

## Is the Jones Act Really 106 Years Old?

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The Middle East war has focused attention on the “Jones Act,” a U.S. maritime policy law. Waiving the law allegedly will help with the price of gasoline in the United States, even though the current law narrowly circumscribes the bases and duration of any waiver. Putting the efficacy and practicality of a waiver aside, it might be helpful to get some facts straight about the Jones Act. When discussing the law, the commentariat usually refers to it as a “106-year old law” and associates it with World War I with the implication being that it was a war policy. Is the Jones Act really 106 years old, and was it really a World War I policy? The answer requires some historical context.

The reference point for the one hundred and six years is the passage of time since the Merchant Marine Act, 1920. A single section in that law – section 27 – contains a reservation of U.S. domestic maritime trade to U.S.-flag vessels owned and manned by U.S. citizens. However, section 27 did not express a new general domestic maritime policy. In most respects, section 27 was an afterthought and a free rider on legislation that otherwise predominantly focused on what to do with the fleet of vessels the U.S. government had built, and was still building in 1920, for World War I.

The 1920 Act also focused on how to take advantage of the huge fleet of U.S.-built vessels to keep the U.S.-flag merchant marine substantially engaged in international trade. For example, there was a provision to amend free trade agreements to permit tariff discrimination in favor of cargoes carried by U.S.-flag vessels. A policy of maintaining or growing the U.S.-flag fleet engaged in the domestic trade was not part of the 1920 Act.

Section 27 closed a loophole that had been created by a 1912 U.S. Attorney General opinion relating to Alaska. Senator Wesley L. Jones, a Republican from the State of Washington, was responsible for the whole of the 1920 Act as Commerce Committee Chairman and used the 1920 Act to fix that loophole via section 27. At the time and long after, the whole of the 1920 Act was known as the “Jones Act.” It was not until well after World War II that section 27 (and, confusingly, another section dealing with merchant mariner injuries) has generally come to be called “the Jones Act” as it is today. For people in Alaska, section 27 was always “the Jones Act.”

The record does not support the view that section 27 charted a new domestic maritime course other than closing the 1912 loophole. Section 27 was a restatement of pre-existing law. Section 27 amended the 1898 domestic maritime trade reservation to U.S.-flag vessels. The 1898 law was, in turn, a restatement of a law that goes back to 1817, which was signed by President James Madison as he was finishing his second term.

The 1817 law reserved U.S. domestic maritime trade to vessels owned by U.S. citizens; the 1898 law reserved such trade to vessels registered in the United States, which must be owned by U.S. citizens. In 1898, all U.S.-flag vessels, whether engaged in U.S. domestic trade or U.S. international trade, had to be built in the United States.

The 1817 law was the first outright reservation of U.S. domestic maritime trade to U.S.-connected vessels. Before that, a July 20, 1789, law signed by President George Washington effectively reserved U.S. domestic maritime trade to vessels built in the United States and owned by U.S. citizens through a tonnage tax preference. The chief proponent of that law was Congressman James Madison.

The July 20 law was the third law enacted by the first U.S. Congress. The second law, signed on July 4, imposed duties (tariffs) on imported goods with a 10 percent discount preference in favor of U.S.-built, U.S.-owned vessels. As a point of historical interest, the first law established the form of oaths to be taken by officials in the U.S. government. So, two of the first three laws of the first U.S. Congress in 1789 promoted the U.S. merchant marine.

The 1817 law was patterned, like many laws of the time, on English precedents. England had, as part of its navigation act system, long reserved its domestic trade as well as its colonial trade to vessels owned by its citizens. Specifically, the 1660 Navigation Act, probably the most prominent of such acts, which governed English foreign trade also contained a domestic trade reservation.

The 1660 English domestic trade reservation to English vessels had its origins in an act adopted in 1563 under Queen Elizabeth I. The phraseology of that 1563 domestic trade reservation is similar to the domestic trade reservation contained in the 1817 U.S. statute. English navigation acts have been further traced back to 1381 and the 1381 law, as well as the other English navigation acts, were well known to the founders of the United States.

So, is it accurate to say that the “Jones Act” is 106 years old? No, it is not if the purpose of saying so is to convey the impression that it is a 1920 policy or a World War I policy. The United States domestic maritime trade reservation long preceded 1920, was merely restated in 1920, and had nothing to do with World War I policy. The reservation of U.S. domestic maritime trade to U.S. citizens is much older than 106 years and has always been the policy of the United States.

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