

# WORKBOAT

## Jones Act Christmas present could be a dangerous lump of coal for energy insecure Americans

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Christmas has come early for maritime special interests this year. Buried in the 4,300-page fiscal year 2023 National Defense Authorization Act (NDAA) is language further limiting the executive branch's ability to waive the Jones Act, the 1920 law requiring vessels transporting cargo between U.S. ports to be U.S.-flagged, U.S.-built and mostly U.S.-crewed and owned.

Among the changes to the waiver process include a prohibition on waivers for vessels already carrying cargo as well as a requirement that waivers be granted no earlier than 48 hours after a waiver request is published. The problem with the world's most restrictive cabotage law, some members of Congress have evidently concluded, is that it isn't restrictive enough.

The impact of these changes could prove significant.

Imagine, for example, a ship sailing to Europe laden with U.S. fuel while New England is experiencing an energy shortage. With the new restrictions in place, any such ship not complying with the Jones Act's requirements — which is to say, the overwhelming majority of the world's ships — would be ineligible for a waiver enabling it to divert to a New England port to discharge its much-needed cargo. Rather, any non-compliant ship would first have to be empty of U.S. cargo, apply for a waiver, and then wait at least 48 hours for it to be granted before supplies could finally be loaded and the vessel proceed to where it was needed.

“This is the equivalent to requiring that a firetruck that's already on the road [and] driving by a house that's on fire go back to the firehouse, unload, request permission to go and put out the fire, and wait two days, minimum, before it can go back to put out the fire,” argues the head of the National Energy and Fuels Institute trade association.

Sadly, adding new obstacles to the use of foreign ships in exactly these kinds of emergency situations appears a likely motivator for the new waiver restrictions.

In September the Department of Homeland Security issued a Jones Act waiver allowing a Marshall Islands-flagged ship sailing from Texas to Amsterdam to unload its cargo of diesel fuel in Puerto Rico following Hurricane Fiona. That prompted letters from Jones Act supporters in Congress questioning the waiver's legality. The new NDAA restrictions would have prevented such a waiver from being issued.

While the September waiver certainly reeked of politics and no explanation for how the waiver was in the interest of national defense—a key requirement for Jones Act waivers—was provided,

members of Congress are drawing the wrong conclusions. If existing law prevents foreign ships loaded with U.S. fuel or other critical supplies from speeding relief to Americans during times of emergency, plainly Congress's priority should lie in providing increased flexibility and removing such obstacles. What it's now doing is the complete opposite.

This should not surprise. After all, this latest move by Congress comes two years after it restricted the executive branch's ability to issue broad Jones Act waivers in the fiscal year 2021 NDAA. Notably, that particular revision followed President Trump's 2019 consideration of a 10-year Jones Act waiver for the waterborne transportation of bulk liquefied natural gas (currently impossible due to the complete lack of appropriate Jones Act-compliant ships), something he was said to initially favor before backing away under pressure. The 2021 NDAA changes ensured such a waiver was no longer possible.

Few things, it seems, upset the U.S. maritime lobby than Americans having expanded access to domestic sources of energy.

The lobby's legislative strategy is plain to see: fend off waivers of the Jones Act by inserting new restrictions in must-pass legislation such as the NDAA. It's a dangerous game. This week the country is set to experience its first Arctic blast of the new season, and more will certainly follow before the winter ends. Yet rather than ensure there is maximum flexibility for Americans to access the energy needed to heat their homes, the new NDAA moves in the opposite direction. It's an early unjustified gift to domestic maritime lobbyists and a lump of coal in the rest of the country's collective stocking.

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