

**TESTIMONY OF MATT WOODRUFF**  
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**SENATE COMMITTEE ON COMMERCE, TRANSPORTATION AND SCIENCE**  
**WEDNESDAY, MARCH 6, 2019**

Mr. Chairman, Madame Ranking Member, Members of the Committee. Thank you for the opportunity to be with you today. I am Matt Woodruff, vice president of public and government affairs for Kirby Corporation, a large, American domestic shipping company. We are based in Houston but operate vessels throughout the United States.

I am here today in my capacity as president of the American Maritime Partnership (“AMP”). AMP is the largest maritime legislative coalition ever assembled. Our organization includes all elements of the American domestic maritime industry—shipping companies, ship construction and repair yards, mariners, and pro-defense organizations. Our singular focus is the Jones Act, the foundational law of the domestic maritime industry. As everyone in this room should know, the Jones Act requires that cargo moved by water between two points in the United States be transported on American vessels. Notwithstanding what you sometimes read people saying in the paper, it does not apply to cargo coming or going from a foreign country to any point in the United States, including Puerto Rico or Hawaii.

If there were one word to describe why we have a Jones Act in our country it would be “security.” The Jones Act provides important national, economic and homeland *security* benefits throughout our country. The national security and homeland security benefits have been well-documented through writings and statements by the Defense Department, Coast Guard, and Customs and Border Protection officials, as well as independent experts like the Lexington Institute. For example, recently former Defense Secretary James Mattis referred to the U.S. Merchant Marine as our nation’s “Fourth Arm of Defense.” I submit to you that in these volatile times, with potential trade wars on the horizon, our economic security as a nation should not be subjected to the risk of a foreign power low bidding to buy the job of moving our coastwise commerce, then holding us hostage to gain a trade advantage elsewhere. In every case, the policy rationales for our Jones Act can be summarized in the phrase “American security.” This Committee this year created a subcommittee that is primarily focused on maritime issues and named it the “Security Subcommittee.” We believe that subcommittee is perfectly named because nearly every policy issue that comes before it will in some way involve our nation’s security.

### **Summary of Key Points**

I could spend my entire time talking about the security benefits of the Jones Act, and will happily address any questions you may have in this regard, but I wish to focus my time on two main points. First I will provide you a brief update on the state of the American domestic maritime industry. In short, the state of our industry is strong. Second I will talk about a threat

to that strength, and that is a long-term waiver of the Jones Act for liquified gas cargos, which would require wholesale changes to longstanding interpretations of the Jones Act administrative waiver process. Nothing is more essential to the long-term investments that are necessary for success in our capital-intensive industry than a reliable, predictable, and consistent legal framework. Every time we have a discussion of waivers or repeal of the Jones Act, it has a chilling effect across our industry. It makes vessel owners less willing to invest in vessels and bankers less willing to lend money for them. It makes young people think again before choosing the maritime industry for their career. These are people we will need in the event we must mobilize and move our armed forces in a national emergency. Threats to the Jones Act threaten American security.

### **State of the American Maritime Industry**

The American maritime industry is strong—growing, innovating, and thriving. A recent study by PricewaterhouseCoopers for an AMP board member, the Transportation Institute, shows that ours is an industry that supports total American employment of about 650,000 and has a total economic impact of more \$150 billion annually. There are approximately 40,000 vessels in the U.S. fleet distributing 877 million short tons of cargo annually in a highly efficient, cost-effective and environmentally friendly manner.

Most exciting, the study shows significant growth in our industry between the previous PricewaterhouseCoopers study, which used 2011 data, and the new study, based on 2016 data, the most recent figures available. For example, the number of American jobs related to the domestic maritime industry has increased by 30% over that period.

Many members of this Committee represent major domestic maritime states, including you, Mr. Chairman, and you, Madame Ranking Member. Both Mississippi and Washington are home to a robust domestic maritime industry, with thousands of jobs in each state. The same is true for many other members of this Committee. We welcome an opportunity to visit with your individual offices to describe in more detail the economic impact of our industry on each of your states, as well as nationally.

### **The Core Element of Continued Success—Legal Certainty**

We have one primary request when it comes to the Jones Act and that is legal certainty. We exist in a highly capital-intensive business and our investments in vessels and other infrastructure are long-term. We make those investments in reliance on U.S. law as it stands today and as it has generally stood for nearly 100 years. Our biggest single concern is unanticipated changes to the rules “in the middle of the game.” It is critically important that the legal, regulatory and administrative framework that serves as the foundation for the American maritime industry remains predictable and certain. Hundreds of thousands of Americans depend on that.

In that light, our greatest concern today would be changes to longstanding, consistent interpretations of the Jones Act administrative waiver rules. As you know, administrative waivers of the Jones Act are exceedingly rare and are granted only under the specific

requirements of 46 U.S.C. § 501, a law not specific to the Jones Act but permitting waivers of “navigation or vessel-inspection laws” under certain extremely limited circumstances. The core requirement of § 501 is that Jones Act waivers must be “necessary in the interest of national defense.”<sup>1</sup> “Necessary,” of course, means an action that is “essential or required.” As such, the applicants for this waiver must demonstrate that approval is required or essential for national defense. In fact, Customs and Border Protection (CBP), the agency within the Department of Homeland Security with initial responsibility for managing administrative waiver requests, has recognized that the burden for approval of an administrative waiver is high and has ruled that there must be a showing of an “immediate and adverse impact to national defense.” Indeed, CBP has repeatedly held in their rulings that a Jones Act waiver cannot be issued solely for economic reasons or economic benefit. The Defense Department has historically analyzed administrative waivers by asking if there would be an “immediate adverse impact on defense operations” absent the waiver.

Into this long-standing statutory regime governing administrative waivers of the Jones Act has come the Government of Puerto Rico, which in December filed a request for an unprecedented 10-year administrative waiver under § 501 to import LNG from domestic sources. There are many reasons why this administrative waiver should not be granted. There is no precedent for a waiver of anywhere near that length. Puerto Rico already enjoys a legislative waiver to move LNG in certain circumstances, a waiver it has never used. Puerto Rico currently lacks the infrastructure to receive the gas in the quantity and location that it desires. Puerto Rico has not executed any contracts for domestic supplies of LNG, and international LNG is nearby and available. But the principle reason the waiver request should not be granted is because Puerto Rico’s request does not qualify under the only allowable standard for a Jones Act waiver—when it is “necessary in the interest of national defense.”

There is no national defense interest here. Puerto Rico government officials have repeatedly described their interest in LNG in economic terms. Puerto Rican officials have emphasized that an administrative waiver is needed to lower electricity prices, which is an economic issue. Puerto Rican government statements and actions about natural gas use on the island far predate the administrative waiver request and have focused on presumed economic benefits. The chief executive officer of the Puerto Rico Electric Power Authority (PREPA), Jose Ortiz, and Gov. Ricardo Rosselló have touted natural gas as the best option to cure the island’s reliance on oil and to lower the price of electricity on the island. In an article in Puerto Rico’s largest newspaper announcing the Jones Act waiver request recently, Gov. Rosselló is quoted as saying that LNG use could result in “hundreds of millions of dollars in savings for Puerto Rico and in profits for the U.S. economy.” In fact, the Puerto Rico request is nothing more than the type of request CBP has said should not be permitted under the law – an economic waiver.

AMP appreciates the desire of Puerto Rico to reduce its energy costs and AMP members are actively engaged to find solutions that are compliant with all laws, including the Jones Act, to achieve that goal. No one is better positioned than the leading participants in the domestic shipping industry to assess the economics of moving LNG to Puerto Rico, and already Jones Act carriers are importing LNG into Puerto Rico in ISO containers. We are confident that solutions can be developed that will comply with American law, provide hundreds of family-wage skilled

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<sup>1</sup> 46 U.S.C. § 501.

jobs to Puerto Ricans and other Americans, and achieve the substantial savings touted by Puerto Rico's leaders. Stated otherwise, Puerto Rico can fully realize the benefits of shifting to an LNG energy supply without bypassing Puerto Rican and other American workers in the American maritime industry. We as an industry have reached out to Puerto Rico government officials in an attempt to stimulate that dialogue.

There have been other recent discussions regarding waivers to move LNG to the Northeast. In addition, one prominent oil and gas executive has publicly called for a national waiver to move LNG. But a waiver under these circumstances would face the same challenge as the Puerto Rico waiver—they would require a complete administrative reinterpretation of the waiver statute and its unambiguous "interest of national defense" requirement. As we have said previously, there are no precedents for long-term waivers and no precedent for economic waivers.

Given the growth in the U.S. supply of natural gas, there is a strong interest by many in the development of a coastwise-qualified domestic vessel fleet to transport gas to Puerto Rico and elsewhere in America, as needed. Many observers believe that the construction of such a fleet is inevitable. Within the U.S. domestic shipping and shipbuilding industry, there is a strong interest in the construction of a domestic LNG tank vessel fleet, which would represent a new market.

However, just like pipelines, LNG liquefaction facilities and other energy transportation infrastructure, most marine vessels are traditionally not built "on spec" but rather built to meet the needs of a customer, backed by a long-term contract. Contracts to move goods not only provide stability for financing but also help the shipping company establish the size and other characteristics of the vessel to best meet the needs of its customers. Unfortunately, gas shippers or developers have been unwilling to enter into the types of contracts or commitments that would be necessary for American shipping companies to finance domestic LNG vessels. In fact, several years ago, three coastwise-qualified U.S. built LNG tankers were fully available in the American Jones Act markets but were unable to find adequate domestic work and eventually went overseas for work.

As markets develop, if the price of domestic natural gas remains low and pipeline capacity remains constrained, customers and developers are highly likely to enter into the types of long-term gas supply contracts that will bring state-of-the-art Jones Act LNG vessels into those markets. Granting this administrative waiver, however, would be a significant setback, if not a death knell, to the effort to develop a domestic LNG market. An extended administrative waiver would be devastating. Domestic shipping markets with capital-intensive assets that operate for more than 30 years depend on certainty. An administrative waiver of the type proposed by Puerto Rico would add massive volatility and disruption to the market and would undercut efforts to build a domestic LNG fleet. In fact, the novel use of the § 501 authority for an extended LNG administrative waiver could destabilize the entire American domestic shipping industry by introducing extreme uncertainty and volatility into the market. Again, our singular request to this Committee is certainty.

The points we have made above are true not only for LNG but for LPG and for that matter, any cargo in any trade. Certainty is essential to our success.

## **Conclusion**

Again, thank you for allowing us to be with you today for one of the first Commerce Committee hearings under your leadership. We are grateful for the chance to tell our story and to emphasize to you the exciting growth of our industry. Our industry is a great American success story, and the key to our continued success is a predictable, sound, consistent legal framework so that we can “deliver the goods” for our nation.