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MYTHBUSTING PROPOSED LEGISLATION - OFFSHORE WORKERS FAIRNESS ACT MYTHS AND FACTS

This fact sheet demystifies key myths and provides facts regarding the proposed legislation entitled the American Offshore Worker Fairness Act, Section 518 of the Coast Guard Authorization Act of 2022 (H.R. 6865) passed by the House on March 29, 2022.

Under the proposed legislation, entities more than 50% foreign owned/controlled would be limited to using mariners and industrial workers from the vessel's flag State or U.S. citizens/aliens lawfully admitted to the U.S. for permanent residence. Additionally, under the proposed legislation, the number of individuals crewing a vessel that are citizens of the flag State or Green Card Holders cannot exceed 2.5 times the number of individuals required to man or crew the vessel under the laws of the flag State, and all foreign seafarers must have a valid Transportation Worker Identification Card ("TWIC").

Myth 1 – Opponents of This Legislation are Advocating Against Americans and American Workers

FACT – To the contrary, opponents of this legislation support Americans and American workers and work with the Jones Act fleet on many projects. Trained and experienced mariners are needed to crew U.S. flag offshore vessels for numerous categories of vessels to support offshore oil and gas and wind projects. The intent of the current exemption law under the Outer Continental Shelf Lands Act ("OCSLA") is to protect U.S. citizens from retaliation when working on a U.S.-flag vessel, on a foreign continental shelf, from being forced to be replaced with a foreign citizen by that coastal nation. Enactment of this proposal would have the opposite intended effect by disrupting and derailing offshore U.S. work and result in foreign countries potentially retaliating against U.S. flag vessels working offshore globally.

Myth 2 – The U.S. Coast Guard Created a Citizenship Loophole in the Current Exemption Regulations

FACT – Congress never intended the foreign crew to be from the flag State. Congress stated that the crew will be "members of the crew of foreign-flag vehicles or structures as established under certification of registry of other nations." This means that the flag State determines what the manning requirements are to be – not that the manning must be linked to the flag State. Also, the legislative history the current exemption law under OCSLA emphasizes the great concern to ensure there is no retaliation by foreign countries and mandated that the Coast Guard is required to make a finding that a foreign country does not discriminate against a U.S. flag vessel working overseas before it issues an exemption.

Myth 3 – Without This Legislation, Foreign Owned or Controlled Vessels with Lower Operating Costs Will Take Away Work from U.S. Flag Vessels in the Oil and Gas and Offshore Wind Sectors

FACT –The foreign flag vessels are not competing with U.S. flag vessels based on crew wages. The U.S. market already has a monopoly on all jobs for [Crew Transfer Vessels ("CTVs"), Service



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Operation Vessels (SOVs”) and Offshore Supply Vessels (“OSVs”). For the most part it is only when there is no U.S. capability that foreign vessels are used (e.g., heavy lift foundation vessels, larger Wind Turbine Installation Vessels (“WTIVs”), cable and pipelay vessels. These foreign flag speciality vessels must first install the foundations, turbines, and lay the cable and pipe to provide the jobs and employment for U.S. vessels and their U.S. crews.

Myth 4 – This Proposal Levels the Playing Field and Creates More Jobs for U.S. Mariners and Speciality Technicians

FACT –The U.S. domestic fleet continues to struggle to even crew its own vessels today and they are not being challenged to prove this point. And the market will desperately need more U.S. mariners for vessels such as CTVs and SOVs to meet the needs of offshore wind development. The reality is the maritime academies today are not training mariners for offshore jobs. This proposal would instead remove the limited number of speciality vessels needed to perform this critical work offshore and thus derail the entire offshore wind industry including employment for U.S. mariners altogether.

Myth 5 – Requiring Foreign Seafarers to Obtain a TWIC Will Enhance Offshore Security

FACT – A TWIC is required by the Maritime Transportation Security Act for workers who need unescorted access to secure areas of the nation’s maritime facilities and vessels. A foreign flag vessel has no secure areas for which a TWIC would be required, when operating on the U.S. OCS. The offshore industry has an impeccable security record, and this would create an unnecessary regulatory burden to require every foreign crewmember to first travel to the U.S. in order to obtain a TWIC before working offshore.

Myth 6 – Flag States Have Sufficient Mariners and Specialty Technicians to Continue to Crew Offshore Vessels under this Proposal

FACT – There is a limited supply of specialist technicians and mariners globally, and few if any from the vessel flag States that typically perform speciality offshore work. As a result, the proposed legislation would essentially require a vessel to replace most of its crew with untrained and inexperienced U.S. crew – and there are no such crews available anyway. Companies will simply be unable to accept the operational risks to do so and therefore would turn to work elsewhere globally.

Myth 7 – The Proposed Legislation Will Solve Language Barrier Obstacles by Requiring Foreign Seafarers to be from the Same Flag State

FACT – There are no language barrier problems at sea - English is the universal language at sea under international standards which mandate the use and understanding of English for commercial mariners and communications at sea.

Myth 8 – Current Law Will Continue to Permit a Foreign Flag Vessel to Obtain an Exemption to Use its Crew if It is Demonstrated That There are an Insufficient Number of Qualified U.S. Mariners



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FACT – Proponents making this statement are mistaken. Due to current Coast Guard regulations, a vessel that is more than 50% owned or controlled by a foreign interest cannot apply for a manning exemption demonstrating that there is not a sufficient number of citizens of the United States or resident aliens (“Green Card Holders”) qualified and available for the work. 33 C.F.R. § 141.5.

Myth 9 – Foreign Citizens Can be Used to Train U.S. Crews Aboard U.S. Flag Vessels

FACT – Current law allows U.S. citizenship requirements to be waived for any other vessel if the Coast Guard determines, after an investigation, that qualified seamen who are citizens of the United States are not available. 46 U.S. Code § 8103(b)(3)(c). Unfortunately, the U.S. Coast Guard refuses to grant any exemptions under this authority today. Ironically this often leads to the selection of using a foreign flag vessel rather than a U.S. flag vessel because there are often no U.S. citizens to perform certain specialty work.

Myth 10 – Opponents to this Legislation are Against Enhanced Enforcement of Companies that Violate or Avoid the Offshore Crewing Exemption Law

FACT – To the contrary, opponents to this legislation agree that the Coast Guard could improve its oversight of the exemption process, by requiring crewing exemptions for offshore wind projects, increased enforcement through boardings, and requiring annual renewals of crewing exemptions.

MYTH 11 – The Current Exemption Process is Flawed Because Unlimited Visas Can be Issued as Visas are not linked to the Vessel for which the Exemption was Issued

FACT – There is no valid reason to link a worker’s visa to a particular vessel. In fact, there is no requirement under U.S. law to link a B visa to the particular work assignment in the U.S. A B-1 (OCS) visa is a type of business (“B”) visa. The Coast Guard exemption letter issued to a vessel serves as proof to an embassy officer that that worker is eligible to initially be issued a B-1 (OCS) visa and a B-1 (OCS) visa holder cannot work aboard a vessel that has not been issued a vessel exemption. Appropriate enforcement action should be taken for violations.

Myth 12 – Opponents to this Legislation are not Willing to Work with Congress to Advance the Interests of U.S. Workers

FACT – To the contrary, opponents believe Congress is listening to flawed assumptions and should instead focus on realistic measures to advance U.S. worker and overall energy interests. Congress should work with the U.S. Coast Guard to assess the domestic maritime workforce and number of qualified and available U.S. citizens available for work on specialist vessels and to make recommendations on what is needed to build such a technically capable U.S. workforce. Congress should also establish priorities and create incentives including funding to support maritime training and labour unions to address the U.S. mariner skills and availability shortfall.

Myth 13 – The U.S. Can Still Meet the Biden Administration’s Goal of 30 GW of Offshore Wind with Only American Workers and American Vessels.



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FACT – Almost all of the foreign flag speciality vessels must first complete the work to install foundations, topsides, and wind turbines, lay the cable and pipe before U.S. flag vessels can perform the necessary support work. A lack of specialty vessels and a lack of trained American mariners will greatly hinder the Biden Administration’s goal.