Cruising in Hawaii

How the federal government’s 1886 Passenger Vessel Services Act has limited the Aloha State’s tourism potential

By Jonathan Helton
Cruising in Hawaii

How the federal government’s 1886 Passenger Vessel Services Act has limited the Aloha State’s tourism potential
Executive summary

Even before the COVID-19 outbreak of early 2020, luxury cruise ships were uncommon in Hawaii waters. Now, in the wake of the state’s coronavirus-inspired lockdown, they aren’t being seen at all.

But what about those days before the coronavirus crisis? Under normal circumstances, it would be reasonable to assume there would have been plenty of U.S.-flagged cruise vessels capitalizing on the state’s exceptional natural beauty. But there weren’t. The majority of cruise ships that visited Hawaii’s ports were flying the flags of countries such as Bermuda or the Bahamas.¹ Those, of course, are all now missing in action, too, because of the fears of COVID-19 and Hawaii’s lingering lockdown measures.
And what about when this is all over? How can we encourage the ocean cruise industry to become a viable and thriving component of Hawaii’s tourism sector, generating thousands of jobs for isle residents and millions of dollars in revenues for businesses and government tax coffers?

First we must realize what was holding back the industry to begin with. The reason was – and still is – a protectionist federal shipping law.

No, it’s not the Jones Act, a similar law that was enacted in 1920 but applies to only merchandise. Instead, it’s the even older federal Passenger Vessel Services Act, adopted in 1886, which applies – as its title makes clear – to the transport of passengers.

Like the Jones Act, the PVSA requires that ships being used in coastal trade be U.S. flagged and built, and at least 75% owned and crewed by Americans.

Also like the Jones Act, its intent when enacted was “to protect the U.S. maritime industry from foreign competition.” This allegedly was to support national security by ensuring the existence of U.S. shipyards and qualified mariners. But it hardly fulfills that intent now. No bluewater ocean-going cruise ships have been built in America for over 60 years.

To fully revive cruising in Hawaii’s ocean waters, the PVSA needs to be either repealed or reformed.
Introduction

Before the COVID-19 lockdown restrictions sidelined the ocean cruising business in Hawaii virtually entirely, only one U.S. company in modern times, Pride of America Ship Holding LLC, had been offering cruises wholly in Hawaii’s island waters that allowed passengers to go ashore at each Hawaii port.

That was because of the federal Passenger Vessel Services Act of 1886, which requires any ship carrying passengers in the American coastal trade be U.S. flagged and built, and at least 75% owned and crewed by Americans. It was enacted during the days when all travel between Hawaii and anywhere else took place on ships. Often those ships carried both passengers and cargo. As airplanes became common, the dynamics of travel changed. Fewer people traveled by ship. Pretty soon it was mostly just cargo on those ships, which by then were also shielded from foreign cargo competition by the Jones Act.

These days the PVSA applies mostly to passenger ferries and river and ocean cruise liners. In Hawaii, the lack of ferry service between the islands can be attributed, in part, to the cost of having to buy U.S.-made ferries, which are four to five times more expensive than ferries manufactured abroad.

In the case of so few cruise liners in Hawaii waters, the PVSA is almost wholly to blame. Partly it’s because of the U.S.-build requirement, but it’s also because only U.S. ships may transport passengers from one Hawaii port to another without having to travel to at least one “distant” port.

In other words, under this 134-year-old mercantilist legislation, foreign cruise liners are allowed to pick up passengers at a Hawaii port and cruise in Hawaii waters, but the passengers may not go ashore at any of the other Hawaii ports unless the vessel also stops at a foreign port. If a passenger wants to disembark, or leave the cruise ship completely, before returning to the original port, the ship must first go to a
“distant” foreign port, such as Fanning Island, 1,000 miles south of Hawaii.\textsuperscript{10} A cruise liner attempting to make such voyages in violation of the PVSA requirements can be fined $798 per passenger.\textsuperscript{11}

This is similar to a “closed loop” cruise, whereby a foreign vessel can pick up passengers on the West Coast and visit Hawaii ports, but only if it stops at a “nearby” foreign port such as Ensenada, Mexico,\textsuperscript{12} and returns to its point of embarkation.\textsuperscript{13} Closed-loop cruises can also be launched from Hawaii, but since the nearest foreign port is Fanning Island, that would, ironically, make them “distant port cruises” as well.

Another type of “distant foreign port” cruise is when foreign cruise liners take on passengers in California, sail to Hawaii – where passengers can visit the various island ports – then continue to Oceania or Asia.\textsuperscript{14} This applies also to foreign vessels transiting from New Zealand to the West Coast.\textsuperscript{15}

At one time, foreign cruise liners could also conduct “voyages to nowhere,” in which the vessels leave and return to the same port, stopping nowhere else. However, these types of cruises were banned in 2016 by the U.S. Customs and Border Protection,\textsuperscript{16} based on an interpretation of U.S. immigration law, leaving the Hawaii-based MS Pride of America as the only ocean cruise liner in the U.S. allowed to operate voyages to nowhere.

For Hawaii to benefit more from the ocean cruise industry, the PVSA would need to be repealed or reformed. In the case of the similar Jones Act, which applies to the transport of merchandise between U.S. ports, one reform that has been proposed is eliminating the U.S-build requirement. If U.S. companies did not have to buy more expensive U.S.-built ships to carry merchandise between U.S. ports, that would lower upfront capital costs and conceivably encourage more companies to enter the market. Such a reform could also work in the cruise industry, though only full repeal – allowing foreign-owned and foreign-flagged companies to carry passengers between U.S. ports at will – would more fully serve the goal of open competition and greater prosperity for Hawaii’s economy.
Before the coronavirus lockdowns, more than 20 cruise line companies qualified as American-owned. But besides Pride of America Ship Holding LLC, which owns the 2,186-passenger MS Pride of America, none of them operated on domestic ocean routes covered by the PVSA. Instead, they offered cruises in the Caribbean, Europe and the Pacific using mostly less expensive foreign-built ships.

At least six of the smaller lines covered by the PVSA plied America’s coastal or river routes, but none operated ocean routes. These lines could be found sailing the Mississippi River, the Great Lakes, the Columbia and Snake rivers in the U.S. Northwest, and touring the coast of Alaska.

As previously noted, the MS Pride of America is the only large PVSA-qualified ship operating in Hawaii waters. And that ship has a history that demonstrates the law’s failure as well.

Its construction began in 2001 at a U.S. shipyard. But despite $185 million in federal subsidies, the shipyard was unable to finish the vessel. The half-completed Pride of America was “towed across the Atlantic to be completed in Germany for [its then-owner] Norwegian Cruise Lines.” Subsequently considered foreign-built, the ironically named Pride of America required an exemption to operate in U.S. waters. So in 2003 its owner sought and obtained such an exemption, not only for the Pride of America but two other foreign-built ships as well: the Pride of Hawaii and the Pride of Aloha.

In 2009, University of Hawaii economics professor James Mak and two UH undergraduate students documented that “ticket prices for NCL [Norwegian Cruise Lines] spiked downward after the introduction of each new Pride vessel and remained lower than before.” The cruise line also experienced an increase of passengers on its Hawaii routes, from 134,000 in 2004 to 368,000 in 2007.
Today the Falls of Clyde sits deteriorating in Honolulu Harbor. Numerous efforts to refurbish the vessel have failed and its future is uncertain.

However, this passenger boom was not to last. In 2008, the cruise line redeployed two of the ships, to Europe and Florida, leaving the Pride of America as the only U.S.-flagged ocean-going cruise ship in Hawaii. Mak’s study noted that after the change, “ticket prices rose sharply.”

The lesson here is that competition typically results in lower prices. The competition in this case consisted of ships within the same company, and when the Pride of America was left as the only PVSA-qualified ship in Hawaii, there was no incentive for its owner to keep fares low. The company certainly didn’t have to worry about meaningful competition from foreign cruise lines.

Just prior to the coronavirus lockdowns, a seven-night cruise on the Pride of America cost roughly the same, or more, than a 15-night cruise on a Princess Cruises-owned ship from California to Hawaii and back (via Ensenada, of course). And this didn’t take into account the airfares tourists had to pay to fly to Hawaii to board the cruise.

James Mak, economist and professor emeritus at the University of Hawaii, wrote more than 10 years ago about how the federal Passenger Vessel Services Act is a hindrance to Hawaii’s economy.
History of reform efforts

One of the earliest proponents of PVSA reform was Matson Navigation Co., currently one of the two major ocean cargo carriers between Hawaii and the U.S. mainland.

In 1898, Matson purchased the Falls of Clyde from the Falls Line, in Scotland, where the ship had been constructed. Matson planned to use the vessel in its Hawaii-mainland trade, but the U.S. annexation of Hawaii complicated the situation. However, in 1900, the Hawaiian Organic Act, which governed the new territory, exempted certain vessels, including the Falls of Clyde, from PVSA requirements. Matson used the ship to carry goods and passengers between Hawaii and San Francisco. In 1907, it sold the vessel to Associated Oil Co., which used it to transport oil and molasses between Hawaii and the mainland. Associated Oil Co. sold the Falls of Clyde in 1920, and it changed hands several times after that. In 1963, it was returned to Hawaii, this time as a historic landmark. In 1968 it was opened as a museum, and in 1973 Congress declared it a National Historical Landmark.

Today the Falls of Clyde sits deteriorating in Honolulu Harbor. Numerous efforts to refurbish the vessel have failed, and its future is uncertain.

Another reform occurred during the height of World War I. On Oct. 5, 1917, Congress unanimously voted to suspend the nation’s “coastwise shipping law,” as it applied to all U.S. coastal trade, excepting Alaskan commerce. The impetus to “opening Hawaii to [the] service of Japanese and Dutch liners” was the lack of U.S.-flagged ships operating in U.S. waters, as many had been requisitioned for the war effort. At least five of Matson’s ships, for example, were enlisted for military transport, leaving Hawaii without sufficient carriage to and from the mainland.

The Hawaii Herald had noted in June 1917 that “to most people it would have been a good thing to have never instituted the coastwise shipping laws to these islands so far away from the mainland and are touched at by so many passing foreign ships.”

The paper urged that any suspension should last the duration of the war, “at least,” and that, in fact, is what happened. It wasn’t until Sept. 1, 1920, almost two years after the official end of World War I, that America’s ocean transportation regulations were reinstated. During the period the rules were suspended, foreign-owned companies such as Toyo Kisen Kaisha (T.K.K.) provided regular cargo and passenger transport between Hawaii and the U.S. mainland.

Jumping forward to the late 1990s, there were several bills that sought to reform the PVSA. One was the proposed United States Cruise Tourism Act of 1997, which sought to allow foreign-flagged cruise vessels to operate on routes not served by U.S. ships. Their rights to operate on those routes would have been terminated three years after a U.S. vessel started operating the same route, but the bill failed. Sponsor U.S. Rep. Mark Sanford (R-SC) proposed the bill again in 1999, to no avail.

Another bill, the proposed Freedom to Ship Act of 1997, would have enacted more sweeping reforms. It sought to repeal the domestic-build requirement and citizenship quota for passenger, cargo, dredging and other coastal vessels. It still would have required that any ship operating in domestic trade be U.S. owned and flagged, but foreign companies would have been allowed to establish U.S. subsidiaries that could qualify as U.S. owned, so long as they were two-thirds owned by U.S. citizens. Like Sanford’s bills, this bill also failed to gain traction.
In 1999 and again in 2001, U.S. Sen. John McCain sponsored bills that would have allowed U.S. companies to purchase one foreign-built cruise ship each, if they also purchased at least two cruise ships each from U.S. yards. The exemptions for the foreign-built ships would be terminated “24 months after the delivery date for the replacement vessel(s) for it.” Those bills were terminated.


Throughout the debates over the years, it became clear that the PVSA was encouraging U.S. cruise line companies to look abroad for new ships. At a 1998 congressional hearing, U.S. Rep. Nick Smith (R-MI) cited Disney’s interest in building PVSA-compliant ships. However, “when they solicited over a billion dollars in contracts, not a single U.S. shipyard would even bid on the projects.” The ships were subsequently built in Italy.

Additionally, a 2001 Senate report on McCain’s bill noted the dearth of U.S. oceangoing cruise ships.

“There are only two large coastwise trade-qualified cruise ships engaged in that [coastwise] trade,” it said.

Both operated on routes in Hawaii. The report blamed this on “the higher costs of building and operating U.S.-flagged cruise ships and competition from modern, foreign-flagged cruise ships.”

Where PVSA reform stands now

In recent years, there has been little legislative activity related to the PVSA, but reform opponents have remained vigilant.

The Transportation Institute, for example, claims on its website that the one U.S.-flagged blue-water cruise ship in the whole country “contributes to the critical pool of qualified U.S. seafarers and provides vital repair and maintenance work for U.S. shipyards.”

The Transportation Trades Department of the AFL-CIO stated in a 2017 Q&A mainly about the Jones Act that, “Our members are also beneficiaries of related maritime cabotage laws, including the Passenger Vessel Services Act of 1886 and the Dredging Act of 1906, which support union jobs in the marine passenger transportation and dredging industries, respectively. Beyond employment, the Jones Act creates a framework for safe, good-paying jobs set against an increasingly exploitative international shipping paradigm that routinely ignores workers’ rights and profits on inhumane employment practices.”

Similarly, a one Capt. Kelly Sweeney from Washington state took to the pages of the Professional Mariner in July 2018 to defend the PVSA, claiming it “protects the livelihood of tens of thousands of American ferry workers.” Kelly was moved to pen his defense two months after the U.S. Office of Information and Regulatory Affairs released a request for information regarding maritime regulatory reform. The office said it was “particularly interested in learning more about experiences with regulations involving cargo or passenger vessels.”
In Kelly’s view, this showed that the “enemies of our domestic maritime industry work continually to undermine the laws that benefit and strengthen our merchant marine, and would love nothing better than to destroy the U.S.-flag fleet for the money that would line their pockets.

“Never in our nation’s history,” he said, “has there been such a concerted effort to question the statutes that are the very foundation of our domestic maritime industry. This unprecedented move could conceivably result in every U.S. maritime law being scrapped.”

Such claims about the supposed benefits of the PVSA — and the occasional hysterics in defending it — are clearly overblown. The U.S. blue-water cruise industry is all but dead. In fact, there are only five companies worldwide that have the capacity to build cruise ships. Even if a U.S. company could afford to build a cruise ship domestically, it is unlikely any U.S. shipyard has the know-how to construct one, as the case of Disney cited above shows.

A 2017 report from National Defense University concurred: “The United States might also promote tourism by allowing foreign cruise ships to carry passengers between U.S. ports; this would not disrupt a U.S. industry because at present the Jones Act [PVSA] has simply made this market uneconomical.”

Proponents of PVSA reform include executives from U.S. river cruise companies, with additional support coming from various academic studies.

Bruce Nierenberg, former president of Delta Queen Steamboat Co., told Travel Weekly in 2014 that the PVSA’s domestic-build requirement is a deterrent to anyone looking to enter the U.S. river cruise market.

The U.S. crew requirement can prohibitively inflate costs, he told Travel Weekly, but the real challenge is building ships stateside. The crew, he said “is not the limitation. It’s building the ships. It’s a big issue for a couple reasons. There is really no American passenger shipbuilding left. … It’s an industry that we have lost touch with here.”

John Waggoner, chairman and CEO of the American Queen Steamboat Co. — one of the largest river cruise lines in the United States — expressed similar interest in modifying the domestic-build requirement.

In 2018, Ted Sykes, then president and COO of American Queen Steamboat, also cited the build requirement as a barrier to the river cruise industry.
Cui bono?

As for who benefits besides self-interested labor unions and shipbuilders, there is the city of Vancouver, in British Columbia, Canada, according to Seattle-based maritime attorney Terry Leitzell.

“Vancouver is a lovely city and an attractive destination for tourists,” Leitzell said in a 1996 commentary for the Seattle Journal of Daily Commerce, “but the primary reason for its rapid growth as a cruise capital is the U.S. Passenger Services Act, a restrictive statute that discourages cruise ships from using Seattle, Portland and other Northwest port cities.”

A 2014 law review article by University of Michigan law professor Keith E. Diggs made the same point: “Today, our coastwise trade laws benefit Canada by incentivizing cruise lines to bus passengers from Seattle to Vancouver before embarking on cruises to Alaska.”

In 2005, sociologist and cruise industry expert Ross Klein wrote for a Canadian research center: “[British Columbia] ports, … are indispensable to cruise lines due to U.S. cabotage laws that require non-U.S. registered ships visiting multiple U.S. ports to either include a foreign port in their itineraries or to embark and/or disembark passengers at a foreign port (cruise lines use foreign-flagged ships as a means of dodging U.S. taxes and labour standards).”
At the other end of the U.S. West Coast, the PVSA had been benefiting Mexico. As Victoria Buchholz, a corporate and intellectual property attorney, and Todd Buchholz, a former White House director of economic policy, wrote in the Los Angeles Times in August 2017:

“The cruise docks of San Diego sit vacant 90% of the year. Meanwhile, 80 miles south, Ensenada receives more than three times as many passengers as San Diego, and many more than New York, New Orleans and Boston. Vancouver hosts three times as many sailings as Seattle. Since cruising generates an estimated $3.2 billion for Canada’s ports, it’s no surprise that the Canadian government lobbies to preserve the PVSA.”

“Without the PVSA,” the pair noted, “dozens more cruises would depart daily from U.S. cities such as New York and Seattle, and the hundreds of millions of dollars generated from those voyages would stay within the U.S. economy, providing thousands of portside jobs — for longshoremen loading cargo, bellhops, tour guides, taxi drivers and local farmers supplying fruits and vegetables for those all-you-can-eat buffets. And of course, each stop would generate revenue for U.S. cities in port fees as well as local and state taxes.”

These examples are from the pre-coronavirus era, but the U.S. law that they refer to is still in play, and would need to be repealed or reformed if America’s ocean cruise industry is not to revert to the same pattern as it slowly revives.
For Hawaii, reform options could include any of the bills proposed in Congress in the late 90s and early 2000s, or outright repeal. Alternatively, noncontiguous states and territories could be exempted from the act. This would provide benefits to Hawaii and Alaska especially, as well as the West Coast ports that often embark passengers to Hawaii and Alaska.

For now, at least, proponents of change apparently won’t be able to count on support from most of the state’s congressional delegates or governor.

Asked recently for his position on the PVSA, U.S. Sen. Brian Schatz (D-HI) wrote: “I support federal policies that protect and support our nation’s maritime industry. I will also continue to uphold policies that support a strong U.S. domestic shipbuilding industrial base, which is critical to our national security and helps sustain a fleet of vessels that can provide a reliable trade of perishable and nonperishable goods to Hawaii.”

U.S. Senator Mazie Hirono (D, HI), Rep. Tulsi Gabbard (D, HI) and Hawaii Gov. David Ige (also a Democrat), did not return requests for comment.

Only U.S. Rep. Ed Case (D-HI), who has submitted several bills that would reform the Jones Act, stated he would “consider this issue further,” though so far he had “not especially focused on the impacts of the Passenger Vessel Services Act.”
Benefits of reform

Hawaii benefited, albeit temporarily, when Norwegian Cruise Lines was granted a PVSA exemption in 2003 to use foreign ships in the Hawaii trade. Puerto Rico experienced similar benefits, but even more spectacularly.

In 1984, almost 20 years before NCL was granted a PVSA exemption, Congress granted Puerto Rico an exemption from the law, allowing both U.S. and foreign cruise lines to carry passengers on non-PVSA ships between the U.S. mainland and Puerto Rico. Congress stipulated that this exemption would remain so long as no PVSA-qualified line offered comparable service. To this day, none have, and until the coronavirus crisis came along, the cruise line business had been a significant generator of income for the territory’s economy.

A 2015 report conducted for the Senate of Puerto Rico found that from 1984 to 2014, the “arrival of cruise ships to our ports has tripled,” while between 1990 and 2011 revenues from the cruise ship industry also tripled, to $3 billion. While all of these gains may not be attributable to the exemption, the majority of visitors to Puerto Rico have been from the U.S. mainland.

A 1997 study reached similar conclusions. Commissioned by the California State Tourism Board to examine potential reforms to the PVSA, it found that absent the PVSA’s build requirement, cruise lines might offer excursions up and down the West Coast, benefiting California’s smaller ports and traditional cruise hubs.

The Government Accountability Office in 2004 noted that, “if additional exemptions to the U.S.-built requirement led to new entrants providing U.S.-flag cruise service,… ports and port cities, the merchant marine, and consumers could benefit.”

Additional domestic cruises, it said, “could create more activity for the ports and result in more jobs and increased spending in port cities. U.S.-flag ships also would employ U.S. seamen, adding to the base of trained maritime employees who could serve the country in a time of emergency. Moreover, potential entrants could offer more cruise options and new itineraries to consumers.”

It is easy to imagine that Hawaii would experience economic benefits, if not subjected to the requirements of the PVSA. Once the COVID-19 outbreak is contained, tourists will again want to cruise in Hawaii’s tropical climate and beautiful island waters, and the extent to which they are allowed to do so will depend very much on how regulated Hawaii is by the federal Passenger Vessel Services Act.
As James Mak’s 2009 research into the Passenger Vessel Services Act concluded, “The current, and antiquated law imposes costs on a lot of people but confers few, if any, national benefits. It should be repealed.”

Ten years later, Mak hadn’t changed his mind. Asked in September 2019 if he had any updates to his research, Mak, emeritus professor of economics at the University of Hawaii, said he hadn’t looked into the issue lately.

Nevertheless, he added, “The punchline is that we think the PVSA should be abolished.”
Endnotes


6 “U.S.-Flagged Passenger Fleet Profile,” in “Passenger Cruise Industry,” Transportation Institute, 2019, transportationinstitute.org/jones-act/passenger-cruise-industry; and “What Every Member of the Trade Community Should Know About: The Passenger Vessel Services Act.”


8 Rebecca Maksel, “Hawaii by Air,” Air & Space Magazine, October 2014, www.airspacemag.com/history-of-flight/hawaii-air-180952756/#:~:text=In%20December%202010%E2%80%9C%20and%20four%20field%20near%20Honolulu. According to Maksel, “It wasn’t until 1936 that Pan Am began carrying passengers from San Francisco to Hawaii on its luxurious Martin M-130 Clippers. Richard F. Bradley paid the equivalent of $51,000 to be among the passengers on the first flight. … The Clippers flew just once a week, carrying only eight or nine passengers, since cargo and mail took priority.”

9 “Trying to make the case in defense of Young Brothers (Community Matters),” ThinkTech Hawaii, interview with Michael Hansen, July 10, 2020, see 18:20, www.youtube.com/watch?v=Pk-pygitYgY.


24 Ibid, pp. 16-17.


33 Ibid.


51 Ibid.


