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Case Brief: First Circuit Clarifies Public Vessel Status Under the Oil Pollution Act

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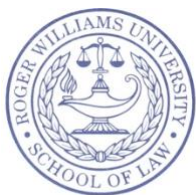
Highlights

- The First Circuit issued the first decision interpreting the definition of “public vessel” under the Oil Pollution Act. It held that “public vessel” should have the same interpretation in both the Oil Pollution Act and Public Vessels Act.
- The Oil Pollution Act does not apply to discharges from vessels in non-commercial service that are owned by the federal government but contracted to a private organization, so long as the federal government exercises operational control over the vessel.
- The holding may apply to other statutes with that use the term “public vessel.”

Background

The Oil Pollution Act (“OPA”) does not apply to any discharge of oil from a public vessel.¹ The OPA defines public vessel as “a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce.”² Until recently, no courts had ruled on whether government-owned vessels operated under contract by non-governmental entities are public vessels under this definition.

In *Ironshore Specialty Ins. Co. v. United States (“Ironshore”)*, the U.S. Court of Appeals for the First Circuit became the first appellate court to rule on whether government-owned vessels operated under contract by a non-governmental entity are public vessels under the OPA.³ The court adopted the interpretation of “public vessel” under the Public Vessels Act (“PVA”). In this context, other circuit courts have consistently held that vessels crewed by contractors are public vessels when under the operational control of the government.⁴ Applying this test, the court found that a Military Sealift Command (“MSC”) vessel owned by the Navy but crewed by a private contractor, American Overseas Marine Company, LLC (“AMSEA”), was a public vessel under the OPA because AMSEA was acting under the operational control of the United States.⁵ The decision suggests that vessels that are public vessels under the PVA are likely to also be public vessels under the OPA.



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Case Overview

Ironshore arose from the discharge of 11,000 gallons of fuel from the vessel *Fisher* into the dry dock in which it was being serviced.⁶ The owner of the dry dock, Boston Ship Repair (“BSR”), contained and removed the fuel, at a cost of almost \$3,000,000.⁷ BSR’s insurer, Ironshore Specialty Insurance Company (“Ironshore Specialty”), reimbursed these costs before suing AMSEA and the United States for: “(1) cleanup costs and damages under OPA; (2) a declaratory judgment finding AMSEA and the United States to be strictly liable parties under OPA; and (3) damages sounding in general admiralty and maritime law as a result of AMSEA’s and the United States’ alleged negligence.”⁸

The U.S. and AMSEA moved to dismiss the OPA claims, arguing that *Fisher* was a public vessel and therefore that the discharges were excluded from OPA liability.⁹ They argued that the *Fisher* qualified as a public vessel because it is both owned and operated by the United States. Conversely, Ironshore Specialty argued that AMSEA was the sole operator of the *Fisher*.¹⁰ The district court granted the motions to dismiss.¹¹ Ironshore Specialty appealed to the U.S. Court of Appeals for the First Circuit, which issued its ruling in September, 2017.¹²

The case presented an issue of first impression: no federal court, “aside from the district court in this case . . . has been required to interpret the precise definition of ‘public vessel’ under the OPA.”¹³ The holding in *Ironshore* therefore is an important precedent for future cases.

The First Circuit determined that “public vessel” should be “interpreted in the same manner under both the PVA and the OPA.”¹⁴ The court recognized that the definition of “public vessel” set forth in the OPA requires that the government both own and operate the vessel.¹⁵ The OPA “provides no definition of the word ‘operated,’”¹⁶ and the PVA does not define “public vessel” at all. However, the court noted a long line of cases interpreting “public vessel” under the PVA.¹⁷ Applying principles of statutory construction seeking harmony between statutes and consistency in meaning, the court “harbor[ed] no doubt that Congress intended the OPA term ‘public vessels’ to be interpreted in the same manner as ‘public vessels’ under the Public Vessels Act.”¹⁸

The *Ironshore* court had little difficulty in determining that a government-owned vessel operated by a contractor can be a public vessel under both the PVA and the OPA. It reviewed holdings from five other circuit courts in which vessels owned by the government but operated under contract were consistently determined to be public vessels.¹⁹ These holdings established “a backdrop of federal law that [] consistently interpreted the term ‘public vessels’ to include government owned ships crewed by private contractors acting

on behalf of the government.”²⁰ The court then applied this background principle to the definition under the OPA. It held that:

if a vessel functioning in a public capacity is owned (or bareboat chartered) by the United States, but crewed by a private contractor, such a vessel constitutes a ‘public vessel’ so long as the private contractor is acting under the operational control of the United States and except when the vessel is engaged in commerce.²¹

Applying this test, the First Circuit found the *Fisher* to be a public vessel.²² The First Circuit demonstrated that the *Fisher* was under the operational control of the Navy because the contract between the Navy and AMSEA “clearly established that at all times the *Fisher* would be controlled by the U.S military.”²³ Another section of that contract indicated that the military would exercise “Operational Control.”²⁴ The contract also indicated that Military Sealift Command Headquarters would exercise “Administrative Control.”²⁵ The contract called for the government to exercise final approval of spending if that spending exceeded \$100,000, as well as the incorporation of specific provisions in any subcontract AMSEA executed.²⁶ Furthermore, the master of the ship “was under an obligation to follow both a Navy standard operating manual and any additional definitive instructions from the United States Navy.”²⁷

Implications

This case provides new guidance for determining the public vessel status of government-owned vessels that are operated under contract by non-governmental entities. Under the First Circuit decision, if a vessel is a public vessel under the PVA, then it is likely a public vessel under the OPA.

This holding may apply to oceanographic research vessels that are part of the U.S. Academic Research Fleet (“ARF”). ARF vessels are owned by the federal government but operated by research institutions under charterparty or cooperative agreements.²⁸ Discharges of oil from an ARF vessel may be excluded from OPA liability if the U.S. government retains operational control over the vessel, as indicated by the relevant agreement or other evidence, such as direction on the vessel’s schedule and/or oversight or control over its operations.

This reasoning supporting this holding is not specific to the OPA and could apply in cases brought under other laws. A wide range of laws and regulations use and define the term “public vessel.”²⁹ If called on to interpret the meaning of the term under these legal regimes, courts could apply the *Ironshore’s* reasoning to find that government-owned vessels operated under contract are public vessels under the Clean Water Act, admiralty law, or other laws. This holding therefore may affect a broad range of compliance

requirements and potential liabilities for entities contracted to operate government-owned vessels.

Conclusion

In *Ironshore*, the First Circuit issued the first holding interpreting the meaning of public vessel under the OPA. A government-owned vessel crewed by a private contractor is a public vessel if the government exercises operational control over the vessel. Courts will determine whether the government retains operational control over such vessels by considering the contract between the vessel owner and crewing entity, as well as other relevant indicia of government control.

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¹ 33 U.S.C. § 2702.

² 33 U.S.C. § 2701.

³ 871 F.3d 131 (2017).

⁴ *Id.* at 138.

⁵ *Id.*

⁶ *Id.* at 133-34.

⁷ *Id.* at 134.

⁸ *Id.*

⁹ *Ironshore Specialty Ins. Co. v. United States*, No. 15-12292-RWZ, slip op. at 1 (D. Mass Apr. 19, 2016).

¹⁰ *Id.*

¹¹ *Id.* at 2.

¹² 871 F.3d at 134.

¹³ *Id.* at 137.

¹⁴ *Id.* at 137-38 (citing *U.S. v. Gray*, 780 F.3d 458, 467 (1st Cir. 2015), *Erlenbaugh v. U.S.*, 409 U.S. 239, 243 (1972)).

¹⁵ *Id.*

¹⁶ *Id.* at 137.

¹⁷ *Id.* at 138.

¹⁸ 871 F.3d at 138.

¹⁹ *Id.* at 137.

²⁰ *Id.* at 138.

²¹ *Id.*

²² *Id.* at 138-39.

²³ 871 F.3d at 138-39.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 139.

²⁷ *Id.* at 139.

²⁸ *Status of the U.S. Academic Research Fleet as Public Vessels Under U.S. and International Law* (Marine Affairs Institute, Roger Williams Univ. Sch. of Law, Paper No. 8-2017, July 2017).

²⁹ *Id.* at 20-22 (listing statutes).