

MARINE SAFETY MANUAL

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CHAPTER 20: GENERAL PROVISIONS FOR VESSEL MANNING

A. Introduction. This chapter contains guidance for correct, uniform application of the statutes and regulations that relate to the manning of inspected and uninspected vessels. This material is used by Coast Guard marine safety personnel to determine vessel manning scales, in conjunction with the applicable manning laws and regulations and official directives.

B. Authority.

1. Statutes And Implementing Regulations.

- a. Division of crew into watches: 46 U.S.C. 8104; 46 CFR 15.705.
- b. Workhours and rest periods: 46 U.S.C. 8104; 46 CFR 15.1111; 46 CFR 15.710.
- c. Able seamen: 46 U.S.C. 7306-7312 and 8702; 46 CFR 15.1103; 46 CFR 15.840.
- d. Lifeboatmen: 46 U.S.C. 7316 and 8101; 46 CFR 15.845 and 199.100.
- e. Mates: 46 U.S.C. 7102 and 8301; 46 CFR 15.1103; 46 CFR 15.810.
- f. Masters: 46 U.S.C. 7102 and 8301; 46 CFR 15.805.
- g. Radar observers: 46 CFR 15.815.
- h. Chief engineers: 46 U.S.C. 7102 and 8101; 46 CFR 15.820.
- i. Engineers: 46 U.S.C. 7102, 8101 and 8301; 46 CFR 15.1103; 46 CFR 15.825.
- j. Pilots: 46 U.S.C. 7101, 8101 and 8502; 46 CFR 15.812.
- k. Lookouts: 46 CFR 15.850.
- l. Fire patrolmen and cabin watchmen: 46 U.S.C. 8102; 46 CFR 15.855 and 78.30.
- m. Radio officer/radiotelegraph operator watches: 46 U.S.C. 7101-7103, 7318 and 8101; 46 CFR 15.1103; 46 CFR 15.830.
- n. GMDSS Operator(s) and GMDSS Maintenance: 47 CFR 80.1073 and 80.1074.
- o. Tankermen: 46 U.S.C. 3703, 7317, 8703, 9101 and 9102; 33 CFR 155.710; 46 CFR 31.15 and 15.860.
- p. Operators: 46 U.S.C. 8104(h), 8903 and 8904; 46 CFR 15.601, 15.605, 15.610 and 15.705.
- q. Staff officers: 46 U.S.C. 7101, 7102 and 8302; 46 CFR 15.835.
- r. Qualified members of the engineering department (QMEDs): 46 U.S.C. 7313 and 7314; 46 CFR 15.1103.
- s. Ordinary seamen: 46 U.S.C. 8702; 46 CFR 12.25-10 and 15.840.
- t. Crew citizenship: 46 U.S.C. 8103 and 12110(d); 46 CFR 15.720.

The Secretary of the Department of Transportation (SEC DOT) has authorized the Commandant to perform the functions required of the SEC DOT by these laws. This authority has been further delegated in Part 1 of Titles 33 and 46, Code of Federal Regulations (CFR), this manual, and instructions issued to marine safety personnel.

2. General Manning Authority.

The general regulations for manning of vessels are contained in 46 CFR 15 (Subchapter B, Merchant Marine Officers and Seamen). Regulations concerning certificated lifeboatmen, fire patrolmen, and other manning standards for specific classes of vessels are contained in Subchapters D (Tank Vessels), H (Passenger Vessels), I (Cargo and Miscellaneous Vessels), R (Nautical Schools), T (Small Passenger Vessels), and U (Oceanographic Research Vessels). The general manning and crewing requirements for vessels and facilities operating on the U.S. Outer Continental Shelf are contained in Part 141 of Title 33 (Subchapter N, Outer Continental Shelf Activities).

C. Responsibility Of The Officer In Charge, Marine Inspection (OCMI).

Under 33 CFR 1.01-20, the OCMI is responsible for the enforcement of vessel inspection, navigation, and seamen's laws within a specific zone. In this capacity, the OCMI is responsible for certifying the competence of merchant mariners and for establishing manning levels for various types of vessels. The Certificate of Inspection (COI), Form CG-841, states the minimum number of licensed officers and certificated crewmembers necessary for the safe operation of inspected vessels, as required by 46 U.S.C. 8101 and 46 CFR 15.501. Also, many uninspected U.S. merchant vessels are subject to the manning requirements of 46 U.S.C. 8103, 8104, 8304, 8701-8703, 8903 and 8904. The International Convention for the Safety of Life At Sea (SOLAS), Chapter V, Regulation 13(b) requires each vessel to which SOLAS Chapter I applies to be issued a "Safe Manning Document." The COI serves as the safe manning document for U.S. inspected vessels. In establishing the safe manning level for a certificated vessel, the OCMI should consider the following factors, in addition to statutory and regulatory requirements:

1. Size of the vessel;
2. Route;
3. Hull and equipment maintenance needs (protective coatings, cargo gear, equipment sophistication, etc.);
4. Type and horsepower of propulsion machinery;
5. Maintenance of machinery and equipment;
6. Degree of automation of deck and engineroom equipment;
7. Type of cargo;
8. Cargo transfer system;
9. Fire protection systems (crew operational requirements);
10. General arrangement of vessel equipment as it relates to crew operational requirements;
11. Lifesaving equipment;
12. Level of qualification of each crew position to perform tasks demanded by the vessel's mission;
13. Number of passengers carried;
14. Hazards peculiar to route and service;

15. Hours of operation within a 24-hour period;
16. Successful operation of similar vessels;
17. Reasonable workhour limits;
18. The existing safety record of the vessel; and
19. International Maritime Organization guidelines (IMO Resolution A.481) and other international standards.

D. Administration Of Manning Scales.

When a vessel is certificated in one zone for operation in another, the development of the vessel's manning scale should be coordinated with the OCMI for the latter zone, to avoid misunderstandings later. Manning of special or unique vessels shall be coordinated with Commandant (G-MOC). Consult volume I of this manual concerning waivers and appeals of manning requirements.

E. Citizenship Requirements For Licensed And Unlicensed Seamen On U.S. Documented Vessels And Foreign Vessels Within U.S. Jurisdiction.

1. Definition Of Seaman.

In general, the term "seaman" is interpreted broadly by the Coast Guard to mean any 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 operation of the vessel. This interpretation is consistent with expressions of congressional intent, and with judicial opinions regarding the use of the term "seaman" throughout Title 46 of the U.S. Code.

- a. A crewmember may be a seaman although he or she is not occupying a position required by the Certificate of Inspection. However, persons who are on board the vessel in a capacity other than as crewmembers are considered passengers and are not subject to the citizenship requirements; except if the person is filling a position that is designated as a "person in addition to the crew".
- b. Under normal conditions, the Coast Guard does not consider a person who is briefly visiting the vessel in a consulting capacity (e.g., a vendor's technical representative) to be a crewmember. Similarly, the Coast Guard does not apply citizenship requirements to shoreside personnel who come on board vessels while they are not underway to load or unload cargo or to perform services such as maintenance of shipboard equipment. However, under most circumstances, individuals being compensated for performing their jobs while the vessel is underway are considered seamen for the purpose of applying citizenship requirements. Waiters, entertainers, industrial personnel, oil recovery workers, riding maintenance crews, and others employed in the business of the vessel are considered seamen.
- c. The actual details of a particular situation will determine whether in fact the individual in question is a seaman for the purpose of 46 U.S.C. 8103.

2. General Citizenship Requirements.

46 U.S.C. 8103(a) states that only a citizen of the United States may serve as master, chief engineer, radio officer, or officer in charge of a deck watch or engineering watch on a vessel documented in the United States. Section 8103(b) further states that each unlicensed seaman must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence, and not more than 25 per cent of the total number of unlicensed seamen on the vessel may be permanent resident aliens. 43 U.S.C. 1356 also imposes U.S. citizenship requirements on U.S. vessels and certain foreign vessels engaged in Outer Continental Shelf (OCS) activities on waters above our OCS.

a. 46 U.S.C. 8103 Exemptions.

Yachts, fishing vessels fishing exclusively for highly migratory species, and fishing vessels fishing outside the exclusive economic zone of the United States are specifically exempted from the unlicensed seaman citizenship requirements. Except for the master, any unlicensed persons serving aboard such vessels do not have to be U.S. citizens. 46 U.S.C. 12110(d) provides that a documented vessel may be placed under the command only of a citizen of the United States, even if the individual is unlicensed. For the purposes of 46 U.S.C. 8103(a), permanent resident aliens may be considered a citizen of the U.S. for fishing vessels operating off the California coast in waters subject to the jurisdiction of the United States. (See 20.E.4. or Chapter 26 of this volume for further discussion.)

b. 43 U.S.C. 1356 Exemptions.

U.S. citizenship requirements in 33 CFR 141 do not apply to a foreign owned and controlled units operating on the OCS.

To be considered foreign-owned and foreign-controlled, a unit must be more than 50 percent owned and controlled by a foreign citizen(s) or entity.

However, U.S. citizenship requirements may be imposed if the President determines that the vessel's flag country, or the nation that the owners or charters are citizens of or incorporated within, are discriminating against American vessels by excluding U.S. citizens and resident aliens from U.S. vessels engaged in offshore activities off of its shore.

It is recommended that applicants for these exemptions consult 33 CFR 141 prior to submitting an exemption request.

(1) Provisions For Bareboat Chartered Vessels.

Ownership and control of ban OCS unit can be significantly altered by bareboat charter. (e.g. A foreign vessel bareboat chartered to a U.S. citizen or corporation must employ U.S. citizens. Or if a foreign-flag, American owned vessel is under a long term bareboat charter to a foreign citizen or corporation, it may receive an exemption. (See section 20.E.5.c of this chapter for additional guidance.). Refer questions involving bareboat charter to G-MOC.

3. Subsidy Vessels.

Citizenship requirements for U.S. vessels for which a construction or operating differential subsidy has been granted are stated in 46 U.S.C. 8103(c) and (d).

4. Fishing Industry Vessels.

The citizenship requirements applicable to fishing industry vessels are based on the specific class of vessel and its area of operation.

a. Within U.S. Exclusive Economic Zone (EEZ).

46 U.S.C. 8103(i) provides that each unlicensed seaman on a U.S. fishing, fish processing or fish tender vessel that is engaged in the fisheries in the navigable waters of the United States or within the EEZ must be:

(1) a citizen of the U.S.;

(2) an alien admitted to the U.S. for permanent residence; or

(3) any other alien allowed to be employed under laws enforced by the Immigration and Naturalization Service (INS).

This provision allows 100% of the unlicensed seamen employed on such vessels operating within our EEZ to be aliens. However, not more than 25% of the unlicensed seamen on these vessels may be aliens identified in subparagraph 20.E.4.a.(3) above. (As noted previously in paragraph 20.E.2, a fishing vessel fishing exclusively for highly migratory species is exempt from these requirements.)

b. Outside U.S. EEZ.

A fish processing vessel and fish tender vessel operating outside the U.S. EEZ must meet the more stringent citizenship requirements of 46 U.S.C. 8103(b). A combination catcher/processor is considered a fish processing vessel unless it engages exclusively in fishing without processing any catch. A fishing vessel fishing outside the EEZ is exempt from the citizenship requirements. (See chapter 26 of this volume for more information.)

5. Waivers.

46 U.S.C. 8103(b)(3) authorizes the Secretary to waive a citizenship requirement, other than the requirement that applies to the master of a documented vessel, with respect to an offshore supply vessel or other similarly engaged vessel of less than 1600 GT that operates from a foreign port; a mobile offshore drilling unit or other vessel engaged in support of exploration, exploitation, or production of offshore mineral energy resources operating beyond the waters above the U.S. OCS; and any other vessels if the Secretary determines, after investigation, that qualified seamen who are citizens of the United States are not available. Under the Act of December 27, 1950, (46 App. U.S.C. 1 note; 64 Stat. 1120), "An Act to authorize the waiver of the navigation and vessel-inspection laws" the Coast Guard is directed to waive compliance of the navigation and vessel-inspection laws upon the request of the Secretary of Defense, to the extent deemed necessary in the interest of national defense by the Secretary of Defense. 43 U.S.C. 1356 authorizes "exemptions" from citizenship requirements for vessels operating on waters above the U.S. OCS.

- a. Offshore Supply Vessels (OSV) And Mobile Offshore Drilling Units (MODU).
46 U.S.C. 8103(b)(3)(A) and (B) as implemented by 46 CFR 15.720, authorize OSVs operating from foreign ports and MODUs operating beyond the waters above the U.S. OCS, to employ over 25% of crew as aliens lawfully admitted for permanent residence. This general waiver does not apply if the OSV or MODU, though it has departed from a foreign port, engages in operations on the U.S. OCS. In these cases, the vessel is subject to the separate citizenship requirements of the Outer Continental Shelf Lands Act, 43 U.S.C. 1356(c). (See subparagraph 20.E.5.e.(1) below, 33 CFR 141, and NVIC 7-84 for guidelines on exceptions from OCS citizenship requirements and procedures relating to waivers from these requirements.)
- b. Other Vessels Engaged In OCS Activities.
The above general waiver only applies to OSVs and MODUs. Vessels of less than 1600 GT which are not OSVs, but are "similarly engaged" and operated from a foreign port; and vessels which are not MODUs, but are nonetheless engaged in support of exploration, exploitation or production of offshore energy resources beyond the waters above the U.S. OCS must apply to Commandant (G-MOC) for an individual waiver.
- c. Miscellaneous Vessel Types.
Vessel operators of any other vessel may apply for a waiver under subsection 8103(b)(3)(C) when "qualified seamen who are citizens of the United States are not available." Due to the availability of U.S. merchant mariners, requests for waivers under this section are rare. These requests usually must be supported by Department of Labor (DOL) certifications that qualified citizens can not be found for the identified positions.
- d. Fishing Vessels.
In that subsection, 8103(i) allows 100 per cent of the unlicensed seamen to be either permanent resident aliens or other aliens allowed to work under INS rules on fishing industry vessels inside the U.S. EEZ, there is no waiver of citizenship requirements necessary to such vessels. However, fish processing vessels and fish tender vessels operating outside the EEZ are required to the statutory requirements of subsection 8103(b) and may request a waiver in the same way as discussed in paragraph 18.E.5.c.
- e. OCS Citizenship "Exemptions" (Waivers).
43 U.S.C. 1356 and 33 CFR 141 provide three individual classes of exemptions for vessels and other units (including facilities, rigs, platforms or structures), engaged in OCS activities in waters above the United States OCS.

(1) U.S. Controlled Or Owned Vessels/Units.

A temporary exemption may be granted to U.S. controlled or owned vessels/units if there are not a sufficient number of U.S. citizens or resident aliens qualified and available for work. Congress has made the Coast Guard the agency responsible for accepting such waiver requests and granting such waivers if no U.S. citizens or resident aliens can be located for employment. (Refer to NVIC 7-84 for guidelines on exceptions from OCS citizenship requirements and procedures relating to waivers from these requirements.)

(2) National Registry Manning Requirement.

A foreign-flag, American-owned vessel/unit may receive an exemption for the marine crew from the citizenship requirements if the flag country of the vessel had a national registry manning requirement in effect before 18 September 1978 that required the flag country's nationals aboard vessels/units flying its flag. Also, contractual agreements made on an individual basis for a specific vessel may warrant the issuance of an exemption if such agreements were in effect before 18 September 1978.

(3) Presidential Declaration.

The President of the United States may grant an exemption for any position aboard a vessel if he determines that employment of American citizens or resident aliens would not be consistent with the national interest. This exemption would potentially be applied to address a national emergency or circumstances involving special foreign policy implications.

6. Enforcement.

Whenever a question arises as to whether or not a particular individual is properly documented as a permanent resident alien or other alien allowed to work, the Coast Guard officer should consult with local officials of the INS. Coast Guard units that are normally involved in enforcement of laws relating to fisheries should establish contact with the local INS office to discuss how questions concerning aliens will be addressed when they arise.

F. Crew Vacancies And "Sailing Short."

1. Introduction.

46 U.S.C. 8101(e) permits a master to "sail short," e.g., without meeting the manning requirements stated on the COI, under certain unusual circumstances. At the outset of a voyage a vessel should "possess" the complement of certificated crewmembers and licensed officers stipulated on the COI. The Shipping Articles, Form CG-705A, if required, would provide acceptable evidence of this. When vacancies occur at or after the time the crew is required to be aboard as specified in the Shipping Articles, the vessel may sail short, provided the vacancy was without the consent, fault, or collusion of the master, owner, or any other person interested in the vessel, and the master has made a conscientious effort to find a qualified replacement. In addition, the master must be satisfied that the vessel is safe to make the intended voyage.

2. Restrictions.

Convenience-type discharges, vacation time granted in accordance with collective bargaining agreements, etc., are considered "consent" actions and, therefore, not appropriate reasons for sailing short. Desertion, failure to join, hospitalization, etc., are considered "no consent" cases and, may be grounds for sailing short if the master considers the remaining complement sufficient. However, at each port or place called at during the voyage (including the port of departure), the master has an obligation to obtain qualified replacements if they are available. The master need not obtain permission to sail short, but must report the situation in writing within 12 hours of arrival at the port of destination. The master's decision to sail short is subject to the OCMI's review and appropriate administrative action should be taken if warranted (see the Commandant's Decisions on Appeal, Nos. 2136 (Dillon) and 2172 (Chapman). [NOTE: The difference between the sailing-short provision and a national defense waiver is based upon timing and purpose. The waiver is a shortage sanctioned for national defense considerations, and is obtained before the voyage. Sailing short is based solely on the master's judgment, and is the subject of an after-the-fact report, and is not based on national defense considerations.]

3. Filling Vacancies With Foreign Crewmembers.

46 U.S.C. 8103(e) provides that if a documented vessel is "deprived for any reason of the services of an individual (except the master and the radio officer)" while on a foreign voyage, the resulting vacancy can be filled with an individual not a citizen of the United States "until the vessel's return to a port at which in the most expeditious manner a replacement who is a citizen of the United States can be obtained." The non-U.S. citizen crewmember should hold an equivalent certificate of competency appropriate for the position being filled. The vessel would be expected to replace the non-U.S. citizen crewmember at any subsequent port call where a qualified U.S. citizen could be dispatched to meet the vessel.

G. Maintenance Department.

1. Background.

In recent years, labor-saving devices and operational innovations have been introduced on merchant vessels that permit adjustments in the composition of the minimum crews required by the Coast Guard. These adjustments provide the vessel's master the flexibility to use the crew more effectively while still ensuring that sufficient qualified personnel are carried for continued safe operation of a vessel. Such adjustments may include maintenance-persons within the deck and engineering departments, or through the formation of a maintenance department. Personnel so assigned would perform duties on a regular work day basis, and would not be considered members of an established watch, as defined in 46 CFR 15.705.

2. Manning Factors.

The OCMI's authority for approving requests for changes in the required crew composition is contained in 46 CFR 15.501 and 46 U.S.C. 8101. These sections state that the COI issued to an inspected vessel specifies the minimum complement of licensed individuals and crew considered necessary for the safe operation of the vessel. Among

the factors to be considered by the OCMI in determining the minimum crew complement are: installed equipment, degree of automation, use of labor saving devices, workhour limits, and the organizational structure of the vessel.

3. Crossover Between Deck And Engine Departments.

A modern vessel with a traditional deck/engine department organization may typically require 6 ABs and 3 QMEDs. When permitted by the COI, some of the individuals in a vessel's required crew complement may be engaged as maintenance-persons (deck or engine). All personnel so designated will hold ratings as AB for deck maintenance-person or an appropriate rating for engine maintenance-person. Deck or engine personnel assigned to their respective departments are subject to the crossover prohibition of 46 U.S.C. 8104(e). If the vessel establishes an acceptable maintenance department, the persons assigned to the maintenance department are available as a ship's maintenance crew and are not subject to the crossover prohibition. These personnel may then be employed in a manner best satisfying the vessel's needs that is left to the discretion of the vessel master provided the master operates the vessel in accordance with the approved automation plan. Vessels reorganized with a maintenance department or maintenance-persons assigned to deck and engine departments would normally require unlicensed manning including 3 ABs in the deck department, and at least 5 maintenance-persons. (See chapter 23 of this volume for further discussion and sample manning scales for vessels which employ maintenance-persons as required crew.)

4. Watch Augmentation.

The required personnel in the maintenance department shall hold appropriate qualified ratings (AB, QMED, etc.) so that they may be used by the vessel's master to augment navigational or machinery space watches should the need arise. For those personnel not assigned to the maintenance department, watch assignments would be governed by departmental affiliation, except under circumstances noted in 46 U.S.C. 8104(f). For personnel assigned to the maintenance department, watch augmentation will be based on individual qualifications. For example, an individual who holds both deck and engine qualifying ratings assigned to the maintenance department may be assigned to deck or engine watches. During periods in which these maintenance-persons are used to augment navigational or machinery space watches, they become part of the watch and are subject to successive watch rotation (46 CFR 15.705). Engagement of maintenance-persons with the intention of assigning any individual alternately between deck and engineering watch sections on a routine basis would be considered a violation of 46 U.S.C. 8104(e).

5. Maintenance Department Request.

A request for implementation of a maintenance department on an inspected vessel will require complete documentation from the vessel's operator describing how such a department will function within the shipboard management arrangements. The request must be made to the OCMI who last certificated the vessel or is currently conducting an inspection for certification. The documentation must include an operating manual for the vessel that describes the structure of the maintenance department, qualifications of the maintenance-persons, the responsibilities and duties of all vessel personnel when the maintenance department concept is implemented, various operating conditions under

which personnel would be rotated out of the department (e.g., watchstanding augmentation), and a planned maintenance program.

H. Workhour Limits.

1. Tankers.

The Oil Pollution Act of 1990 (OPA 90) amended 46 U.S.C. 8104 by adding a new subsection (n) which reads as follows: "On a tanker, a licensed individual or seaman may not be permitted to work more than 15 hours in any 24 hour period, or more than 36 hours in any 72-hour period, except in an emergency or a drill. In this subsection, "work" includes any administrative duties associated with the vessel whether performed on board the vessel or onshore."

2. Other Vessels.

Various sections of 46 U.S.C. 8104 limit the number of hours that licensed individuals and/or crewmembers may be required to work on certain classes of vessels. This does not preclude seamen from voluntarily working beyond those limits and possibly becoming fatigued from excessive hours of overtime. OCMI's should consider all relevant information described in 20.C in establishing required manning levels. While there may be no definitive, scientific basis for a maximum workhour limit for vessel crewmembers, the OCMI has the discretion to impose manning levels based on a specified reasonable workhour limit taking into account fatigue and other human factors. A twelve hour work day, applied in a manner similar to the above workhour limit for tankers, is considered a reasonable workhour limit for other classes of vessels. It is recommended that the OCMI consider this workhour limit in establishing manning levels for non-tankers, adjusting for vessel specific factors that might either alleviate or exacerbate fatigue. Likewise, the OCMI may appropriately consider working conditions and workhour limits established through a collective bargaining agreement in arriving at a final manning determination. (See chapter 24 of this volume for additional discussion regarding working conditions.)

3. Enforcement.

Coast Guard boarding officers/marine inspectors, during boarding or inspection activity on board a vessel shall:

- a. Ensure that they make general inquiries concerning the working conditions on board the vessel.
- b. Make a specific effort on tankers to ascertain whether the vessel's crew is complying with the workhour provisions of 46 U.S.C. 8104(n) and rest requirements of STCW as found in 46 CFR 10.51111. A review of vessel work logs, maintenance records, and crew interviews should be conducted at each vessel inspection and reinspection to validate adequacy of the manning level to maintain the vessel in safe operating condition.

- (1) Any indication that the owner/operator has made manning increases beyond that required by the COI to satisfy workhour limits, or that workhours have been or may be exceeded, or that required maintenance has not been performed because of inadequate manpower should be brought to the attention of the OCMI. The OCMI should review the vessel's manning complement and determine whether the required complement should be modified or increased to ensure that the vessel can be safely operated within the OPA workhour limits.
- (2) All manning increases necessary to meet the statutory requirements must be reflected on the COI as the minimum required manning, regardless of whether the owner has already made such changes voluntarily. To facilitate program review of OPA 90 impacts, OCMI shall notify Commandant (G-MOC) of any increases in manning levels imposed as a result of this work hour limit.

