



Foreign countries, including Russia, benefit from WWI-era Jones Act

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Since the Russian army's Feb. 24 invasion of Ukraine, the United States has done everything it can diplomatically to punish the Russian incursion, with one colossal petrochemical exception.

Sanctions have been leveled, and international banks have frozen the accounts of Russian officials. Many state funds have divested of Russian assets. Countless exchanges of goods and services between Russian and American businesses have been forcibly ground to a halt by law. However, energy has been mainly left alone.

Republicans charge that President Joe Biden's energy policies are at fault for this breach in the sanctions siege wall, even as Russia's troop convoy attempts to encircle Kyiv. Moves made by his administration against fracking, pipelines, and some exploration are in their sights.

The story is that America achieved "energy independence" only to have it clawed back by a White House too beholden to special interests to stick up for American interests. As a result, Americans' fuel and natural gas purchases are helping prop up an aggressive petrostate bent on regional conquest.

However, there is at least one problem with that story. Even if American energy exploration and extraction can produce enough fuel to heat and power every single household, business, and industrial consumer in the whole U.S., an obscure 1920 law hobbles transportation of much of that fuel to the places that need it.

Cato Institute trade policy analyst Colin Grabow posed the obvious question, "But why?" in a recent blog post. The answer, or at least "part of the answer," per Grabow, comes from a protectionist U.S. policy called the Jones Act.

"As outrage mounts over Russia's invasion of Ukraine, Americans may be chagrined to learn that despite being the world's largest oil producer and a net exporter of petroleum products, the United States turns to Russia to help meet its energy needs," wrote Grabow on March 1. "Indeed, imports of Russian petroleum products have averaged over 370,000 barrels per day over the last decade, and in 2020 Russia was the third-largest source of U.S. petroleum imports."

That's not a significant number when set against total public consumption of a little over 20 million barrels a day. Still, that much oil, in combination with natural gas shipping, can make a massive difference to the bottom line of a country that relies heavily on oil for revenues and armaments.

"One would think that Russia's natural gas company, Gazprom, would serve customers in the Eastern Hemisphere while American companies served customers in the West, but the Jones Act upends the transportation logistics and further enriches Gazprom in the process," wrote Casey Mulligan, former chief economist of the White House Council of Economic Advisers, in the *Washington Times*.

Retired State and Defense Department official Debra Cagan was more pointed in her criticism of the effects of the Jones Act in propping up Russia.

"Somewhere in between the archaic application of the Jones Act and the self-righteousness of those who would deny Americans access to U.S. produced energy, there is a clear-cut winner. Unfortunately for us, that winner is Putin, and U.S. consumers are left paying the price," she wrote in the *Houston Chronicle*.

Critics charge that because of the Jones Act, Russia and other nations end up supplying natural gas to New England in cold winters; the American shipbuilding industry has been reduced to more of a hobbyist pursuit. As a result, Hawaii, Puerto Rico, Guam, Alaska, and other far-flung locales have developed closer trade ties to other countries than the mainland.

"A Taiwanese ship leaves Taipei for Los Angeles. On its return trip, a shipper asks if it can drop off cargo in Hawaii on the way," writes Joe Kent, executive vice president of Hawaii's Grassroot Institute, who grew up on the Big Island.

"The answer," he says, "is no." The reason? "The leg from Los Angeles to Hawaii is an interstate trip rather than an international trip."

The Jones Act applies, meaning the ship would have to be American-built, fly a U.S. flag, and be maintained by a crew of at least 75% American citizens.

"Hawaii has one of the highest costs of living in the nation," Kent points out, and he blames the Jones Act for a lot of that burden. He shows how the act's effects incline Hawaiian business away from more commerce with the continental U.S. commercially.

"Because of the Jones Act, many American ranchers buy grain from Canada or Argentina rather than U.S. farmers. Similarly, it makes more sense for Hawaii ranchers to transport cattle to Canada, rather than waiting for a Jones Act ship to take them to California," Kent writes.

And it's not likely to get better soon. Kent observes, "The fleet of U.S. vessels that comply with the Jones Act restrictions has dwindled from 2,300 in 1946 to less than 100 today, and many of those ships are old and among the most expensive in the world to maintain."

In some categories of shipping, there aren't Jones Act-compliant vessels to get American goods or commodities to American markets. One example is liquefied natural gas. Grabow explained to the *Washington Examiner* that "transporting liquefied natural gas to New England from other U.S. locations by water, however, is not possible due to the total absence of LNG tankers in the Jones Act fleet."

The reason is that the cost of producing a tanker to transport LNG domestically is sky-high. It costs somewhere in the neighborhood of \$200 million in South Korea, which is still a lot of money to scratch together. In the U.S.? Add \$500 million to that price tag.

There aren't takers at that price, so many trade routes become victims of what economists call "distortions" in the everyday operations of the market.

Massachusetts noted this shipping goose egg in a Comprehensive Energy Plan document. It said, "A solution would be to amend or grant an exemption to the Jones Act with regards to LNG."

The American agency that would have to OK such a waiver is called the Maritime Administration, or MARAD, but that is one steep hill to climb.

The law firm Holland & Knight notes, "The Jones Act requirements can be waived to allow foreign-flag vessels to engage in coastwise trade but only in rare circumstances in which the basis for an exemption is the 'interest of national defense.'"

There are two varieties of waivers: those requested by the secretary of defense, which might get some consideration, and those requested by "non-Department of Defense (DOD) entities (or 'discretionary waivers')," the law firm explains on its website.

The *Washington Examiner* asked MARAD how often non-DOD Jones Act waivers are granted. A spokesperson replied, "By statute, the Maritime Administration's role in the Jones Act waiver process is to evaluate the availability of U.S.-flag, Jones Act qualified vessels to meet transportation requirements when DHS's Customs & Border Protection requests a determination. MARAD does not support or oppose Jones Act waiver requests but provides the appropriate information on vessel availability when requested."

Grabow and other critics charge that MARAD is much more interested in the outcome of the process than it lets on publicly and shuts down most requests, even when there are no Jones Act-compliant vessels to be had.

Based on a cache of several hundred emails that the Cato Institute came into possession of through a public records request, Grabow told the *Washington Examiner* that MARAD isn't serving the public interest at all.

"We believe these emails to reveal coordination between MARAD officials and industry lobbyists/representatives to defeat any efforts aimed at reforming or repealing the Jones Act, particularly regarding the law's application to the transportation of liquefied natural gas; and

MARAD to be properly understood as a taxpayer-funded advocacy group and lobbyist operating on behalf of private companies," he explained.

For instance, he pointed to an email by then-MARAD Deputy Administrator Richard Balzano to members of the Massachusetts state government on Jan. 18, 2019.

Massachusetts was interested in getting a waiver to ship natural gas from domestic sources to get cheaper fuel for its residents. It wanted the waiver because zero vessels met the Jones Act qualifications to ship said resources.

And yet, Balzano warned Massachusetts officials in that email, "If you do work towards a waiver request or you request the Mass delegation to try and open the law up to amendment based on an environmental policy. I suspect that will be a very difficult path. I know you would receive Non-concur from MARAD, the W.H., DOD, OHS, and most likely DOE. Just trying to help you better understand the challenges you will encounter. Two weeks ago, Puerto Rico submitted a Jones Act waiver request for LNG for ten years, and it was rejected by DOD, OHS, MARAD, DOE, and the W.H. and has been denied."

The MARAD official's letter effectively talked the Massachusetts officials out of seeking said waiver, which goes to Grabow's point about it being more of an advocacy organization than a neutral referee.

Economists have come up with a term, "regulatory capture." It describes how a regulator comes to be primarily controlled or "captured" by the industry it is supposed to regulate. In this case, it would be the shrunken and now highly protected American boat-building industry.

Even if that description does not accurately describe MARAD's posture, however, the history and intent of the Jones Act would still produce some expensive, absurd outcomes.

The Jones Act isn't a stand-alone law like the PATRIOT Act. It is but one section of the Merchant Marine Act of 1920, introduced by Wesley Jones, a Republican representative from Washington state.

Jones's piece of the legislation had two purposes. First, it encouraged businesses to buy ships left over from World War I. "The government built a ton of ships," Grabow explained to the *Washington Examiner*, and had to get rid of them somehow.

The second purpose was to close a loophole in the country's existing protectionist shipping laws. Even at the time, it cost more to ship goods to far-flung American locales from the mainland, but there were some exceptions, particularly what was called the "overland loophole."

To dodge paying a pretty penny out of American West Coast ports on the way to Alaska, you could send goods up to Vancouver, British Columbia, by rail, and sail them the rest of the way to Alaska.

"Seattle shipping companies hated that," said Grabow, and Jones meant to put a stop to it. And he largely succeeded. If the shipment originates anywhere in America and must sail in the ocean, all Jones Act stipulations apply.

However, over time, protective laws or tariffs don't always protect what they are supposed to protect. For example, several years ago, a Canadian commission looked at costly items by law but which are no longer manufactured in Canada, which the law that pushed up the price was supposed to ensure. These included hockey jerseys, among other items.

In America, the existing Jones Act-compliant fleet has dwindled practically to nonexistence. International-only shipping workarounds have made many states and territories dependent on foreign suppliers, such as Russia, and less on domestic suppliers, such as Texas.

That may be changing soon. In a March 1 editorial, "Jonesing to Give Up Russian Oil," the *Wall Street Journal* noted that "Republicans are fed up with the Biden Administration's animus toward fossil-fuel pipelines, which hampers America's energy industry," but encouraged them to look deeper "at the Jones Act's malign effects."

For instance, "Hawaii annually imports several million barrels of Russian crude oil. Depending on the year, this accounts for roughly 10% to 25% of Russian crude shipments to the U.S." Should Congress amend the Jones Act or scrap it altogether, more American companies could be filling Hawaiian gas tanks.

"Much thinking has been changed by Russian missiles hitting city squares in Ukraine, and maybe this could, too," the editors wrote. Teeing it up for the defense secretary to weigh in with a waiver request that MARAD would have to weigh heavily, they signed off with, "Scuttling the Jones Act is good economics and good security policy."