

Topic Paper #3-8

THE MERCHANT MARINE ACT OF 1920

Prepared for the
Permitting, Siting, and Community Engagement for
Infrastructure Development Task Group

On December 12, 2019 the National Petroleum Council (NPC) in approving its report, *Dynamic Delivery – America's Evolving Oil and Natural Gas Transportation Infrastructure*, also approved the making available of certain materials used in the study process, including detailed, specific subject matter papers prepared or used by the study's Permitting, Siting, and Community Engagement for Infrastructure Development Task Group. These Topic Papers were working documents that were part of the analyses that led to development of the summary results presented in the report's Executive Summary and Chapters.

These Topic Papers represent the views and conclusions of the authors. The National Petroleum Council has not endorsed or approved the statements and conclusions contained in these documents, but approved the publication of these materials as part of the study process.

The NPC believes that these papers will be of interest to the readers of the report and will help them better understand the results. These materials are being made available in the interest of transparency.

The attached paper is one of 26 such working documents used in the study analyses. Appendix C of the final NPC report provides a complete list of the 26 Topic Papers. The full papers can be viewed and downloaded from the report section of the NPC website (www.npc.org).

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Topic Paper

(Prepared for the National Petroleum Council Study on Oil and Natural Gas Transportation Infrastructure)

3-8

The Merchant Marine Act of 1920

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SUMMARY

This paper provides background on the Merchant Marine Act of 1920 (the “Jones Act”) and its implications in the movement of petroleum cargoes within the United States.

The Merchant Marine Act of 1920, known as the “Jones Act” for its author, Senator Wesley Jones, is the U.S. marine cabotage law. It is a national security measure designed to help ensure the nation maintains cargo shipbuilding capacity, vessels and crews needed for defense purposes. It provides in relevant parts that goods carried between two U.S. ports by water must be carried in a U.S. flag vessel that is American built, owned, controlled and crewed.

A recent study found that 80% of the world’s coastlines are covered by some form of cabotage law.¹ Similar U.S. cabotage laws apply to aviation (without the U.S. build requirement), and aviation rules extend beyond domestic carriage to include preferences for U.S. carriers on international routes serving the U.S.

Today, there are over 40,000 vessels under the U.S. flag that meet the requirements of the Jones Act and have coastwise privileges, including over 4000 tank vessels, mainly barges, engaged in the carriage of petroleum products, chemicals, LPG and other liquid and gaseous cargoes. The domestic fleet operates throughout the nation’s inland waterway system, along the coasts and in the non-contiguous trades to Alaska, Hawaii and Puerto Rico. There are no government subsidies or incentives to build particular types or numbers of vessels, so carriers in the domestic trade generally attempt to align the numbers, size, capabilities and trade routes of their vessels with customer demand. Today’s fleet is generally representative of that market demand and for the most part consists of vessels with shorter range and size than the vessels most commonly used on longer international routes.

Demand for the Jones Act petroleum fleet is based on market conditions and is impacted by the availability of pipelines and other modes of transportation. As is the case with respect to pipelines and other petroleum transportation infrastructure, vessel owners generally seek contractual commitments from shippers prior to adding significant capacity, especially in

speculative or short-term markets that cannot justify a long-life asset, such as those expected to be replaced by pipeline service within a few years. The domestic tank vessel market has shown an ability to adapt to market changes as have the other modes of transportation. With the onset of the “shale boom” and prior to lifting of the crude oil export ban, there was high demand for the domestic movement of crude oil by all modes of transport. This drove construction of numerous new tank ships and barges, just as it drove new pipeline and crude by rail projects. Because of exports and expanded crude pipeline capacity, demand for domestic crude movements by water has since waned and utilization and rates for domestic tank vessels have decreased. There are numerous U.S. shipyards that regularly build tank vessels and they have shown the ability to scale production up and down based on market demand.

As with vessels in other trades, charter rates for Jones Act vessels vary based on supply, demand, contract length and other market conditions. At any time, these factors can be different for vessels in the international trades, hence rates between the fleets are not synchronized. Critics of the Jones Act complain that domestic cargo movements cost more than similar international moves. There are a host of laws and regulations beyond the Jones Act that apply to marine and non-marine businesses engaged in domestic commerce that do not apply to vessels in international commerce, including local, state and federal income, *ad valorem* and employment tax provisions, labor, wage, benefit, safety and environmental rules. It is difficult to distinguish the cost impact of the U.S. build, ownership and crewing provisions from the other requirements of law that apply to domestic, but not international or foreign, commerce.

There are statutory provisions allowing the administrative waiver of navigation and vessel inspection laws such as the Jones Actⁱⁱ and these have been implemented when there have been concerns about the capacity of the domestic fleet to meet immediate needs for movement of petroleum and other cargoes following national emergencies. For example, waivers were issued following Hurricane Katrina, Superstorm Sandy, and the hurricanes of 2017. In addition to the administrative waiver provisions, Congress has regularly enacted specific waiver provisions for certain vessels or issues. Waiver provisions provide a safety valve where the domestic fleet lacks capacity to meet an unforeseen need but generally are not employed for exclusively economic concerns.

In sum, the Jones Act imposes requirements that must be met when transporting energy in domestic commerce. Its requirements are well-known, of long standing and market participants are capable of complying, having done so for almost a century. It does not create an impediment to the transportation of energy.

ⁱ Seafarer Rights International. (2018). [Cabotage Laws of the World](#). London, UK.

ⁱⁱ [46 U.S.C. § 501](#)