



# THE JONES ACT

ESSENTIAL TO AMERICAN BORDER  
AND HOMELAND SECURITY &  
THE PREVENTION OF ILLEGAL  
IMMIGRATION



**THE JONES ACT** requires all cargo moved by water between two points in the United States be transported on American vessels with American crews. The Jones Act is widely known for its economic and national security benefits.<sup>1</sup> However, a mostly unseen, yet essential, additional Jones Act benefit relates to border protection, homeland security, and the prevention of illegal immigration.

## PROTECTING AMERICA'S BORDERS AND WATERWAYS

America is a maritime nation. Much of its water is navigable—on the coasts, in the Gulf of Mexico, on the Great Lakes and on the inland waterways of the United States. For example, the inland waterways system of the United States alone extends more than 12,000 miles. (By contrast, the entire Canadian and Mexican borders are only 7,000 miles combined.) Centered around the Mississippi River and its connecting tributaries, the intracoastal waterways and the inland river system directly benefit 38 states in America's heartland. These rivers cut through Middle America, often coursing through major cities and population centers, near bridges, schools, and sports stadiums. Similarly, vessels traverse the Great Lakes, surrounded by eight states and carrying the raw materials that power the North American manufacturing center. The Department of Homeland Security ("DHS") has focused particular attention on the importance of Great Lakes domestic shipping to the steel industry and the North American economy in general.

## THE ROLE OF THE JONES ACT

The Jones Act ensures that the owners, crew members, and builders of those vessels are Americans. The Act requires vessels to be U.S. controlled, U.S. crewed, and U.S. built, all of which contribute to security in different ways. In every respect, Jones Act operators and crews work closely with local, state, and federal law enforcement agencies,

## CURRENT JONES ACT SECURITY MEASURES

- American-built vessels
- American-crewed vessels
- American-owned vessels

## POTENTIAL RISKS OF REPEAL

- Insufficient supply of militarily-crucial civilian mariners
- Reduction of militarily-vital shipbuilding capacity
- Reduced military sealift capacity
- Decreased homeland security
- Loss of economically vital American industry, including reduced transportation capacity, outsourced jobs, and lesser economic impact



## 12,000 miles of inland waterways

“Were the Jones Act not in existence, the Department of Homeland Security would be confronted by the difficult and very costly requirement of monitoring, regulating, and overseeing foreign-controlled, foreign-crewed vessels in internal U.S. waters.”<sup>2</sup>

“The homeland and border security threat related to vessels is real, consuming considerable attention from federal law enforcement agents. One expert puts it this way: The prospect of terrorists on the inland waterways system is a particularly daunting challenge to homeland security. Via the inland waterways, a terrorist could reach America’s heartland and many of its largest and most important urban centers. ...Guarding every potential target along the inland waterways against terrorist attack is an impossible task.”<sup>1</sup>

including DHS officials from the U.S. Coast Guard and the Customs and Border Protection (“CBP”). The American vessel crewmembers are carefully screened and investigated before receiving their licenses. They operate under specific regulations to ensure that America remains safe and secure. The Jones Act and related coastwise laws “simplify efforts to ensure that rogue regimes and international terrorists cannot strike this country via its ports and waterways.”<sup>3</sup>

Today, foreign ships with foreign ownership and crews can enter American ports on international voyages. However, for domestic marine transportation—moving cargo between two domestic points—only American companies with American crews are permitted.

### FOREIGN FLAG TRAFFIC INTO U.S. SEAPORTS IS RISK-LADEN

Foreign-flag vessels entering U.S. seaports pose a variety of inherent risks to U.S. border security, including the threat of drug trafficking, arms smuggling, illegal immigration, cargo theft, and a variety of other transnational crimes.<sup>4</sup> Each year, upwards of five million seafarers enter into U.S. ports, 85 percent of whom are aliens.<sup>5</sup> When a foreign flagship desires entry into an American port, a number of security measures are triggered, which are designed to mitigate many of these risks. For example, the foreign ship must forward its crew list well in advance before entering an American port, and security checks are run on all crewmembers. Customs officials personally visit each entering vessel and review the credentials of all foreign crewmembers prior to anyone’s debarkation. Crewmembers without visas generally cannot leave the ship. In certain cases, the U.S. Coast Guard and the CBP can require the ship to hire private security firms to guard the foreign crew of the vessel to ensure no person disembarks or otherwise boards the ship without authorization. Notwithstanding these current security measures, vulnerabilities already exist at our major seaports, which will only be further exacerbated and magnified in the absence of the Jones Act.

## ENTRY OF ILLEGAL IMMIGRANTS

Despite the measures described above at our major ports of entry, the Government Accountability Office (“GAO”) has identified several flaws in the system. For example, it found the U.S. Coast Guard and the CBP were unable to accurately account for the raw number of absconders and deserters from foreign flag vessels—that is, those foreign seafarers who illegally enter the country from foreign-flag vessels calling on U.S. ports.<sup>6</sup> In addition, despite Congressional mandates to scan 100 percent of the cargo containers inbound to the United States, the DHS has been unable to do so; instead, it only scans a mere fraction of such containers.<sup>7</sup> With respect to foreign crews, because the U.S. government has absolutely no control over foreign government seafarer credentialing practices, real concerns also exist that extremists may fraudulently obtain seafarer credentials as a way to gain entry into the United States.<sup>8</sup> In fact, the DHS considers the illegal entry of aliens through U.S. seaports by exploitation of maritime industry practices to be a key security concern.<sup>9</sup> In this regard, in 2011, the GAO determined that the CBP does not have the ability to electronically verify foreign seafarer credentials,<sup>10</sup> and there is no indication that the CBP has developed such capability. These security concerns exist at the major coastal ports of entry around the country, where significant security infrastructure and measures have already been put in place to mitigate these risks.

## A WORLD WITHOUT THE JONES ACT

Consider the task of managing and mitigating these formidable risks in a non-Jones Act world, in which foreign ships and crews could move freely throughout America’s rivers, coastal areas, and other waterways. Imagine foreign ships and foreign dredges moving through 12,000 miles of inland waterways, often with no U.S. Coast Guard, CBP, or other security officers anywhere nearby. Inland vessels move freely along waterways, often tying up to docks, terminals, or other points along the river with no security officials anywhere. Imagine the nearly impossible task of federal monitoring of the foreign crew members on tens of thousands of vessels traveling within our domestic waters. U.S. dredges often work in very close proximity to our military bases and terminals, and having foreign dredges and crews operating in these strategic places would be a significant security concern. It is no surprise then that when one Senator proposed changes to the Jones Act in early 2015, the Commandant of the U.S. Coast Guard and a very senior Defense Department official quickly objected.

Without a Jones Act, according to Congressmen Steve Scalise (R-La) and Duncan Hunter (R-Ca), “vessels and crews from foreign nations could move freely on U.S. waters, creating a more porous border, increasing possible security threats and introducing vessels and mariners who do not adhere to U.S. standards into the bloodstream of our nation.”<sup>11</sup>





## THE HEART OF THE MATTER—AMERICAN CREWS

The heart of the homeland security benefit is the Jones Act's requirement that domestic vessels use American crews. American mariners—sometimes called merchant mariners—have been celebrated for their valor since the World Wars, when they lost their lives providing military sealift and support in numbers far beyond other military services. Today, the Americans aboard commercial vessels are highly trained, licensed, and full partners in securing our nation with U.S. maritime security officials such as the U.S. Coast Guard and the CBP. When these American commercial mariners see something that threatens U.S. homeland security, they report it through established channels and processes to law enforcement agencies. During the horrific

attacks on New York on Sept. 11, 2001, the U.S. Coast Guard called vessel operators to help evacuate lower Manhattan despite the possibility that additional attacks could occur. "I was uncertain who was going to respond," recalled a U.S. Coast Guard officer, "[but] about 15–20 minutes later there were boats all across the horizon." In the documentary *Boatlift*, narrator Tom Hanks said that American vessel crews headed into the smoke-filled "unknown" in lower Manhattan, ultimately rescuing nearly 500,000 civilians in "the largest sea evacuation in history." Not just in extraordinary situations like 9/11 but also in everyday circumstances, American crews on American ships make America more secure.

**THE JONES ACT** provides an often unseen benefit in many areas but none more so than border protection, homeland security, and the prevention of illegal immigration. The Jones Act makes America stronger and its borders more secure.

### ABOUT AMERICAN MARITIME PARTNERSHIP

American Maritime Partnership (AMP) is the voice of the U.S. domestic maritime industry, a pillar of our nation's economic, national, and homeland security. More than 40,000 American vessels built in American shipyards, crewed by American mariners, and owned by American companies, operate in our waters 24/7, and this commerce sustains nearly 650,000 American jobs, \$41 billion in labor compensation, and more than \$150 billion in annual economic output.

### REFERENCES

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5. U.S. Gov't Accountability Office, GAO-11-195, *Federal Agencies Have Taken Actions to Address Risks Posed by Seafarers, but Efforts Can Be Strengthened* 1 (2005) [hereinafter, GAO, *Seafarer risks*].
6. *Id.* at 24-33.
7. See U.S. Gov't Accountability Office, GAO-11-195, *Supply Chain Security: Container Security Programs Have Matured, but Uncertainty Persists over the Future of 100 Percent Scanning* (2012).
8. GAO, *Seafarer Risks*, *supra* note 5, at 1.
9. *Id.* at 12-13.
10. *Id.* at 20-23.
11. Reps. Duncan Hunter & Steve Scalise, *Making Headway with America's Maritime Industry*, Wash. Times (Mar. 25, 2014), available at <http://www.washingtontimes.com/news/2014/mar/25/hunter-and-scalise-americas-maritime-industry-lead/>.



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