

A Century of the Jones Act

by Salvatore R. Mercogliano, PhD

On a gray and partially overcast day in the middle of June 2019, the National Steel and Shipbuilding Company (NASSCO) launched the newest Jones Act vessel for the Matson fleet and the US merchant marine. Named *Lurline*, she was the sixth vessel to carry this iconic name for the shipping line. Her original namesake was a brig built in 1887 and owned by Captain William Matson. This new *Lurline* is a Kanaloa-class container and roll-on/roll-off ship, better known as a Con-Ro. At 870 feet long, she can transport 3,500 containers and 500 vehicles between the west coast of the United States and Hawaii. Her diesel engines can produce speeds up to 23 knots on either conventional fuel or liquefied natural gas (LNG), used to reduce emissions when operating close to shore.¹ She and her sister-ship, *Matsonia*, will replace three older diesel-powered ships.

Lurline and *Matsonia* will join a diminished US deep-draft merchant fleet (ships greater than 1,000 gross tons) that consists of only 180 ships as of 2019.² In terms of total size, today's American commercial fleet ranks 22nd in the world, a precipitous fall from its position of dominance after the Second World War when 5,500 ships were added to the thousand pre-war ships to make it the largest merchant marine in the world.³ Today, the vast majority of ship construction is located in the Far East, with the People's Republic of China, the Republic of Korea, and Japan building 90.5 percent of the world's ships. The largest owners of ships today are



MATSON, INC.

The 870-foot Lurline, being launched into San Diego Bay on 15 June 2019. According to Matson CEO and chairman Matt Cox, "The construction of this ship required 150,000 man-hours to complete. It's over a year's work for about 2,000 professionals...engineers, tradesmen and lots of support people. And over its expected lifespan, this ship will generate approximately 4.5 million man-hours of work opportunity for the US mariners who will operate it...not to mention all the dock workers and terminal personnel."

Greece, Japan, and China, and the majority of the world's fleet fly the flags of Panama, the Marshall Islands, Liberia, and Hong Kong.

With lower construction costs overseas, better corporate operating environments, and reduced legislation and oversight, many ship owners prefer to operate outside the United States. One of the primary reasons for building *Lurline* in California is a century-old law known as the Merchant Marine Act of 1920, more commonly known as the Jones Act. Opponents

of the Jones Act, which requires ships in the coastal trade to be American-built, -crewed, -owned, and -operated, often attribute the decline of the US merchant marine to this piece of legislation and also blame many of the nation's woes on it. Nevertheless, *Lurline* and the 180 ships in the US fleet, including the 100 ships meeting the provisions of the Jones Act, are vital to not only this nation's commerce but also its national security. It is the latter that led directly to the creation of this act a hundred years ago.

The History

On 2 April 1917, President Woodrow Wilson went before Congress and asked for a declaration of war due to a series of attacks upon American merchant ships. Characterized by historian Rodney Carlisle as attacks on our "sovereignty at sea," Wilson built his case on an earlier statement when he declared an "Emergency in Water Transportation of the United States" on 5 February 1917.⁴ Since the outbreak of the Great

The Hyundai Heavy Industries (HHI) Ulsan Shipyard in South Korea is the largest shipyard in the world. Today, HHI accounts for 10-15% of the global shipbuilding market.



HYUNDAI HEAVY INDUSTRIES

War, the nation reeled economically as the merchant fleets of the world vacated the American trade. The largest commercial fleet, that of the British, was diverted to support the war effort, while the second largest, that of Germany, sought shelter and was chased from the high seas. The US fleet was third, but too small to pick up the slack. As a result, the price to ship a ton of cotton jumped from \$0.35/ton to \$6.10/ton by 1917. The rate to charter a ship increased twenty-fold and the domestic economy went into a recession as goods piled up on the docks and imports stopped arriving in American ports.

On 14 June 1917, only two months after Congress declared war against Imperial Germany, fourteen chartered American merchant ships stood ready to set sail for Europe with the four infantry regiments of the US Army's First Division. One of the ships was drawn from the transAtlantic trade, two were from the Caribbean, but the remaining eleven were all involved in the US coastal trade. The ships served as the embryo for the fleet that would eventually transport the American Expeditionary Force across the Atlantic in World War One. Some of the vessels were taken into the Navy as part of the Cruiser and Transport Force or the Naval Overseas Transportation Service, while some returned to the domestic trade. However, these ships would not be enough, as the US only transported 45 percent of the AEF and had to rely on its allies for the rest. An emergency shipbuilding program, authorized under the Shipping Act of 1916 and the US Shipping Board (USSB), led to the creation of the Emergency Fleet Corporation (EFC). Eventually headed by Edward Hurley and assisted by Charles Piez and Charles Schwab, the USSB and EFC oversaw a program that resulted in 2,318 ships. The vast majority of the ships were still on the building ways when the war ended; the massive Hog Island ship fabrication facility, on the site of the Philadelphia International Airport today, had fifty ways, but its 122 ships were all

Launch of the Quistconck at Hog Island shipyard in Philadelphia, 5 August 1918. President Woodrow Wilson and First Lady Edith Wilson are standing on the platform on opposite sides of the flagpole.

completed after the Armistice.⁵ Yet, this vast war-built fleet needed to be managed and more importantly, the nation did not want to ever find itself in the position it did at the start of the Great War—dependent on other nations for its trade and unable to transport and sustain its military overseas and return them after the war.

The Merchant Marine Act of 1920

The end of the war found the United States on the precipice of maritime dominance and an opportunity for the nation to use its commercial fleet to exert its influence, as cited by Jeffrey Safford in *Wilsonian Maritime Diplomacy, 1913–1921*. To do this, the nation needed to embrace a new policy and it found two advocates. William

S. Benson, the first Chief of Naval Operations, assumed the chairmanship of the US Shipping Board on 13 March 1920. In his 1923 book, *The Merchant Marine*, he clearly stated his position: “Constant protection can come only from an ample navy and a permanent merchant marine, under our own flag. A merchant fleet of adequate size for our peace time commerce, manned by American citizens whose loyalty will keep them at their posts when danger comes, and whose experience will equip them for higher office in our non-combatant fleet when it serves as an auxiliary to our navy, is not a mere instrument of commerce—it is a necessity.”

He noted that with the scuttling of the High Seas Fleet at Scapa Flow in June



1919, and with the Conference on the Limitation of Armaments setting the US Navy and Royal Navy at parity, the importance of the nation's merchant marine increased significantly. The higher building and operating costs for the American commercial fleet, due to "higher standards prescribed by our laws and by our customs for the workmen engaged in the construction of the vessel," much of which was brought about during the Progressive Era by advocates such as Robert La Follette, required a government policy to protect the industry.⁶

The other advocate was Senator Wesley Jones (R-WA), who navigated House Resolution 10378 through the Senate. A noted reference work on this subject states "Republican senator Wesley Jones, who rammed the bill through Congress without any debate, has been the popular term used to refer to the section of the Merchant Marine Act of 1920, which reserves the coastwise and intercoastal trade to US-flag vessels built in the United States and owned by American citizens."⁷ The Jones Act in its entirety is much more than this one narrow focus. While there is no denying the role played by these two, Benson for the visibility he brought to the issue and Jones for steering it through the Senate, there were many others who pushed this policy through.

On 8 November 1919, William Stedman Greene (R-MA), arose in the House of Representatives and moved that they form a Committee of the Whole to consider HR 10378, "To Provide for the Promotion and Maintenance of the American Merchant Marine." Forwarding the bill



Senator Wesley Jones (1863–1932)

with the unanimous consent of the Committee on the Merchant Marine and Fisheries, he announced, "I believe the question of the American merchant marine is the most important question that has been brought to the attention of the House."⁸ The paramount issue he identified was the fact that only seven American ships had been involved in overseas trade before the start of the war. With the new war-built fleet of the US Shipping Board and Emergency Fleet Corporation, he hoped to see these ships sold to American firms and utilize them on key international trade routes.

The issue of coastwise trade, with which the Jones Act is synonymous, was only mentioned in passing. Laws dealing with the preference of domestic over foreign ships in our coastwise trade were a bedrock of the early national government,

specifically, the third law passed by the First Congress (1 Stat. 27, enacted 20 July 1789). It was codified in 1817 by disallowing any ship, either partially or wholly foreign-owned, from participating in cabotage. During the First World War, that law was relaxed due to the shortage of American hulls to transport goods and the need to divert American coastwise vessels into the foreign trade. With the end of the conflict and an inventory of a large war-built fleet, the restoration of the 1817 provisions were to be incorporated into a separate law.

Greene's bill passed the House on a vote of 240 to 8, with 184 not voting. HR 10378 was then referred to the Senate. On 6 January 1920, Senator Joseph E. Ransdell (D-LA) introduced the bill to the chamber. He noted that the legislation was "the outgrowth of very serious consideration of the subject for a period of eight months by the National Merchant Marine Association." The focus of the bill, with only twelve sections, was to shift the government-owned merchant fleet into private hands. The Senate referred the bill to the Committee of Commerce, headed by Senator Jones. On 4 May, Jones provided SR 573 on the committee's proposed changes and amendments. It was at that time that the Senate conference committee, led by Jones and Ransdell, and joined by Charles L. McNary (R-OR), William M. Calder (R-NY), and Furnifold M. Simmons (D-NC), unveiled a substantially revised bill that incorporated Representative Greene's earlier work, and that of many others into a larger, more expansive merchant marine omnibus bill.

Less than a week later, Senator Jones was able to get approval for consideration of the bill by the Senate. The bill was debated from 10 to 21 May, when the Senate recommended the five Senators form a conference committee with the House. Representative Greene, joined by George Edmonds (R-PA), Frederick W. Rowe (R-NY), Rufus Hardy (D-TX), and Ladislav Lazaro (D-LA)—later replaced by William B. Bankhead (D-AL)—held three conference committees to hash out the language and changes to the bill.

The Oregon Shipbuilding Company was the largest of the Kaiser shipyards in the Pacific Northwest. At its peak during WWII, it employed more than 35,000 workers.



OREGON HISTORICAL SOCIETY

What is today Section 27 was originally Section 29; the only amendments made to it after its inclusion in the new bill was the addition of two provisions that provided for the completion of the Alaska Railroad and a restriction that areas already connected in the US by only Canadian rail lines could still utilize them. On 2 June, the conference committees presented their reports, but some issues remained, and a final submission was not made until two days later.

With the changes incorporated, on 4 June they voted, with the House passing the vote 145–120 (with 1 present and 168 not voting) and the Senate affirmed 40–11 (with 45 not voting). Just prior to the vote in the House of Representatives, Congressman Greene addressed his colleagues on the bill before them. Reflecting on his 22 years of service in the House, he announced, “Ever since I have been in this body, I have been in favor of an American merchant marine.” He recounted the introduction of his original bill on 8 November and how after a day of open debate it was met by nearly unanimous support but then went to sit in the Senate for seven months. He concluded, “We have occupied considerable time since we have been empowered by the votes of this body to prepare and present an American merchant marine bill.”

Over in the north wing of the Capitol, Senator Wesley Jones was also making his plea to his colleagues: “When the war began, we had practically no ships under the American flag on the high seas. Practically the only shipping we had was in the coastwise trade, built up under our coastwise laws; and if we had not built up that merchant marine under the coastwise laws, the result of this war might have been far different.” He aimed to provide a historical backing for this law: “How did Great Britain build up her merchant marine? She built it up by saying that goods from her colonies should not be brought into Great Britain except under the British flag and in British ships. She continued that policy for years and years until she had built up her merchant marine. Then she removed those restrictions.”

He determined, “We want to build up our merchant marine in the foreign trade, the overseas trade. We had no such merchant marine when the war broke out...ships alone do not make a merchant marine. They must



US NAVY PHOTO

Laila Linares, a 2006 alumna of the US Merchant Marine Academy, sailed as a licensed engineering officer on Military Sealift Command (MSC) ships for the first three years of her career after graduation. To ensure a steady supply of well-trained merchant mariners, the Maritime Administration (MARAD) funds the USMMA at Kings Point, New York. The six state-owned maritime academies receive partial funding from MARAD.

have cargoes, they must have traffic, they must have business, or they will be laid up or be sold to foreign countries. Routes must be established, and trade developed to maintain them.”

With the passage in both houses, Public Law 66–261 went to President Woodrow Wilson for his signature and became law the following day. For the first time, the nation had an official policy toward the American merchant marine, as laid out in its preamble:

That it is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is hereby declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine.⁹

A Century Later

Opponents to the Jones Act have argued that this policy has not only been a hindrance to American maritime success, but the cause of its decline.¹⁰ Their attacks focus on the waning of the merchant marine from a position of dominance at the end of the WWII to its current position as 22nd in the world.¹¹ With a total of 3,692 ships in the fleet (those over 100 gross tons), the vast majority are offshore supply vessels, tugs, and barges, and only 180 are larger than 1,000 gross tons. Groups such as the CATO Institute and the American Enterprise Institute focus on the greater expenses to operate the ships, to build and repair them in the US, and the unfair burden placed on citizens in remote areas of the nation, such as Alaska, Hawaii, and Puerto Rico. What they omit from their discussion are factors beyond the Jones Act. The introduction of open registries (or flags of convenience), the curtailing of coastal trade due to the construction of the Interstate Highway System and Colonial Pipeline, the end of differential subsidies in the 1980s, and the shift in naval construction out of public shipyards to private ones to build the 600-ship Navy, all contributed to the decline of the US merchant marine.

The issue remains: Why do we still need the Jones Act after 100 years? The answer lies in the statements of Admiral Benson, Congressman Greene, and Senator Jones; in the preamble of the act itself, and in the merchant marine's performance in conflicts since its passage—national defense. As a world power, the United States has global commitments. It has military forces forward deployed on nearly every continent in the world. In time of war or national emergency, the military needs to project its forces from the continental US. While it is routine to transfer personnel via commercial airliner, the same cannot be done with the bombs, bullets, and black oil needed to sustain the military's presence across the oceans. Only commercial merchant ships can provide the necessary tonnage.

In September 2019, the United States Transportation Command, the military headquarters tasked with overseeing logistics for the Department of Defense, ordered the activation of 33 ships in the surge sealift fleet.¹² All told, these vessels represented over half of the 61 ships in the reserve fleet owned by the government. The ships are normally maintained with a small operating crew and must draw from the commercial sector for their additional manpower. As the ships underwent their activation, mariners, many of whom are employed on ships in the Jones Act—such as some sailing with Matson—answered the call.

Much as they did in the First World War, when the 11 ships in that initial troop convoy were pulled from their coastal duties to transport the 1st Division overseas, the 33 ships activated at the end of September depended on the mariners, companies, and ship maintenance companies that support the domestic merchant marine. While Jones Act ships have not been commonly with-



NTSB MARINE ACCIDENT REPORT NTSN/MAR-17-01

El Faro was lost with all hands during Hurricane Joaquin in September 2015.

drawn from trade in conflicts such as those in Korea, Vietnam, the Persian Gulf or Iraq, they have provided the corpus of personnel. In a potential peer-to-peer conflict, or regional conflict in East Asia that may not involve the United States, the nation could find itself in a position akin to that experienced by the nation in 1914. That situation led to the passage of the Merchant Marine Act of 1920, and its need, then, is still resonating a century later.

Today, the Jones Act, along with several other programs—cargo preference laws and the Department of Defense's Maritime Security Program—maintain ships in the US fleet. All is not well with the fleet, as ship replacement is too slow and expensive. China is rapidly building up its naval and commercial fleet while the United States lags behind. The loss of SS *El Faro* and its 33 crewmembers in 2015 highlights the ever-present danger of operating vessels, even in the coastwise trade. The heads of the Maritime Administration and the Transportation Command testified to the dire state of the sealift fleet and merchant marine in March 2019.¹³

It is easy to write off the American merchant marine as too expensive and outdated due to the Jones Act. But the question needs be asked: Is the United States prepared to outsource its coastwise trade and lose the majority of its remaining deep-draft merchant ships? Such a loss may provide short-term economic benefit, but the long-term danger and threat to national security may prove fatal. This was the concern echoed a hundred years ago and it remains as pertinent today as it did then. †

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NOTES

¹ www.matson.com/kanaloa-class.html.

² www.maritime.dot.gov/sites/marad.dot.gov/files/oictures/DS_USFlag-Fleet_20190815_Bundle.pdf.

³ www.maritime.dot.gov/sites/marad.dot.gov/files/docs/outreach/history/historical-documents-and-resources and www.unctad.org/en/PublicationsLibrary/rmt2018_en.pdf.

⁴ www.presidency.ucsb.edu/documents/proclamation-1354-emergency-water-transportation-the-united-states.

⁵ www.cnrs-scrn.org/northern_mariner/vol26/tnm_26_407-424.pdf.

⁶ William S. Benson, *The Merchant Marine: A Necessity in Time of War: A Source of Independence and Strength in Time of Peace*, (New York: MacMillan Company, 1923).

⁷ René de la Pedraja, *A Historical Dictionary of the US Merchant Marine and Shipping Industry: Since the Introduction of Steam* (Westport, CT: Greenwood Press, 1994), 286-287.

⁸ www.govinfo.gov/content/pkg/GPO-CRECB-1919-pt8-v58/pdf/GPO-CRECB-1919-pt8-v58-13-2.pdf.

⁹ www.loc.gov/law/help/statutes-at-large/66th-congress/session-2/c66s2ch250.pdf.

¹⁰ www.cato.org/project-on-jones-act-reform; www.aei.org/tag/jones-act/.

¹¹ www.catalog.hathitrust.org/Record/000969248 and https://unctad.org/en/PublicationsLibrary/rmt2018_en.pdf.

¹² www.ustranscom.mil/cmd/panewsreader.cfm?ID=802CA6F2-5056-A127-59427A663A8F9A02&yr=2019.

¹³ www.news.usni.org/2018/03/08/marad-u-s-short-almost-2000-mariners-supply-american-forces-war; www.news.usni.org/2019/03/07/transcom-marad-want-speed-purchase-used-ships-reserve-fleet.