**FREQUENTLY ASKED QUESTIONS**

1. **What is the process to hire mariners from other countries for foreign vessel owners with more than 50 percent foreign ownership?**

Foreign vessel owners petition the U.S. Coast Guard (USCG) for a letter stating that their vessel is more than 50 percent foreign owned and thus excluded from the requirement to employ U.S. citizens. The required information includes the vessel’s name and identification numbers, its scope of work, identity of the vessel’s parent company and said company’s CEO, board, shareholders, and any contracts currently held on the vessel.

Once the USCG reviews and approves this information, they provide the vessel owner with a letter stating that the manning requirements of the Outer Continental Shelf Lands Act (OCSLA) do not apply to this vessel. This letter, usually referred to as a “letter of non-applicability” or “Outer Continental Shelf (OCS) exemption letter” has no expiration date. Instead the USCG relies upon foreign vessel owners to “self-report” any material changes in its ownership to the USCG in order for new letters to be issued.

Once the letter of non-applicability has been issued to the vessel owner, copies of this letter are provided to crewing agencies around the world. Those agencies then provide copies of the letters to mariners selected to work on the foreign-flagged vessel. Those mariners then take a copy of the letter of non-applicability, their mariner license, and a U.S. State Department Non-Immigrant Visa Application Form (DS-160) to any U.S. Consulate. Following their interview and if granted, the mariners are provided a U.S. B-1/OCS visa valid for five years.

1. **Does the U.S. B-1/OCS** **visa limit which vessel a foreign mariner can crew?**

The visa is not tied to the vessel so the mariners have flexibility to move from one job to another. The visa is good for five years provided the mariner carries a copy of the letter of non-applicability for the vessel he or she will be serving aboard.

1. **How will the legislation ensure the Department of Homeland Security knows who is aboard these vessels?**

The legislation requires the USCG to inspect these vessels annually to ensure compliance with this law and that the crew members on these vessels secure (Transportation Worker Identification Credential) TWIC cards from the U.S. Department of Homeland Security.

1. **What role does the U.S. Department of Homeland Security have in screening entry of foreign mariners?**

In implementing the 1978 amendments to OCSLA, a legal position was drafted by the General Counsel of Immigration and Naturalization Services (INS, the precursor to U.S. Citizenship and Immigration Services (USCIS)) and the Office of Legal Counsel of the Department of Justice that the OCSLA manning exemption created a “stand alone” immigration control provision outside of the Immigration and Naturalization Act. The INS then determined that it could not take action against foreign mariners being categorized as part of a foreign vessel crew. *In short, INS (now USCIS) has stated they have no role to play in the control of foreign mariners coming to the U.S.*

1. **If foreign vessel owners are able to hire mariners from all over the world how do they all communicate if there is a language barrier?**

Given the complexity of these operations, communication is of paramount importance. As such, ensuring improved safety from a crew that all speaks the same language, be that English, or the native language of the vessel’s home country is vital. The legislation encourages this communication by ensuring mariners on vessels are from the same nation.

1. **Is 2.5 times exactly what is needed to allow for regular crew changes? Is a slight buffer built in?**

Yes. 2.5 times allows for two crews to man the vessel allowing for regular crew changes with a buffer included for contingencies.

1. **Will this apply to all foreign vessels in U.S. waters?**

No.  This provision will only apply to vessels engaged in “OCS Activities” in U.S. waters or foreign-flagged vessels which are engaged in operations that are exploring for, developing, or producing resources, including non-mineral energy resources.  Thus, the provision does not apply to cargo ships or other foreign-flagged vessels that are transporting non energy or resource cargo to or from the U.S.

1. **Has the Department of Interior included any obligations for companies who are granted leases on the Outer Continental Shelf to hire Americans?**

Yes. Commercial leases that will be granted to companies bidding on leases in the New York Bight are [required](https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/OCS-A%200537%20Lease.pdf) to *“make every reasonable effort to enter a Project Labor Agreement covering the construction stage of any proposed project for the leased area.”* Though this is not a mandate, it does make clear the Department of Interior would like to see companies who are granted leases for renewable energy development hire American workers. For clarity, this legislation does not take a position on union versus non-union workers and is more concerned with opportunity for American mariners working on offshore projects.

1. **Will the legislative proposal prevent foreign mariners from serving aboard foreign vessels working on offshore energy projects in U.S. waters?**

No. The legislation permits mariners from a foreign vessel’s home country to serve aboard the vessel when it is operating in U.S. waters. Additionally, current law—as preserved by the legislation—allows for mariners of any nation to serve onboard a vessel while it is in U.S. waters if it is demonstrated that there are an insufficient number of qualified U.S. mariners. [[1]](#footnote-1)

1. **These are specialized vessels that have specialized crew that cannot be replaced with U.S. mariners. Won’t prohibiting certain mariners from working on U.S. projects delay or possibility shut-down offshore energy projects?**

U.S. mariners are already serving on U.S.-owned/U.S.-flagged and U.S.-owned/foreign-flagged, and even in some very rare cases foreign-owned/foreign-flagged subsea construction vessels. This class of vessels perform very technical and demanding work within the offshore industry so know U.S. mariners can do this work. Further, the U.S. merchant marine is highly skilled and qualified, and the U.S. has some of the best maritime training schools in the world, thus, there is no reason to think that additional U.S. mariners cannot be trained to conduct this work.

As recently as December 2021, Siemans Gamesa announced it was chartering the U.S.-flagged PAUL CANDIES to serve as a Service Operations Vessel. Similar, and even more technologically complex vessels are already being built in the U.S. and will be crewed with U.S. mariners.[[2]](#footnote-2)

1. **Given the current labor shortage across all sectors, will this legislation have a negative impact on the U.S.’s ability to build out offshore energy infrastructure by limiting the pool of available workers?**

There have always been sufficient commercial mariners for offshore energy projects in the United States and each year the Coast Guard approves more than 48,000 applications for new or renewals of merchant mariner credentials. The pipeline of domestic mariners is ensured, in part, by the annual graduates matriculating from the dedicated maritime academies around the country. The seven U.S. Maritime Academies graduate close to 1,400 cadets per year. These cadets graduate with a diploma and the U.S. Coast Guard license required to operate offshore vessels. There is currently a large appetite among cadets to work in the offshore industry, particularly offshore wind, and as a result many of the Academies are investing in offshore wind training. Considering these domestic assets and the investments they have made, this legislation will capitalize on and bolster the available offshore wind workforce. By creating good-paying, secure jobs for U.S. mariners, the legislation will not only attract current mariners, but will recruit new workers into the maritime industry.

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1. ﻿**The International Chamber of Shipping reports a current shortage of 16,500 international mariners, without international mariners involved in U.S. offshore wind. Considering these reports if there is a short supply of foreign mariners, wouldn’t the market adjust regarding wages without the need for further intervention?**

The question implies foreign vessel owners would have to start paying higher wages due to labor shortages. As previously stated, foreign vessel owners engaged in work servicing offshore energy projects, which is the issue we are addressing, are not subject to U.S. tax or labor obligations and consequently able to keep their costs lower by hiring mariners unaffiliated with the vessel’s flagged country.

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Second, the legislative proposal is designed to both close a loophole and create an environment for U.S. companies to be competitive. Proposals such as these are not new. In Brazil, the Labour Ministry requires a certain proportion of the crew on foreign vessels be Brazilian citizens and this fluctuates based upon both the time the vessel is in Brazil and the work undertaken. In Mexico, as well as Brazil, a market test must be conducted to determine a lack of domestic vessels for certain activities before a foreign vessel can be utilized.

1. **How will the legislation impact vessels already under contract?**

International and U.S. regulations require most vessels to have a Safety Management System (or SMS), which dictates the safety policies and procedures the vessel operator and crew will follow. Most SMSs have policies regarding “short service employees” (or SSEs). These polices dictate how new employees should receive vessel-specific training, safety policies to ensure the safety of new employees and the vessel, and how many mariners can be new to the vessel or new to their position at any one time. The phase in time of the legislation (120 days) provides time for each vessel to execute its SSE policy and safely replace foreign crew members with U.S. crew members or crew members from the vessel’s home country.

1. **Congress amended OCSLA at the end of 2020 to re-affirm that laws applicability to non-oil and gas operations on the OCS. How does is this currently being enforced?**

It is not. The U.S. Coast Guard is not applying this process to offshore wind vessels despite Congress’ reaffirmation that OCSLA applies to “installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources, *including non-mineral resources*…”

*According to the International Marine Contractors Association, “there is a requirement that foreign-flag vessels engaged in ‘OCS activities’ offshore the United States must use US citizens to crew such vessels, unless the vessel is more than 50% foreign owned or controlled by foreign citizens.  If this requirement is met, the vessel may engage in OCS activities using foreign crewmembers.  Applications to use foreign citizens under these circumstances are approved by the U.S. Coast Guard. However, the Coast Guard currently takes the position that this requirement does not apply to offshore wind activities.  As such, applications for approval are not currently required before using foreign citizen crews.”[[3]](#footnote-3)*

1. 43 U.S.C. 1356 (c)(1)(B) [↑](#footnote-ref-1)
2. <https://www.workboat.com/offshore/edison-chouest-to-build-first-jones-act-offshore-wind-service-vessel> [↑](#footnote-ref-2)
3. <https://www.imca-int.com/information-notes/enforcement-of-the-jones-act-and-vessel-crewing-laws/?_cldee=Y2FybC5hbm5lc3NhQGhvcm5iZWNrb2Zmc2hvcmUuY29t&recipientid=contact-a259af4c2692ea11a81100224807f96d-7a9fc3392cc14158b4f998cc126f8b2d&esid=c466100c-4858-ec11-8f8f-00224842c98d> [↑](#footnote-ref-3)