The Jones Act: American Industrial Protectionism at its Crummiest

Joe Lantow & David Working

"One of the great mistakes is to judge policies and programs by their intentions rather than their results." – Milton Friedman

Spend enough time around America's maritime industries, and before long you'll cross paths with the Jones Act. Although not well-known or understood by most Americans, the Jones Act has hearty supporters, derisive critics, and very few who regard the policy with indifference. But how did a law that "received little publicity" when it passed 104 years ago come to be a political lightning rod in any American industry that relies on vessels? And why is it such a thorn in the side of the seafood industry? We'll address those questions, but first: a brief history lesson.

The Origins of the Jones Act

The Merchant Marine Act of 1920 (introduced by Senator Wesley Jones) is a federal statute that regulates maritime commerce. The law was passed in the wake of US entry into World War One, which necessitated a massive and rapid buildup of shipbuilding capacity known as "The War of the Ways."

Ships were essential to supply Europe, transport American troops, continue essential wartime commerce, and protect both commercial and naval shipping from U-boats. The rapid naval buildup project was expensive, required critical wartime materials like steel, and was "*filled with stories of waste, corruption, and inefficiency,*" in the words of Senator Jones himself.

The act was aimed at achieving two key goals:

- Protect American shipyards to ensure an ongoing American capacity to rapidly build domestic warships, and
- Maintain a large American-owned commercial fleet to facilitate domestic and international trade.

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While the original statute contains dozens of sections, each regulating different portions of American shipbuilding and maritime law, discussions about the Jones Act generally refer to Section 27, which states:

"No merchandise… shall be transported by water… between points in the United States… in any other vessel than a vessel built… documented … and owned… by citizens of the United States."

The intent was a common thread in industrial protectionism cases across history: that by protecting American shipbuilding and shipping from foreign competition, it would incentivize the development of domestic industry that had strategic value in peace and at war. As a brief aside: there's a common misconception that the Jones Act requires US ships to be entirely crewed by US citizens, but it does not. That constraint is a requirement of US vessel documentation law under Title 46 USC §8103, which outlines citizenship requirements for crews and officers, mandating that:

"… only a citizen the of U.S. may serve as master, chief engineer, radio officer, or officer in charge of a deck watch or engineering watch on a documented vessel", and that *"Not more than 25 percent of the unlicensed [entry-level]*

seamen on a vessel … may be aliens [ex. H-2B Visa holders].”

The Jones Act and Shipbuilding

The interpretation of the Jones Act Section 27 leads to two critical elements: first, US-flagged vessels have to be majority-built in the US (from predominantly US-made steel); and second, American-port-to-American-port shipping has to be completed by a US-owned, US-crewed, and US-flagged vessel.

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This means that US shipyards are the sole source of ships for US maritime industries. In contrast, international shipbuilding industries don’t have a (fully) captive domestic market, so shipyards in Japan (15% of global tonnage), Korea (28%), and China (51%) have built massive shipbuilding and exporting operations that benefit from the scale of servicing the world.

When competing globally, US shipyards have compounding systemic disadvantages. At a base level, US labor is expensive, especially compared to global shipbuilding powerhouses like China; and US shipbuilding materials are comparatively more expensive, especially in core components like steel. Because of these cost disadvantages, US shipbuilders can really only compete to build for the captive US market, which means the target market is capped and the industry can’t build the scale to further reduce costs.

This is how you get today’s US shipyards: an insubstantial, inefficient, and ossifying domestic industry that builds vessels at 3-5x the total cost of what it takes to build them internationally on the commercial market; that is responsible for less than 1% of new global ship construction; and builds domestic warships up to 26x (yes, *twenty-six* times) more expensive than a used foreign-built ship intended for the same purpose. One may read this and conclude that a shipbuilder wronged us, some years ago, and we’re out for revenge. Far from it! Domestic shipbuilders don’t suffer from a lack of competence or capability.

The systemic disadvantages simply render innovative or capital-intensive strategic moves too risky for the potential benefit. So long as the Jones Act maintains domestic shipyards’ domestic monopoly on vessel construction, they are prudently acting in their own self-interest.

The Jones Act and the American Seafood Industry

The cost of purchasing, crewing, and maintaining ships is a huge part of the overall cost structure of seafood harvesting. Since US ships operating in fishing are subject to the Jones Act (fish is “merchandise,” at least in the eyes of the law), and therefore subject to building vessels in the US, the price of operation is simply higher, often prohibitively so.

Think of it this way—you have an American crab harvester and a Norwegian crab harvester. They’re identical in size and throughput and product quality. Their operations can each generate about $2 million of profit per year, selling crab on global markets.

The Norwegian vessel costs $10 million to build – a 5-year payback period. The American vessel costs $24 million to build – a 12-year payback period. The Norwegian owners can defend the business case to borrow funds to build a new vessel every 10 years, making incremental improvements in safety, quality, and throughput. The American owners cannot, and instead spend increasing amounts of money (that they recognize as rising costs of operations) to rehabilitate 40-year-old vessels.

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Play this scenario out for every single fishing, harvesting, and processing vessel in the United States. The Jones Act indirectly mandates that participants in the seafood industry compete on unequal footing in the global marketplace. Take in the implications of that asymmetry: the US seafood industry operates with an relatively inflated cost structure—required by regulation, not because of biology or geography—but earns revenue from selling a commodity in the global marketplace, competing against

international producers without the same cost burden. For fisheries that have low profit margins to begin with, the Jones Act—and specifically the constraint that US-flagged vessels be built in the US—threatens the very viability of the fisheries. This disconnected market, with a burdened cost structure and an unprotected commodity market exposure, must be fixed. From a seafood policy perspective, we're left with two options: either enact protections on the market or remove the cost burden.

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The most direct form of market protection comes in the form of trade tariffs exercised on imported seafood, intended to protect the domestic market by raising the price of foreign seafood. In other words: to level the cost structure playing field, just add more costs to international producers—at least in order to access the American marketplace. But therein lies a key problem: the domestic market isn't big enough to support the industry. Tariffs would also have the downstream problem of raising the price of a consumer staple, something we would consider—at least as an explicit policy aim—as bad policy.

Alternatively, we could focus on funding a carrot, rather than tariffing the stick.

Congress could reduce the effective cost of purchasing ships by subsidizing vessel construction through grants or low-interest loans, given either to manufacturers or purchasers of ships.

But subsidies would be prohibitively expensive to the taxpayer (again, domestic ships are three to five times more expensive) and would function as large payments to domestic shipbuilders... as a reward for being noncompetitive. It's clear we've lost the plot. Recall that the original aim of the Jones Act was to ensure an effective shipbuilding industry and guarantee a large and modern commercial maritime fleet. We're now discussing raising food prices and spending tax dollars to subsidize an inefficient industry while disincentivizing marine investment. It's begging the question...

Why is the Jones Act Still Around?

It's time to dust off Federalist #10 and consider the factional interests at play.

Most Americans are unaware of the Jones Act and the effects it has on everyday purchases. That's because from the end consumer's perspective, there's no explicit Jones Act surcharge on a product like salmon, despite a very real increase to price. We have a situation of dispersed costs, but concentrated benefits. James Madison was right: that creates a political scenario that is very challenging to unwind.

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Most Americans would agree that the original aims of the Jones Act (ensure infrastructure for wartime shipbuilding efforts and protect domestic logistics from foreign control) have merit, or are at least very politically challenging to oppose.

American shipyards, domestic shipping firms, and maritime workers understand this, have great lobbyists, and a strong incentive to maintain the status quo.

They've made the rational choice to invest in Congress and have been rewarded in kind. One may notice that all four Senators in the two states where the general population bears the greatest costs created by the Jones Act, Alaska and Hawaii, are all ardent supporters of the Jones Act. It's not a coincidence; these are also the states with the largest reliance on American shipbuilding and maritime transport.

National security concerns provide additional political cover, by masking an economic policy with the language of national defense. But it's fundamentally unclear how an aging commercial fleet and outdated shipyards are contributing to national security. It's worth noting that in times of emergency, like hurricanes, the president's first move is often to temporarily suspend the Jones Act to speed up the movement of critical supplies.

There may be limited advantages to the Jones Act, like protecting American maritime labor from foreign intervention or ensuring that American naval production is kept separate from geopolitical rivals like China. But these risks exist in many other industries, and we don't dogmatically maintain rigid 104-year-old political structures like the Jones Act to mitigate them.

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There are other mechanisms to subsidize or support a domestic shipbuilding infrastructure that don't have to result in passing crippling costs along to other adjacent industries (and ultimately to consumers).

The Jones Act Has Died. Long Live the Jones Act

The solution here doesn't have to be to repeal the entire Merchant Marine Act of 1920. There's more to the Jones Act than just Section 27, and there's more to Section 27 than shipbuilding. Remember: American port to American port shipping vessels have to be US-crewed, US-owned, and US-flagged (which requires US-built). Phasing out the US-built portion of the Act would drastically lower costs for US maritime industries, without disrupting the routes owned by US carriers.

Even phasing out the US material reliance in the US-built requirement would be an improvement, as any domestic shipyard would tell you they'd be more competitive if they could use foreign steel.

There are plenty of mechanisms for Jones Act reform, and just about any of them would be preferable to the status quo. As Senator Jones himself noted in his introduction of the act that informally bears his name, *"There may be provision(s) in the act that ought not be there."*

Maybe we should listen to him.

ZacharyScott.

1200 Fifth Avenue, Suite 1500 Seattle, WA 98101

o: 206.224.7380

zacharyscott.com