**Repeal the Coastwise Restrictions of the Merchant Marine Act of 1920, Also Known as the Jones Act**

**Sponsored by: Rep. Angel Cruz (PA) and Sen. Nellie Pou (NJ)**

**WHEREAS,** Congress enacted the Merchant Marine Act of 1920, also known as the Jones Act or the Cabotage Law, to support military readiness and to support the shipbuilding and seafaring industries; and,

**WHEREAS,** the Merchant Marine Act of 1920 is a federal statute that established that goods and passengers carried between US ports had to be shipped in a primarily American-made and US flagged vessel operated by an American crew; and,

**WHEREAS,** the rationale behind the Act was that, after World War I, Congress feared that German U-boats would attack again and felt the need to have many readily available sailors in case of an incursion; and,

**WHEREAS,** by making the Merchant Marine work under the Jones Act’s regulations, US had many vessels and sea-savvy men ready to go to combat and had designated a captive market to the Merchant Marine; and,

**WHEREAS,** Congress does not consider German U-boats in the Atlantic Ocean a threat anymore making the original purpose of the Jones Act not relevant to today’s geopolitical circumstances; and,

**WHEREAS,** there is no military need for the Jones Act since there have been other pieces of legislation that update the military aspect of the Jones Act, for example, the 2004 *National Defense Authorization Act*, which requires cooperation between the Secretary of Defense and the Secretary of Transportation to establish a fleet of 60 active ships that would be commercially viable, militarily ready and privately owned; and,

**WHEREAS,** the Jones Act resulted in higher prices for residents of Alaska, Hawaii, and Puerto Rico because Jones Act-compliant vessels are considerably more expensive than other shipping companies; and,

**WHEREAS,** the 2014 Update on The Competitiveness of Puerto Rico’s Economy by the Federal Reserve Bank of New York found that, “much of [the] high cost [of shipping goods between the U.S. mainland and Puerto Rico] is attributable to the Jones Act;”[[1]](#footnote-1) and,

**WHEREAS,** a 2013 General Accountability Office (GAO) Report revealed that “an ongoing investigation by the Department of Justice’s Antitrust Division has led to, among other things, guilty pleas in 2011 and 2012 by three of the four Jones Act carriers that serve Puerto Rico. In general, the three carriers each separately pled guilty to conspiracy to suppress and eliminate competition by agreeing to fix rates and surcharges for certain water freight transportation services between the continental United States and Puerto Rico. In addition, to date, the three shipping companies have been sentenced to pay about $46 million in criminal fines and six executives have been sentenced to serve prison time totaling more than 11 years;”[[2]](#footnote-2) and,

**WHEREAS,** the above also serves to underscore that the Jones Act creates a legal oligopoly; and,

**WHEREAS,** pricing in Jones Act vessels is mainly negotiated between the shipper and the shipping company, and therefore is not based on published rates, which makes it not only opaque and hard to study, but also promotes a culture of silence and forced complicity among the very victims of the ship owners for fear of retaliation via higher prices with no alternative to turn to; and,

**WHEREAS,** specifically, according to a report published by the U.S. International Trade Commission, the Jones Act is estimated to cause between $5 and $15 billion in annual combined economic damage to the residents of Alaska, Hawaii and Puerto Rico;[[3]](#footnote-3) and,

**WHEREAS,** on July 13, 2017, United States Senator John McCain introduced S 1561, The Open America’s Waters Act of 2017, a bill to repeal the Jones Act restrictions on coastwise trade; and,

**WHEREAS,** in advocating for passage of this Act, Senator McCain stated that “the Jones Act, [is] an archaic and burdensome law that hinders free trade, stifles the economy, and ultimately harms consumers.” He added that The Open America’s Waters Act “would eliminate this regulation, freeing American shippers from the requirement that they act against their own business interests. By allowing U.S. shippers to purchase affordable foreign-made carriers, this legislation would reduce shipping costs, make American farmers and businesses more competitive in the global marketplace, and bring down the cost of goods and services for American consumers.”[[4]](#footnote-4)

**THEREFORE, BE IT RESOLVED,** that the National Hispanic Caucus of State Legislators declares the Jones Act to be detrimental to the development and economic well-being of the United States, particularly of Alaska, Hawaii and Puerto Rico; and,

**BE IT FURTHER RESOLVED,** that the National Hispanic Caucus of State Legislators calls upon the United States Congress and the President of the United States to repeal the coastwise restrictions imposed by the Merchant Marine Act of 1920; and,

**BE IT FURTHER RESOLVED,** that the National Hispanic Caucus of State Legislators specifically supports the enactment of S. 1561, The Open America’s Waters Act of 2017, and calls upon all Senators and Members of Congress to cosponsor and approve it and any other bill with the same purpose; and,

**BE IT FURTHER RESOLVED,** that the National Hispanic Caucus of State Legislators calls upon all State Legislators to introduce Resolutions in their chambers calling for the repeal of the Jones Act; and,

**BE IT FURTHER RESOLVED,** that a copy of this Resolution be sent to the President, all Members of Congress and all other interested parties.

ON FEBRUARY 22, 2018, DURING ITS MEETING IN CHICAGO, IL, THE NHCSL EXECUTIVE COMMITTEE MOVED FORWARD THIS RESOLUTION WITHOUT A FORMAL RECOMMENDATION, ON THE CONSENSUS THAT THE TOPIC IS OF GREAT IMPORTANCE AND THE FULL MEMBERSHIP SHOULD DISCUSS IT. THE FULL MEMBERSHIP THEN POSTPONED CONSIDERATION OF THE RESOLUTION, REQUESTING THAT AN EXPERT PANEL BE CONVENED AT THE NEXT ANNUAL SUMMIT.

**Issue Brief – FOR LEGISLATORS ONLY**

Note: The NHCSL Policy office prepared this Resolution at the behest of Sen. Nellie Pou and Immediate Past President Rep. Angel Cruz and it contains our substantiated reasonable best efforts.

The historical reasons that led to the enactment of the Merchant Marine Act of 1920 (Jones Act) in the post-World War I period are not seriously debated. Congress needed a ready supply of trained sailors and available ships for mobilization in the event of another large-scale war overseas, with the added political benefit of creating jobs via protectionist legislation.[[5]](#footnote-5) There is also no reasonable debate regarding the fact that after World War II, and with the advent of the Cold War, the United States Navy became professionalized and reached a scale, reach and technological advantage unmatched today or in history. Therefore, the military readiness rationale behind the Jones Act is no longer relevant.[[6]](#footnote-6)

The coastwise trade restrictions of the Jones Act are simple: goods and passengers carried between United States ports must be shipped in primarily American-made and US flagged vessels, operated by an American crew. Their outsize impact on overseas states and territories[[7]](#footnote-7) is apparent: because overseas states and territories import more in general than they export, and in particular, because they import from the continental United States considerably more than they export to places outside the United States, and the majority of their exports are to the United States, incoming international ships cannot drop off cargo in their ports on the way to the continental United States because they would be forced to sail with their hulls partly empty, an uneconomic proposition. This means that almost all trade on Alaskan, Hawaiian and Puerto Rican ports is, and must be, on Jones Act-compliant ships.

Jones Act-compliance is expensive. Jones Act-compliant shipping companies must pay U.S. wages to their crews which are higher than those of ships flagged in other nations. They must also comply with regulations that others do not have to and pay U.S. taxes. Therefore, few companies engage in this business, and those that do require a competitive edge to do so. The Jones Act is that competitive edge, acting as a subsidy to the oligopoly that it necessarily creates.

In fact, the Jones Act hampers the competitiveness of Alaska, Hawaii and Puerto Rico within NAFTA because while trade barriers are reduced with Canada and Mexico, they are increased by the Jones Act with Alaska, Hawaii and Puerto Rico.

To add insult to injury, Jones Act pricing was deregulated in the 1990’s. According to reports by a major group of Puerto Rico importers at a 2017 U.S. Senate meeting in which NHCSL staff was present, since then, pricing in Jones Act vessels has been mainly negotiated between the shipper and the merchant marine company and is not based on published rates. This means that, during negotiations, the importers are only aware of the past pricing they have received and not the pricing that others receive, placing them at a clear disadvantage. Even worse, it forces their compliance because, according to that testimony, merchant marine companies have retaliated against those who complain, for example, by holding their cargo in ports of origin for extended periods. This situation coalesces into a culture of silence and forced complicity for fear of retaliation via higher prices or higher indirect costs with no alternative to turn to.

The importers’ testimony is lent credibility by the U.S. General Accountability Office’s 2013 revelation that, in 2011 and 2012, the three carriers serving Puerto Rico each separately pled guilty to conspiracy to suppress and eliminate competition by agreeing to fix rates and surcharges for certain water freight transportation services between the continental United States and Puerto Rico, being sentenced to pay about $46 million in criminal fines.[[8]](#footnote-8) Moreover, six of their executives were sentenced to serve prison time totaling more than 11 years for those same crimes. This is not the behavior of companies that have the best interests of their clients in mind, much less of Hispanic communities. It is classic monopolistic behavior by companies that know they own a captive market.

We do not have that sort of smoking-gun evidence about criminal activity in merchant marine shipping to Hawaii and Alaska, but there is little reason to suspect that the situation is any different there.

The above is not to imply that all the price differential between overseas locations and the continental United States is due to the Jones Act. Island locations and far-flung locales cannot benefit from the economies of scale and competitive alternatives (like trains or trucks) available to continental United States locations. They are forced to import goods, many of them refrigerated, on ships, or bear the costs of prohibitively expensive air shipping. However, most, if not all, unbiased experts have concluded that Jones Act-compliance must carry an added cost to Hawaii, Alaska and Puerto Rico. The criminal antitrust convictions against several Jones Act carriers should dispel any doubt about this.

The rest of the debate boils down to exactly what the markup is. According to the Jones Act carriers it is minimal. They claim that “the reality is that the difference between U.S. and foreign costs for shipping can be explained entirely by the difference in costs related to taxation, regulation, labor costs, and working conditions.”[[9]](#footnote-9) Others, including the U.S. International Trade Commission, have pegged it at up to $15 billion annually, when their estimates are updated to today’s prices. This is an eye-opening but unnecessary distraction. There should be no markup at all. The benefits to a few thousand workers[[10]](#footnote-10) across the United States cannot justify the destruction of Puerto Rico’s entire economy and the hobbling of Alaska’s and Hawaii’s, which impact millions of Americans. The Jones Act unfairly discriminates against Americans living in Hawaii, Alaska and Puerto Rico.

On July 13, 2017, United States Senator John McCain introduced S. 1561, The Open America’s Waters Act of 2017, repealing the Jones Act restrictions on coastwise trade.

**What is this Resolution advocating for?**

* The Resolution declares the coastwise restrictions of the Jones Act to be detrimental to the development and economic well-being of the United States, particularly of Alaska, Hawaii and Puerto Rico, and calls for their repeal.
* The Resolution supports the enactment of Senator McCain’s S. 1561, The Open America’s Waters Act of 2017, which repeals those restrictions, and calls upon all Members of Congress to cosponsor and approve it and any other similar bill.
* The Resolution calls upon all State Legislators to introduce Resolutions in their chambers calling for the repeal of the coastwise restrictions of the Jones Act.

**Pros**

* It would bring relief to and help jump-start Puerto Rico’s economy
* It would dramatically lower the cost of living in Hawaii, Alaska and Puerto Rico
* It encourages economic justice to millions of Americans in those locations
* It punishes the crimes committed by the merchant marine oligopoly
* It is agnostic to Puerto Rico’s status (compatible with Commonwealth and Statehood)

**Cons**

* Some labor unions, including the AFL-CIO, support the Jones Act because it buoys Merchant Marine jobs
* According to the oligopoly, if the Jones Act were repealed, “the current Jones Act fleet would begin to erode and defaults on federally-guaranteed mortgages would escalate dramatically, costing the federal government millions of dollars.”[[11]](#footnote-11) They estimate the total exposure of the federal government and the owners of the vessels to be over $1 billion.[[12]](#footnote-12) (Contrast this with the $15 billion it costs Hawaii, Puerto Rico and Alaska annually.)

1. An Update on The Competitiveness of Puerto Rico’s Economy, p. 7 (NY FED, July 31, 2014). Available at: <https://www.newyorkfed.org/medialibrary/media/outreach-and-education/puerto-rico/2014/Puerto-Rico-Report-2014.pdf> [↑](#footnote-ref-1)
2. GAO, *Puerto Rico: Characteristics of the Island’s Maritime Trade and Potential Effects of Modifying the Jones Act*, p. 34, fn. 25 (March 2013). Available at: <https://www.gao.gov/assets/660/653046.pdf> [↑](#footnote-ref-2)
3. Currency values updated to 2017 dollars by the Grassroots Institute of Hawaii, *The Jones Act in Perspective: A survey of the costs and effects of the 1920 Merchant Marine Act* (Apr. 9, 2017) Available at: <http://www.grassrootinstitute.org/2017/04/the-jones-act-in-perspective/> (citing U.S. International Trade Commission, *The Economic Effects of Significant U.S. Import Restraints: Third Update* (2002); and, U.S. International Trade Commission, *The Economic Effects of Significant U.S. Import Restraints* (1991)). See also, Nelson A. Denis, *The Jones Act: The Law Strangling Puerto Rico* (New York Times, Sept. 25, 2017) Available at: <https://www.nytimes.com/2017/09/25/opinion/hurricane-puerto-rico-jones-act.html> [↑](#footnote-ref-3)
4. <https://www.mccain.senate.gov/public/index.cfm/2017/7/senator-john-mccain-introduces-legislation-to-repeal-the-jones-act-promote-free-trade> [↑](#footnote-ref-4)
5. Matt Pearce, *What is the Jones Act, and why does Puerto Rico want it gone?* (LA Times Sept. 27 2017) Available at: <http://www.latimes.com/nation/la-na-jones-act-20170927-story.html> [↑](#footnote-ref-5)
6. The merchant marine industry claims that it still plays a vital national defense role. It estimates that, if the Jones Act were repealed, the “Department of Defense would have to spend $800 million annually to maintain [the] resources” it gets from the Jones Act. However, this number pales in comparison to the estimated $5–$15 billion that the peoples of Hawaii, Alaska and Puerto Rico pay annually to maintain the Jones Act. For the industry argument, see <https://transportationinstitute.org/jones-act/> [↑](#footnote-ref-6)
7. The U.S. Virgin Islands are exempt. [↑](#footnote-ref-7)
8. Considering this is a multi-billion-dollar industry, those fines are at the slap-on-the-wrist or cost of doing business level. [↑](#footnote-ref-8)
9. <https://transportationinstitute.org/jones-act/> [↑](#footnote-ref-9)
10. The industry claims 73,787. See <https://transportationinstitute.org/jones-act/> [↑](#footnote-ref-10)
11. Id. [↑](#footnote-ref-11)
12. Id. [↑](#footnote-ref-12)