

THE CONTRIBUTION OF THE JONES ACT TO U.S. SECURITY



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EXECUTIVE SUMMARY

The United States has always had a special relationship to water. It is a nation founded from the sea. Its interior was explored and linked to the sea via mighty rivers and waterways that penetrate deep into the continent's interior. Seaborne commerce drove the American economy for two centuries; even today that economy is dependent on the sea to carry virtually all the \$3.5 trillion in international trade generated annually. Millions of Americans have made their livings from the seas and national waterways. The security of the seas, part of the global commons, has been a central theme of this country's military strategy since the days of the Barbary pirates.

From Athens and Rome to Great Britain and the United States, the great seafaring nations have built strong maritime industries, merchant marines and navies. These three components of seapower are interrelated. A maritime industry is vital to the ability to build ships, including naval vessels. The merchant marine is what carries goods to and from this country in both peace and war. A strong Navy secures the oceans for U.S. seaborne trade and access but is dependent on the industrial base to produce new vessels and repair existing ones.

The importance of a national maritime industry and merchant marine was recognized in law as far back as 1920 when Congress passed Section 27 of the Merchant Marine Act, also known as the "Jones Act." Only vessels conforming to the provisions of the Jones Act are permitted to carry passengers or cargo between two U.S. ports, a process also termed "cabotage." All officers and 75 percent of the crews of vessels engaged in cabotage must be U.S. citizens, with the remainder being citizens or lawfully admitted aliens. These vessels must be built in the United States, owned by U.S. citizens,

and flagged or operated under the laws of the United States.

The greatest danger to the role and function of the United States as a seafaring nation is the decline of its maritime industry and merchant marine. Commercial shipyards have made significant investments to modernize, and turn out high-quality vessels with advanced engineering. Today, hundreds of seagoing vessels from larger container ships to tankers and barges and world-class deep-ocean drilling platforms are built every year. The projects keep American shipyards in operation, employing approximately 100,000 skilled workers. Moreover, tens of thousands of merchant mariners are at work every day as a consequence of the Jones Act. As a result, the nation retains the means to build and repair Navy vessels, and provide critical sea lift for the military.

Ninety years after it became law, the Jones Act continues to be vital to national security needs. In the face of continuing low-cost subsidized foreign competition, real world economics would dictate that the U.S. shipbuilding industry would decline. Without the Jones Act, the United States would face the danger of a rapid decline in its merchant marine fleet. It would then be required to provide massive subsidies to that industry, pay exorbitant prices for naval vessels and rely on foreign-owned or flagged vessels to carry critical military cargoes or to build and maintain at great expense a unique, government owned fleet of cargo vessels. Finally, because Jones Act vessels must conform to U.S. laws and have U.S. crews, waterborne transportation is reliable and the homeland is more secure.

The report was written by Dr. Daniel Goure of the Lexington Institute.

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AMERICA'S UNIQUE RELATIONSHIP WITH WATER

The United States of America has a unique relationship with water. It is a nation founded from the sea by taking advantage of the continent's many natural harbors and access to inland waterways such as the Chesapeake Bay, the Great Lakes and the Mississippi River. Coastal areas are home to a wealth of natural and economic resources and are the most developed areas in the nation. These areas comprise 17 percent of the contiguous U.S. land area but serve as home to more than half of the nation's population. As a nation that extends "from sea to shining sea," America benefits from the protection offered by two great oceans as well as the opportunities to be the bridge between Asia and Europe.

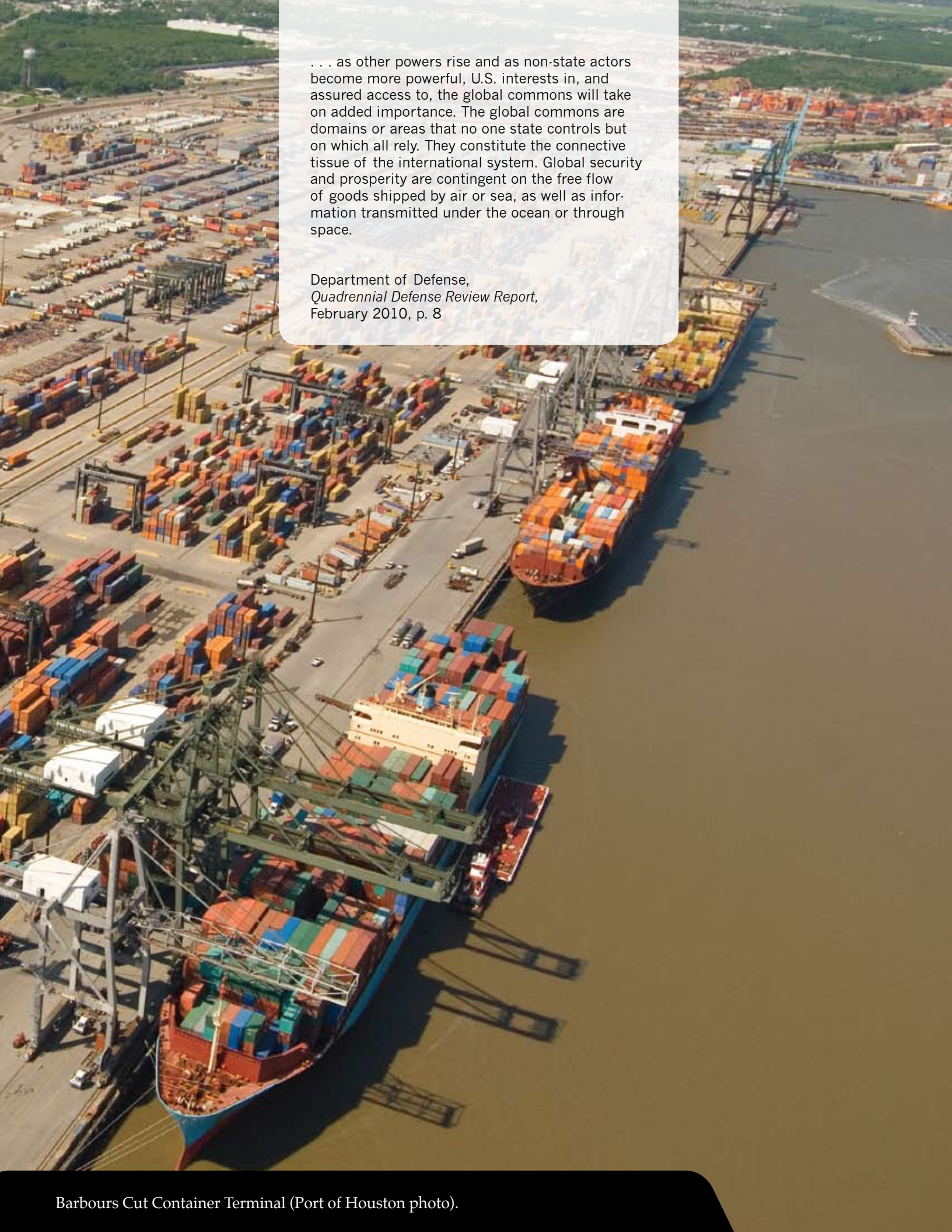
As the 2010 National Security Strategy observed, "America . . . is dependent upon overseas markets to sell its exports and maintain access to scarce commodities and resources."¹ It is impossible to overestimate the economic value of sea-based commerce. Seaborne commerce drove the American economy for two centuries; even today that economy is dependent on the sea to carry virtually all the physical components of the \$3.5 trillion in U.S. international trade generated annually. Hundreds of billions more is generated by economic activity in U.S. waters including mineral extraction (notably oil), fishing, inland and coastal cargo movement and tourism. Millions of Americans make their livings from the seas and national waterways.

The United States is also unique as a political union with significant non-contiguous constituent elements separated from the continent by the water. There are two important states, Hawaii and Alaska. There are territories such as Guam, American Samoa and the Northern Marianas in the Pacific and the Virgin Islands

and the Commonwealth of Puerto Rico in the Caribbean. Finally, there is the Guantanamo Bay Naval Base on the island of Cuba.

America's inland waterways directed the expansion of the nation westward, helped to knit together the different parts of the country and is today a major avenue for national and international commerce. The inland waterways of the United States encompass over 25,000 miles of navigable waters, including the Intracoastal Waterway, a 3,000-mile waterway along the Atlantic and Gulf Coasts. This liquid highway touches most of America's major eastern 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 inland waterways allow the movement of approximately 630 million tons of cargo valued at over \$73 billion annually. By using waterborne transportation, shippers save around \$10 per ton over the cost of shipping by alternative modes resulting in \$7 billion annual savings nationwide.

Geography made it all but inevitable that the United States would be a naval power. A combination of mercantile and security interests dictated that the U.S. Navy would need to project power not only to close-in waters but around the globe. The global presence of robust naval force is the principal reason that the United States remains the only nation able to project and sustain large-scale operations over extended distances.



... as other powers rise and as non-state actors become more powerful, U.S. interests in, and assured access to, the global commons will take on added importance. The global commons are domains or areas that no one state controls but on which all rely. They constitute the connective tissue of the international system. Global security and prosperity are contingent on the free flow of goods shipped by air or sea, as well as information transmitted under the ocean or through space.

Department of Defense,
Quadrennial Defense Review Report,
February 2010, p. 8

INTERNATIONAL COMMERCE, NATIONAL SECURITY AND THE GLOBAL COMMONS

American economic and security interests are by no means limited to close-in waters or to its rivers and inland waterways. As the world's largest economy and foremost military power, the United States has a singular interest in the maritime domain -- that combination of oceans, seas, bays, estuaries, islands, coastal areas, littorals, and the airspace above them that carries more than 90 percent of the world's trade and near which some 60 percent of the world's population lives.² Half of all the oil and natural gas produced annually is transported by sea or through pipelines that travel under water. Much of this vital flow must transit narrow chokepoints such as the Straits of Hormuz, Straits of Malacca and the Suez Canal. The United States maintains an extensive network of allies, partner nations and military installations around the world that can only be accessed by air or water.

So important has the use of the world's oceans been that it has given rise to a specific corpus of customs law and international treaties that seek to secure and protect access to this domain. Central to international law as applied to the oceans is the concept of freedom on the seas. The heart of this concept is the right of free and unimpeded travel and use of the oceans, to include the right of free passage through and overflight of international waters.

Beginning first with a corpus of maritime law and practice, the international community developed a concept of the global commons. The global commons includes those domains beyond national borders that are not the territory of individual states but are reserved for the use of all mankind. Included under the umbrella of the global commons are the world's oceans, seabeds, outer space and cyber space.

The United States has been centrally responsible for creating and maintaining the global commons. "Since the end of World War II, and especially since the end of the Cold War, the openness and stability of the global commons have been protected and sustained by U.S. military dominance and political leadership. The U.S. Navy and Coast Guard have dissuaded naval aggression and fought piracy around the world, ensuring unprecedented freedom of the seas."³ The significance of the global commons has increased as a globalized economic order has emerged. Consequently, it is increasingly important that the global commons be rendered secure against a wide range of threats.

The ability of the U.S. military to operate in, from and through the global commons will be of increasing importance in the decades to come. This is particularly the case with respect to the oceans. The seas and oceans provide a sovereign base for military operations. As demonstrated in recent military operations from Iraq and Afghanistan to Libya and Somalia, the ability to project power from the seas is vital to U.S. national security. Sea lines of communications (SLOCs) will be the most critical means of providing for the resupply of U.S. forward deployed forces and sustainment of allies overseas.

United States seapower will be globally postured to secure our homeland and citizens from direct attack and to advance our interests around the world. As our security and prosperity are inextricably linked with those of others, U.S. maritime forces will be deployed to protect and sustain the peaceful global system comprised of interdependent networks of trade, finance, information, law, people and governance.

One of the major factors in America's success in deterring potential aggressors and projecting its military power over the past half century has been the presence of its naval forces off the coasts of far-off lands. Moreover, those forces have proven of enormous value in relief missions when natural disasters have struck. They will continue to be a significant factor in the future.

U.S. Sea Services, A Cooperative Strategy for 21st Century Seapower, October 2007



Aircraft carrier USS Ronald Reagan and MSC support ship USNS Bridge supporting maritime security operations (U.S. Navy photo).

The crucial enabler for America's ability to project its military power for the past six decades has been its almost complete control over the global commons, particularly the world's oceans. The ability of U.S. seapower to influence actions and activities at sea and on land has never been greater or more important. In fact, U.S. adversaries recognize the advantage conferred on the United States by its military preeminence on the seas and are working assiduously to deny it access to that domain. As the 2010 Quadrennial Defense Review observed, "without dominant U.S. capabilities to project power, the integrity of U.S. alliances and security partnerships could be called into question, reducing U.S. security and influence and increasing the possibility of conflict."⁴


In order to meet its national security objectives, the United States requires a Navy second to none. Moreover, that Navy needs to be of sufficient size and capability to achieve a number of concrete missions. The first of these is forward deployment. The ability to station forces forward, near allies and vital interests is critical in providing for deterrence as well as timely response to crisis, manmade or natural. Naval forces also have inherent flexibility; they can be moved as circumstances dictate across the global commons provided by the world's oceans.

Forward deployment is a necessary but not sufficient condition to the fulfillment of U.S. national objectives. In addition, the Navy must be prepared to conduct operations from the sea. Such operations can involve the delivery of long-range cruise missile strikes by surface ships and nuclear attack submarines and carrier air operations employing F/A-18E/Fs. There are also air and missile defense operations conducted by Aegis-equipped cruisers and destroyers supported by carrier launched E2-D surveillance aircraft. Operations from the

sea against the land include the employment of amphibious forces and naval fire support to deploy elements of the Marine Corps ashore. Regardless of how U.S. forces are positioned on land, whether over the beach or by means of airlift and land transportation, they must be sustained. This is largely the province of maritime sealift, both dedicated Navy vessels and commercially-owned ships under contract.

In order to secure its forward deployed forces and conduct operations from the sea, the Navy must be able to exercise sea control. Sea control, or as it is often known command of the sea, is the ability to freely transit through and operate on the seas while denying that ability to hostile naval forces. The capacity for sea control also confers on the Navy the ability to protect the global commons.

Since September 11, 2001, greater emphasis has been placed on the mission of protecting the U.S. homeland. The Navy has long had the responsibility of homeland defense, securing the nation from direct attack from the sea. Today, in cooperation with the Department of Homeland Security and most notably the Coast Guard, the Navy is also responsible for preventing terrorist attacks against the homeland from the seas and U.S. waters.



The U.S. shipbuilding and repair industry is a strategic asset analogous to the aerospace, computer, and electronic industries. Frontline warships and support vessels are vital for maintaining America's national security and for protecting interests abroad. In emergency situations, America's cargo carrying capacity is indispensable for moving troops and supplies to areas of conflict overseas. A domestic capability to produce and repair warships, support vessels, and commercial vessels is not only a strategic asset but also fundamental to national security.

U.S. Department of Commerce, *National Security Assessment of the U.S. Shipbuilding and Repair Industry*, May 2001

Military cargo destined for the war zone crowds the deck of a Jones Act trailership.

MILITARY SEALIFT AND COMMERCIAL SUPPORT TO OVERSEAS DEPLOYMENTS

A key attribute of U.S. national security is the ability to project and sustain large-scale operations over extended distances. Essential to this is the availability of sufficient and appropriate sealift. Every U.S. overseas military operation has depended on sealift for the movement of forces and the delivery of supplies. U.S.-flag commercial carriers transported nearly 60 percent of all military cargoes moved to Afghanistan and Iraq. In addition, fully half of the mariners used to crew government-owned vessels came from the commercial merchant marine.⁵

The Department of Defense employs fleets of transport ships used to move critical military cargoes in the event of war. Many of these ships are a part of the National Defense Reserve Fleet (NDRF), and are managed by organizations such as the Military Sealift Command (MSC) and the Maritime Administration. MSC operates a fleet of over 100 non-combatant, civilian-crewed ships.

MSC's sealift program employs a combination of government-owned, civilian crewed and chartered ships to provide high quality, reliable transportation of critical military equipment and supplies. MSC must first look to the U.S.-flagged market to meet its sealift requirements, only employing government-owned ships when suitable U.S.-flag commercial ships are unavailable. The government-owned sealift fleet consists of a combination of tankers, dry cargo ships, and large, medium-speed roll-on / roll-off ships built or converted in U.S. shipyards.

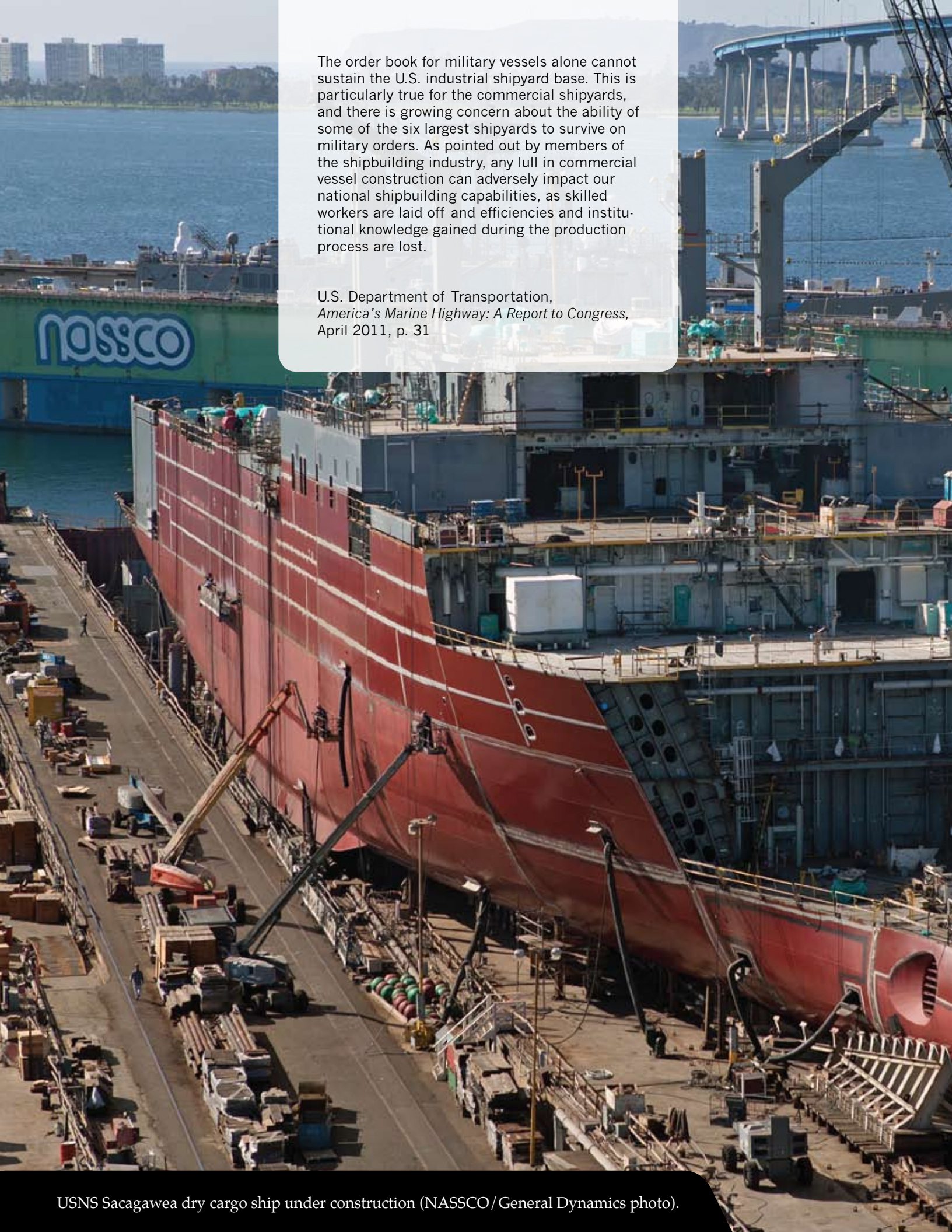
The Maritime Administration maintains the NDRF's inventory of 178 ships that can be accessed if needed. Fifty of these ships are maintained in the Ready Reserve Force (RRF)

that can be accessed by MSC on relatively short notice.⁶ RRF ships, crewed by U.S. merchant mariners, have made a substantial contribution to virtually every major U.S. overseas contingency of the past six decades.

The Military Sealift Command maintains a fleet of ships loaded with military equipment and consumables that is forward deployed in regions of vital national security. The Prepositioning Program enables rapid response to military contingencies or humanitarian operations. This program consists of 31 ships, a combination of U.S. government-owned ships, chartered U.S.-flag ships and ships activated from the Maritime Administration's RRF. It is important to point out that these prepositioned ships are all crewed by civilian mariners who are employed by private ship operators under contract to the federal government. These ships are repaired and maintained in U.S. shipyards.

In addition to these dedicated fleets of cargo carriers, the MSC maintains the Voluntary Intermodal Sealift Agreement (VISA), a government-industry partnership that guarantees access by the military to commercial shipping at predetermined agreed rates during a national emergency. The companies receive a subsidy from the federal government or are awarded peacetime defense cargo movement contracts.

Absent a robust and effective domestic maritime industry, MSC would be dependent on foreign shipyards and vessels to meet this nation's ongoing need for military transportation. This would place the U.S. military and the nation's security at unacceptable risk.



The order book for military vessels alone cannot sustain the U.S. industrial shipyard base. This is particularly true for the commercial shipyards, and there is growing concern about the ability of some of the six largest shipyards to survive on military orders. As pointed out by members of the shipbuilding industry, any lull in commercial vessel construction can adversely impact our national shipbuilding capabilities, as skilled workers are laid off and efficiencies and institutional knowledge gained during the production process are lost.

U.S. Department of Transportation,
America's Marine Highway: A Report to Congress,
April 2011, p. 31

MAINTAINING A ROBUST NAVY AND MERCHANT MARINE

The ability to employ credible naval power in peacetime, crisis or war is dependent on the existence of a diversified, robust and well-maintained fleet. Over the past several decades the demand on U.S. naval forces and the merchant marine has virtually exploded as threats to U.S. security proliferated and the U.S. has responded to a series of natural disasters from the Indian Ocean tsunami and Haitian earthquake to Hurricane Katrina and the Fukushima nuclear meltdown.

Yet, even as the demands on naval forces grow both qualitatively and quantitatively, the size of the Navy's fleet has shrunk dramatically from nearly 600 ships in the late 1980s to less than 300 today. Further reductions in the size of the fleet are likely, due to the projected decline in defense spending over the next several years. As a result, the remaining Navy ships will likely be employed more intensively and, consequently, incur greater wear and tear. This means that sustaining the Navy will require continued and even increased maintenance and repair in order to ensure that its ships reach their expected service life.

A robust Navy also requires a strong and well-functioning shore establishment. The shore establishment consists of facilities for the repair of machinery and electronics; communications centers; training areas and simulators; ship and aircraft repair; intelligence and meteorological support; storage areas for repair parts, fuel and munitions; medical and dental facilities; and air bases. Most of these facilities are government owned and operated. However, a significant portion of the establishment devoted to the construction and repair of Navy ships is in private hands. There are only a limited number of private U.S. shipyards that can construct military vessels. There are approximately 20 private U.S. shipyards that can accommodate

the construction or repair of vessels up to 400 feet in length. In addition, there are a network of companies all across the country that provide critical systems and components for Navy and commercial ships.

The maintenance of adequate physical infrastructure to support the Navy is a necessary but not sufficient condition. There also needs to be the design teams to create the required classes of ships, both combatants and support vessels. Perhaps most important of all, there is a requirement to protect and nurture the skilled workforce to build new ships and overhaul/maintain/upgrade the existing fleet. Today, the U.S. maritime industrial base employs some 100,000 Americans. The U.S. Navy's requirements for the construction of new ships, including fleet support vessels, is extremely exacting as are the standards for maintenance and repair. Maintaining the qualified workforce is an expense, but also a national security necessity.

In addition to the workforce at the shipyards, national security requires the maintenance of an experienced and knowledgeable merchant marine sufficient not only for peacetime operations but surge requirements as well. For obvious security reasons, the Department of Defense requires that all shipments of critical military cargoes be carried in U.S.-flag vessels manned by officers and crews who are U.S. citizens.



Ship repair at the Pearl Harbor Naval Shipyard (U.S. Navy photo).

Today, the power of the U.S. Navy is sustained by a relatively small number of shipyards and a narrow maritime industrial base. The private companies operating these shipyards have made significant capital investments in their facilities and in training their workforce. These investments and even the survival of some of these companies is threatened by looming defense budget cuts.

At the same time, the U.S. domestic shipbuilding industry has suffered as the result of unbalanced foreign subsidized competition. As a consequence, the infrastructure for building and repairing naval ships has also declined. Today there are nine shipyards building most of the Navy's ships and submarines; only one of these is capable of constructing nuclear aircraft carriers. According to some estimates, the current U.S. Navy 30-year shipbuilding plan is insufficient to ensure an adequate workload for all of the major shipyards.⁷ This problem exists both for the construction of combatants and fleet support vessels. At these uneconomical production rates, it is extremely difficult for U.S. shipyards to contain costs. With regard to this second category of Navy ships, without the additional revenue generated by the production of commercial vessels, the costs of fleet support vessels built at the same yards could become unaffordable.


Over a period of decades, low cost, subsidized foreign competition has resulted in a significant erosion of the commercial shipbuilding industry in the United States. Moreover, the current limited procurement of ships under the Navy's shipbuilding plan, together with the prospect for further major reductions in ship acquisitions arising from the current defense budget environment puts the workforce at risk. Maintaining robust commercial markets for U.S. shipbuilding and repair provides a vital

benefit to the U.S. shipbuilding industrial base over time. Without deliberate and purposeful support for this industry, there could well be dire national security consequences.

Sustaining the size of the U.S. Navy requires not only annual procurement of a sufficient quantity of ships but also ensuring that existing vessels reach their expected service life. The number of yards and facilities capable of providing repair and overhaul of Navy ships has shrunk over time. For some of these yards, repair/maintenance/overhaul of existing vessels is a critical supplement to the work of constructing new vessels, stabilizing their workforce and cash flow.

A robust and capable U.S. merchant marine will only exist so long as there are jobs. The drive to lower costs has resulted in a flight by operators of commercial vessels to flags of convenience and to the use of low cost labor from the developing world. This practice has been going on since at least the 1920s with respect to the U.S. commercial fleet as regulations increased and labor costs rose. As the size of the U.S. commercial fleet declined so did the size of the qualified mariners and the gap between demand and the number of qualified crews is judged to be at a critical level.⁸

The future of both the U.S. Navy and that of its commercial maritime industries is intimately linked. The construction of new naval vessels and repair of existing ones cannot be "off-shored." This means that a robust and modern shipbuilding industrial base is a vital U.S. national security requirement.

An aerial photograph showing the massive aircraft carrier USS Constellation (CV-64) being escorted by a tugboat named Lauren Fogel (T-207) in a narrow waterway. The carrier is moving away from the viewer, leaving a large wake. The tugboat is positioned behind the carrier, connected by a chain. The waterway is flanked by forested hills, and several smaller boats are visible in the distance.

I have no doubt that as long as America maintains the Jones Act as the foundation of our maritime policy, U.S.-flag vessel operations will meet the needs of waterborne commerce. And it will sustain the maritime infrastructure - the builders, the owners, the mariners - whose labors always have and always will ensure our security. USTRANSCOM, Military Sealift Command, The Surface Deployment and Distribution Command, and MARAD support the maintenance of a viable U.S.-flagged fleet and U.S. mariner pool. We can't do business without either.

Lt. General Gary Hughey, United States House Committee on Armed Services, June 13, 2002. (HASC No.107-42).

U.S.-flag tugs escort the massive aircraft carrier USS Constellation safely to her destination.

The importance of maintaining a domestic U.S. shipbuilding industry and merchant marine has been recognized in U.S. law for some 200 years. For this same period, Congress has imposed conditions on vessels and personnel engaged in maritime transportation in U.S. waters.⁹ By the 1920s the need to take action to ensure the health of a robust domestic shipbuilding industry and merchant marine became obvious. In response Congress passed Section 27 of the Merchant Marine Act of 1920, also known as the Jones Act. Only vessels conforming to the provisions of the Jones Act are permitted to carry passengers or cargo between two U.S. ports, a process also termed “cabotage.” In addition, all officers and 75 percent of the crews of vessels engaged in cabotage must be U.S. citizens, with the remainder being citizens or lawfully admitted aliens. These vessels must be built in the United States, owned by U.S. citizens, and operated under the laws of the United States. Provisos added to the Act in the 1930s denies to vessels sold “foreign in whole or in part” or “rebuilt” abroad, respectively, coastwise trading privileges.¹⁰

It is important to note that the United States was never alone in seeking to protect its domestic shipbuilding industry and merchant marine. The majority of maritime nations impose some type of restrictions on commercial vessel ownership, crewing and/or ship construction.¹¹ For many years it was common practice for nations to subsidize their shipbuilding industries. A number of countries continue to do so.

In requiring that vessels engaged in cabotage be U.S. built, repaired and owned and that crews be predominantly U.S. citizens, Congress was exercising its legitimate prerogatives under U.S. and international law. In particular,

the Jones Act recognized the direct and ongoing connection between the state of U.S. commercial shipbuilding and national security. At a time before nuclear-power for warships and the introduction of jet-age weapons systems and complex electronics, there was less of a distinction between the shipyard infrastructure and workforce experience required to build warships and commercial vessels. In addition, the experiences in World War One had clearly demonstrated the importance both of a large merchant marine and of the ability to turn out new cargo vessels rapidly. The provisions of the Jones Act were intended to support the U.S. shipbuilding industry and merchant marine as a matter of national security.

The Great War taught all maritime nations about the value of possessing a robust and capable cadre of merchant mariners. Starting with World War One, the merchant marine demonstrated its value as the “fourth arm of the military.” To underscore this point, the casualty rate among U.S. merchant mariners in World War Two was higher than that for any other branch of the military.¹²

The relevance of the Jones Act to U.S. national security now and in the future must be judged in light of the continuing threats America faces overseas and this nation’s requirements for naval power and sealift. Also, the relevance of the Jones Act has to be evaluated in the context of the new threat posed by international terrorism.

If we did not have the Jones Act, cargo preference, the MSP program and Voluntary Intermodal Sealift Agreement (VISA) programs, I can assure you that it is unlikely that ships would remain under the U.S. flag. And the U.S.-citizen mariner pool needed for the Department of Defense in times of national emergency or war would simply disappear.

U.S. Maritime Administrator, Capt. William Schubert, United States House Committee on Armed Services, June 13, 2002. (HASC No.107-42).



A U.S.-flag tugboat travels through New York Harbor on its way to a ship-assist docking.

SUSTAINING U.S. NATIONAL SECURITY: THE ROLE OF THE JONES ACT

The Jones Act is even more relevant to U.S. national and domestic security today than it was in 1920. In its 2001 assessment of the state of the U.S. shipbuilding and repair industry, the U.S. Department of Commerce observed that “the Jones Act serves the interest of the U.S. because it provides a fleet of sealift capable vessels, a workforce of experienced and knowledgeable people and a shipbuilding industrial base that can be used to protect American economic and military security.”¹³ Since then, the size of the U.S. Navy continued to shrink even as it is suffering from increased wear and tear, the military-capable shipyards have been under increased financial pressure and the workforce is challenged by cheap foreign labor. Thus, if anything, the Jones Act makes an even greater contribution to national security today than it did in 2001.

Those involved in fighting and supporting America’s overseas conflicts are even clearer regarding the value of the Jones Act. The official view of the U.S. Navy is that the Jones Act continues to make a vital contribution to U.S. national security. “For decades, U.S. merchant mariners have provided essential support for the U.S. Navy during times of war and national crisis. Repealing the Jones Act would remove that support at a time when we are fighting two wars and facing a continuing threat from international terrorism.”¹⁴ This view is shared by U.S. Transportation Command which is responsible for deploying and sustaining U.S. forces worldwide. According to General Duncan McNabb, TRANSCOM Commander, “I obviously think cargo preference, [the Maritime Security Program], the Jones Act -- all of those things are absolutely essential for having a very strong merchant marine.”¹⁵

Looking forward towards a time of continuing international challenges to U.S. national

security and budget austerity, the significance of the Jones Act is likely to grow. The United States will continue to project military power globally, resulting in an ongoing even growing requirement for sealift and sustainment from the sea. For its part, the Navy will continue to be forward deployed and prepared to project power from the sea and support humanitarian operations. Therefore, the military must have a capable and secure merchant marine fleet that meets its need for sealift. In addition, the Navy will pursue a shipbuilding program designed to a fleet of sufficient size and capability to meet a wide range of military and humanitarian challenges. It will require both an industrial base of sufficient size and experience to build next generation combatants, provide new fleet support vessels and repair and overhaul an increasingly aging inventory.

Commercial shipyards have made significant investments to modernize, and turn out high-quality vessels with advanced engineering such as the large, medium-speed roll-on / roll-off ships. In the face of continuing low-cost subsidized foreign competition, real world economics would dictate that the U.S. shipbuilding industry would decline. Without the Jones Act, the United States would face the danger of a rapid decline in its merchant marine fleet. It would then be required to provide massive subsidies to that industry, pay exorbitant prices for naval vessels and/or rely on foreign-owned or flagged vessels to carry critical military cargoes or to build and maintain at great expense a unique, government owned fleet of cargo vessels.



U.S. Coast Guard patrol (Port of Los Angeles photo).

Since September 11, the United States has sought to create a multi-layered system to protect the United States from state-based and terrorist attack while continuing to permit the free flow of legitimate goods, services and people across the nation's borders. A key element in the national strategy to secure the homeland is to gain sufficient visibility into movement of goods and people to the United States so as to uncover and interdict any attempt to use the global transportation network to launch an attack.

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 extremely 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.

Although the Jones Act was not written with today's threats to homeland security in mind, its provisions provide an important base on which to build the systems, processes and procedures needed to secure America. The provisions in the Jones Act regarding vessel ownership and manning simplify efforts to ensure that rogue regimes and international terrorists cannot strike at this country via its ports and waterways. One could readily assert that were there no Jones Act, Congress would have to invent one.

Today, the Department of Homeland Security (DHS) is expending enormous human and financial resources to secure and control the nation's borders and transportation networks. There are programs to scan and control foreign ships and cargoes at ports of embarkation. It 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. DHS manages the Transportation Worker Identification Credential (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.

The task of securing U.S. seaports and foreign cargoes is daunting by itself. It makes no sense to allow foreign-owned ships operated by foreign crews to move freely throughout America's inland lakes, rivers and waterways. Were the Jones Act not in existence, DHS would be confronted by the difficult and very costly task of monitoring, regulating, and overseeing all foreign-controlled, foreign-crewed vessels in internal U.S. waters.

America needs a strong and vibrant U.S.-Flag Merchant Marine. That is why you ... can continue to count on me to support the Jones Act (which also includes the Passenger Vessel Services Act) and the continued exclusion of maritime services in international trade agreements.

Candidate Barack Obama, August 28, 2008



A Jones Act tanker built in 2009 in San Diego waits for a berth in Port Everglades, Florida.

THE JONES ACT NEEDS TO BE PRESERVED AND ENFORCED

In many ways, the contributions of the Jones Act to national and homeland security are more significant today than at any time in its 90 year history. Maintaining a robust Navy and viable, responsive merchant marine is likely to be more difficult in the years ahead. Shrinking defense budgets will place a premium on the most cost-effective expenditure of every defense dollar. Ensuring a base of commercial ship construction and repair/overhaul in the United States is an absolute necessity in order to maintain shipyard capacity, and the critical supplier base.

Events of the last decade have provided indisputable evidence of the importance of a U.S. merchant marine to national security. Whether it is carrying cargoes bound for Iraq and Afghanistan, delivering relief supplies to victims of natural disasters around the world or manning prepositioned ships ready to respond to any crisis, the U.S. merchant marine provides unique capabilities that could not be replicated if allowed to waste away.

In light of the nation's continuing requirement for a robust Navy, it is vital to maintain a domestic shipbuilding/repair industry and for it to be able to keep the costs for both new construction and repair/overhaul of existing ships as low as possible while still meeting very high performance standards. This will not be possible in the absence of an adequate level of commercial business to even out the flow of work and provide additional revenues to cover fixed overhead. In the current era of globalized production, the Jones Act guarantees commercial shipbuilding and repair/overhaul work in the United States.

Recognizing the importance of a robust, modern U.S. shipbuilding industrial base, it is critical that the Navy and Coast Guard pursue full funding for its shipbuilding program

and maintain robust ship repair accounts. The nation also needs to recapitalize aging segments of the domestic fleet in U.S. commercial shipyards. Finally, the U.S. government should support and encourage existing and emerging commercial markets for U.S.-built vessels.

The Obama Administration should consider three additional actions that would be extremely beneficial to the American maritime industrial base and, hence, to national security. The first is to press Congress to fully fund the Maritime Security Program (MSP). Also, many Military Sealift Command and Maritime Administration Ready Reserve Force ships are reaching the end of their useful lives. Replacing this capacity with new construction would support both the industry and the military.

Second, the administration should seek continued funding for the Title XI Federal Ship Financing Program which offers loan guarantees on contracts to build or overhaul commercial vessels in U.S. shipyards. This program has strong return for the government, as each Title XI dollar can leverage up to 20 dollars of private investment. Title XI encourages the maintenance of commercial facilities and a skilled workforce that can also be employed in constructing and maintaining Navy vessels.

Third, the administration should expand implementation of the Marine Highway Initiative (MHI). The MHI is intended to accelerate development of waterborne shipping services thereby reducing congestion on land as well as saving money through expanded use of maritime transportation. The results would be a double boost to the economy (ship construction and reduced freight costs), the creation of jobs and support for national security.

END NOTES / GLOSSARY OF TERMS

END NOTES

- ¹The White House, *National Security Strategy*, May 2010, p. 15
- ²U.S. Sea Services, *A Cooperative Strategy for 21st Century Seapower*, October 2007
- ³Abraham M. Denmark, "Managing the Global Commons," *The Washington Quarterly*, July 2010, p. 166
- ⁴Department of Defense, *2010 Quadrennial Defense Review Report*, February 2010, p. 31
- ⁵Military Sealift Command, "Military Sealift Command Media Center," January 4, 2004
- ⁶U.S. Navy Military Sealift Command, "Ship Inventory," available at <http://www.msc.navy.mil/inventory/>
- ⁷Industrial College of the Armed Force, *Shipbuilding 2010*, Industry Study Final Report, Spring 2010, pp. 2-4
- ⁸Maritime Administration, *Merchant Mariner Training to Meet Sealift Requirement*, A Report to Congress; U.S. Department of Transportation Maritime Administration. August 2004
- ⁹Constantine G, Papavizas and Bryant E., Gardner, "Is the Jones Act Redundant?" *U.S.F. Journal of Maritime Law*, Volume 21, Number 1, 2008-2009
- ¹⁰The full text of the Jones Act is available at www.1800jonesact.com/maritime_statutes/default.html
- ¹¹John F. Frittelli, *The Jones Act: An Overview*, Congressional Research Service Report RS21566, July 8, 2003
- ¹²U.S. Merchant Marine, "U.S. Merchant Marine Casualties during World War II", available at <http://www.usmm.org/casualty>.
- ¹³U.S. Department of Commerce, *National Security Assessment of the U.S. Shipbuilding and Repair Industry*, May 2001, pp. 80-81
- ¹⁴Maritime Transport & Logistics Advisors, LLC, "U.S. Navy Opposes Congressional Efforts to Repeal the Jones Act," September 9, 2010, available at <http://www.maritimeadvisors.com/news.html>
- ¹⁵General Duncan McNabb, "Speech on National Maritime Day," May 23, 2011

GLOSSARY OF TERMS

DHS – U.S. Department of Homeland Security
MARAD – Maritime Administration
MHI – Marine Highway Initiative
MSC – Military Sealift Command
MSP – Maritime Security Program
NDRF – National Defense Reserve Fleet
RRF – Ready Reserve Force
SLOC – Sea Lines Of Communication
TRANSCOM – U.S. Transportation Command
TWIC – Transportation Worker Identification Credential
VISA – Voluntary Intermodal Sealift Agreement

On the cover: Earl Industries' shipyard facility, consisting of two 900-foot piers and supporting industrial facilities, is located on the Elizabeth River in Portsmouth, Virginia, and is engaged in repair and modernization of U.S. naval vessels.

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Performance-Based Logistics: A Primer For The New Administration, April 2009



Articulated Tug-Barge unit, part of the U.S.-flag domestic fleet, carries oil up the Hudson River to a refinery. Barges then deliver the refined home heating oil and gasoline to New England.

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