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# The Jones Act: Washington's Ultimate Swamp Creature

*Case Study*

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For almost 100 years the U.S. economy has been burdened by a law called the Jones Act. Formally known as the Merchant Marine Act of 1920, it restricts the waterborne transportation of goods within the United States to vessels that are U.S.-flagged, U.S.-built, at least 75 percent U.S.-owned, and at least 75 percent U.S.-crewed. While laws restricting domestic transportation by operators from other countries—a phenomenon known as cabotage—are common among countries with maritime geographies, few are so draconian. Indeed, the World Economic Forum calls it the world's most restrictive such law.<sup>1</sup>

Passed in the wake of World War I, the law's supporters—most prominently Sen. Wesley Jones (R-WA)—claimed that it would help avoid a reliance on foreign shipping that the United States experienced during the conflict.<sup>2</sup> Jones Act advocates assert that the law's restrictions ensure the existence of U.S. ships, U.S. mariners, and a domestic shipbuilding capability that can be drawn upon in times of war and national emergency. But instead of bolstering the U.S. maritime industry, the Jones Act's protectionism has contributed to its decline. That it still survives is not explained by the law's economic or policy merits, but rather the votes its supporters can deliver. The Jones Act is the ultimate Washington swamp creature whose support is paradoxically strongest in those states where it inflicts the most harm.

The Jones Act is a veritable recipe for how to raise the cost of maritime transport. The U.S.-flag restriction means that only 99<sup>3</sup> of the world's more than 50,000 ships<sup>4</sup> can offer their services, dramatically reducing competition. U.S. ownership and labor mandates, meanwhile, deprive the sector of investment and increase labor costs. Perhaps most egregiously, the domestic-build provision means the purchase of ships at prices that are up to *five times higher* than those of foreign-built vessels.<sup>5</sup>

Evidence of the Jones Act's impact on transportation costs abound. A 2012 report issued by the Federal Reserve Bank of New York, for example, found the cost of shipping goods from New York to Puerto Rico to be twice as expensive as shipping to nearby Caribbean ports not subject to the Jones Act.<sup>6</sup> Other government studies note examples of oil transport being up to three times more expensive on Jones Act routes than longer international voyages where the law does not apply.<sup>7</sup>

The law's high costs and restrictions produce distortions that ripple through the economy. The Jones Act's cost premium has been cited as the reason that, despite similar prices, farmers in Puerto Rico more often purchase feed and fertilizer from foreign sources than the U.S. mainland.<sup>8</sup> High costs, along with a total lack of Jones Act-compliant ships specially designed to transport livestock, also explain the decision of ranchers in Hawaii to send their cattle to the U.S. mainland via airplane.<sup>9</sup> And

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<sup>1</sup><http://reports.weforum.org/global-enabling-trade-2013/shipping-co/>

<sup>2</sup><https://timesmachine.nytimes.com/timesmachine/1920/08/12/103468215.pdf>

<sup>3</sup>[https://www.maritime.dot.gov/sites/marad.dot.gov/files/pictures/DS\\_USFlag-Fleet\\_20190709\\_Bundle.pdf](https://www.maritime.dot.gov/sites/marad.dot.gov/files/pictures/DS_USFlag-Fleet_20190709_Bundle.pdf)

<sup>4</sup><https://www.statista.com/statistics/264024/number-of-merchant-ships-worldwide-by-type/>

<sup>5</sup>[https://www.everycrsreport.com/files/20190517\\_R45725\\_0cf46bab3c583b70e4ff53076e46db495e9d4bfa.pdf](https://www.everycrsreport.com/files/20190517_R45725_0cf46bab3c583b70e4ff53076e46db495e9d4bfa.pdf)

<sup>6</sup><https://www.newyorkfed.org/medialibrary/media/regional/PuertoRico/report.pdf>

<sup>7</sup><https://www.gao.gov/archive/1999/rc99191.pdf>; <https://fas.org/sgp/crs/misc/R43390.pdf>

<sup>8</sup><https://www.gao.gov/assets/660/653046.pdf>

<sup>9</sup><https://www.youtube.com/watch?v=Oq4YQqXMquQ>



while natural gas is both cheap and plentiful in the United States, an absence of dedicated liquefied natural gas carriers in the Jones Act fleet is a key reason why Puerto Rico instead purchases its natural gas from Trinidad and Tobago. Incredibly, there is no way to transport it from the U.S. mainland.

Such examples help explain why a recent OECD study concluded that repealing the law could result in up to \$135 billion of increased economic output.<sup>10</sup>

But the possible gains could reach higher still. The reduced competitiveness of waterborne transport means increased reliance on other forms of transportation such as trucks. This, in turn, means increased congestion, pollution, and highway maintenance costs. That 40 percent of EU internal freight is moved by sea<sup>11</sup> compared to a mere 6 percent of domestic tonnage in the United States for all waterborne cargo<sup>12</sup> gives some hint as to the scale of the missed opportunity.

The Jones Act's toll further expands after accounting for lost export opportunities. During free trade negotiations the United States consistently refuses to place the Jones Act on the table for discussion. In response, U.S. trading partners leave in place protectionist measures of their own that reduce the access of Americans to their own markets. Everyone walks out a loser.

Has anything been achieved by this costly law? Certainly not a strong, dynamic maritime sector. By virtually any metric it is in shambles.

Since 1950 the number of Jones Act-compliant oceangoing ships has shrunk from over 400 to a mere 99.<sup>13</sup> It's a fleet that has not just deteriorated in numbers but is creaking with age. While Maritime Administrator Mark Buzby told Congress earlier this year that it's rare to find commercial ships beyond 15-20 years of age<sup>14</sup>, such vessels are in abundance in the Jones Act fleet. One-third of all Jones Act-compliant ships are at least 20 years old, and among the 42 non-tanker ships a stunning 26—62 percent—are at least 25 years old.<sup>15</sup>

This decline in ships has been matched by a decline in mariners. Indeed, a 2017 government report concluded that the pool of available merchant mariners—relied upon by the U.S. military to crew sealift ships—has shrunk to such levels that it is at least 1,800 short of those needed to crew both the sealift and commercial fleets in a sustained wartime scenario.<sup>16</sup>

U.S. commercial shipbuilding, the ostensible beneficiary of the Jones Act's U.S.-build requirement, exists in an equally grim state. Absent the rigors of international competition U.S. shipyards have become a pale imitation of those found abroad, ridden with inferior technology and low productivity.

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<sup>10</sup>[https://read.oecd-ilibrary.org/science-and-technology/local-content-requirements-and-their-economic-effect-on-shipbuilding\\_90316781-en#page21](https://read.oecd-ilibrary.org/science-and-technology/local-content-requirements-and-their-economic-effect-on-shipbuilding_90316781-en#page21)

<sup>11</sup><https://publications.europa.eu/en/publication-detail/-/publication/ec937c8f-4b6d-462e-9278-8a2d092d24c2>

<sup>12</sup><https://fas.org/sgp/crs/misc/R44367.pdf>

<sup>13</sup>[https://www.everycrsreport.com/files/20190517\\_R45725\\_0cf46bab3c583b70e4ff53076e46db495e9d4bfa.pdf](https://www.everycrsreport.com/files/20190517_R45725_0cf46bab3c583b70e4ff53076e46db495e9d4bfa.pdf)

<sup>14</sup><https://www.youtube.com/watch?v=xQu4gdxoE1Y&feature=youtu.be&t=2375>

<sup>15</sup>[https://www.maritime.dot.gov/sites/marad.dot.gov/files/pictures/DS\\_USFlag-Fleet\\_20190709\\_Bundle.pdf](https://www.maritime.dot.gov/sites/marad.dot.gov/files/pictures/DS_USFlag-Fleet_20190709_Bundle.pdf)

<sup>16</sup><https://www.maritime.dot.gov/sites/marad.dot.gov/files/docs/mariners/1026/mwwg-report-congress-finalr3.pdf>

This has contributed to high ship prices, low demand for the shipyards' offerings, and consequent production of a mere 2-3 oceangoing ships per year.<sup>17</sup> Wasted away upon a diet of protectionist poison, U.S. involvement in the production of large commercial ships is in danger of slipping beneath the waves.

That such a failed and destructive law has managed to persist for nearly 100 years can be largely attributed to two dynamics. The first is claims that the Jones Act conveys important benefit to U.S. national security. According to this thinking, the law guarantees the existence of U.S.-flagged ships, U.S. merchant mariners, and a U.S. shipbuilding industry that can be drawn upon by the U.S. military in times of conflict to carry supplies and equipment as well as repair damaged naval vessels and build new ones.

Such logic falls apart, however, when subjected to even cursory scrutiny. During the massive sealift effort in support of the Persian Gulf War, for example, the United States found itself so short on ships that a quarter of military equipment was transported by foreign-flagged ships and it twice requested the services of a Soviet-flagged transport ship (denied both times).<sup>18</sup> Yet despite this dearth of shipping only a single Jones Act-compliant ship was used to transport equipment from the United States to Saudi Arabia.<sup>19</sup>

Beyond ships, the United States also faced a shortage of mariners which necessitated the use of retirees to crew the sealift effort. At least two of these retirees were in their eighties. The oldest was 92.<sup>20</sup> The war was also of sufficiently short duration that U.S. commercial shipyards, which have only further atrophied since the war, were not called upon to produce new warships (where most have little expertise) or repair battle-damaged vessels.

The second dynamic prolonging the Jones Act's existence is the age-old phenomenon of dispersed costs and concentrated benefits. The Jones Act's costs, while considerable, are spread across the vast expanse of the U.S. economy. As a result, most Americans are likely not even aware of the law. Even if they are, the relatively small direct cost to each U.S. citizen substantially reduces their incentive to commit the time and resources needed to successfully lobby for its removal.

Businesses harmed by the Jones Act may also be reluctant to become deeply involved in a reform effort. Even if the Jones Act exacts a significant toll, these organizations no doubt ask themselves if it is worth committing significant resources to the reform of a law that been impervious to such efforts for decades. Furthermore, the law is typically only one of an array of regulatory concerns they would like to see addressed. And lobbying for reform risks antagonizing powerful members of Congress who could be potential allies on these other issues.

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<sup>17</sup>[https://www.everycrsreport.com/files/20190517\\_R45725\\_ocf46bab3c583b70e4ff53076e46db495e9d4bfa.pdf](https://www.everycrsreport.com/files/20190517_R45725_ocf46bab3c583b70e4ff53076e46db495e9d4bfa.pdf)

<sup>18</sup><https://www.jcs.mil/Portals/36/Documents/History/Monographs/Transcom.pdf>

<sup>19</sup>Vice Adm. A.J. Herberger, USN [Ret.], Kenneth C. Gaulden, and Cdr. Rolf Marshall, USN [Ret.], *Global Reach: Revolutionizing the Use of Commercial Vessels and Intermodal Systems for Military Sealift, 1990-2012* (Annapolis: Naval Institute Press, 2015), p. 106.

<sup>20</sup><https://www.jcs.mil/Portals/36/Documents/History/Monographs/Transcom.pdf>

The risk-reward calculus often does not favor taking a strong stand. As a result, there are currently almost no groups whose sole or even main focus is securing the law's demise.

Among those who profit from the Jones Act, however, it is a very different story. They are not only keenly aware of the law, but regard it as nearly existential concern. As a result, there is a long list of groups which loudly advocate for the Jones Act including the American Maritime Partnership, Transportation Institute, American Waterways Operators, Lake Carriers Association, American Maritime Congress, Navy League, Shipbuilders Council of America, Offshore Marine Service Association, AFL-CIO, and many more. They are well-organized, well-funded, and make their presence felt in legislative offices around the country.

The power of both the Jones Act lobby and the dynamic of dispersed costs and concentrated benefits are most vividly on display in two of the states most harmed by the Jones Act: Alaska and Hawaii. Facing limited overland transport options in the case of Alaska, and none for Hawaii, both states are highly dependent on expensive Jones Act shipping for much of their commerce with the U.S. mainland. The burden on Alaska is actually such that, as the result of a 1984 referendum, the state's law requires Alaska's governor to "use best efforts and all appropriate means to persuade the United States Congress to repeal those provisions of the Jones Act."<sup>21</sup>

Shockingly, however, all three members of the state's congressional delegation are in lock-step support of the law. When President Trump was said to be considering a Jones Act waiver for the domestic transport of liquefied natural gas, both Sen. Lisa Murkowski (R-AK) and Sen. Dan Sullivan (R-AK) were part of a congressional delegation that visited the White House to dissuade him from such a move.<sup>22</sup> It's a similar story in Hawaii, where three of the four members of Congress who represent the state fully support the law.

This bizarre phenomenon would seem to be explained by the fact that, as states heavily dependent on Jones Act transportation, both are also disproportionately home to interests that benefit from the law. Similarly, it is surely no coincidence that some of the Jones Act's loudest congressional critics in recent years, such as the late Sen. John McCain (R-AZ) and Sen. Mike Lee (R-UT), have hailed from states with no coastline and little connection to the Jones Act industry.

The Jones Act is a protectionist relic and economic albatross that has raised costs, increased traffic and pollution, and reduced export opportunities. It is sand in the U.S. economy's gears. The law's alleged virtues, meanwhile, are wholly without merit. Meant to bolster the domestic maritime industry, the Jones Act has instead contributed to its decline. Its national security rationale has been consistently proven a fiction. And yet it persists.

To drown this swamp creature will require a mighty campaign. Americans will have to be made aware of the Jones Act and the myriad ways in which it impacts them, their families, and the country as a whole. Its justifications will have to be exposed for the myths that they are. And the disparate

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<sup>21</sup><http://www.legis.state.ak.us/basis/statutes.asp#44.19.035>

<sup>22</sup><https://www.bloomberg.com/news/articles/2019-05-01/trump-jones-act-congress>

groups who stand to benefit from the law's demise, ranging from farmers to the Puerto Rican diaspora to the business community to environmentalists, must band together as one. It's time for Americans to say enough is enough. It's time to repeal the Jones Act.