

TESTIMONY OF BRIAN W. SCHOENEMAN
SEAFARERS INTERNATIONAL UNION
ON BEHALF OF MARITIME LABOR

HOUSE COMMITTEE ON TRANSPORTATION
SUBCOMMITTEE ON THE COAST GUARD AND MARITIME
TRANSPORTATION

HEARING ON JONES ACT FLEET CAPABILITIES

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Thank you, Chairman Hunter, Ranking Member Garamendi and members of the subcommittee for allowing me to testify today. My name is Brian Schoeneman, legislative director for the Seafarers International Union. I am here today on behalf of sea-going maritime labor, including the Seafarers, the American Maritime Officers, the Marine Engineers' Beneficial Association, and the International Organization of Masters, Mates and Pilots. Between our organizations and our affiliates, we represent all the mariners employed on all the vessels operated by the various Jones Act shipping lines that currently service Puerto Rico and the Virgin Islands. All told, the unions represent thousands of Jones Act mariners sailing across the United States today.

President Trump announced in his inaugural address that "a new vision will govern our land. From this moment on, it's going to be America First."¹ The President announced his desire that his new Administration "follow two simple rules: Buy American and hire American."²

For the United States Merchant Marine, these are words that resonate deeply. The men and women of the United States Merchant Marine have been putting America first for our entire existence. It was American merchant mariners, angered by British threats to bombard Machias, Maine, for no other reason than the residents were unwilling to load a cargo of lumber destined to be turned into British barracks in Boston, who struck the first blow for American liberty and independence on the high seas in 1775.³ Fully a year before the Declaration of Independence, these Merchant Mariners risked their lives to defend what would become the United States of America.

To put it simply – America's mariners have been putting America first even before there was an America. Throughout the decades and centuries that followed, American mariners would continue to risk their lives, braving British men-o-war, Confederate commerce raiders, German torpedoes, and the inherent dangers of the high seas to bring supplies to our soldiers, commerce to our partners, and food to hungry people around the

¹ President Donald J. Trump, Inaugural Address (Jan. 20, 2017).

² *Id.*

³ See generally, 1 GARDNER WELD ALLEN, A NAVAL HISTORY OF THE AMERICAN REVOLUTION 8-10 (1913).

world. In peace and war, the United States Merchant Marine has answered America's call and we have always put America first.

The Jones Act⁴, and its predecessors dating back to the founding of the republic⁵, have reflected the federal government's desire to ensure that the United States Merchant Marine would always be responsible for the carrying of domestic cargo between two points within the United States. As the United States has grown and expanded over the last 241 years, the policy that American ships, owned by Americans, built in America, and crewed by Americans has remained the bedrock foundation of federal maritime policy. It was one of the first "America First" policies, and it is important that those who advocate altering it recognize how fundamental to American law the Jones Act is.

The Jones Act is critical to the United States. Maintaining a robust domestic fleet, capable of carrying domestic cargo provides a variety of benefits to America, not the least of which are the hundreds of thousands of domestic jobs that rely upon the Jones Act.⁶ The Jones Act is responsible, according to independent studies of its economic impact, contributing over \$100 billion to the national economy, and supports nearly 500,000 jobs.⁷ Many of these jobs, especially shipboard jobs and shipyard jobs, are highly skilled, good-paying middle class jobs that would be difficult to replicate were they to be lost.

The United States relies on its private sector merchant marine to support the Armed Forces by providing the bulk of its logistical network⁸, whether through programs like the Maritime Security Program⁹, or the various government-owned, private sector-operated vessels that make up the bulk of the Military Sealift Command¹⁰ fleet, and the Maritime

⁴ Pub. L. No. 66-261, 41 Stat. 988 (1920), *recodified at* 46 U.S.C. § 55102.

⁵ While the Jones Act dates to 1920, similar laws that achieved the same purpose date back to the earliest days of lawmaking under the federal Constitution, when Congress first limited the domestic maritime trades to American ships. *See* Act of Sept. 1, 1789, Ch. 11, 1 Stat. 55; *see also* Act of July 20, 1789, Ch. 3, 1 Stat. 27.

⁶ *See* Thomas Allegritti, Remarks at the TradeWinds Jones Act Forum (Oct. 8, 2014), available at <https://www.americanmaritimepartnership.com/wp-content/uploads/2014/10/TradeWinds-Jones-Act-Script-Final.pdf>.

⁷ *Id.* at 2.

⁸ *Hearing on the Maritime Administration's Fiscal Year 2016 Budget Request Before the Subcomm. on Coast Guard and Maritime Transportation of the H. Comm. on Transportation and Infrastructure*, 114th Cong. 2 (2015) (statement of Paul N. Jaenichen, Administrator, Maritime Administration, U.S. Department of Transportation).

⁹ 46 U.S.C. §§ 53101–53111 (2017). The Maritime Security Program is a jointly administered Defense Department and Maritime Administration program of 60 militarily useful and commercially viable ships. In exchange for a yearly stipend payment of \$5 million designed to help offset, but not completely cover, the increased cost of maintaining a vessel under the U.S.-Flag, the Department of Defense has access to the ships, mariners and intermodal networks of all the contracted companies. The MSP fleet is the backbone of the U.S.-Flag international fleet, but the number of jobs it supports pales in comparison to the Jones Act fleet.

¹⁰ U.S. DEPT. OF DEF., U.S. NAVY'S MILITARY SEALIFT COMMAND – CIVIL SERVICE MARINERS 1 (2017), <http://www.msc.navy.mil/civmar/>.

Administration's Ready Reserve Force¹¹ and National Defense Reserve Fleets.¹² Those fleets are crewed by mariners who must maintain largely the same skillsets as those in the Jones Act fleet, whether sailing in-land, on the Great Lakes, or in the blue water trades to Puerto Rico, Guam, Hawaii and Alaska. Ensuring a domestic base of jobs that can provide the necessary experience and training for those who may have to crew our military related fleets in war time has long been a basic, fundamental premise of the Jones Act.¹³

These two arguments, among others¹⁴, have been the basis for the long-term support that Congress and the federal government has given the Jones Act.

Despite the critical importance the Jones Act has to play for national, economic and homeland security, critics have maintained a steady onslaught of anti-Jones Act opinion pieces, often repeating conclusions made by the same discredited studies while either completely ignoring or misrepresenting the arguments made by the industry and labor.¹⁵ These opinion pieces frequently site outdated or fundamentally flawed "studies" of the Jones Act, largely written or sponsored by biased or agenda driven organizations¹⁶ while ignoring unbiased, non-partisan studies that draw differing conclusions, like the most recent GAO study of the Jones Act in Puerto Rico.¹⁷

¹¹ U.S. MAR. ADMIN., THE MARITIME ADMINISTRATION'S READY RESERVE FORCE 1 (2017), <https://www.marad.dot.gov/ships-and-shipping/strategic-sealift/office-of-ship-operations/ready-reserve-force-rrf/>.

¹² U.S. MAR. ADMIN., NATIONAL DEFENSE RESERVE FLEET 1 (2017), <https://www.marad.dot.gov/ships-and-shipping/strategic-sealift/office-of-ship-operations/national-defense-reserve-fleet-ndrf-2/>

¹³ 46 U.S.C. § 55101 (2017). The policy statement reads in its entirety that "[i]t is the policy of the United States that merchant marine vessels of the United States should be operated by highly trained and efficient citizens of the United States and that the United States Navy and the merchant marine of the United States should work closely together to promote the maximum integration of the total seapower forces of the United States."

¹⁴ For the purposes of this testimony, I am limiting my remarks to specific benefits provided by American citizen mariners. Other examples of the Jones Act benefit to the United States, such as to the domestic shipbuilding industry, are outside the scope of my testimony.

¹⁵ See e.g., Colin Grabow, *Jones Act is a Swamp Creature That's Strangling Puerto Rico*, USA TODAY (Oct. 1, 2017), available at <https://www.usatoday.com/story/opinion/2017/10/01/jones-act-swamp-creature-strangling-puerto-rico-refuses-to-die-colin-grabow-column/716162001/#>. Mr. Grabow, who is affiliated with the CATO Institute, repeats many of the claims made by anti-Jones Act advocates, and references multiple reports that the maritime industry has debunked.

¹⁶ One of those organizations is the CATO Institute, and multiple CATO writers have attacked the Jones Act over the years. See e.g., Scott Lincicome, *If You Like Higher Prices, Enriched Cronies, and Weak National Security, Then You'll Love the Jones Act*, CATO INST. (Jan. 22, 2015), <http://www.cato.org/publications/commentary/you-higher-prices-enriched-cronies-weak-national-security-then-youll-love>.

¹⁷ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-13-260, PUERTO RICO: CHARACTERISTICS OF THE ISLAND'S MARITIME TRADE AND POTENTIAL EFFECTS OF MODIFYING THE JONES ACT 1 (2013), [hereinafter "GAO Puerto Rico Report"], <http://www.gao.gov/assets/660/653046.pdf>.

Those opposing the Jones Act, both nationally and specifically for Puerto Rico, frequently claim that the Jones Act alone is responsible for a significant increase in costs for commercial products on the island. This claim cannot be substantiated.¹⁸

Even though the only non-biased, non-partisan review of the Jones Act and Puerto Rico, the GAO Puerto Rico Report, made it clear that there is no way to determine the potential increased cost the Jones Act causes in Puerto Rico, a number of members of Congress have requested long-term Jones Act waivers or permanent Jones Act exemptions for Puerto Rico based either on the cost fallacy or false claims that the Jones Act is impeding disaster efforts.¹⁹

It is critical that before Congress takes any steps to alter our cabotage regime, that the potential impacts of those changes be fully identified, vetted, and reviewed.

For example, in their press release touting the introduction of S. 1894, Senators McCain and Lee claimed that “[s]hipping costs from the United States mainland to Puerto Rico have been estimated to be twice as much as from neighboring foreign islands,” and that the Jones Act is an “antiquated, protectionist law that has driven up costs and crippled Puerto Rico’s economy.”²⁰ Neither of these statements is accurate, but they have been repeated over and over by the media, anti-Jones Act elected officials and have spread like a disease across social media.

S. 1894, for example, is a wholly inadequate piece of legislation that ignores the myriad of difficult issues that must be addressed by any bill purporting to exempt any area of the United States from the Jones Act. It merely adds Puerto Rico to a list of exempted U.S. connected areas, without addressing any of the legitimate questions that such a waiver would necessarily entail.

It is taken as holy writ by anti-Jones Act activists that a repeal of the Jones Act would result in lower transportation costs. They make this assumption based primarily on comparing U.S.-Flag freight rates with international freight rates. This is comparing apples to oranges, of course, because comparing American domestic freight rates with international rates makes little sense. Every route is different, even just in distance, and no two routes are the same. Since there has been no international shipping between US ports at any point in American history, there is literally nothing to compare.

¹⁸ *Id.* at 21, noting “because so many other factors besides the Jones Act affect rates, it is difficult to isolate the exact extent to which freight rates between the United States and Puerto Rico are affected by the Jones Act.”

¹⁹ See, e.g., Letter from Representatives Velaquez, Guterrez, Serrano, Soto, Espaillat, Beatty, Torres and Crowley to Elaine Duke, Acting Secretary of Homeland Security (September 27, 2017) (on file with author), in which eight members of Congress requested a one-year administrative waiver of the Jones Act “to allow Puerto Rico to have more access to the oil needed for its power plants, food, medicines, clothing and building supplies.” See also S. 1894, 115th Cong. (2017).

²⁰ Press Release, Senator John McCain, McCain & Lee Introduce Legislation to Permanently Exempt Puerto Rico from the Jones Act (Sept. 28, 2018), <https://www.mccain.senate.gov/public/index.cfm/2017/9/mccain-lee-introduce-legislation-to-permanently-exempt-puerto-rico-from-the-jones-act>

That being said, there is no argument that international ship operators are able to charge lower rates than their American based competitors on international routes, and it is that differential that leads anti-Jones Act activists to assume that a repeal would necessarily reduce shipping costs.²¹ Yet when one looks at the issues in closer detail, those assumptions begin to disappear. For example, the reason foreign operators tend to be cheaper than U.S.-Flag operators is largely the result of them being foreign - foreign corporations, not engaged in domestic commercial activity, and not within the traditional tax, regulatory and labor jurisdiction of the United States.²² They are taxed by their home jurisdictions (if at all), subject to minimal international laws that all vessels must comply with, and routinely operate with little if any worker protections.

This would not be the case if those companies were to enter into the US domestic market.²³ Even if exempted from the Jones Act, Puerto Rico remains a U.S. territory, and commercial transportation between a U.S. port and Puerto Rico would be considered domestic transportation under existing law.²⁴

Thus, foreign corporations that choose to engage in domestic US commerce would subject themselves necessarily to federal tax law, wage-and-hour laws, immigration laws, and mariner security screenings and licensing requirements, among others.²⁵ In the end, the vast majority of the competitive advantages that foreign-flag ship operators have over domestic operators would disappear, and their freight rates would likely be similar – or may even be higher – than those that exist right now under the Jones Act.

The McCain legislation does not take this impact into account. Neither does the requested one-year waiver. When faced with the substantial compliance costs necessary for foreign ship operators to engage in this trade on a long-term or permanent basis, it is difficult to say with certainty how many companies would even choose to enter the trade.

Focusing solely on cost also ignores the benefits the Jones Act provides Puerto Rico and the rest of the United States. As noted in the GAO Report, the Jones Act has provided Puerto Rico with reliable, on-time service, the Jones Act operators have made over \$1 billion in private investment in Puerto Rico, and employ thousands of Puerto Ricans on the island and on the routes between the mainland and Puerto Rico.²⁶ All of that would be jeopardized, and the exemption would undermine every Jones Act operators' reliance on the stability of the law, which would likely have a negative impact on stock prices and potentials for long-term financing of assets.

²¹ See, e.g., MAR. ADMIN., U.S. DEP'T OF TRANSP., COMPARISON OF U.S. AND FOREIGN-FLAG OPERATING COSTS (2011), http://www.marad.dot.gov/documents/Comparison_of_US_and_Foreign_Flag_Operating_Costs.pdf explaining a number of key cost differentials between U.S.-Flag and foreign operators, including higher regulatory costs, security screenings and the like.

²² For an in-depth discussion of the various legal, tax, regulatory and labor issues that necessarily arise when repealing or otherwise exempting Puerto Rico or other localities from the Jones Act, see Mark Ruge, et al., *Myth and Conjecture? The "Cost" of the Jones Act*, 46 J. MAR. L. & COM. 23 (2015).

²³ *Id.*

²⁴ *Id.* at 36.

²⁵ *Id.*

²⁶ GAO Puerto Rico Report, *supra* note 17 at 28-9.

At its most fundamental, however, repealing the Jones Act or otherwise exempting Puerto Rico from it would be putting foreign companies and foreign workers ahead of American companies and American workers. It would represent the antithesis of the President's economic policy, while at the same time undermining national security, creating a dangerous new vector for illegal immigration²⁷, and arguably would have little impact on the quality of life of U.S. Citizens, whether in Puerto Rico or elsewhere in the United States.

Maritime labor stands adamantly opposed to any long-term waivers or exemptions of the Jones Act. At the same time, we stand in solidarity with our brothers and sisters in Puerto Rico, and will continue to do what the United States Merchant Marine has always done, in good times and bad, peacetime and war, for the last two and a half centuries – deliver the goods, wherever and whenever needed. We are proud to be a part of the efforts to bring relief to Puerto Rico after Hurricane Maria and our members will continue to do their part, no matter what.

To be clear – the Jones Act is not impeding relief efforts in Puerto Rico right now. It is not forcing aid to be turned away, nor is it slowing down efforts to get relief supplies to the people who need them. Foreign-flag ships with cargo from ports outside the United States are, and remain, allowed entry to Puerto Rico. The claim that the Jones Act is impeding relief efforts is a lie – and no matter how many times those in the media repeat that lie, it remains a lie.

We urge Congress to exercise due diligence in fact finding, and beware of misinformation and false claims being propagated by anti-Jones Act agitators who are attempting to hijack this crisis to further their agendas.

We also ask that a full accounting be made at the end of the temporary 10-day waiver the President granted last week, so we can know what the impact of this waiver was on relief efforts and so that we can better prepare for future crises.

Finally, we ask that Congress continue to stand with us in bipartisan support of the Jones Act, which remains the foundational law of the domestic maritime industry, which has its origins as far back as the founding of our Republic.

Maritime labor, alongside our colleagues, remain committed to doing everything in our power to help our fellow Americans in Puerto Rico and the Virgin Islands through the aftermath of these devastating storms.

²⁷ For more on the border security aspect of the Jones Act, see Daniel Goure, *The Jones Act and Homeland Security in the 21st Century*, LEXINGTON INST. (June 23, 2016) available at <http://www.lexingtoninstitute.org/jones-act-homeland-security-21st-century/>.