

Issue Brief

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The Jones Act Paradox: Why Is a Law that is Deemed “Essential” So Frequently Waived?

Introduction

The Merchant Marine Act of 1920, known as the Jones Act, is one of the rare pieces of American legislation that has remained relatively unchanged for over a hundred years. The policy was designed to protect the U.S. maritime industry from competition by mandating that goods shipped between U.S. ports must be transported on ships that are built, owned, and operated by United States citizens. In maritime law, these types of restrictions on shipping are known as cabotage. As National Taxpayers Union Foundation’s Andrew Wilford [summed it up](#), “[A] French cargo ship can dock in Boston, but it can’t continue on to Savannah.”

The Jones Act’s supporters argue that the law is critical to the economic and national security of the United States. But if the Jones Act is so critical to American interests, why does the government waive it so often in response to national disasters? These waivers make it easier – and cheaper – to get supplies where they are needed in response to an emergency. There are also frequent waiver requests for various development projects because of the rarity of Jones

Key Facts:



The Jones Act, a century-old law, mandates U.S.-only shipping between domestic ports. Despite its purportedly ‘essential’ status, it is frequently waived during crises, raising questions about whether such an economically costly law is truly necessary.



The Jones Act harms the economy by inflating shipping costs, hitting consumers’ wallets, as well as artificially restricting the methods by which American consumers can have goods transported to them. And while it is aimed at protecting the U.S. maritime industry, the Jones Act ironically has led to its demise.



Despite all of the flaws with the Jones Act, lawmakers have been raising barriers to relief waivers. This is moving policy in the wrong direction.

Act-compliant shipping fleets. Rather than being a key bulwark of national and economic security relied upon in times of crisis, the Jones Act only serves as a nonsensical barrier to trade that must be removed when it can no longer be circumvented.

A recent law increased transparency going forward for Jones Act waiver requests. Unfortunately, that law also made it harder for Jones Act waiver requests to get approval. The history of such requests over the past several years, reviewed below, demonstrates that lawmakers should reconsider the effectiveness and practicality of the Jones Act in general as it does not serve the function it was instituted for.

A Turbulent History

Critics of the Jones Act point out that its mandates significantly increase the cost of shipping, which is ultimately passed on to consumers. For example, Rep. Ed Case (D-HI) argues that the Jones Act significantly increases the cost of living in Hawaii by limiting the number of ships that can legally transport goods to the islands. According to a [2020 study](#), the Jones Act cost the average Hawaiian family \$1,800 per year.

Similar costs are imposed on Alaska. A recent analysis from America's northernmost state [opined](#), "At least as far as Alaskans are concerned, stripped to its economic essentials, the Jones Act is nothing more than an interstate subsidy flowing from Alaska consumers to shipbuilders, shipowners, operators, and seafarers overwhelmingly located in other states."

For a good explanation of how ridiculous the Jones Act restrictions can be, Reason Foundation published a video on YouTube called [Cabotage](#), a parody of the song "Sabotage" by the Beastie Boys. In the video, a Canadian ship loaded with goods is prevented by a federal agent from docking in Puerto Rico unless it touches base at a foreign port first.

The Jones Act's strongest advocates are often the same [domestic shipping interest groups it protects](#). They argue that the law safeguards American jobs in the maritime sector, preserves domestic shipbuilding capability, and is critical to national security.

However, despite these claims of how essential the Jones Act is, its restrictions are frequently waived whenever there is an emergency. Below is a review of Jones Act waivers for disasters since 2005:

- Hurricane Katrina (2005): After the devastation caused by Hurricane Katrina, then-Secretary of Homeland Security Micheal Chertoff was instructed by President George W. Bush to waive the Jones Act. This allowed non-U.S.-built, owned, and documented vessels to distribute petroleum and refined petroleum products to areas in need. The [eighteen-day](#) waiver was specific to vessels transporting these commodities and was in effect until September 19, 2005.
- Hurricane Rita (2005): Hurricane Rita that same year led to another directive from the President for Secretary Chertoff to waive the Jones Act restrictions. This allowed foreign-flagged ships to transport fuel between U.S. ports for [one month](#), increasing the flexibility of the U.S. energy distribution system.
- Libyan Crisis (2011): In response to oil supply disruptions stemming from the war in Libya, the [Obama Administration approved](#) several Jones Act waivers from July 8, 2011, to September 9, 2011. The waivers helped to efficiently implement a sale from the U.S. Strategic Petroleum Reserve (SPR) so that foreign vessels would be able "to transport the crude oil from U.S. delivery points to U.S. refineries."
- Hurricane Sandy (2012): The Jones Act was waived again in 2012 to ease the transport of petroleum products from the Gulf Coast to the Northeast. The waiver lasted from November 13th to the 20th.

- Hurricanes Harvey and Irma (2017): In the aftermath of Hurricanes Harvey and Irma, the Trump Administration issued temporary Jones Act waivers for Texas, Louisiana, and Florida. These waivers were meant to facilitate the recovery and relief efforts in the areas severely damaged by these hurricanes. In total, the Act's restrictions were waived for [27 days](#).
- Puerto Rico (2017): Similarly, a temporary waiver was issued for Puerto Rico following the devastation caused by Hurricane Maria in September 2017. The waiver was aimed at expediting the response to the severe storm. Following this waiver, President Trump briefly considered waiving the Jones Act in Puerto Rico for [ten years](#), a move that would have greatly benefited [Puerto Rico](#).
- [Colonial Pipeline](#) (2021): In the wake of an historic cyber attack, the Secretary of Homeland Security Alejandro Mayorkas, approved a temporary Jones Act waiver to allow for the swift transport of oil products between the Gulf Coast and the East Coast.
- Hurricane Fiona (2022): After a hurricane hit Puerto Rico again, Secretary Mayorkas approved another waiver, much to the chagrin of the American Maritime Partnership. The purpose of the waiver was to allow a [Marshall Islands-flagged ship](#) sailing from Texas to Amsterdam to detour and give its diesel cargo to Puerto Rico. The partnership had this to say: "Granting of this waiver rewards calculated and predatory behavior that undermines a dedicated American supply chain for Puerto Rico, and it is a harmful precedent that invites similar cynical stunts by foreign oil [traders](#)." The cynical stunt they're referring to bought Puerto Ricans energy when Jones Act restrictions would have left them dead in the water.

The review of recent actions shows how critical Jones Act waivers are in expediting and streamlining relief. It also shows that the Jones Act increases basic costs and imposes needless delays and complications year-round, not just when there is an emergency or natural disaster. Every time the act gets waived during national crises, its supporters' arguments lose more water.

Other Waiver Requests and Problems Imposed by the Jones Act

For every accepted waiver request, there are many that are denied and there are yet other complications caused by the Jones Act. As noted above, Hawaii's Representative to Congress has noted that the Jones Act significantly increases the basic cost of living in Hawaii. Earlier this year, Padma Lakshmi, a long-time host of the *Top Chef* television program, caused a stir by using her social media presence to highlight how the Jones Act essentially imposes a [food tax on the residents of the Commonwealth of Puerto Rico](#).

Jones Act problems, which often necessitate waiver requests, don't just arise from "special interests" as erroneously claimed by the act's loudest proponents. The Jones Act's deleterious impacts do not just result from natural disasters, and they are more widespread than its advocates claim. There are many numerous examples but below is an overview of a handful of recent significant Jones Act-related complications.

- Polar Vortex (2014): The winter in 2014 was especially harsh. New Jersey ran out of road salts during the historic cold wave. The shortage was so bad that the state nearly had to [close its roads](#) after using up its stockpile. Many municipalities had used up their salt stockpiles that would normally last all the way through spring. There was a ready solution in the form of a 40,000-ton salt rock sale in Maine. Unluckily for New Jersey, the salt was on a Marshall Islands cargo ship. The state requested a Jones Act waiver, but it was denied as they had [requested it too late](#).

- Natural Gas Supplies during Russia’s War on Ukraine (2022): Russia’s invasion of Ukraine led to a sharp rise in natural gas prices (LNG). New England was particularly affected by this, as the region relies heavily on imported LNG in the winter. Since U.S.-exported LNG is generally transported on more affordable foreign ships, the Jones Act essentially barred New England from legally receiving the natural gas needed to keep its citizens warm.
- Red Hill Bulk Fuel Storage Facility (2023): In late November of 2021, Joint Base Pearl Harbor Hickam residents reported oil smells coming from their tap water. The contamination was traced back to Red Hill, the largest underground fuel storage facility in the U.S. This led to the Secretary of Defense’s decision to shut it down. Starting in October 2023, the fuel at the facility will be relocated to other storage depots. In April 2023, Rep. Case sent a letter to the President requesting a waiver [noting](#), “As a practical matter, Jones Act ships are functionally unavailable for this timeframe and prohibitively expensive due to the very limited number of fuel tankers in the Jones Act fleet, which are fully committed elsewhere.”.
- Offshore Energy Development Projects (2022): The Outer Continental Shelf (OCS) Lands Act extended the Jones Act to approximately 200 miles offshore for purposes of development of mineral resources. This has complicated offshore projects because there are deficiencies in the Jones Act-compliant fleet to get the needed equipment to development sites. In 2010, the U.S. Customs and Border Protection (CBP), responsible for enforcing the Jones Act, ruled that it did not apply to stationary construction vessels. Then the issue turned to whether the Jones Act would apply to non-mineral energy development in the OCS. In April 2022, CBP ruled that the Jones Act does not apply to some OCS development of wind energy, decreasing [complications and costs](#) because of [a lack of U.S.-flagged specialized ships](#) for these projects.

In addition to all of its direct impacts on consumers, businesses, and taxpayers, the Jones Act also hinders the development of the American maritime industry as a whole. A protected industry is also free from international competition, meaning that they have less of an incentive to innovate. As Michael Hansen, president of the Hawaii Shippers Council, [put it](#): “The only thing American about an oceangoing ship assembled in the U.S. today is the extraordinarily high price; foreign shipyards provide the design, main engines and other equipment.”

Many of the waiver requests are due to the shortcomings of the Jones Act-compliant fleet. The American maritime industry often turns to [European companies](#) not just to fulfill cargo shipping needs where the U.S. lacks enough specialized vessels — there are only [93](#) private oceangoing ships in the Jones Act fleet as of 2023 — but also for the [ship designs](#) for manufacturing.

Despite the shortcomings of the Jones Act fleet to efficiently support offshore projects or to get relief aid where it is needed as swiftly and cheaply as possible, supporters of the Jones Act offer up fierce resistance to nearly all waiver requests. One of the most vocal sources of resistance to economic efficiency is The American Maritime Partnership (AMP). They complained the Jones Act waiver for Puerto Rico mentioned above [meant](#) that “special interests are prevailing over national interests.” In response to the road salt shortage that endangered travel in the wake of the 2014 Polar Vortex, AMP blamed the impacted states for a [lack of preparation](#) and urged, “... don’t delay in requesting assistance from the American maritime industry!” This represents a complete lack of regard for taxpayers who pay the bill for all this.

Murky Waters: Jones Act Waivers and Transparency

The arguments frequently raised against waivers, even in the face of clear cases where waivers were necessary for the public good, suggest an entrenched resistance to change that does not serve the broader American interests. Unfortunately, despite all of the problems associated with the Jones Act, Congress has made it more difficult, not less, to get waivers.

In the National Defense Authorization Act for Fiscal Year 2023 (NDAA), Congress enacted several amendments to make it harder to get approval of Jones Act waivers. Under the NDAA, a U.S. vessel availability survey must be conducted before any waiver can be granted, prescribes a 48-hour waiting period, prohibits retroactive U.S. vessel availability surveys, and “prohibits waivers once the vessel proposed to receive a waiver is already underway.” K&L Gates, a multinational U.S.-based law firm, wrote that the [purpose of the statute](#) was to “to avoid waivers whenever possible.”

Fiscal Year 2023’s NDAA amendments included a change to increase the transparency of waiver requests. Starting December 23, 2023, CBP is required to publish all waiver requests on a [website](#). Given that the amendments added barriers against new waivers, there is no doubt the reason for the additional transparency is so that Jones Act supporters can work to prevent a requested waiver from being granted. But it also can shed light on just how often waiver requests are submitted to CBP (other waiver requests, as noted above, can be addressed directly to the President). The NDAA provision does not apply retroactively. NTUF has submitted a Freedom of Information Act Request for a record of previous waiver requests. Information was not supplied by the time of publication of this issue brief.

There is also a renewed effort on the current Congress to add even more barriers to waivers from the Jones Act. Representatives John Garamendi (D-CA) and Garret Graves (R-LA) have added a [provision to the current Coast Guard authorization bill](#) that would make the application of the Jones Act in the OCS stricter, making it harder to and more expensive to get the specialized ships where they are needed.

Conclusion

NTUF’s Free Trade Initiative frequently features legislation to roll back tariffs. Recently, the Free Trade Initiative wrote about the [Formula 3.0 Act](#), which would repeal harsh tariffs on baby formula to address shortages. Also analyzed was the [Bicameral Congressional Trade Authority Act](#), which would reassert Congressional authority on tariffs suggested by the president for the sake of national security. The benefits of these bills would include the introduction of foreign competition, lower prices for consumers, increased innovation, an expanded variety of goods, and overall economic growth.

The Jones Act fails to justify itself, even on its own terms. A law designed for the sake of national security shouldn’t weaken the nation in times of emergency. The Jones Act leaves the U.S. slower to react when the need arises. Rather than continuing to experience the negative effects of a hundred-year-old piece of legislation, it seems like a “no-brainer” for Congress to pursue repealing, or at least reforming the act.

Both sides of the aisle must recognize that clinging to this outdated policy is not an act of patriotism, but rather one of stagnation. The United States, a global leader, must ensure that its maritime policy is agile, competitive, and in tune with the needs of its citizens.

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