***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. OCLSA 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 but has instead created a loophole that allows foreign vessels from some of the wealthiest countries in the world to utilize mariners not from their home or flag nation, but from 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 14 to 70 percent (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 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 created a loophole and allowed companies from high-wage nations to send vessels to U.S. waters with mariners from other countries at lower wages resulting in decreased crewing costs. Closing this loophole 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 are evergreen, good for the life of the vessel and 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**

The American Offshore Worker Fairness Act would:

* 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.
* Requiring 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 six months after enactment, 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.
* Requires the USCG to inspect foreign vessels annually to review compliance of the crewing requirements. Additionally, the proposal adds language specifying that an exemption provided to a foreign vessel can be revoked if the vessel is found to be out of compliance or if errors are found on its application. The language sets a penalty of $10,000 per day for violations.
* Requires the USCG to notify the Secretary of State of each exemption to ensure that only those foreign mariners who meet the requirements for a visa are provided a visa.

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 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.

**Supporters**

Shipbuilders Council of America, Offshore Marine Service Association, United Brotherhood of Carpenters