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Homeland Security

United States  
Coast Guard

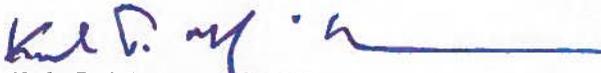


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16700  
CG-CVC Policy Letter  
13-04 CH-01

**MAR 27 2015**

  
From: Kyle P. McAvoy, CAPT  
COMDT (CG-CVC)

To: Distribution

Subj: DISTANT WATER TUNA FLEET (DWTF) VESSELS MANNING EXEMPTION  
GUIDANCE

- Ref:
- (a) Coast Guard and Maritime Transportation Act (CGMTA) of 2006, Section 421
  - (b) Coast Guard Authorization Act (CGAA) of 2010, Section 904
  - (c) Coast Guard and Maritime Transportation Act (CGMTA) of 2012, Section 701
  - (d) Howard Coble Coast Guard and Maritime Transportation Act of 2014, Section 601
  - (e) 1987 Treaty on Fisheries Between the Governments of Certain Pacific Islands States and the Government of the United States Of America ("South Pacific Tuna Treaty")
  - (f) International Convention for the Prevention of Pollution from Ships (MARPOL), 1973, 1978, 1997
  - (g) International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended

1. **Purpose:** The purpose of this policy letter change is to incorporate the statutory mandates established by reference (d) for the U.S.-documented Distant Water Tuna Fleet (DWTF) vessels, and to reiterate the applicable requirements established in references (a) through (c). Guidance herein pertains to DWTF vessels and their eligibility for a statutory manning exemption. U.S.-documented (i.e., U.S. Flag) DWTF vessel operators often seek foreign citizens to temporarily fill positions on their vessels that are otherwise required to be filled by U.S.-licensed mariners. The statutorily authorized manning exemption is applicable to licensed positions, other than the Master, when no U.S.-licensed mariners are readily available. Generally, the manning exemption is applicable to the Chief Engineer, Assistant Engineer, and/or Officer-in-Charge of a Navigation Watch (Chief Mate) positions.

**Disclaimer** - Although this policy letter is not a regulation and cannot be legally enforced against any member of the public, it describes procedures that members of the public should follow if they wish to exercise the DWTF manning exemption as set forth in references (a) through (d). Persons who do not wish to complete any aspect of the procedures described in this policy letter, may propose alternatives. The 14<sup>th</sup> Coast Guard District Commander will consider proposed alternatives, and may accept such alternatives that he or she determines are equivalent to this policy letter's procedures and intent, while ensuring safety of the vessel and crew when the manning exemption is exercised.

MAR 27 2015

2. Directives Affected. CG-CVC Policy Letter 13-04, dated December 20, 2013, is updated by this policy letter, CG-CVC Policy Letter 13-04 CH-01, dated March 27, 2015.

3. Action. Pursuant to Title 33, Code of Federal Regulations, Subchapter A, Part 1, Subpart 1.01, a District Commander has final authority for the performance of Coast Guard functions within the confines of the district. The 14<sup>th</sup> Coast Guard District staff and its field units should utilize the guidelines in this letter to ensure DWTF vessels that wish to employ foreign citizens to fill a required position, in lieu of a U.S.-licensed mariner, satisfy the applicable laws and regulations, and to ensure that the foreign officer candidate holds an acceptable credential for service on these vessels. If any party wishes to appeal a decision of the U.S. Coast Guard that is made within the guidelines of this policy letter, that party may do so using the process set forth in 46 CFR Part 1.

This policy guidance is effective May 1, 2015.

4. Definitions.

- a. *South Pacific Tuna Treaty (SPTT)* is the 1987 multilateral Treaty on Fisheries Between the Governments of Certain Pacific Islands States and the Government of the United States of America, as re-negotiated/extended in 2013.
- b. *Distant Water Tuna Fleet (DWTF) Vessel* is a U.S.-flagged large purse seine fishing vessel, fishing exclusively for highly migratory species (generally various species of tuna) in the Treaty area under a fishing license issued pursuant to the SPTT.
- c. *Credential* is a mariner's document, license, or endorsement certificate, as generally described in 46 CFR Part 10, issued by an authority that indicates the mariner has met the professional requirements and other qualifications, as outlined in 46 CFR Part 11, to serve in a specified capacity on a vessel consistent with its tonnage, route/service, and/or horsepower rating. To be valid and acceptable for service on a DWTF vessel, a foreign citizen's *credential* must bear an official seal or signature of an administration's authority.

Note: A certificate from a training organization of a flag state is not adequate documentation to show capacity for service in a required position on a DWTF vessel. Only an official credential from an administration authority will be accepted. Such a credential would be an STCW certificate, or, a license that shows a tonnage, route/service, and/or horsepower rating. A credential that does not show service capacity will not be accepted until the Coast Guard can validate that the individual is qualified to serve on the vessel.

5. Background.

- a. *Legislative History for the Manning Exemption.* The DWTF manning exemption was first authorized by reference (a), and subsequently re-authorized and amended by references (b), (c), and (d). With the exception of the master (who must be a U.S. citizen), the manning exemption allows for relief from the requirement that U.S.-

**MAR 27 2015**

documented DWTF vessels employ properly licensed U.S. citizens in required navigation and engineering positions, subject to certain restrictions and limitations, and, if qualified U.S. citizens are not readily available.

- i) Reference (a) authorized U.S.-documented purse seine fishing vessels fishing exclusively for highly migratory species under a license issued pursuant to the SPTT, and operating in and out of American Samoa, to engage foreign citizens to meet the manning requirement, except for the master. The foreign citizen had to hold a license or certificate issued in accordance with the STCW, reference (g). The exemption authorization was valid for a 48-month period ending on July 11, 2010.
  - ii) Reference (b) temporarily re-authorized the use of foreign citizens in licensed positions (other than the master) on DWTF vessels, until December 31, 2012. The re-authorization also added a requirement that DWTF vessels engaging foreign citizens to meet a manning exemption must have an annual safety examination by the Coast Guard.
  - iii) Reference (c) again re-authorized the manning exemption for DWTF vessels and tied the expiration date to the date the SPTT ceases to have effect. The re-authorization also added Guam (previously only American Samoa) to the limitation on where a vessel must 'operate in and out of' to be eligible for the exemption. Further, it amended the licensing restriction that a foreign citizen engaged in a required position must hold a license or certificate issued in accordance with the STCW (reference (g)). In lieu of an STCW credential, reference (c) established that a foreign citizen's credential must be equivalent to one issued by the Coast Guard for the position, with respect to the requirements for experience, training, and other qualifications.
  - iv) Reference (d) amended the eligibility and requirements for a DWTF vessel to exercise the manning exemption. It removed the requirement for an Annual Dockside Safety Examination and that the vessel must operate in and out of American Samoa or Guam.
- b. *The U.S. DWTF.* The U.S. DWTF fishing under the SPTT may be comprised of up to 40 purse seine fishing vessels that have been granted fishing access privileges to the Exclusive Economic Zones (EEZ) of certain island nations within the South Pacific region that are parties to the SPTT. To be eligible for a license to fish under the SPTT, a vessel's certificate of documentation (COD) need only have a 'registry' endorsement as described in 46 CFR 67.17.
- i) From 2006 through 2014, the DWTF underwent a major capitalization and re-flagging effort that resulted in the construction of several new DWTF vessels in foreign shipyards, and the re-flagging of an additional number of vessels from foreign to U.S. documentation. Because these vessels were built or completed a major conversion after September 15, 1991, and operate with more than 16 individuals on board, they are also subject to the requirements of Subparts D and E of 46 CFR Part 28, pertaining to certain safety and equipment requirements, and stability.

MAR 27 2015

- ii) The newer DWTF vessels average approximately 220 feet in length, 1,800 gross tons, and a 3,600 horsepower propulsion engine rating. Some may carry fish-spotting helicopters, as well as related aviation fuel and support equipment. Older DWTF vessels are slightly shorter in length and are of lower tonnage and horsepower.
- iii) On a DWTF vessel exercising the manning exemption, there is often only one U.S. citizen on board (the master) and the crew is comprised of 25 to 45 individuals of various nationalities. A fishing voyage is typically 4-6 weeks in duration, and the fishing grounds may be thousands of miles away from any search and rescue resources. Landings are generally conducted in one of the island nations signatory to the SPTT. Trans-shipments, if conducted in accordance with the terms of the SPTT, and replenishment at sea may also occur.
- iv) From 2006 through 2014, there were numerous fatalities, two vessel losses, and numerous serious marine incidents experienced with U.S. DWTF vessels. DWTF vessels often have been unable to demonstrate full compliance with regulatory requirements during their safety examinations, which caused some delay in their returning to fishing operations. Due to the history of these vessels, circumstances surrounding the marine casualties, and the remoteness of their operating areas, the Coast Guard considers the DWTF to be high-risk vessels.

6. Discussion on the Manning Exemption and Enforcement.

- a. The lineage of statutes that authorized and re-authorized the manning exemption for DWTF vessels established requirements, restrictions, and limitations to be eligible for the exemption. A Manning Exemption Letter is a letter from the Coast Guard that validates the vessel/operator's eligibility for the manning exemption, and may expedite a vessel boarding or examination process. Owners, operators, and/or vessels must comply with statutory requirements to be eligible for the foreign manning exemption, but as noted in paragraph 5.a, those statutory requirements have changed several times since 2006. Specific items to be completed to receive a Manning Exemption Letter, and the documentation to be submitted and reviewed by the Coast Guard, are outlined in paragraph 7. Upon satisfactory review of the submitted documentation, a Manning Exemption Letter may be issued. A Manning Exemption Letter may be requested at any time following the completion of procedures in paragraph 7. Manning Exemption Letters, and any revised letters, will be issued by the 14<sup>th</sup> Coast Guard District Commander's staff after the necessary documentation has been submitted and validated.
- b. Should a DWTF vessel experience a marine casualty and the investigation determines that a foreign-credentialed mariner contributed to the casualty as a result of incompetence, negligence, or violation of U.S. law or regulation, the following action may be taken: 1) a report made to the administration that issued the foreign mariner's credential; and 2) the owner/operator may be requested to replace that individual as soon as possible.

MAR 27 2015

- c. Masters of DWTF vessels are ultimately responsible for the safe operation of their vessel and the safety of their crew. They are also responsible for compliance with all applicable statutory and regulatory requirements for the vessel, including proper manning or manning exemption requirements. A vessel found operating without the proper documentation or satisfying the manning exemption requirements, may have its Manning Exemption Letter revoked, and the owner, operator, and/or master may be subject to enforcement action. Enforcement action may include the issuance of a violation report, assessment of a civil penalty, voyage termination or Captain of the Port Order against the vessel, and/or suspension and revocation proceedings against the master. These actions are also possible following a marine casualty incident as described in paragraph 6.b.

7. Procedures and Guidance for Obtaining/Issuing a Manning Exemption Letter.

- a. On an annual basis (usually during the month of June), the Coast Guard will verify with NOAA's Pacific Islands Regional Office the identification of vessels that have a current license to fish under the South Pacific Tuna Treaty. Without a current license issued pursuant to the Treaty, a vessel is ineligible for a manning exemption and a request for a Manning Exemption Letter will not be considered. Should a DWTF vessel not renew or be re-issued its license to fish under the SPTT, any Manning Exemption Letter for that vessel will become null and void and revoked on the date the vessel's license expires. Therefore, the first step to be eligible for a manning exemption is for a vessel to obtain a license to fish under the Treaty.

If a DWTF vessel has a license under the Treaty, a Manning Exemption Letter may be issued for a period of up to two years provided the owner/operator complies with the provisions of this policy letter. Manning Exemption Letters are intended to validate manning exemption eligibility set forth in references (a) through (d) and verify compliance with applicable laws and regulations. The letter also recognizes the company's/owner's/ operator's acceptance of the manning exemption requirements and understanding of compliance. A Manning Exemption Letter request must be submitted in writing to the 14<sup>th</sup> Coast Guard District Commander. The request must be made a reasonable time in advance of the date on which any foreign citizen is to be engaged on a vessel. Copies of all required documents and information and the written request may be initially submitted via email or facsimile, however, originals shall be provided to:

Commander (dp)  
14<sup>th</sup> Coast Guard District  
300 Ala Moana Blvd, Room 9-212  
Honolulu, HI 96850-4982  
Attn: DWTF Manning Exemption Letter Request

- b. The request for a Manning Exemption Letter, or renewal, is expected to include the following information/documentation necessary to validate manning exemption eligibility:

MAR 27 2015

- i) Owner/operator evidence or demonstration, by written documentation, that there are no U.S. citizens readily available to fulfill the manning requirement for the vessel as established in 46 CFR Part 15.
  - A. Information showing that the company continues to actively advertise for U.S. citizens to fill the licensed positions required on these vessels, through national/regional fishing and maritime trade periodicals, as well as any company web sites.
  - B. A record of advertisements run, job fairs or similar events attended, and U.S. maritime personnel organizations and other appropriate suppliers of workers, e.g. union halls, maritime academies, and maritime trade schools, contacted for recruiting efforts.
  - C. A summary listing the number of applications/résumés/inquiries received, number of interviews granted, and reasons applicants were not acceptable for the position.
- ii) Identification of the certified Drill Conductor(s) who provide(s) the monthly instruction and emergency drills on the vessel(s); including the name of the qualified individual, date certification was received, and training organization issuing the certification.
- iii) Verification that each foreign officer employed under the manning exemption has or will have a valid national credential or endorsement, written in or translated into English, and certified by a cognizant authority of an issuing administration recognized or accepted by the Coast Guard (see addendum), that is of the prescribed level, and meets the spirit and intent of the competencies and suitability a U.S. citizen serving in the same position would be expected to have. The individual must be qualified to serve in a specified capacity on a vessel consistent with the tonnage, route/service, and/or horsepower rating of the specific DWTF vessel on which the individual is intended to be employed. The issuing administration's requirements for experience, training, and other qualifications must be similar to those required by the Coast Guard.

Note: A list of administrations whose credentialing requirements the Coast Guard determines to be acceptable for manning exemptions on DWTF vessels will be available as a separate addendum to this policy letter such that it can be revised and updated as necessary without requiring re-issuance of this letter. Any other administration's credentials can be considered for an acceptability determination if the owner/operator of the DWTF vessel provides the Coast Guard Headquarters Office of Commercial Vessel Compliance (CG-CVC), Mariner Credentialing Program Policy Division (CG-CVC-4), with information on that administration's credential requirements for evaluation.

- iv) In addition to providing an acceptable credential for a foreign mariner whom there is an intention to employ, the owner/operator/master of the vessel must affirm the following for each individual to be employed under the manning exemption:

MAR 27 2015

- A. A navigation officer has a basic English proficiency, which means the mariner can, as expected of a licensed officer on a U.S- documented commercial fishing vessel, effectively understand the navigation rules, aids to navigation publications, and radio-telephone communications instructions.

Note: A licensed GMDSS radio operator, if so employed on board the vessel, may fulfill this requirement so long as that operator is on duty at the same time as the foreign mariner filling the Officer-in-Charge of a Navigation Watch (Chief Mate) position.

- B. The officer meets the moral character, physical and medical fitness standards of the credentialing administration, and has satisfactorily passed a drug test.
- v) A fishing agreement, as required by 46 U.S.C. Chapter 106, showing compensation for officers and crew, is available on the vessel.
- c. Upon satisfactory review and acceptance of the information and documentation provided in accordance with paragraph 7. b, above, the 14<sup>th</sup> Coast Guard District Commander may issue a Manning Exemption Letter. The letter may be issued to the company, owner, or operator, but must identify the vessel(s) to which it applies. A copy of the letter should be carried onboard a vessel and be available for inspection upon request to expedite a boarding or examination process.
8. Miscellaneous topics related to Manning Exemptions.
- a. *Replacement of a Foreign Officer Due to an Emergency.* If a foreign officer with a credential from an administration not previously accepted is hired to replace the currently employed foreign officer (previously accepted) due to an emergency during the approved exemption period, the owner/operator or master must exercise due diligence to ensure the new individual's credential is valid and meets the acceptability requirements of this policy letter. The replacement foreign officer should be changed out at the earliest possible port call with an acceptable individual unless information on that administration's licensing experience and training requirements is submitted to the Coast Guard within 72 hours of the replacement officer embarking the vessel, and that administration's credential requirements can be validated prior to the vessel's port call. Upon satisfactory review and acceptance of the information and documentation, the Coast Guard may add that administration to the list of accepted administrations.
- b. *Crew Manifests.* At any time while a manning exemption is exercised, the Coast Guard may request a copy of the vessel's current crew manifest, to be provided within 72 hours to the requesting office. If a foreign officer employed per the manifest does not have a proper credential, that individual will have to be removed from the vessel and replaced as soon as possible, but not later than during the vessel's next port call. Sailing with an ineligible foreign officer may be grounds to void the current Manning Exemption Letter for the vessel, and may subject the owner/operator or master to enforcement action, as discussed in paragraph 6. c.

MAR 27 2015

- c. *Safe Manning Letter.* In addition to a Manning Exemption Letter, it is recommended that owners/operators/masters of DWTF vessels request a Safe Manning Letter from the cognizant OCMI, acknowledging that the vessel meets the manning requirements for the vessel under 46 CFR Part 15. Because DWTF vessels are not issued, or do not carry a certificate of inspection, this letter would then be available to provide any port state control official who may question the manning requirements for the operation of the vessel and its voyages.
- d. *Global Marine Distress and Safety System (GMDSS) Requirements.* DWTF vessel owners and operators are reminded that the master and at least one additional individual on the vessel must be a licensed GMDSS radio operator.
- e. *Compliance with Other Applicable Statutes, Regulations, and International Treaties.* It is the responsibility of vessel owners, operators, and masters to know and understand all applicable requirements for their vessel and ensure compliance. Compliance will be verified by the Coast Guard during any contact with the vessel, but particularly during any inspection activity or Dockside Safety Examination.
- f. *Dockside Safety and Other Examination Requirements.*
- i) Per reference (d), an “Annual” *Dockside Safety Examination* is no longer required for DWTF vessels that wish to exercise the manning exemption to employ foreign citizens. Effective as of the date of this letter, DWTF vessels will now only be required to meet the same Dockside Safety Examination requirement applicable to other commercial fishing vessels. An examination must be completed at least once every five years, with the first such examination completed prior to October 15, 2015 as set forth in 46 U.S.C. §4502(f), established by Section 305 of reference (c). When a Dockside Safety Examination is conducted on a DWTF vessel, the examination will include verification of compliance with the manning requirements in 46 CFR Part 15, the provisions of a Manning Exemption Letter, the safety and survival equipment requirements set forth in 46 CFR Part 28, and International Treaties and Conventions.
- ii) Although the frequency for a Dockside Safety Examination for DWTF vessels will now be only at least once every five years, if an owner or operator chooses to comply with this minimum standard only, he or she should be aware of potential unintended compliance consequences with regard to other established policies, programs, and requirements. For example:
- A. The National Oceanic and Atmospheric Administration (NOAA), as set forth in 50 CFR Part 600.746(d), will not deploy a fisheries observer on a vessel that has not passed a USCG Commercial Fishing Vessel Safety Examination.
- B. MARPOL International Oil Pollution Prevention and International Air Pollution Prevention Certificates, as may be applicable to certain vessels, require periodic examinations (inspections) to be performed to keep the certificate valid and in effect. Invalid international certificates, if found when a vessel is examined by a

MAR 27 2015

nation's Port State authority, could lead to an international detention filed with the International Maritime Organization, or other enforcement actions.

- iii) *Fishing Vessel Examiners.* Due to the size and complexity of DWTF vessels, when a Dockside Safety Examination is requested, Coast Guard vessel examiners should have a Fishing Vessel Safety Examiner (CFVE) qualification, and either a Marine Inspector Hull (HI) qualification or a Machinery (MI) Qualification.
- iv) *Requesting an Examination.* The owner/operator can arrange for an examination by contacting the appropriate OCMI well in advance of the desired date for the examination.
- v) *Examination Location.* Considering possible travel restrictions and budget limitations, the Coast Guard expects the Dockside Safety Examinations and checks on other regulatory compliance requirements to be conducted in American Samoa or Guam. On a case-by-case basis, the Coast Guard will consider an owner's/operator's request for an examination/inspection to be conducted in a foreign port. The owner/operator must contact the appropriate OCMI (Sector Guam, MSD Pago Pago, Sector Honolulu, or Coast Guard Activities Far East) at least 30 days in advance of the desired visit to the foreign port for such request to be considered. Further, the owner/operator must acknowledge and agree in writing to pay any applicable overseas examination fee and travel reimbursement for Coast Guard personnel.

9. Point of Contact. The point of contact regarding the foreign citizen manning exemption on DWTF vessels is Mr. Charlie Medlicott, 14th Coast Guard District Commercial Fishing Vessel Safety Coordinator. He can be reached at 808-535-3417, or at [Charles.J.Medlicott@uscg.mil](mailto:Charles.J.Medlicott@uscg.mil).

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Addendum: Matrix of Acceptable Administration Credentials and Qualified Mariners (This is a separate related document that can be updated as information is received and validated without requiring revision of this policy letter. A copy is available from Commandant (CG-CVC) or CCGD14 (dp).)