

The Jones Act and Homeland Security in the 21st Century

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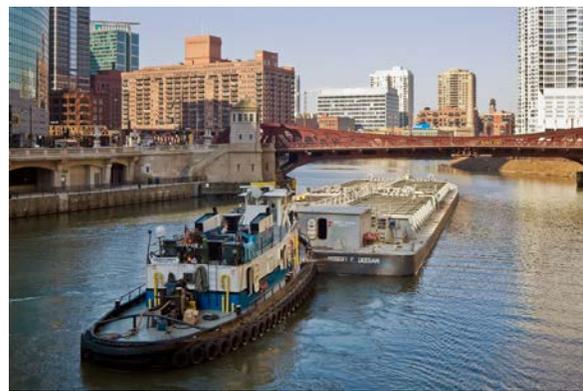
June 2016

Among the enumerated powers granted to Congress in Article One, Section Eight of the U.S. Constitution is to provide and maintain a Navy. Fulfilling this responsibility requires, inter alia, that Congress ensure the health of the domestic shipbuilding and repair industrial base and existence of an American merchant marine.

Almost one hundred years ago, the Congress of the United States sought to enhance the nation's ability to provide and maintain a Navy by passing the Merchant Marine Act of 1920, also known as the Jones Act. At the time, the motivating concerns were economic security and maintaining a viable shipbuilding industry and merchant marine in support of a strong Navy. The Act places restrictions on what is called cabotage or the movement of goods between U.S. ports and on U.S. waterways, requiring that only U.S. built and flagged vessels conduct this trade and that at least 75 percent of the crews be U.S. citizens. In addition, the Act restricts the foreign steel content of repair work on U.S. flag vessels thereby restricting such activities to U.S. shipyards. Today, the Jones Act remains critical to the maintenance of a U.S. shipbuilding and repair industry and associated skilled workforce to support the Navy. It is vital also to the sustainment of our merchant marine.¹

Since 9/11, the Jones Act has taken on new significance for national security in a way that no one in 1920 could have imagined. It now plays an important role in securing the homeland from the threat of international terrorism.

The current debate of enhancing U.S. border security has focused almost exclusively on illegal movement of people and drugs into the southern United States from Mexico. Yet, the southern



A tugboat pushing a barge westward along the main stem of the Chicago River.
(Retrieved Wikimedia; ©2008 Jeremy Atherton)

¹ The full text of the Jones Act is available at www.1800jonesact.com/maritime_statutes/default.html



The Saint Lawrence Seaway is a system of locks, canals and channels in Canada and the United States that permit ocean-going vessels to travel from the Atlantic Ocean to the Great Lakes, as far inland as the western end of Lake Superior.
(Retrieved Wikimedia)

land border is actually the smallest at 1,989 miles. The U.S. border with Canada is almost three times longer at 5,525 miles.

But all this country's land borders taken together are dwarfed by the 95,000 miles of national shoreline. This includes the Pacific, Atlantic and Gulf coasts as well as the Great Lakes separating the United States from Canada. Along this shoreline are many of America's greatest cities: Los Angeles, San Francisco, Portland, Seattle, Chicago, Boston, New York, Philadelphia, Charleston, Savannah, Miami and Tampa. Virtually all of these are associated with ports through which annually pass millions of cargo containers and hundreds of thousands of passengers.

Moreover, the United States is a nation of rivers as well as the world's preeminent maritime power. For example, a ship entering the homeland through a coastal port such as New Orleans will have access to the deep interior. The inland waterways of the United States encompass over 25,000 miles of navigable waters, including the Intracoastal Waterway, a 3,000-mile highway that traverses the Atlantic and Gulf Coasts. This liquid highway touches most of America's major Eastern and Gulf Coast cities including Washington DC, Philadelphia, Baltimore, Chicago, New Orleans and Mobile. Inland and intracoastal waterways

directly serve 38 states from the nation's heartland to the Atlantic seaboard, Gulf Coast and Pacific Northwest.

The U.S. marine transportation system encompasses all of these waterways, as well as the world's largest exclusive economic zone. For regulatory, safety and security purposes, it includes 361 ports, over 3,000 facilities and more than 14,000 regulated domestic vessels. In totality, securing not simply America's waters but all the relevant infrastructure poses a daunting challenge. According to the U.S. Coast Guard, "the vastness of this system and its widespread and diverse critical infrastructure leave the nation vulnerable to terrorist acts within our ports, waterways, and coastal zones, as well as exploitation of maritime commerce as a means of transporting terrorists and their weapons."²

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. These waterways are heavily traveled by both commercial and pleasure craft. They carry an enormous weight of the nation's internal commerce. Critical land lines of communications and oil and gas pipelines traverse a number of these waterways. Guarding every potential target along the inland waterways against terrorist attack is an impossible task.

² <https://www.dhs.gov/news/2012/09/11/written-testimony-us-coast-guard-house-transportation-and-infrastructure>

The protection of the nation's maritime transportation system is governed largely by the 2002 Maritime Transportation Security Act (MTSA) and the Security and Accountability for Every (SAFE) Port Act of 2006. The MTSA and SAFE Port acts address not only standards for the physical security of the nation's ports and maritime facilities and the proper documentation of all vessels, cargoes and people arriving at a U.S. port, but also identity security for those who have access to maritime infrastructure or domestic vessels. SAFE Port instituted the Transportation Worker Identity Credential (TWIC) for the purpose of vetting maritime workers and replacing the hundreds of identity cards then in use with a single, recognizable and tamper-resistant credential.

The Department of Defense and Department of Homeland Security (DHS) along with domestic law enforcement agencies at both the state and federal levels are expending enormous amounts of manpower and resources to monitor and secure the nation's ports and waterways. Within DHS, the responsibility for maritime security rests with the Coast Guard, Customs and Border Protection and the Transportation Security Administration (TSA). There are programs to control foreign ships and scan international cargoes at ports of embarkation. Ships, cargoes and their crews are subject also to additional inspections and credential checks when they enter the United States. DHS also manages the TWIC program that issues special credentials to workers who require unescorted access to secure areas of ports, vessels, outer continental shelf facilities and to all credentialed merchant mariners. To be eligible for TWIC, one must be a U.S. citizen, lawful permanent resident, naturalized citizen or a nonimmigrant alien, asylee, or refugee who is in lawful status.³ Since the inception of the TWIC program, TSA has provided the new credentials to some 2.9 million workers involved in some way with the marine transportation system.

The effort to prevent the entry of foreign terrorists, weapons or contraband into the U.S. homeland is a massive undertaking involving tens of thousands of government personnel to surveil and control the large number of foreign citizens, cargo containers and foreign-owned and crewed ships that enter the United States every year. Their movements and those of their crews are subject to a variety of controls and restrictions. Without valid passports and TWIC documentation, foreign sailors are restricted to their ships and the immediate port area.

The same is not the case for U.S. vessels and their crews engaged in the movement of goods or the provision of services solely within U.S. waters. While there are federal and state laws and regulations governing the operation of ships involved in cabotage, they are far less demanding than those in place to prevent threats or contraband from entering this country's ports from overseas.



The Herbert P. Brake pushes a new barge east on the Erie Canal in Fairport, New York.
(Retrieved Wikipedia)

³ <https://www.tsa.gov/for-industry/twic>



Mississippi Ships on the lower part of the Mississippi River.
(Retrieved Wikimedia / US Department of Agriculture image)

It is particularly important that those vessels and crews which routinely travel between U.S. ports and especially the inland waterways through America's heartland pose no threat to the homeland. One approach would be to apply the same security conditions for vessels and crews operating in U.S. waters as exist for foreign-owned and operated vessels coming from overseas. This would include advance notification of ship movements, inspections of cargoes, and the vetting of crews. This would be in addition to the regulations governing their operation under the MTSA and the SAFE Port Act.

In addition, the requirement to treat vessels conducting cabotage as if they were potential sources of threats to the homeland on the same order as foreign vessels entering U.S. ports would also necessitate much more extensive intelligence and surveillance on their activities. Extending the same data management and tracking requirements for foreign vessels and crews to those operating in U.S. waters would require an enormous investment of both resources and personnel by DHS components. Given the essentially flat budgets under which DHS has operated for the past several years, the necessary expenditures would only come at the expense of the effort to monitor foreign threats seeking to enter the country. It is for this reason that the higher standards with respect to ownership and manning requirements for Jones Act ships are so significant.

The task of securing U.S. seaports and foreign cargoes is daunting by itself. It makes no sense to add to the burden facing domestic security agencies by allowing foreign-owned ships operated by foreign crews to move freely throughout America's inland lakes, rivers and waterways. The requirement that all the officers and fully 75 percent of the crews of vessels engaged in cabotage be U.S. citizens goes a long way to reducing the risk that terrorists could get onboard or execute an attack on a U.S. target. In effect, there is a system of self-policing that reduces the requirement for law enforcement and homeland security organizations to expend time and effort to ensure that these vessels and crews are safe to traverse U.S. waters. Were the Jones Act not in existence, the Department of Homeland Security would be confronted by the difficult and costly requirement of monitoring, regulating and overseeing foreign-controlled, foreign crewed vessels in coastal and internal U.S. waters.

