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16711/Foreign Crew
D8(m) Policy Ltr 02-2004
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MEMORANDUM

From: D. F. RYAN II
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To: Distribution

Subj: FOREIGN CREWMEMBERS WORKING ON BOARD OFFSHORE SUPPLY VESSELS

Ref: (a) 46 U.S.C. 8103 (b)
(b) 43 U.S.C. 1356

1. **PURPOSE:** This letter provides Eighth Coast Guard District (D8) guidance in determining the legality of foreign crewmembers working on board offshore supply vessels (OSVs).

2. **DIRECTIVES AFFECTED:** None.

3. **BACKGROUND:**

   a. There have been reports of foreign crewmembers (not permanent resident aliens) working on board U.S. flagged OSVs on the U.S. OCS. They normally hold a C-1/D visa, and are neither "aliens lawfully admitted to the U.S. for permanent residence" nor aliens holding a valid waiver from G-MOC. The OSV owners typically arrange for all the transportation costs for the foreigners and take care of any health issues. The owners also do not pay the foreign workers directly; they normally pay an agent who then pays the workers' family. The foreigners work on board the vessel as deckhands. However, since the vessels meet the minimum manning requirements set by the COI with U.S. citizens, the OSV owners view the foreigners as "extra" crewmembers.

   b. There are two statutes that govern the employment of non-U.S. citizens as unlicensed crewmembers on board U.S. flagged vessels working within the U.S. OCS. Reference (a) requires that each unlicensed seaman must be either a U.S. citizen or an "alien lawfully admitted to the [U.S.] for permanent residence." It further stipulates that no more than 25 percent of the total unlicensed seamen on board can be aliens lawfully admitted for permanent residence. Reference (b) requires that all crewmembers be either U.S. citizens or "aliens lawfully admitted to the U.S. for permanent residence." Both of these statutes contain a provision under which G-MOC may issue a waiver for the employment of other legal aliens when there are not U.S. citizens or permanent resident aliens qualified for work available. The requirements for the waiver program are contained in NVIC 7-84. (To date, G-MOC has not issued any waivers for OSVs operating in the U.S. OCS and is unlikely to do so due to the difficulty in proving that U.S. citizens are not available for employment.) The effect of these statutes is that all crewmembers on an OSV operating

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in the OCS must be either U.S. citizens or permanent resident aliens or they must possess a valid waiver from G-MOC and be in full compliance with the conditions of the waiver. Without a waiver from G-MOC, foreign workers who are not permanent resident aliens are not permitted, and the maximum number of permanent resident aliens that may be employed is 25 percent of the total number of unlicensed seamen on board.

4. **DISCUSSION:**

a. Any alien serving as a crewmember on board an OSV operating in the U.S. OCS must be able to show that they are aliens lawfully admitted for permanent residence or produce a waiver from G-MOC and demonstrate compliance with the waiver. 33 CFR 141.30 lists three methods for an alien to show that they have been lawfully admitted for permanent residence:

(1) An MMD;

(2) A "green card"; or

(3) A declaration of intent to become a citizen issued by a U.S. naturalization court.

b. Production of a visa would not satisfy the above requirement because visas are temporary in nature. Therefore an alien with only a visa of any sort, including a C1/D or B-1 visa, would be violation of both references (a) and (b) unless they had a waiver from G-MOC.

c. When permanent resident aliens are encountered then the number should be compared with the total number of unlicensed seaman aboard the vessel to ensure that it does not exceed 25 percent. If there were only three seamen aboard, none of them can be resident aliens. If the number of resident aliens exceeded 25 percent, a violation of reference (a) exists, and the company would be subject to a $650 fine. The minimum number of crewmembers as stated on the vessel's COI has no bearing because the law applies to the "total number of unlicensed seamen <u>on</u> the vessel".

d. The fact that foreigners may have been hired to fill a position on the vessel that exceeds the manning requirements of the COI is irrelevant. 46 CFR 125.160 defines "crew" as "all persons carried on board the OSV to provide navigation and maintenance of the OSV, its machinery, systems, and arrangements essential for propulsion and safe navigation or to provide services for other persons on board". Therefore, if the foreigners on the OSVs are deckhands and help out with day-to-day operations, they are considered "crewmembers".

e. In addition, MSM Volume III, Chapter 20, Paragraph E, defines "seamen" as an "individual engaged or employed in the business of a ship or a person whose efforts

contribute to accomplishing the ship's business, whether that person is involved with operations of the vessel". It also states "a crewmember may be a seaman although he or she is not occupying a position required by the COI. Persons who are on board the vessel in a capacity other than as a crewmembers are considered passengers and are not subject to the citizenship requirements; except if the person is filling a position that is designated as 'person in addition to the crew'". It further states, "individuals being compensated for performing their jobs while the vessel is underway are considered seamen for the purpose of applying citizenship requirements". Therefore, if the foreigners are employed in the operations of the vessel and are being paid by the company for their work on board the vessel, they are considered "seamen".

f. An "offshore worker" is defined in 46 CFR 125.160 as "an individual carried aboard an OSV and employed in a phase of exploration, exploitation, or production of offshore mineral or energy resources served by the vessel; but it does not include the master or a member of the crew engaged in the business of the vessel, who has contributed no consideration for carriage aboard and is paid for services aboard". Therefore, if the foreigners are being paid by the OSV owners to work on board the vessel and do not depart the vessel once the OSV gets to an OCS facility, they are not considered to be an "offshore worker".

5. **ACTION:**

a. There is no legal basis for the allowance of foreign workers who are not permanent resident aliens and do not have a waiver letter from G-MOC to serve as crewmembers on board an OSV in the U.S. OCS. Therefore, OCMIs should inform companies that this practice is not legal. Depending on the circumstances, the OCMI may deem it appropriate to allow companies time to rectify the situation. Marine inspectors are to verify the nationality of all crewmembers during future OSV inspections. If companies are still found to be in violation of 46 U.S.C. 8103 after an initial outreach period, the following actions should be taken:

(1) For the first offense:

(i) Have the vessel's owner/operator remove the foreign crewmember from the vessel.

(ii) Notify Customs and Border Protection (CBP) to see if they intend to take any action.

(iii) Issue a Letter of Warning (LOW) to the company.

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(2) For subsequent offenses:

(i) Have the vessel's owner/operator remove the foreign crewmember from the vessel.

(ii) Notify Customs and Border Protection (CBP) to see if they intend to take any action.

(iii) Conduct civil penalty action against the company.

6. **FEEDBACK:** Questions on this policy should be referred to the Eighth Coast Guard District, D8(m), at 504-589-2455.

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