

BACKGROUND

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Sink the Jones Act: Restoring America's Competitive Advantage in Maritime-Related Industries

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Abstract

The Jones Act drives up shipping costs, increases energy costs, stifles competition, and hampers innovation in the U.S. shipping industry. Originally enacted to sustain the U.S. Merchant Marine, the law has instead fostered stagnation in the U.S. maritime shipping industry. Furthermore, the Jones Act fleet is unable to meet the needs of the U.S. military, which routinely charters foreign-built ships to fulfill additional sealift needs. The U.S. economy and the U.S. military would be better served without the Jones Act.

The Merchant Marine Act of 1920, more commonly referred to as the Jones Act, is a protectionist measure that regulates domestic U.S. shipping practices. The Jones Act mandates that any goods shipped by water between two points in the United States must be transported on a U.S.-built, U.S.-flagged, and at least 75 percent U.S.-crewed vessel. Originally conceived to sustain the Merchant Marine fleet after the First World War, the Jones Act has become the support system for domestic commercial shipbuilding.

Foreign companies carry more than 80 percent of traffic in American international liner commerce.¹ The Jones Act keeps otherwise uncompetitive elements of the American shipping industry afloat, but this legislative gift to the shipping industry carries a stiff price. The Jones Act harms the U.S. economy by driving up shipping costs. It increases energy costs, stifles competition, and hampers innovation that is essential to the long-term competitiveness of the U.S. shipping industry, and the national security argument for the Jones Act is weak at best.

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KEY POINTS

- The Jones Act mandates that any goods shipped by water between two points in the United States must be transported on a U.S.-built, U.S.-flagged, and U.S.-operated vessel.
- The Jones Act fleet is unable to provide the sealift or icebreaking capability needed by the U.S. Armed Forces.
- According to the Government Accountability Office and the Federal Reserve Bank of New York, the Jones Act significantly increases domestic maritime shipping prices, increasing costs for businesses and consumers.
- Repealing the Jones Act would reduce the cost of transporting energy by water because foreign-flagged ships could transport oil for an estimated one-third of the cost of U.S.-flagged ships.
- Repealing the outdated, protectionist Jones Act would promote competition, strengthen the economy, and benefit American consumers.

The Jones Act Hinders National Security

The national security justifications behind the Jones Act have little impact on U.S. military capabilities. These supposed security benefits include maintaining a merchant fleet that can be used in time of crisis to serve U.S. interests and sustaining the industrial base for U.S. shipbuilding. Neither argument has held up to actual maritime practices in the United States.

The Jones Act no longer fulfills its intended purpose of maintaining a dependable marine fleet for national security and emergencies. In 1955, there were 1,072 U.S.-built commercial ships.² By 2000, the U.S. Jones Act-eligible fleet consisted of just 193 ships and by 2014 that number had fallen to just 90.³ In fact, by artificially inflating prices, protectionist measures such as the Jones Act may have given foreign competitors a competitive edge in international shipping. The Persian Gulf conflict in the early 1990s proved that the Jones Act was not a necessary element in supplying and sustaining a military operation. Military Sealift Command (MSC), which supplies deployed U.S. Armed Forces, shipped more than one-fifth of its dry cargo on foreign-chartered vessels.⁴

Additionally, the U.S. Department of Defense (DOD) has frequently leased foreign vessels to execute missions that required additional sealift capacity. This further obviates the need for the Jones Act. Official DOD policy states:

[MSC] charters ships (from the commercial market) to meet the requirements of DoD components and respond to changes in the operational environment. Unfortunately, *very few commercial ships with high military utility have been construct-*

ed in U.S. shipyards in the past 20 years. Consequently, when MSC has a requirement to charter a vessel, nearly all of the offers are for foreign-built ships. In cases where the need is immediate or subject to change, due to the operational environment or other factors, a commercial charter is the only practical way to obtain the capability.⁵

Jones Act proponents who oppose this policy argue that South Korea and China—which build many of the world’s commercial ships—are far too volatile for the U.S. to rely upon them for shipping needs. While this argument is debatable from a geopolitical perspective, it ignores the more immediate security concern: supplying service members with what they need, when they need it.

The U.S. Department of Defense has frequently leased foreign vessels to execute missions that required additional sealift capacity.

The Maritime Administration’s Ready Reserve Fleet (RRF) also proves that maritime security does not rely on the Jones Act. This fleet, created for “transport of Army and Marine Corps unit equipment, combat support equipment, and initial resupply during the critical surge period before commercial ships can be marshaled,” has supplied the military at the outset of both the Iraq and Afghanistan wars as well as in past conflicts. Currently, 30 of the 46 RRF ships are foreign-built.⁶ The U.S. clear-

1. Daniel Brackens, “The Negative Effects of the Jones Act on the Economy of Hawaii,” The Bastiat Institute, August 18, 2009, p. 6, <http://www.bastiatinstitute.org/wp-content/uploads/2009/08/Jones-Act-Study1.pdf> (accessed February 18, 2014).
2. American Maritime Congress, “Modern Merchant Marine,” <http://www.americanmaritime.org/merchant/> (accessed February 20, 2014).
3. U.S. Department of Transportation, Marine Administration, “United States Flag Privately-Owned Merchant Fleet, 2000-2014,” www.marad.dot.gov/documents/US-Fleet_Summary_Table_2000-2014.xls (accessed February 20, 2014). This does not include the over 31,000 barges, 5,500 tugs, and nearly 1,000 offshore supply vessels. For a recent breakdown of the U.S.-Flag, Jones Act-Eligible, Privately Owned Merchant Fleet, see United States Department of Transportation Maritime Administration, “2011 U.S. Water Transportation Statistical Snapshot,” November 2013, http://www.marad.dot.gov/documents/US_Water_Transportation_Statistical_snapshot.pdf (accessed April 8, 2014).
4. Michael Hansen, “Jones Act Requirements Could Block Natural Gas Transport to Hawaii,” *Hawaii Reporter*, April 16, 2012, <http://www.hawaiireporter.com/jones-act-requirements-could-block-natural-gas-transport-to-hawaii/123> (accessed February 18, 2014).
5. Ronald O'Rourke, “DOD Leases of Foreign-Built Ships: Background for Congress,” Congressional Research Service *Report for Congress*, May 28, 2010, <http://www.fas.org/sgp/crs/weapons/RS22454.pdf> (accessed February 18, 2014) (emphasis added).
6. U.S. Department of Transportation, Maritime Administration, “The Maritime Administration’s Ready Reserve Force,” http://www.marad.dot.gov/ships_shipping_landing_page/national_security/ship_operations/ready_reserve_force/ready_reserve_force.htm (accessed April 18, 2014).

ly lacks the capacity to transport needed materials and supplies for the military solely with Jones Act-qualified ships, and the Armed Services have acted accordingly by outsourcing.

In this way, the Jones Act and its supporters inadvertently hinder national security. If the U.S. military is comfortable with using foreign vessels during wartime, the argument that they are less safe in commercial use is greatly weakened. If the U.S. military is not comfortable using foreign vessels, then it should simply purchase the ships it needs as part of the defense program, but subjecting the entire U.S. economy to the inefficiencies of a massive protectionist regime for the claimed security benefits is nonsensical.

Critics of this argument might point out that most of the foreign-built vessels servicing MSC and the RRF are relatively old compared to their U.S.-built counterparts. However, the reason for this may also have to do with protective measures by the U.S. government. After the successful use of foreign-built vessels to supply the military during the Persian Gulf War, Congress authorized the Strategic Sealift Program, which claimed to address the shortfall of U.S.-built vessels to perform these roles.⁷ This gave preference to U.S. shipbuilders to sustain the MSC fleet, despite the availability of foreign vessels. Thus, the age of foreign vessels used in the MSC fleet should be attributed to this preferential requirement rather than a lack of availability or ability to build ships.

The U.S. Coast Guard could also benefit greatly from a repeal of the Jones Act. With the increasing interest in natural resources in the Arctic, the Coast Guard's presence in the region will likely rise. Polar icebreaking capacity is a primary responsibility of the Coast Guard in this region, and the Jones

Act hinders its ability to carry out this mission. The Coast Guard's "High Latitude Region Mission Analysis Capstone Summary" concluded that the Coast Guard needs three heavy and three medium polar icebreakers to accomplish all of its Arctic and Antarctic missions.⁸ Today, the Coast Guard fleet has one medium polar icebreaker (USCGC *Healy*) and one heavy polar icebreaker (USCGC *Polar Star*).

The *Healy* operates primarily as a research vessel under the direction of the National Science Foundation. The *Polar Star* is nearly 40 years old and was inactive from 2006 to 2012, when it returned to active service after a \$90 million overhaul.⁹ This overhaul will extend the service life of the *Polar Star* for another seven to 10 years. In the meantime, the Coast Guard is trying to find funding for a new heavy polar icebreaker to begin filling its capability gap. This project could cost nearly \$1 billion.¹⁰ To commission this new icebreaker within the desired time frame, the Coast Guard would need to dedicate a large portion of its procurement budget over several years. This is virtually impossible.

Instead of allocating precious funding that could be used elsewhere, the Coast Guard should pursue leasing foreign-owned commercial polar heavy icebreakers. (The U.S. lacks a commercial heavy icebreaker fleet.) However, the Jones Act inhibits this.

The U.S. military already relies on Russian icebreakers to facilitate resupply missions to McMurdo Station in Antarctica.¹¹ In 2011, when an ice storm prevented the last winter fuel delivery to Nome, Alaska, the U.S. Coast Guard solicited the services of a Russian vessel to reach the community.¹² This response effort required the *Healy* to serve where a heavy icebreaker would have been much more effective. Ultimately, a Jones Act waiver allowed the Russian tank-

7. NASSCO, "Strategic Sealift Program," <http://www.nassco.com/products-and-services/usn-dc/strategic-sealift.html> (accessed May 19, 2014).
8. ABS Consulting, "United States Coast Guard High Latitude Region Mission Analysis: Capstone Summary," July 2010, <http://assets.fiercemarkets.com/public/sites/govit/hlsummarycapstone.pdf> (accessed February 19, 2014). See also David Perera, "Coast Guard Needs at Least 3 Heavy Icebreakers, Says High Latitude Study," *FierceHomelandSecurity*, August 17, 2011, <http://www.fiercehomelandsecurity.com/story/coast-guard-needs-least-3-heavy-icebreakers-says-high-latitude-study/2011-08-17> (accessed February 18, 2014).
9. Antonietta Rico, "Polar Star Gets Back to Work," *Navy Times*, June 17, 2013, <http://www.navytimes.com/article/20130617/NEWS03/306170016/Polar-Star-gets-back-work> (accessed February 25, 2014).
10. Stew Magnuson, "Sticker Shock: \$1 Billion for New Icebreaker," *National Defense*, June 2013, [http://www.nationaldefensemagazine.org/archive/2013/June/Pages/StickerShock\\$1BillionforNewIcebreaker.aspx](http://www.nationaldefensemagazine.org/archive/2013/June/Pages/StickerShock$1BillionforNewIcebreaker.aspx) (accessed February 18, 2014).
11. Seth Robson, "US Uses Russian Icebreaker to Get Fuel Supplies to Antarctica," *Stars and Stripes*, February 12, 2012, <http://www.stripes.com/news/pacific/japan/us-uses-russian-icebreaker-to-get-fuel-supplies-to-antarctica-1.168398> (accessed February 18, 2014).
12. Emily Keyes, "Arctic Policy: Assets and Opportunities," *Pacific Maritime Magazine*, October 1, 2013, <http://www.pacmar.com/story/2013/10/01/features/arctic-policy-assets-and-opportunities/186.html> (accessed February 18, 2014).

er to operate in U.S. waters, but repealing this law would allow the Coast Guard and other government services to lease foreign-built icebreakers more easily, while diminishing U.S. reliance on Russia.

Jones Act proponents also argue that America must keep its shipyards in operation in case that capacity and capability is required in times of military buildup. Yet only one of the shipyards that build the Navy's primary vessels (e.g., carriers, destroyers, amphibious vessels, and submarines) also produces large commercial shipping vessels.¹³ The idea that the Jones Act preserves and sustains America's naval superiority is antiquated. Furthermore, proponents disingenuously argue that it helps to "avoid complete dependence on ships controlled by foreign nations."¹⁴ Yet the military maintains its capacity to build highly sensitive weapons systems—including naval ships—regardless of the existence or health of comparable commercial sectors in the U.S. Allowing America to use foreign-built ships for noncombative systems makes economic sense when those ships can be built less expensively abroad.

The Jones Act directly threatens national security in disaster response. The President can waive the Jones Act during a national emergency and often does. President George W. Bush signed a waiver during the response to Hurricane Katrina to ensure that all maritime assets could aid in restoration and stabilization. More recently, President Obama waived the Jones Act during the response to Hurricane Sandy "to immediately allow additional oil tankers coming from the Gulf of Mexico to enter Northeastern ports, to provide additional fuel resources to the region."¹⁵ During disasters, recovery efforts should not be slowed by unnecessary legal roadblocks. If during disasters the Jones Act only causes hesitation before engaging in a response effort, it provides no benefit.

Harmful to U.S. Economy

The Jones Act undermines U.S. economic competitiveness in a number of ways. For example, U.S.-built, U.S.-owned, and U.S.-crewed vessels have dramatically higher operating costs than other options available to shippers. U.S.-flagged container ships and tankers spend over four times as much as foreign vessels on crewing expenditures.¹⁶ Jones Act ships also have higher maintenance costs, and it is more costly to repair and maintain vessels in domestic shipyards compared to foreign ones. Repair and routine work on U.S. tankers costs almost 70 percent more than comparable work on foreign tankers.¹⁷ Foreign vessels have longer trade routes and can spread their costs over a larger amount of cargo, making operating costs cheaper. As indicated by a March 2013 Government Accountability Office (GAO) study, foreign vessels that operate in a global marketplace have the flexibility to adjust their capacity to meet changing markets.¹⁸

The GAO study also indicates how the Jones Act limits economic opportunities for American companies:

[S]ome companies operating in Puerto Rico told us that they may not purchase goods from U.S. sources because of higher transportation costs on Jones Act vessels compared to foreign-flag vessels. In some instances, they may instead purchase the same or a closely substitutable good from a foreign country. This was particularly evident in the bulk shipping market. For instance, according to representatives of the Puerto Rico Farm Bureau, the rate difference between Jones Act carriers and foreign carriers has led farmers and ranchers on the island to more often source animal feed and crop fertilizers from foreign sources than from U.S. domestic sources,

13. Shipbuilders Council of America, "U.S. Navy Shipbuilding," <https://shipbuilders.org/us-navy-shipbuilding> (accessed November 26, 2013).
14. Aker Philadelphia Shipyard, Jones Act Background, <http://www.phillyshipyard.com/section.cfm?path=216,227> (accessed November 26, 2013).
15. U.S. Department of Homeland Security, "DHS Announces Expansion of Temporary, Blanket Jones Act Waiver," November 3, 2012, <https://www.dhs.gov/news/2012/11/03/dhs-announces-expansion-temporary-blanket-jones-act-waiver> (accessed November 26, 2013).
16. United States Department of Transportation, Maritime Administration, "Comparison of U.S. and Foreign-Flagged Operating Costs," September 2011, http://www.marad.dot.gov/documents/Comparison_of_US_and_Foreign_Flag_Operating_Costs.pdf (accessed April 25, 2014), and U.S. International Trade Commission, "The Economic Effects of Significant U.S. Import Restraints," 5th update, February 2007, p. 98, <http://www.usitc.gov/publications/332/pub3906.pdf> (accessed February 18, 2014).
17. Ibid.
18. U.S. Government Accountability Office, *Puerto Rico: Characteristics of the Island's Maritime Trade and Possible Effects of Modifying the Jones Act*, March 2013, <http://www.gao.gov/assets/660/653046.pdf> (accessed February 18, 2014).

even though commodity prices were stated to be similar. They provided an example that shipping feed from New Jersey by Jones Act carriers costs more per ton than shipping from Saint John, Canada, by a foreign carrier—even though Saint John is 500 miles further away. According to the representatives, this cost differential is significant enough that it has led to a shift in sourcing these goods from Canada. Other companies involved in food importing gave additional examples of corn and potatoes being sourced from foreign countries rather than the United States, which they attributed to the lower cost of foreign shipping. However, data was not available to verify the extent to which changes in sourcing occurs because of higher transportation costs on Jones Act vessels.¹⁹

A report from the Federal Reserve Bank of New York reached a similar conclusion:

It costs an estimated \$3,063 to ship a twenty-foot container of household and commercial goods from the East Coast of the United States to Puerto Rico; the same shipment costs \$1,504 to nearby Santo Domingo (Dominican Republic) and \$1,687 to Kingston (Jamaica)—destinations that are not subject to Jones Act restrictions....

Shipping goods to and from Puerto Rico costs considerably more than shipping to and from the Island's regional peers, imposing an important cost on Puerto Rican businesses and dampening the economy's competitiveness. Much of this relatively high cost of shipping is widely attributed to the Jones Act.²⁰

Hawaii State Senator Sam Slom (R) recently said that shipping a 40-foot container from Los Ange-

les to Shanghai costs \$790 whereas it costs \$8,700 for the same container to ship from Los Angeles to Honolulu.²¹

These reports may actually underestimate the operational cost difference between Jones Act and foreign vessels. The data used in comparing the Jones Act fleet with its foreign counterparts used a constant of ships less than 10 years old.²² Yet hundreds of Jones Act ships are well above 10 years old. Hence, their maintenance costs likely exceed those of foreign vessels, which are much younger on average.²³

The problem of aging Jones Act vessels will likely worsen because the domestic shipbuilding industry has the capacity to build only a handful of large shipping vessels each year. If a majority of Jones Act ships are retired soon, domestic commercial shipbuilders will likely not be able to replace them quickly enough to maintain capacity. Furthermore, according to Drewry Maritime Analysis, U.S.-built ships purchased by Jones Act shipper Matson between 2003 and 2006 were four times more expensive than comparable ships built in Asia.²⁴ This could put additional upward pressure on domestic shipping prices.

The Jones Act also undermines the long-term competitiveness of the U.S. shipping industry. Government support for the industry artificially props up the market, reducing the incentive for American companies to become cost-competitive and encouraging dependence on the preferential treatment by the government. Furthermore, when the government uses its power to protect the American shipbuilders, they use more of their resources to lobby for continued protection. The result is a tight web of politicians and special interests making decisions that benefit very few while dispersing the costs among consumers.

Granted, the Jones Act is not the sole driver of cost differential between the American shipping industry and foreign competition, and American

19. Ibid.

20. Federal Reserve Bank of New York, "Report on the Competitiveness of Puerto Rico's Economy," June 29, 2012, <http://www.newyorkfed.org/regional/puertorico/report.pdf> (accessed February 18, 2014).

21. Cathy Bussewitz, "Hawaii, Alaska, Territories Team up on Jones Act," Associated Press, March 14, 2014, <http://bigstory.ap.org/article/hawaii-alaska-territories-team-jones-act> (accessed April 8, 2014).

22. U.S. International Trade Commission, "The Economic Effects of Significant U.S. Import Restraints."

23. Standard & Poor's, "Credit Risks Mount for U.S. Domestic Shipping Companies as Ships Start Showing Their Age," March 26, 2012, <http://ow.ly/d/FWU> (accessed February 18, 2014).

24. Drewry Maritime Research, "US Cabotage Protection Gets More Expensive," *Container Insight Weekly*, November 17, 2013, <http://ciw.drewry.co.uk/features/us-cabotage-protection-gets-more-expensive/> (accessed November 26, 2013).

shipbuilders have demonstrated their ability to be competitive internationally by building ships for many other countries. However, in the U.S. the domestic industry faces higher tax rates and must comply with an increasingly burdensome and complex regulatory environment. Any vessel operating from between two American ports should be subject to U.S. taxes and sensible regulations but should be allowed to compete with U.S. vessels. Doing so will promote competition that will drive down costs and benefit the American economy broadly. In the aggregate, studies have shown that a full repeal of the Jones Act would yield economic benefits of up to \$682 million per year.²⁵

Jones Act and U.S. Trade Agreements

Some defenders of the Jones Act refer to studies showing that other countries have similar policies.²⁶ If U.S. officials are concerned about foreign shipping restrictions, then it would make sense to try to reduce those barriers through trade negotiations. But instead of trying to reduce foreign barriers, the main goal of U.S. negotiators has been to maintain U.S. barriers.

For example, during North American Free Trade Agreement (NAFTA) negotiations, the United States sought and received a Jones Act exemption.²⁷ They also sought and received a Jones Act exemption in World Trade Organization (WTO) negotiations: "U.S. negotiators insisted on retaining one such item that was for them the most sacrosanct of the sacred cows, the Jones Act."²⁸

Other countries have consistently expressed their concern about U.S. unwillingness to negotiate. For example, according to Japan, "The [Jones Act]

exemption was established by one member and has been maintained for years. We have concerns that the continuation of this exemption undermines the credibility of the WTO rules as a whole." According to Norway, "This is an important issue for Norway as the [Jones Act] in essence makes it impossible to sell ships to the United States." According to the European Union (EU), "The prevailing situation has negative economic consequences for the EU's shipbuilding industry by closing the US market for ships, certain segments of which, for example passenger ferries, are of interest to EU shipbuilders."²⁹

When asked about the possibility of tackling the Jones Act through WTO negotiations in 2006, then-U.S. Trade Representative (USTR) Susan Schwab replied: "There are a couple of areas where we are less open than we could be. Maritime is one of them. That is an extremely sensitive area, and no I don't see that being part of the negotiation."³⁰ More recently, current USTR Michael Froman observed: "This Administration has continuously ensured that the application of the Jones Act is permitted under each of our trade agreements. As we continue to participate in discussions where this issue may arise, including trade agreement negotiations, we will continue to take this position."³¹ This is a poor strategy because when the United States makes certain sectors of the economy off-limits in trade negotiations, other countries are likely to respond in kind.

Distorted Energy Markets

The Jones Act also adversely affects the U.S. energy sector. The Jones Act regulations particularly harm the economies of Alaska, Hawaii, and Puerto Rico, which rely more on maritime energy com-

25. Justin Lewis, "Veiled Waters: Examining the Jones Act's Consumer Welfare Effect," *Issues in Political Economy*, Vol. 22 (2013), pp. 77-107, <http://www.elon.edu/docs/e-web/students/ipe/volumes/lewis%202013.pdf> (accessed April 25, 2014). U.S. International Trade Commission Studies have found similar welfare benefits.
26. Transportation Institute, "Jones Act/Domestic Shipping," <http://www.trans-inst.org/jones-act.html> (accessed April 8, 2014).
27. North American Free Trade Agreement, Annex II: Reservations for Future Measures, Schedule of United States, <http://www.sice.oas.org/trade/nafta/anx2usa.asp> (accessed April 8, 2014).
28. Craig VanGrasstek, *The History and Future of the World Trade Organization* (Geneva, Switzerland: The World Trade Organization, 2013), p. 66, http://www.wto.org/english/res_e/booksp_e/historywto_02_e.pdf (accessed April 8, 2014).
29. "U.S. Faces Grilling over Jones Act Exemption," *Smart Grid*, December 20, 2007, <http://smart-grid.tmcnet.com/news/2007/12/20/3179713.htm> (accessed April 8, 2014).
30. Office of the U.S. Trade Representative, "Transcript of Press Briefing in Australia with USTR Susan C. Schwab and Agriculture Secretary Mike Johanns," September 21, 2006, <http://www.ustr.gov/about-us/press-office/speeches/archives/2006/september/transcript-press-briefing-australia-ustr-susa> (accessed April 8, 2014).
31. "Questions for the Record for Committee on Ways and Means Full Committee Hearing on President's Trade Policy Agenda with Ambassador Michael Froman," *Huffington Post*, July 18, 2013, <http://big.assets.huffingtonpost.com/FromanWaysandMeansResponse.pdf> (accessed April 8, 2014).

merce than the 48 contiguous states. The act may also make renewable energy less affordable.

The United States produced 7.7 million barrels of oil per day in October 2013, the highest since 1995, and the Energy Information Administration projects that production will increase to 9 million barrels per day by 2015.³² Lower demand for transportation fuels and increased deliveries of oil by pipeline and rail to Gulf Coast refineries from the Northwest and Texas have led to higher U.S. exports of refined petroleum products. Refined petroleum exports to foreign markets represent new market opportunities for American companies, increased U.S. economic growth, and incentives for more exploration and production.

Repealing the Jones Act would reduce the cost of transporting energy by vessel because foreign-flagged ships could transport oil for an estimated one-third of the cost of U.S.-flagged ships.

Repealing the Jones Act would potentially provide the Gulf Coast with another customer: the Northeast. Families in the Northeast, especially those dependent on home heating oil, would welcome more domestically produced crude and refined petroleum products that are transported by ship, which would be less expensive than imports or products transported by rail where sufficient pipeline capacity is not available. Repealing the Jones Act would reduce the cost of transporting energy by ves-

sel because foreign-flagged ships could transport oil for an estimated one-third of the cost of U.S.-flagged ships.³³ If U.S.-flagged vessels are economically viable without protectionism, this could drive down prices of other domestic shipping operations and make them more competitive globally.

Natural gas production from the shale revolution continues to climb,³⁴ and the abundance of natural gas could be particularly welcome in Hawaii and Puerto Rico. Electricity prices in Hawaii are nearly double those in the state with the next highest prices because Hawaii generates 75 percent of its electricity from petroleum and must rely on Jones Act vessels for all domestic oil shipments.³⁵

Even worse, the U.S. has no domestic capability to transport natural gas by sea because domestic shipyards lack the capacity to build such ships.³⁶ This problem will only grow as liquid natural gas becomes an increasingly appealing means of transporting energy,³⁷ leaving Hawaii and Guam unable to obtain domestically produced natural gas. Puerto Rico wants to shift from high-cost petroleum to cheaper natural gas. Puerto Rico's Electric Power Authority pays as much as 30 percent more for liquefied natural gas because of restrictions on the use of foreign-flagged ships and has voiced concerns about using Jones Act vessels because the premium for using them would offset the benefits of cheaper natural gas.³⁸ Conversely, the Jones Act harms Alaska's economic viability on the supply side because this state with rich oil and natural gas resources cannot ship them to the continental United States or Hawaii without complying with the Jones Act.

Extending the Jones Act to offshore renewable energy projects could also increase the price of electricity paid by American families. Offshore energy

32. U.S. Energy Information Administration, "Short-Term Energy Outlook (STEO)," February 2014, http://www.eia.gov/forecasts/steo/pdf/steo_full.pdf (accessed February 18, 2014).

33. John Bussey, "Oil and the Ghost of 1920," *The Wall Street Journal*, September 13, 2012, <http://online.wsj.com/article/SB10000872396390444433504577649891243975440.html> (accessed November 26, 2012).

34. U.S. Energy Information Administration, "Short-Term Energy Outlook (STEO)."

35. U.S. Energy Information Administration, *State Electricity Profiles 2010*, January 2012, <http://www.eia.gov/electricity/state/pdf/sep2010.pdf> (accessed November 26, 2013).

36. Standard & Poor's, "Credit Risks Mount for U.S. Domestic Shipping Companies."

37. Bob Tita, "U.S. Gas Boom Helps Power Sea-Going Vessels," *The Wall Street Journal*, September 25, 2013, <http://online.wsj.com/news/articles/SB10001424052702303342104579097271690917490> (accessed November 26, 2013).

38. Casian Communications, "High Time for an Independent Study," *Caribbean Business*, April 26, 2012, http://www.caribbeanbusinesspr.com/prnt_ed/news02.php?nw_id=6948&ct_id=10 (accessed November 26, 2013), and U.S. Government Accountability Office, *Puerto Rico*.

projects can be built and serviced by foreign vessels, but there have been legislative attempts to bring renewable-energy workers under the Jones Act.³⁹ Denying American consumers access to foreign providers of renewable energy services would result in higher prices for Americans.

Increasing Competition and Lowering Costs

Defenders of the Jones Act argue that the American shipping community is critical to the economy and that the industry is perfectly capable of competitively meeting any consumer demands. In fact, Eric Smith, vice president of the American Maritime Partnership, said that consumers do not incur any additional costs because of the Jones Act, emphasizing: "It doesn't cost the consumer a single penny."⁴⁰ Yet the examples noted in this paper contradict that claim. Furthermore, the Matson shipping company recently ordered U.S.-built vessels at four and five times the cost of building the ships in Asia, indicating that the Jones Act really is imposing costs on consumers.⁴¹

However, if proponents believe that Jones Act vessels can provide a competitive service and that the law does not hurt consumers, they should not fear repealing it. Open competition is a critical component of any efficient marketplace. American workers may be able to provide the lower-cost service, but absent a truly competitive market, they have no incentive to do so. As a result, American consumers pay higher prices, and the U.S. shipping industry is stagnant.

The rock salt market is a case study of how the Jones Act disrupts open competition. Used to salt roads during snow and ice storms, this commodity is produced widely in the United States, the largest producer in the world.⁴² Despite this, states such as Maryland and Virginia import most of their rock

salt from Chile through the Panama Canal rather than from the Port of South Louisiana.⁴³

This problem was highlighted in February, when the Jones Act prevented New Jersey officials from using a foreign ship to transport salt from Maine in time to respond to a winter storm. The head of New Jersey's Department of Transportation said, "I've got a shipload of salt, 400 miles from here. The only thing that we've been able to define as an American flag vessel would take us a month to get the salt here when I can have the salt here in a day and a half."⁴⁴

Removing this protectionist measure would promote competition not only between domestic and foreign vessels, but also among transportation services. Innovative companies will find ways to make their processes more efficient and offer their services at lower costs, whether that entails transporting a good by vessel, rail, or pipeline. When subject to the market, the industries that meet consumer demand will survive and grow, while other companies will struggle or disappear because of their failure to add value and create wealth. Labor and capital that is no longer used efficiently will be reallocated to more productive uses, therefore creating more wealth and benefiting consumers.

The Protectionist Jones Act

The Jones Act is blatant cronyism in which one group is benefiting from special treatment by the government at the expense of everyone else. If politicians are serious about affordable energy, economic growth, industrial innovation, and providing competitively priced goods and services, they would remove government barriers to competition in the shipping industry. Repealing the outdated, protectionist Jones Act would promote competition, strengthen the economy, and benefit American consumers.

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MAP 1



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HAWAII SHIPPERS' COUNCIL

NONCONTIGUOUS TRADES JONES ACT REFORM (NTJAR) PROPOSAL OUTLINE

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The Hawaii Shippers Council (HSC) is a business league organization incorporated in 1997 to represent cargo interests – known as “shippers” – who tender their goods for shipment with the ocean carriers, i.e., the “shipping companies” and “shipowners.”

In 2010, the HSC put forward its federal legislative proposal to reform the Jones Act. It's known as the Noncontiguous Trades Jones Act Reform (NTJAR – the acronym may be pronounced “Nit-Jar”).

The Jones Act is the popular name for Section 27 of the federal Merchant Marine Act of 1920. NTJAR would exempt just the noncontiguous trades of Alaska, Guam, Hawaii and Puerto Rico from the U.S.-Build requirement of the Jones Act and only for large self-propelled seagoing merchant ships.

This proposal originated with HSC and does not have a mainland counterpart as did previous reform efforts during the late 1990's with Rob Quartel and the national Jones Act Reform Coalition (JARC).

The HSC is not proposing a nationwide repeal the Jones Act nor a full exemption for Hawaii, Alaska, Guam and Puerto Rico from the Jones Act.

NTJAR Would NOT:

- Change the existing U.S.-Flag, U.S.-Ownership, U.S.-Crew and U.S. management requirements of the Jones Act as they currently apply to the noncontiguous trades.
- Allow Foreign-Flag ships, foreign-seamen or foreign-shipowners in any domestic trade where they are not currently allowed. (They are currently allowed in domestic trade with American Samoa, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands)
- Apply to the domestic tug and barge industry anywhere in the U.S. including in those noncontiguous jurisdictions currently subject to the Jones Act.
- Affect any domestic shipping along the coasts of the contiguous U.S. mainland (known as the coastal and inter-coastal trades), on the inland waterways and the Great Lakes.
- Negatively impact any maritime industry jobs – including shipboard, shipyard and longshore – in the noncontiguous jurisdictions including Hawaii.
- Have any material adverse effect on national security.

The NTJAR proposal is a limited and narrowly targeted reform of the Jones Act that would greatly improve the efficiency of the critical interstate surface (seaborne) transportation between the U.S. mainland and those noncontiguous jurisdictions that are currently subject to cabotage.