

**Before the
Department of Homeland Security
Washington, D.C. 20528;**

and the

**United States Coast Guard
Merchant Marine Personnel Advisory Committee
Washington, D.C. 20593**

July 27, 2017

In the Matter of)	
)	
Merchant Marine Personnel Advisory)	
Committee- Input To Support Regulatory)	
Reform of Coast Guard Regulations-)	
New Task)	Docket ID No. USCG-2017-0661-0001
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Comments of FreedomWorks Foundation

FreedomWorks Foundation is a 501(c)(3) nonprofit and educational foundation dedicated to building, educating, and mobilizing the largest network of activists advocating the principles of smaller government, lower taxes, free markets, personal liberty, and rule of law. In doing so, FreedomWorks Foundation acts as a “service center” for the millions of citizen-leaders who make a difference in the fight for lower taxes, less government, and more freedom.

FreedomWorks Foundation appreciates the opportunity to provide comments to the Department of Homeland Security (DHS), the United States Coast Guard (USCG), and USCG’s Merchant Marine Personnel Advisory Committee (MERPAC) regarding MERPAC’s task to identify existing regulations for possible repeal, replacement, or modification.

One of the core projects of FreedomWorks Foundation is the Regulatory Action Center. The Regulatory Action Center is dedicated to educating Americans about the impact of government regulation on economic prosperity and individual liberty. FreedomWorks Foundation is committed to lowering the barrier between millions of FreedomWorks citizen activists and the rule-making process of government bureaus to which they are entitled to contribute.

In line with this core project, FreedomWorks Foundation believes the flagging laws and the coastwise shipping laws of the United States, and subsequently the regulations under these laws, are both antiquated and economically destructive—amounting to little more than protectionism for the domestic shipping industry. For whatever concentrated benefit these laws may afford to extant interests in the domestic shipping industry, the economic distortions created by protectionist shipping regulations are far more significant. This protectionism has crippled the domestic shipping industry and reduced it to a niche special interest versus a thriving component of the broader logistics market.

For these reasons, FreedomWorks Foundation suggests MERPAC recommend USCG review and ultimately substantially limit or eliminate coastwise shipping regulations to the greatest extent possible under law. Due to MERPAC's obvious narrow focus on issues pertaining to merchant marine personnel, these comments will briefly discuss the adverse effects of coastwise laws on the domestic maritime industry and merchant marine personnel.

Background

The laws and regulations governing America's domestic shipping industry, particularly the under the Merchant Marine Act of 1920—more commonly known as the Jones Act—restrict shipping between two domestic ports in the United States to ships primarily built, owned,

operated and flagged in the United States.¹ According to the World Economic Forum, America's coastwise trade laws under the Jones Act are "the most restrictive" of their kind in the world.²

Regulation and Competitive Disparity

The negative correlation between regulation and competition in a given industry, as well as the positive correlation between competition and consumer welfare, has been proven time and again. Studies show that across various sectors, from utilities like natural gas and telecommunications to other transportation services such as airlines, railroads, and trucking, competition and consumer welfare increased following deregulation.³ Yet, while deregulation of these aforementioned industries began in the 1970s, the domestic shipping industry is still regulated largely as it was in 1920. Other transportation industries have not only been deregulated since the Jones Act went into effect but, in the case of the airlines, been born *and* deregulated. In short, firms in these alternative transportation markets were able to consume greater shares of the logistics market through aggressive competition within their industries. Meanwhile the maritime industry remained boxed-in by heavy regulation, adverse to competition within the industry and thus less competitive in the broader logistics market.

Economic Impact on the Shipping Industry and Merchant Marine Personnel

The result of aggressive protection of the domestic shipping industry is staggering yet unsurprising. Due to the stifling effect of regulation on competitive forces, the domestic shipping industry exhibits monopolistic behavior with reduced service and higher prices, despite the fact alternative logistics industries exist such as rail, airfreight, and trucking. As a result demand for

¹ Title 46 U.S.C. Chapter 121, Documentation of Vessels (46 U.S.C. §§12101-12152) & Title 46 U.S.C. Chapter 551, Coastwise Trade (46 U.S.C. §§55101-55121)

² Moavenzadeh et al. "Enabling Trade Valuing Growth Opportunities," World Economic Forum, 2013. http://www3.weforum.org/docs/WEF_SCT_EnablingTrade_Report_2013.pdf

³ Crandall, Robert and Jerry Ellig, "Economic Deregulation and Customer Choice," The Mercatus Center (Center for Market Process), 1997. https://www.mercatus.org/system/files/MC_RSP_RP-Dregulation_970101.pdf

domestic shipping services is suppressed. This dynamic has sent the industry into nothing short of a death spiral, harming future merchant mariners and limiting demand for sailors.

The total Jones Act-qualifying fleet of commercial ships dropped from 1,072 in 1955 to just 193 by 2000 and a mere 91 by 2016.^{4 5} This dramatic decline has not been experienced in the total global shipping market. Private oceangoing ships flying the US flag, of which Jones Act qualifying ships are only a fraction, totaled 2,926 or 16.9 percent of the global fleet in 1960. By 2016, those figures were 169 and .4 percent, respectively.⁶ Extrapolating these figures out, the international fleet was comprised of roughly 17,313 ships in 1960 and 42,250 ships in 2016. Thus, as American shipping industry shrank by over 95 percent, the global industry grew by nearly 150 percent. This represents hundreds of thousands, if not millions of potential American maritime jobs had the domestic industry remained internationally competitive. It is not, however, reflected in the crewing and operating costs on US-flagged ships. Per a 2011 report from the Department of Transportation's Maritime Administration (MARAD):

“Based on the cost data provided to the Maritime Administration by carriers for 2009 and 2010, the total average daily operating cost of a U.S.-flag vessel was roughly \$21,774 and \$20,053, respectively. By comparison, average daily foreign-flag operating costs in 2009 and 2010, worldwide, were roughly \$7,410 and \$7,454, respectively. With average vessel operating costs roughly **2.7 times higher** than their foreign-flag counterparts (2010), U.S.-

⁴ Slattery, Brian, Bryan Riley, and Nicholas Loris, “Sink the Jones Act: Restoring America’s Competitive Advantage in Maritime-Related Industries,” The Heritage Foundation, May 22, 2014. <http://www.heritage.org/government-regulation/report/sink-the-jones-act-restoring-americas-competitive-advantage-maritime>

⁵ Grennes, Thomas, “An Economic Analysis of the Jones Act,” The Mercatus Center, George Mason University, 2017. <https://www.mercatus.org/system/files/mercatus-grennes-jones-act-v1.pdf>

⁶ *Ibid.*

flag carriers are at a distinct disadvantage in their ability to compete in international transportation markets... The Maritime Administration's internal analysis of operating cost data revealed that U.S.-flag crewing costs were roughly **5.3 times higher** than foreign-flag vessels in 2010.”⁷

At such a drastic cost disparity, there is little-to-no economic incentive to hire American sailors or for Americans to work on foreign ships and lines. In fact, American shipping firms today only receive business as the result of US law. Domestic routes are protected by the Jones Act while, according to the Congressional Research Service, “almost all revenues of the U.S.-flag international fleet” come from preference cargo, which is cargo Congress requires to be shipped aboard American vessels.⁸ While protectionism may allow crews to charge exorbitant prices, the lack of demand resulting from these prices is suffocating the industry as a whole.

These facts should not be confused as a justification for retaining the shipping regulation status-quo to protect the relative few remaining merchant marine personnel engaged in this walled-off market. Such would only behoove the relative few existing sailors in the short-term, as the historical trend indicates the protection of an isolated mode such as maritime shipping cannot protect substantial market-share in the entire logistics market in the long run. Such a complete demise may seem too far over the horizon for some to imagine; however, evidence suggests the number of qualified American merchant sailors continues to dwindle. Both MARAD and military officials testified in 2016 that the United States is facing a merchant crew

⁷ “Comparison of U.S. and Foreign-Flag Operating Costs,” U.S. Department of Transportation Maritime Administration, September 2011. https://www.marad.dot.gov/wp-content/uploads/pdf/Comparison_of_US_and_Foreign_Flag_Operating_Costs.pdf

⁸ Frittelli, John, “Cargo Preferences for U.S.-Flag Shipping,” Congressional Research Service, October 29, 2015. <https://fas.org/sgp/crs/misc/R44254.pdf>

shortage in the next decade and that the nation has insufficient fiscal and physical resources, such as training vessels, to compensate.⁹

Continued protection is likely only to kill more jobs as firms adapt through new practices and technologies to circumnavigate any remaining need, and thereby eliminating demand, for Jones Act-regulated shipping.

Safety of Merchant Marine Personnel

Stagnant competition resulting from protectionist regulation not only threatens the long-term viability of the domestic maritime industry, in the short-term it creates safety risks for American merchant mariners.

With significantly limited competition and thus limited consumer choice, there is little incentive for domestic maritime firms to deploy state-of-the-art ships. The data clearly reflects such an issue. Per a 2016 report in *The Maritime Executive* magazine:

“One widely acknowledged consequence of the Jones Act is that the US-built fleet is considerably older than the global, non-US built fleet. The current US-built fleet has an average age of 33 years, versus 13 years for the global fleet.”¹⁰

One could hardly argue that any vehicle, be it a car, airplane, or boat, built over three decades ago is just as safe as one built today. Yet, domestic maritime regulations intended to economically protect merchant mariners are jeopardizing their safety. A tragic example is that of the merchant ship *El Faro*. The ship was one of a handful of Jones Act-qualifying ships servicing Puerto Rico from the mainland US. In 2015, *El Faro*

⁹ Grady, John, “U.S. Facing Looming Shortage of Merchant Mariners,” USNI News, March 22, 2016. <https://news.usni.org/2016/03/22/u-s-facing-looming-shortage-of-merchant-mariners>

¹⁰ Jallal, Craig, “The Value of the Jones Act Fleet: \$4.6 Billion,” *The Maritime Executive*, March 21, 2016. <http://maritime-executive.com/editorials/the-value-of-the-jones-act-fleet-46-billion>

sank after encountering rough seas due to a hurricane in the vicinity. Thirty three sailors perished. While no regulation can be blamed for acts of God, *The New York Times* noted in reporting on the incident, “*El Faro*’s sinking highlights a vulnerability in the United States States merchant fleet: its age.”¹¹ *El Faro* was 40 years old at the time it sank.¹²

Without sufficient competition, Jones Act regulations will continue to drive the average age of the dwindling American maritime fleet higher, reducing demand for merchant marine shipping due to rising risk and exposing the remaining labor force of merchant sailors to unnecessary hazard.

Recommendation

MERPAC should recommend to USCG and DHS that coastwise regulations be amended or waived to the greatest extent permissible under law. In particular, 46 U.S. Code § 8103 (b)(1)(B), which currently reads, “not more than 25 percent of the total number of unlicensed seamen on [a documented] vessel may be aliens lawfully admitted to the United States for permanent residence” should be amended to by striking 25 percent and adding 49 percent. This would keep regulations consistent with the statutory requirements that coastwise merchant vessels be primarily operated by US citizens, while allowing for greater competition in the merchant sailor labor market. This would drive down crewing costs and thereby increase overall demand.

More broadly, USCG and DHS are granted authority to waive Jones Act requirements for specific vessels as well as issue temporary universal waivers.¹³ USCG and DHS should grant

¹¹ Mouwad, Jad, “Missing Cargo Ship Highlights Vulnerability of Aging U.S. Fleet,” *The New York Times*, October 14, 2015. <https://www.nytimes.com/2015/10/15/us/sinking-of-cargo-ship-el-faro-raises-questions-about-age-of-us-fleet.html?mcubz=2>

¹² *Ibid.*

¹³ 46 U.S. Code § 501 - Waiver of navigation and vessel-inspection laws

exceptional leniency in granting waivers or issue a long-term universal waiver and subsequently study the effect of the policy on the domestic maritime market.

Conclusion

FreedomWorks Foundation appreciates the opportunity to offer these comments to MERPAC. FreedomWorks Foundation strongly contends that the laws and subsequent regulations designed to protect the domestic maritime industry, such as the Jones Act, have produced significant unintended consequences requiring immediate redress. In particular to the mission of MERPAC, these rules have suppressed competition in the domestic shipping market, ultimately harming demand and exposing merchant marine personnel to hazard aboard an aging fleet.

For these reasons, FreedomWorks Foundation suggests MERPAC recommend to USCG and DHS that options such as those recommended, or any others within the bounds of federal law, be pursued to increase the leniency of coastwise trade laws.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Patrick Hedger', written in a cursive style.

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