



To Protect Privileged Shippers from Competition, the Government Fought Jones Act Waivers

Joe Lancaster

October 26, 2022

As New England faces natural gas price spikes and Puerto Rico struggles in the aftermath of Hurricane Fiona, emails have emerged showing that government officials have opposed measures that would help ease supply constraints.

At issue is the Merchant Marine Act of 1920, more commonly called the Jones Act. Passed in the aftermath of World War I, the law dictates that cargo shipped between two U.S. ports can only be carried by American-made ships owned by American entities and staffed by American crews. As *Reason's* Scott Shackford noted last month, there are currently fewer than 100 ships that comply with the Jones Act, severely limiting the amount of goods that can be transported to more distant locales like Puerto Rico.

Even though the U.S. exports liquified natural gas (LNG) from coastal Georgia, it could only ship it to Puerto Rico if a Jones Act-compliant American boat was available to make the journey. In 2019, the U.S. territory had to import fuel from Siberia. In 2018, Massachusetts was similarly forced to import natural gas from Russia rather than simply getting it from Georgia or Louisiana. Such shipments not only take longer but are significantly more expensive.

The Department of Homeland Security (DHS) can issue Jones Act waivers "if the proposed shipments are in the interest of national defense and after careful evaluation of the issue" with other agencies, DHS Secretary Alejandro Mayorkas said in a statement. Indeed, it has issued waivers in the past under very similar circumstances: It did so for Puerto Rico, but only for 10 days, after the island was devastated by Hurricane Maria in 2017.

According to emails obtained by the Cato Institute, officials in the U.S. Maritime Administration (MARAD) vigorously opposed long-term waivers, in the interest of protecting the shipping industry from competition.

MARAD, part of the Department of Transportation (DOT), is "charged with promoting the development and maintenance of a strong merchant marine for the national defense and development of its foreign and domestic commerce." Its 2023 annual budget is \$987 million. In January 2019, as the DOT and the Department of Energy (DOE) considered Puerto Rico's request for a 10-year waiver, MARAD Deputy Administrator Richard Balzano emailed two staffers in Transportation Secretary Elaine Chao's office. Balzano noted that Energy Secretary Rick Perry favored the waiver, but "I just want to make sure that DOE

understands the issue and the devastating effect a wavier [sic] will have on the US maritime industry."

As Cato's Colin Grabow noted, "the entire rationale for such a waiver is that *bulk transportation of LNG is not a service that the U.S. maritime industry provides*" (emphasis in original).

The same month, Balzano emailed several of Massachusetts Gov. Charlie Baker's staffers to dissuade them from seeking a Jones Act waiver for the state. Balzano cautioned that if the state requested a waiver, "I know you would receive Non-concur from MARAD," as well as the White House, Department of Defense (DOD), DHS, "and most likely DOE." He also suggested that the state did not need a waiver, as there were at least four Jones Act-compliant ships available to meet the state's needs. But as Grabow pointed out, only one of those four ships, the Clean Jacksonville, was owned by an American company at the time, and it could only hold about 2 percent as much LNG as an average seafaring tanker.

Balzano later emailed Francis McDonald, president of the Massachusetts Maritime Academy, which receives some of its funding via MARAD grants. Balzano assured McDonald, "We communicated that we would not support a waiver to the Jones Act and neither would the White House and the DOD, or DHS." McDonald responded, "Sounds like good news," and indicated that he was pursuing the matter himself. Later that year, a state energy report complained that "Massachusetts imports LNG from Trinidad and Tobago, while U.S. gas is sent overseas on foreign-flagged ships."

Notably, the communications came from the same tranche of emails in which a DOT committee recommended charging "all past and present [Cato] members...with treason."

Mayorkas noted that the 2020 National Defense Authorization Act "eliminated the Federal Government's authority to issue long-term comprehensive waivers" for any reason other than to "address an immediate adverse effect on military operations." But he also defended the act as a piece of protectionism, saying, "The Jones Act is vital to maintaining the strength of the American shipbuilding and maritime industries." This is often how the act's defenders characterize it: Robert O'Brien, national security adviser to former President Donald Trump, wrote last year that the Jones Act was essential to countering "potential adversaries" who may hope to "hamstring the U.S. economically by disrupting maritime trade."

But putting aside such a hypothetical future conflict, the Jones Act currently makes it much more difficult for U.S. states and territories to get sorely needed supplies. These emails also beg the question of why a government agency with a nearly billion-dollar annual budget exists primarily to "promote" one particular industry. As Cato's Grabow noted, "at least in matters concerning the Jones Act, MARAD is properly regarded as a taxpayer-funded lobbyist for the U.S. maritime industry."