



FREE MINDS AND FREE MARKETS

In the Aftermath of Hurricane Fiona, the Jones Act Is Screwing Over Puerto Rico Again

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September 27, 2022

The absurd consequences of America's terrible trade protectionism are on full display just off the coast of Puerto Rico today, as a foreign ship full of barrels of diesel fuel is waiting to see if it will be allowed to deliver them to the hurricane-stricken island.

We are, once again, speaking of the Jones Act, technically called the Merchant Marine Act of 1920. The Jones Act requires that ships delivering goods between U.S. ports be made in America, owned by American companies, and crewed by Americans. The act is openly and plainly a protectionist law designed to shield the domestic maritime industry from foreign competition.

The impact is felt most keenly on the outer edges of America's territory, places like Alaska, Hawaii, and Puerto Rico that are most dependent on ocean shipping to receive goods. The law by its very nature drives up the costs. And in the case of an emergency or disaster, it is difficult to respond quickly because there aren't all that many Jones Act-compliant ships. (There are less than 100 of them.) Whenever a crisis comes around that involves shipping, this law that supposedly helps America has to be temporarily suspended or bypassed in order to handle it.

Today, President Joe Biden's administration is trying to figure out what to do about a BP ship loaded with fuel idling off the coast of Puerto Rico. Because of the Jones Act, the ship cannot legally deliver fuel to the island, where thousands remain without any power at all in the wake of Hurricane Fiona, without some sort of exemption.

In 2017, President Donald Trump allowed for a 10-day waiver of the Jones Act to allow for foreign-flagged ships to transport goods between domestic ports after Hurricane Maria. Ten foreign ships used the waiver to transport goods like drinking water, canned food, heating oil, and fuel from other U.S. ports to Puerto Rico.

Granting waivers "for the purposes of national security" was, thankfully, a relatively quick process for the Department of Homeland Security that year. But in 2020, the National Defense Authorization Act was amended to change the waiver process, requiring that the purpose of these

waivers is to prevent "an immediate adverse effect on military operations" and, thus, making it much harder for the federal government to provide them.

So, for the nonmilitary citizens of Puerto Rico, the Biden administration has to evaluate whether any U.S. vessels can perform the job before granting waivers to other ships. If there isn't, it must consider what proper legal justification it can provide to allow the BP ship to dock on the island.

The governor of Puerto Rico, Pedro Pierluisi, on Monday asked the administration to let the vessel dock. Several Puerto Rican officials are begging the administration to provide Jones Act waivers. Eight Democratic members of Congress*, including Rep. Alexandria Ocasio-Cortez of New York, sent a letter asking the administration to waive the law for this crisis.

But thanks to the 2020 amendment, it's unfortunately not that simple. And as *The Washington Post* notes, the American shipping industry is resisting any waivers for Puerto Rico, crisis be damned:

The American Maritime Partnership—a coalition that represents operators of U.S.-flagged vessels and unions covered by the Jones Act—wrote a letter to [DHS Secretary Alejandro] Mayorkas on Friday explaining why the Jones Act should not be waived in the aftermath of Hurricane Fiona.

The group said that domestic vessels were ready and available to support the recovery effort in Puerto Rico, with more than 2,000 containers positioned in the port of San Juan to provide supplies before the storm. The group's president, Ku'uhaku Park, said that U.S.-flagged ships are providing Puerto Rico with essential goods for its recovery, adding that waiving the Jones Act would benefit foreign shippers rather than Puerto Ricans.

"There is no indication that American shipping capacity is insufficient to meet demand, and, therefore, no justification for a waiver of the Jones Act," he said.

Essentially, Park is telling the administration to just ignore everybody in Puerto Rico screaming at them for help. They, apparently, should wait to see if the domestic ships fail to provide what they need *before* letting foreign ships respond. Imagine this mindset in any other industry—demanding that failure must happen before competition could be permitted.

Colin Grabow has been documenting the many negative impacts on American consumers and competitive enterprise caused by the Jones Act as a research fellow at the Cato Institute's Herbert A. Stiefel Center for Trade Policy Studies. He noted in July that America's protectionist shipping laws have long been a disaster for Puerto Rico. Lawmakers have generally just refused to deal with it in favor of catering to the maritime industry and its unions.

"Puerto Rico has a 43 percent poverty rate," he tells *Reason* in response to the industry's insistence that the law be maintained. "So why are we subjecting them to some of the world's most expensive shipping? In the discussion about how to help Puerto Rico, how about we begin by ending policies like the Jones Act that actively hurt the island?"

The industry has long-defended the law by insisting that Americans would lose their jobs if we allowed foreign vessels to engage in shipping between domestic ports. Grabow thinks this is a short-sighted position.

"U.S. policy shouldn't be dictated by whether someone, somewhere loses a job," Grabow says. "By that logic we should oppose all technological progress and free trade. While some would lose jobs, many other Americans would gain employment and see their standards of living raised. The Jones Act is properly understood as a tax on domestic commerce that drives up the cost of Americans trading with one another. That's not exactly pro-jobs or pro-prosperity."

Biden is a stalwart supporter of the Jones Act and defended it both before and during his administration. This morning he nevertheless tweeted his alleged appreciation for capitalism and competition:

But as long as he supports the Jones Act, which deliberately shields the American shipping industry from competition at the expense of hundreds of thousands of U.S. citizens, this is just hot air.