

American Offshore Worker Fairness Act

U.S. Senator Bill Cassidy, M.D.

Background

The Outer Continental Shelf Lands Act (OCSLA) requires all vessels, rigs, platforms, or other structures on the U.S. Outer Continental Shelf (OCS) be manned by U.S. citizens or lawful permanent residents. OCSLA also has an exemption and allows vessels that are more than 50 percent foreign owned to operate in U.S. waters with foreign crews. This requirement and exemption were enacted to *“reconcile dual concerns of providing fullest possible employment for Americans in [OCS] activities and eliminating to the fullest extent ... retaliation by foreign nations against American workers in foreign offshore activities”* In practice, the exemption has not provided reciprocal access to foreign waters for U.S. mariners. At the expense of U.S. mariners, the exemption has allowed foreign vessels from some of the wealthiest countries to work in U.S. waters and employ mariners not from their home or flag nation but from other low-wage nations.

Labor is the biggest operational expenditure for a vessel operator. Foreign mariners come from Russia, Eastern Europe, India, the Philippines, and China and are often paid substantially (depending on position) less than their U.S. counterparts. As a result and because they are not subject to U.S. tax and labor laws, foreign vessels owners are then able to leverage the cost savings derived to undercut the charter rates of similar U.S. vessels.

The Problems

When the U.S. Coast Guard (USCG) issued certain enacting regulations for OCSLA under their purview, USCG decoupled the citizenship of foreign persons who are permitted to work on the U.S. OCS from the citizenship of the vessel owner. Doing so resulted in companies from high-wage nations sending vessels to U.S. waters with mariners from countries unassociated with vessel’s flag and at lower wages. The effect of this was decreased crewing costs that undercut U.S. vessel owners and came at the expense of maximizing employment opportunities for Americans. Addressing this disparity will greatly assist American mariners and U.S. companies participating in both the offshore oil and gas and wind industries.

In addition and under current practice when a foreign-flagged vessel seeks to operate in U.S. waters with a foreign crew, the vessel owner will seek a letter of OCSLA non-applicability from the U.S. Coast Guard. This letter states that the OCSLA manning requirement does not apply to the vessel, because it is more than 50 percent foreign owned. As currently structured, these letters good for the life of the vessel. The U.S. Coast Guard only requires foreign vessels to apply for this exemption once, and subsequently urges foreign vessels to self-report any material changes in their ownership. On the other hand, U.S. vessel owners are required to prove their ownership once a year for coastwise privileges.

Furthermore, the above-described OCSLA letters of non-applicability can be provided to an unlimited number of foreign mariners. These foreign mariners utilize the letter to secure a visa

which is valid for five years. But, the USCG is uncertain how many visas have been issued or are currently valid.

The Solution

In an effort to strike a balance between “providing the fullest possible employment for Americans in OCS activities” and while ensuring the installation of offshore wind turbines and the activities of oil and gas rigs or mobile offshore drilling units are not disrupted, The American Offshore Worker Fairness Act:

- Ensures mariners manning foreign-flagged vessels engaged in offshore energy activities in U.S. waters are either U.S. mariners (U.S. citizens or legal permanent residents) or are citizens of the nation where the vessel is flagged.
 - *Vessels such as oil rigs or mobile offshore drilling units or vessels performing certain offshore lifts, including offshore wind installation vessels, are exempt.*
- Creates a new domestic market survey requirement for foreign vessels laying pipelines or cables on Outer Continental Shelf. This proposal would allow foreign vessels to perform this work if a U.S. flagged vessel is not available and/or capable of performing the work sought.
- Requires foreign mariners serving in U.S. waters to secure a Transportation Worker Identification Credential (TWIC) thereby improving the oversight of foreign-flagged vessels and the mariners that work on board them.
- Sunsets all current letters of OCSLA non-applicability based requires foreign vessels to reapply for a new letters based upon their current ownership, and limits future letters of OCSLA non-applicability to be valid for 12 months from the date of issue.
- Limits the number of foreign mariners that may receive a visa sponsored by a vessel’s letter of OCSLA non-applicability to 2.5 times the number of persons required by the vessel’s safe manning document.
- Creates greater transparency on enforcement for Jones Act violations.
- Increases funding and extends the authorization for Maritime Centers of Excellence

Proposals such as these are not new. Despite assertions by opponents of this legislation that this is not how international shipping conventions are implemented, in Brazil, the Labour Ministry requires a certain proportion of the crew on foreign vessels be Brazilian citizens and this fluctuates based upon the time the vessel is in Brazil and the work undertaken. In Mexico, as well as Brazil, a market test must also be conducted to determine a lack of domestic vessels for certain activities before a foreign vessel can be utilized.