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### FOREIGN SEAMEN ON U.S. FLAG VESSELS

#### Contents

Preamble: The shortage of Mariners.....	1
An American Mariner Complains.....	1
GCMA Takes a Stand to Protect American Jobs.....	2
GCMA Mariner Sounds Alarm on Homeland Security .....	2
Foreign Crew Exploited While Working on Offshore	
Supply Vessels in the Gulf of Mexico .....	3
Background: The Applicable Statute .....	5
Background: The Marine Safety Manual.....	5
Comply with Visa Requirements to Work Offshore	
or Else .....	7
Prominent Admiralty Attorney Warns GCMA of	
Provisions of H.R. 889 .....	8
Giving Away American Mariner Jobs: GCMA Opposes	
Foreign "Riding Crews".....	10

### PREAMBLE: THE SHORTAGE OF MARINERS

The maritime industry in the United States may have come to grips with the fact that the supply of "lower-level" mariners willing to work in any capacity on tugs, towboats, offshore supply vessels, and small passenger vessels is not likely to increase. Many believe that the only remaining solution to their personnel problems lies in recruiting foreign seamen. While some of the practices are legal, others skirt existing laws while others are illegal.

The shortage of mariners is more than a national problem. It is an international problem that involves not only entry-level mariners but also trained officers at all levels.

While our report will focus on "lower-level" mariners, it cannot ignore the problems that large vessel owners face in crewing their vessels and the extent to which they will go to solve their problems.

The push to use foreign seaman on American-flag vessels is an attempt to hire individuals that will work for less money than their American counterparts and will accept almost any unsafe or unhealthy workplace conditions and do almost

anything their employers require to earn a paycheck to support their families overseas or in neighboring countries.

The search for "cheap labor" has caught up with our "lower-level" mariners. It is a "race to the bottom" that started by:

- reducing crew size to an absolute minimum – often to unsafe levels.
- removing cooks from many line haul towboats and offshore supply vessels.
- abusing the "12-hour rule" for licensed officers on a two-watch vessel by expecting them to perform additional duties "after hours."
- by fighting to prevent reasonable work-hour limits for unlicensed personnel on inland waters and rivers.
- by encouraging and allowing illegal immigrants to work on American-flag vessels.

From our observations over the past six years, we believe the Coast Guard is either ill prepared or reluctant to deal with the emerging situation because they have become too closely bound to the will of industry trade associations.

### AN AMERICAN MARINER COMPLAINS

[Source: This article appeared in *WorkBoat Magazine*, August 2002, "Mail Bag", p. 9.]

Why are foreign seamen allowed to remain in port aboard foreign-flag ships in Fourchon, LA, and other ports along the U.S. Gulf Coast when U.S. merchant mariners are being laid off? Are these foreign-flag ships and lay barges allowed to work U.S. coastal waters in violation of the Jones Act that's supposed to protect U.S. merchant seamen?

U.S. masters are violating U.S. admiralty law by commanding these ships with illegal crews in U.S. waters. Some U.S. chief engineers are also serving aboard these ships. Why has the U.S. Customs Service<sup>(1)</sup> and the U.S. Immigration and Naturalization Service<sup>(1)</sup> turned their backs to these illegal port calls? Why isn't the U.S. Coast Guard doing anything about these illegal operations? Have our U.S. oil companies gotten so much power that all the enforcement authorities are either in partnership with these oil companies or are simply choosing to look the other way? [<sup>(1)</sup> These agencies were reorganized into the new Department of Homeland Security on March 1, 2003.]

It's time for something to be done about this situation. It's time for merchant seamen and the friends of merchant seamen to join together and throw these foreigners out of our waters. They're our jobs. Write and call your Congressmen and senators. Tell them what is going on and what you want done about it. Without action, our merchant fleet is doomed. S/Jonny Weelman, Portland, Maine.

**[GCMA Comment: Our thrust is not to "throw out" foreign seaman. Rather, it is to prevent the continued exploitation of our own "lower-level" mariners by improving working conditions in the maritime industry to attract more of our countrymen to well-paying jobs and stable employment.]**

**[GCMA supports the efforts of the International Transport Workers Federation (ITF) in improving working conditions on foreign-flag vessels.**

**GCMA TAKES A STAND TO PROTECT AMERICAN JOBS –2002**

GCMA first took a stand on foreign seamen working on U.S.-flag vessels in a Letter to the Editor of WorkBoat magazine on July 26, 2002 as follows:

“We would like to comment on the letter by Jonny Weelman published in the August’s WorkBoat complaining about foreign seamen working aboard foreign-flag vessels in Port Fourchon, LA and other ports along the U.S. Gulf Coast. It’s interesting to note that his letter was sent from Portland, Maine, which indicates how pervasive knowledge of foreign vessel activity in Port Fourchon has become.

“The letter complains about the use of foreign-flag vessels in our coastal waters in violation of the Jones Act. The Jones Act states that only certain U.S.-flag vessels have the right to engage in coastwise trade. Whether or not these foreign-flag vessels actually are engaging in coastwise trade is debatable. This is also a determination for U.S. Customs to make, not the U.S. Coast Guard.

“On the other hand, enforcement of U.S. citizenship requirements in the Outer Continental Shelf Lands Act (OCSLA) is a **duty** of the U.S. Coast Guard. It is a matter of speculation by some observers whether or not this enforcement is being done diligently, if at all.

“Could one or more of these foreign vessels be in Port Fourchon for any purpose other than to perform some form of offshore oil-related activity on the U.S. outer continental shelf relative to an oil development-related activity? This is a legitimate question to ask after the attacks of September 11<sup>th</sup>.

“We understand that the OCSLA mandates that only U.S. citizens be employed on the U.S. outer continental shelf in support of the mineral and oil industry. There are several very limited exceptions to these requirements for certain personnel: when U.S. citizens are not available, when foreign companies have the right to effectively control a vessel, or for certain temporary and intermittent professional personnel who are not crewmen. We believe that many officials in both the U.S. Coast Guard and the mineral and oil industry are completely unaware that these citizenship requirements (as defined in 33 CFR Part 141)<sup>(1)</sup> apply to both **fixed** and **floating** production units, MODUs, and other vessels that support the exploration, development, and exploitation of the OCS oil and mineral resources. <sup>[<sup>(1)</sup> *The USCG regulations governing operations on the OCS have been under revision for over 10 years, have become hopelessly outdated, and are unable to provide American workers including merchant seamen the workplace protections they need. Revisions would “require foreign vessels engaged in OCS activities to comply with requirements similar to those imposed on U.S. vessels similarly engaged. Refer to Docket #USCG-1998-3868.*]</sup>

“We understand that in light of the events of September 11, 2001, the Coast Guard has taken significant steps and Congress has provided funds to protect many of the nation’s ports and waterways from terrorist attacks. Notably, no funds were provided to protect Port Fourchon and its vulnerable

access route! However, the Coast Guard’s October 4, 2001, temporary final rule lengthening the usual advance notification of arrival from twenty-four to ninety-six hours for certain vessels bound for United States ports is a welcome effort. This rule properly exempts U.S. flag vessels that carry passengers and supplies in support of the OCS mineral and oil industry. Could it be that the U.S. Coast Guard is not requiring foreign-flag vessels performing similar duties to give 96 hours advance notice of their arrival at U.S. ports? These vessels are clearly not a part of the coastwise exemptions granted in the temporary regulation.

“These foreign vessels in the Gulf of Mexico include derrick barges, seismic vessels, dive support vessels, MODUs, and others, which routinely perform important industrial tasks on the outer continental shelf. These vessels, in and of themselves, are not necessarily a security concern. However, since they may generally be considered exempt from the notice of arrival requirements, they could potentially offer opportunities for vessels not legitimately performing OCS activities to claim to be doing so, and enter our ports without scrutiny or notice. Clearly, this is not an acceptable situation.

“Does the U.S. Coast Guard really believe that Osama bin Laden and his Al Qaeda organization do not own, operate and crew vessels, and that they are not aware of what typically occurs at oil industry staging ports? Oil exploration and drilling and related activities are well known in the Middle East. Even Americans like Mr. Weelman in Maine can see what goes on in the Gulf of Mexico.

“We recognize that these are challenging issues that require the focus of resources and attention to detail.

“If, as a nation, maritime security is a real issue of concern, then the U.S. Coast Guard should be concerned about foreign vessel activities in Port Fourchon, as well as other oil staging ports along the Gulf Coast and, in fact, nationwide. We understand that there may be cases where foreign vessels departing west coast ports deliver supplies and cargo to American drilling rigs.

“It would seem that the present situation presents an ideal opportunity to the U.S. Coast Guard to both perform what may turn out to be critical national defense port security functions with respect to these vessels, as well as ensuring that U.S. citizens are performing OCS activities as required by law. Jobs of American mariners are clearly at stake.

“We understand that any foreign vessel engaged in an OCS activity should either be manned entirely by U.S. citizens, or the vessel must have letters from the U.S. Coast Guard in Washington for crew exemptions to the law, or authorizing letters (also from the U.S. Coast Guard) approving a “foreign right to effectively control” the vessel.

“We have good reason to believe the offshore oil industry considers U.S. Coast Guard enforcement of certain federal law is a joke and privately hold them up to ridicule. Isn’t it time to get the job done?

s/Richard A. Block  
Master #1014425  
Secretary, GCMA

**GCMA MARINER SOUNDS ALARM  
ON HOMELAND SECURITY**  
Source: GCMA Newsletter #24, July/August 2004

Although some parts of the new regulations give us heartburn, GCMA actively supports the nation's homeland security efforts. We have been very specific in asking our mariners to keep their eyes open and report suspicious operations.

One of our most experienced licensed masters did just that when he found a number of things seriously amiss on the vessel he was assigned to. The vessel was a dilapidated offshore supply vessel that had been re-flagged and was operating under a "flag of convenience" (FOC). The vessel was working for an American company with a foreign crew hired to work in the offshore mineral and oil industry off the Louisiana coast.

Among other things, in fact among a great many other things, the vessel had no sign of a security plan and regularly worked between several gulf coast oil ports.

The master reported the discrepancies he found on the vessel to one Coast Guard Marine Safety Office but never received a return call.

The master was concerned about security. He was also concerned about a number of unsafe conditions aboard the vessel. In addition, the foreign crew reported that they had signed an agreement to work 8-hour watches but were being exploited to work a typically endless oilfield day of at least 12-hours.

After hearing nothing from the Coast Guard, the master called GCMA for advice and then proceeded to fully document his story. GCMA, in turn, immediately contacted the commanding officers of two marine safety offices to conduct a thorough investigation of the master's allegations. At press time<sup>(1)</sup>, we have no further information on the progress of this investigation. [<sup>(1)</sup> *In fact, we only learned by accident that the Coast Guard finally took some action against the owners of the vessel from an outside source.*]

Since the Coast Guard does not take sides in "labor disputes," GCMA also contacted the International Transport Workers Federation (ITF) inspector in New Orleans, the national ITF office in Washington and ITF headquarters in London.<sup>(1)</sup> [<sup>(1)</sup> *Unlike the Coast Guard, the ITF showed immediate concern over the exploitation of foreign seamen.*]

The offshore oil industry poisoned its pool of licensed and documented mariners with its virulent anti-labor union activities starting in 1999. The conditions and activities reported to us in this particular case show how willing certain companies are to break not only U.S. labor laws but other laws as well to make a fast buck.<sup>(1)</sup> [<sup>(1)</sup> *The OSV was a vessel previously financed by American taxpayers under Title XI. The Maritime Administration foreclosed upon the defaulted loan and sold with the express provision that it would never be used in the offshore oil industry in U.S. waters – as it was now employed!*]

GCMA is concerned for the health, safety, and welfare of all mariners regardless of race, creed, color, or national origin. We also support the Jones Act protections our mariners have come to expect.

**FOREIGN CREW EXPLOITED WHILE WORKING  
ON OFFSHORE SUPPLY VESSELS  
IN GULF OF MEXICO**

At GCMA we have heard stories of companies cutting corners out in the Gulf of Mexico by hiring foreign workers to perform jobs normally done by Americans.

The Eighth Coast Guard finally addressed the problem in Policy Letter 02-2004. We reprinted pertinent portions below for your information and action and added emphasis by underlining, removed meaningless information, and provided other information as needed.

**[GCMA Comment: We want every offshore mariner to be familiar with this policy letter. As part of homeland security awareness, if you have any definite knowledge of violations of this policy please report specific facts (e.g., names, dates, boat names and places) to GCMA for evaluation and placement with our USCG contacts.]**

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.<sup>(1)</sup> 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.<sup>(2)</sup> The OSV owners typically arrange for all the transportation costs for the foreigners and take care of any health issues.<sup>(3)</sup> 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<sup>(3)</sup> with U.S. citizens, the OSV owners view the foreigners as "extra" crewmembers. [<sup>(1)</sup> *OCS = Outer Continental Shelf.* <sup>(2)</sup> *G-MOC = A staff department at USCG Headquarters.* <sup>(3)</sup> *One company abandoned a seriously-injured mariner in New Orleans to find his own way home.* <sup>(4)</sup> *COI = Certificate of Inspection.*]

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.)<sup>(1)</sup> The effect of these statutes is that all crewmembers on an OSV operating 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.

**[GCMA Comment: Several years ago one local employment agency attempted to obtain a waiver to bring in hundreds of foreign deckhands and engineers. The maritime unions pointed out to authorities in Washington that there were many qualified American workers available.]**

#### 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, 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 on 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<sup>(1)</sup> 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 under way 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". [<sup>(1)</sup>MSM = Marine Safety Manual, Volume 3 is a USCG publication that contains Coast Guard personnel policies.]

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 on 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 save as crewmembers on board an OSV in the U.S. OCS. Therefore, OCMI's 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 USC 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.
- (2) For subsequent offenses:
  - (1) 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.

Distribution : All Eighth District MSOs & MSUs.

**BACKGROUND: THE APPLICABLE STATUTE**  
**[46 U.S.C. 8103 (Partial)]**

**[GCMA Comment: A statute is based on an Act of Congress. “Regulations” must be based upon statutes.]**

**§8103. Citizenship and Naval Reserve Requirements.**

(a) 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 documented vessel.

(b)(1) Except as otherwise provided in this section, on a documented vessel –

(b)(1)(A) Each unlicensed seaman must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence; and

(b)(1)(B) Not more than 25 percent of the total number of unlicensed seamen on the vessel may be aliens lawfully admitted to the United States for permanent residence.

(b)(3) The Secretary may waive a citizenship requirement under this section, other than a requirement that applies to the master of a documented vessel, with respect to –

(b)(3)(A) An offshore supply vessel or other similarly engaged vessel of less than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title that operates from a foreign port;

(b)(3)(B) A mobile offshore drilling unit or other vessel engaged in support of exploration, exploitation, or production of offshore mineral energy resources operating beyond the water above the outer Continental Shelf (as that term is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)); and

(b)(3)(C) Any other vessel if the Secretary determines, after an investigation, that qualified seamen who are citizens of the United States are not available....

(f) A person employing an individual in violation of this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of \$500 for each individual so employed....

(h) The President may –

(h)(1) Suspend any part of this section during a proclaimed national emergency; and

(h)(2) When the needs of commerce require, suspend as far and for a period the President considers desirable, subsection (a) of this section for crews of vessels of the United States documented for foreign trade.

**BACKGROUND: THE MARINE SAFETY MANUAL**

**[GCMA Comment: The Marine Safety Manual (MSM) is a Coast Guard publication containing information and explanations that guide Coast Guard personnel in the performance of their duties. It helps mariners to understand the purpose, goals, and expected outcomes of many Coast Guard programs.]**

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

(E)(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. The 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.

(E)(1)(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 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 “a person addition to the crew.”

(E)(1)(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 seaman.

(E)(1)(c). The actual details of a particular situation will determine whether in fact the individual question is a seaman for the purpose of 46 U.S.C. 8103.

(E)(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 percent 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.

(E)(2)(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 seamen citizenship requirements. Except for the master, any unlicensed persons are 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.)

(E)(2)(b). 43 U.S.C. 1356 Exemptions. U.S. citizenship requirements in 33 CFR 141 do not apply to 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 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 its shore.

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

(E)(2)(b)(1). Provisions For Bareboat Chartered Vessels. Ownership and control of an OCS unit can be significantly altered by bare boat charter. (e.g. A foreign vessel bareboat chartered to a U.S. citizen or a 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.....

*[Note: Subsidy & Fishing Industry Vessels – text omitted]*

(E)(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 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.

(E)(5)(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).

(E)(5)(b). Other Vessels Engaged In OCS Activities. The above general waiver only applies to OSVs and MODUs. Vessels of less than 1,600 GT which are not OSV's, 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.

(E)(5)(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 be found for identified positions.

*[Note: Fishing vessels text omitted.]*

(E)(5)(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.

(E)(5)(e)(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 a 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 NVIC7-84 for guidelines on exceptions from OCS citizenship requirements and procedures relating to waivers from these requirements.)

(E)(5)(e)(2). National Registry Manning Requirements. 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 September 18 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.

(E)(5)(e)(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 alien would not be consistent with the national interest.

(E)(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 local INS office to discuss how questions concerning aliens will be addressed when they arise.

**COMPLY WITH VISA REQUIREMENTS  
TO WORK OFFSHORE OR ELSE**

*[Source: Marine News, Nov. 2005. By Jonathan K. Waldron and Charles T. Blocksidge.*

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All vessels operating and conducting activities on the United States Outer Continental Shelf (OCS) are required to be U.S.-crewed subject to certain exemptions. Foreign crewmen operating under these exemptions are required to obtain a special visa called an B-1 (OCS) visa. While this requirement has been in effect since the 1970s, enforcement of the B-1 (OCS) visa requirement took on new meaning following the events of September 11, 2001 and the implementation of enhanced security measures.

Knowledge of the exemption and visa requirements is particularly critical due to the flurry of clean up and repair activities following Hurricanes Katrina and Rita in the Gulf of Mexico. Vessel owners and operators have generally been familiar with the manning citizenship requirements; however, the process of applying for and securing the appropriate visa for the vessel's crew is of heightened interest to the Customs and Border Protection officials since 9/11. The following is a brief overview of the exemption request and visa application process. It is critical that the application process start early to ensure offshore operations are not adversely affected.

### **Background**

Through the Outer Continental Shelf Lands Act and its amendments, Title 43 of the United States Code, sections 1331 – 1356, Congress announced that the United States Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the OCS and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed. To this end, vessels conducting operations on the OCS must be documented under the laws of the United States and manned or crewed by citizens of the United States or aliens lawfully admitted to the United States for permanent residence.

If a vessel and its crew do not meet this U.S. manning

requirement, then the vessel owner or operator must apply for a manning citizenship exemption. To be granted the exemption, the applicant must be able to prove that citizens of a foreign nation have the absolute right to effectively control the vessel or that ownership of the vessel is over fifty percent foreign. Vessels intending to conduct operations on the OCS generally fall into two categories:

(1) U.S.-flag vessels with a U.S. crew and other foreign citizens needed to perform emergency or specialist work on a temporary basis, or

(2) a foreign-flag vessel with a foreign crew.

Historically, foreign individuals working on vessels on the OCS were able to work on vessels conducting OCS operations with a crewmember/transit visa (C 1/ D visa) due to limited enforcement of the B-1 (OCS) visa requirement. This visa was issued for persons desiring to enter the United States to join a vessel and/or serving as a crewmember on a vessel making a routine port call in the United States. Due to the increased security interests after 9/11 in monitoring individuals that enter the United States, persons engaged in OCS activities must now possess a B-1 (OCS) visa or they will not be allowed ashore in the United States.

### **Exemption Process**

The application process to receive a citizenship exemption to use a foreign crew can be very time consuming. The application package is submitted to the Coast Guard's Division of Foreign and Offshore Compliance. The application must, among other things, contain the following information or the package will be deemed incomplete and therefore delay the approval process.

- Project Scope
- Personnel
- Vessel information
- Contracts, subcontracts and/or bareboat charter agreements that affect ownership or control
- Parent company public trading and registration documents
- Public trading and registration documents for all companies in the chain of ownership
- Affidavits identifying/certifying ownership, control, and nationality of shareholders and directors.

Approval can often take 60 or more days depending on the complexity of a particular case. Following approval, the vessel owner can begin the process of obtaining B-1 (OCS) visas for their crew. Exemption requests to supplement a U.S. crew with additional individuals to provide specialist or technical skills (i.e. persons considered in addition to the "regular complement" of the vessel) must be sent to the local Coast Guard office for a determination.

### **Visa Process**

Once an exemption package is approved, the Coast Guard issues a letter of exemption for the vessel. Based on this letter, a B-1 (OCS) visa may be issued for the purpose specified in the exemption letter. The amount of time it takes to be issued a B-1 (OCS) visa depends largely on the consulate through which the application is being processed. In addition to the exemption letter, the applicant for the visa

must provide the following:

**Payment of a Non-Refundable Application Fee**

- A completed visa application form DS-156 and DS157 (when applicable)
- A passport valid for travel to the United States and with a validity date at least six months beyond the applicant's intended period of stay in the United States
- One passport size photo (not digital, taken within the last six months)
- A comprehensive letter, or contract from the employer over on the employer's letterhead (original) identifying the crew member and describing in detail the nature and function of the crewmember's position.

In order to avoid potential breach of contract actions and other operational delays, foreign vessel owners and operators should plan accordingly to submit manning citizenship exemptions requests in a timely manner since processing and approval normally takes between 60 and 90 days. To this end, it is strongly encouraged that U.S. counsel be sought as the exemption request process involves a detailed understanding of the vessel owners corporate organization, the vessel's operational capabilities, and most importantly the legal framework which is used to analyze a request. Legal counsel should also be used to ensure that B-1 (OCS) visas are applied for and obtained for foreign crewmembers. Failure to secure not only the citizenship exemption, but also the proper B-1 (OCS) visas for a vessel's crew can result in fines, penalties, lengthy operational delays and personnel issues such as refusal to allow crewmembers ashore, meet a vessel, or deportation.

**PROMINENT ADMIRALTY ATTORNEY  
WARNS GCMA OF PROVISIONS OF H.R. 889  
Source: GCMA Newsletter #34, Sept/Oct 2005**

*[Source and Introduction: Ralph J. Mellusi called and directed us to his posting on website [www.sealawyers.com](http://www.sealawyers.com) .*

*At first glance, the subject matter appears to apply only to "upper-level" deep-sea mariners. However, the implications of Section (§) 425 of this bill should be very clear and equally disturbing to our lower-level mariners as well.*

*Because of the shortage of experienced merchant mariners at all levels (as documented in a WorkBoat magazine article in the October 2005 issue), it is disheartening to see that Congress appears to have caved in by encouraging use of foreign seamen.*

*This "Bill" passed the House of Representatives by a vote of 415 to 0. It now moves on to the U.S. Senate. Time is short, and if you find it as troubling as we do, pick up your phone and call your United States Senator – NOW NOT LATER! His or her number is in the phone book under U.S. Government. Additional emphasis by underlining is ours. The law offices of Tabak, Mellusi & Shisha are located at 29 Broadway, New York, NY 10006-3267. Tel (212) 962-1590 or (800) 280-1590; FAX (212) 385-0920.]*

September 26, 2005

**Comments on H.R. 889  
An Act To Authorize Appropriations for Coast Guard**

**Fiscal Year 2006**

(Otherwise known as an Act to Out-Source American Seafaring Jobs)

On September 15, 2005, the House of Representatives, passed H.R. 889. One of the amendments to the Bill, which was sponsored by Congressman Young from Alaska, will have a major adverse impact on U.S. maritime, seagoing labor. Oddly, this amendment sailed through the House without a single opposition, 415 to 0. The amendment, which is found in section 425 of the Bill, is entitled "Citizenship and Naval Reserve Requirements." A copy of the Index to the Bill, the relevant section, and Congressional Record are attached as Exhibit 1. Relevant section 425 reads as follows:

"Section 8103 (b) of Title 46, United States Code, is amended by adding the following language at the end of that subsection:

(4) Paragraph (1) of this subsection and section 8701 of this title do not apply to individuals transported on international voyages who are not part of the crew complement required under section 8101 or a member of the Stewards department, and do not perform watchstanding functions. However, such individuals must possess a transportation security card issued under section 70105 of this title, when required."

The significance of this is the following. First, what this Bill accomplishes, in simple words, is that it permits U.S. flag vessels to carry an unspecified number of foreign seamen on international voyages to perform any type of work (outside of the stewards department) excepting work considered to be a "watchstanding function". This means that all non-watch standing work, including but not limited to maintenance and repair, heretofore performed by U.S. citizen crews, can now be performed by foreign seamen.

The impact of this will greatly affect licensed personnel (engine more so than deck) and all unlicensed ratings excepting those in the stewards department.

A glimpse into some history which preceded this Bill is reflected in an exchange of correspondence between Admiral Thomas H. Collins, USCG, William G. Schubert, Maritime Administrator, and Vice Admiral David Brewer, Department of the Navy, attached as Exhibit "2". *[Attachments are available on the website.]*

As reflected in this exchange and to their credit, the U.S. Coast Guard has stood fast, against the contrary intentions and opinions of these agencies, by properly interpreting and enforcing the U.S. citizenship and other requirements contained in the federal manning laws and regulations. However, and based on the current and growing use of foreign seaman riding crews on U.S. vessels, (more will be said later on this) it would appear that the Coast Guard's enforcement efforts have not been completely effective.

A concise summary of the relevant laws and regulations are contained in the Coast Guard Marine Safety Manual, which can be viewed on line at:

<http://www.uscg.mil/hg/g-m-nmc/pubs/msm/v3/c20.htm>

In a nutshell, the current federal law and the Coast Guard's interpretation as stated in the Marine Safety Manual, is summarized as follows:

## 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 contributed to accomplishing the ship’s business, whether that person is involved with the operation of the vessel.”

“A crewmember may be a seaman although he or she is not occupying a position required by the Certificate of Inspection.”

“Under normal circumstances, 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 who are compensated for performing their jobs while the vessel is underway are considered seamen for purposes 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.” (emphasis added)

## General Citizenship Requirements

46 U.S.C. 8103(a) states that only a citizen of the United States may serve as a 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 residency, and not more than 25 percent of the total number of unlicensed seaman on a vessel may be permanent resident aliens.”

The above quotations are taken directly from the Coast Guard Marine Safety Manual, Vol. 3, Chapter 20.

Other pertinent provisions of the U.S Code pertaining to manning requirements are the following:

- 46 USC section 10101 defines a “seaman” in extremely broad terms (with limited exceptions), as “an individual employed in any capacity on board a vessel.
- 46 U.S.C. § 8701 prohibits employment of any individual that does not have a merchant mariners’ document.
- 46 USC section 10302 requires ship owners to have written shipping articles which must be signed with all seamen employed on theft vessel.

## How HR 889 Changes the Existing Law.

A new paragraph (4) is added to 46 U.S.C. 8103(b), which does two things:

- it specifically exempts citizenship requirements for persons who are not part of the licensed and unlicensed crew complement set forth in the Certificate of Inspection and who also do not perform watchstanding functions;

- it exempts the requirements to have a merchant mariner’s document for this new class of worlcers.

In summary, all persons who by law have been (or should have been) considered seaman, subject to citizenship, merchant mariner document, and other regulatory requirements, which include riding maintenance crews, waiters, entertainers, industrial personnel, oil recovery workers, etc, will no longer be subject to these restrictions, – if this Bill passes in the Senate, is approved by the President and becomes law.

Of particular and crucial importance in this list are the riding crews. For those of you who are not currently familiar with industry developments, it is a fact of life that foreign seamen riding crews, none of whom have been admitted to the U.S. for permanent residency, are currently being used extensively on US flag vessels in violation of existing laws. They are paid significantly less than Federal Minimum wage, they live and work alongside US seamen, logging more sea-time than U.S. seamen, and they perform all manner of routine maintenance work traditionally done by licensed and unlicensed crews.

Maritime Administrator Schubert states in his letter that “it has been a worldwide practice for many decades to utilize foreign and industrial maintenance teams on commercial merchant vessels, both foreign and U.S. registry ships, and also on U.S. Naval Military Sealift Command Ships”, and that “the teams are used to perform shipyard type repairs and vessel maintenance that are either beyond the capability of the vessel’s crew or which the crew does not desire to do.”

With all due respect to Administrator Schubert, what may be done on foreign flag ships should not dictate U.S- flag manning laws. Moreover, the suggestion or claim that American seafarers by design or intent seek to limit the scope of their traditional work and to outsource their jobs, is an astounding claim. Secondly, his characterization and description of the work performed by foreign riding crews on U.S. ships is completely inconsistent with documents I have obtained in litigation involving foreign seamen. Maintenance and other records I have reviewed demonstrate that foreign riding crews are doing the day to day M&R repairs typically done by the U.S. crews during the vessel’s normal service. It is not shipyard work, or work which is beyond the capabilities of U.S. crews or work U.S. crews do not want to do. Attached as Exhibit “3” are summaries of four months of overtime records, for one Polish foreign seaman who homesteaded a U.S.-flag vessel during the period 1999 to 2001.

His overtime work was categorized by a maritime expert for my office into ten areas. It clearly shows the work is not only routine, but of the type typically performed by licensed engineering (boiler, main engine) and unlicensed deck and engine ratings. Moreover, whoever heard of riding crews being hired to so “sanitary work” or “taking on ships stores”. Other of his overtime records are not attached, as they are repetitive of the same type work. This foreign seaman is only one of many employed on other vessels in the fleet of the same U.S. vessel operator.

The making of a generalized statements as to what foreign riding crews are doing aboard U.S.-flag vessels, is simple to make; however, reviewing the maintenance records in detail – the gold standard will show a different picture.

In the same vein, the comments of Congressman Young as reported in the Congressional Record, that “it is well established that foreign workers may work on U.S. flag vessels on international voyages to conduct various non-watchstanding functions” and that these personnel are not considered seamen” is totally wrong. As noted above, Federal law clearly identifies such personnel as “seamen” and prohibits such employment whether the work performed is watchstanding or non-watching.

How and why this practice has been permitted, and why it has grown are issues that should be studied and addressed. More pressing at this time, however, is the present problem caused by the House passage of this Bill and the urgent need to prevent it from becoming law.

There are numerous legal authorities including U.S. Supreme Court precedent supporting the Coast Guard interpretation of seaman status. Looking ahead, on the assumption that this Bill will become law, maritime labor will likely see a further curtailment of jobs traditionally performed by U.S. citizens.

One likely scenario will be reductions in the size of the crew composition as set forth in the Certificate of Inspection (COI). Vessel owners may likely argue that such reductions are justified because all maintenance and non watchstanding functions are performed by others thereby permitting the vessel to be operated safely with a reduced COI manning level.

Thereafter, the next inroad may well be based on efforts to reduce the concept of watchstanding activities. Vessel owners may argue that traditional watchstanding really means navigational watches, not in-port watches.

Having brought this matter to the attention of all concerned, it is my hope that individually and collectively efforts will be made to spread the word and to take actions which will defeat this amendment when it is considered in the Senate.

If the merchant marine is to remain vital, dependable and available to perform its historic defense and its new security functions, it is imperative that U.S. flag vessels be manned and crewed by U.S. citizens. I urge all to contact their Senators, the Coast Guard and all groups, associations, and organizations interested in these issues to express their concerns and reasons as to why this amendment should be deleted from the Bill.

Respectfully submitted,  
Tabak, Mellusi & Shisha  
s/Ralph J. Mellusi  
s/Jacob Shisha

**GIVING AWAY AMERICAN MARINER JOBS:  
GCMA OPPOSES FOREIGN “RIDING” CREWS**  
Source: GCMA Newsletter #35, Nov./Dec. 2005

*[Background: In our last newsletter (pgs. 28-30) we stated our deep concern about outsourcing American mariners’ jobs as reported in Attorney Ralph Mellusi’s article.]*

### **Masters, Mates and Pilots Protest**

*[Mr. Mellusi was joined in his protest by the International*

*Organization of Masters, Mates, and Pilots in their weekly newsletter of October 6, 2005 as quoted below.]*

In a position paper prepared for members of Congress that oversee maritime issues, MM&P has expressed strong concerns regarding section 425 of HR 889 as passed by the House of Representatives. This section, entitled “Citizenship and Naval Reserve Requirements” will allow foreign workers to be employed aboard U.S.-flag commercial vessels.

MM&P strongly objects to allowing foreign riding crews to work on board U.S.-flag vessels in the post 9/11 world. The position paper states that, “the legislation does not require that foreign riding crews be subject to the same background checks as are applicable to the vessel’s U.S.-citizen crew. Requiring that these foreign workers obtain a Transportation Workers Identification Card in the future does nothing to ensure that foreign citizens working aboard U.S.-flag vessels are not part of a terrorist organization seeking the opportunity and means to harm the vessel, its cargo and the American crew, or in some other way dedicated to the destruction of the U.S. and our way of life.”

In the paper MM&P also noted that the legislative provision does not limit the nature and scope of the work foreign citizen riding crews would be allowed to perform aboard U.S.-flag ships. MM&P also stated that by failing to limit the number of foreign workers who can be employed aboard a U.S.-flag vessel, and by failing to more specifically define the nature and scope of the work these workers can perform, the legislation raises the distinct possibility that the number of American citizen personnel employed aboard the ship and who will be available whenever and wherever needed by the Department of Defense, will be reduced.

### **Katie Haven, MERPAC Member, Protests**

*[This letter was passed to GCMA by Chief Engineer Glenn Pigott, a member of the Merchant Marine Personnel Advisory Committee and member of the GCMA Board of Directors.]*

Dear Friends,

I’m sending this along to everyone who I know who is involved in the Maritime industry in some way. The attachment to this e-mail<sup>(1)</sup> describes legislation that I am opposed to, and I think that many of you will be disturbed by it as well. While most of us know that the practice of hiring “riding crews” to perform work typically done by the ship’s crew is already happening, if this legislation is passed it will open the door for a dramatic transformation of the U.S. Merchant Marine. <sup>[<sup>(1)</sup> i.e., Mr. Mellusi’s letter reprinted in the Sept./Oct GCMA newsletter.]</sup>

The amendment mentions that these workers will be required to carry a Transportation Worker ID card, which is a document that doesn’t even exist yet. The questionable status of this document was a big reason that MERPAC rejected proposed changes to the U.S. Code at their last meeting. I see this amendment as a sneak attack on U.S. merchant mariners, and an attempt by the companies to get away with hiring crews that will work for low wages and not have to have any training whatsoever. If they can do this, why bother with STCW at all?

If you read the attachment, you will see that the bill passed the U.S. House unanimously. I believe that was because the amendment was added at the last minute to an otherwise popular bill. Fortunately, we still have time to act, as it now

goes to the Senate committees for discussion. I know that at least one letter has been written to the appropriate subcommittees, and I can only hope that if the committee members start receiving correspondence asking them to remove this amendment from the bill, that at least one or two of them will start asking questions about it.

The first step is to let them know that there is a constituency out here that feels strongly on this issue. I am sending letters to each Senator on the Commerce, Science, and Transportation Committee and urge you to do the same. The website for the (law firm) that generated the letter in this attachment has more information: [www.sealawyers.com](http://www.sealawyers.com).

Also, it is appropriate to pass this along to anyone you know who would be interested. Best regards, Katie Haven

### GCMA's Protest

*[On October 20, 2005 GCMA addressed the following letter to each member of the Senate Commerce, Science, and Transportation Committee. On November 10, 2005 we addressed a similar letter to the House conferees who must settle the differences between H.R. 889 and the Senate bill that contains no mention of Section 425. The letter was sent by fax and its receipt acknowledged in each instance.]*

Dear Senator (or Representative) xxxx,

Our Association communicates our strong opposition to **Section 425** of **H.R. 889**, An Act to Authorize Appropriations for Coast Guard Fiscal Year 2006.

Our Association speaks on behalf of approximately 45,000 "lower-level" licensed and unlicensed mariners who serve on the nation's tugs, towboats, offshore oil industry vessels, and small passenger vessels.

Our objection to **Section 425** is that it would authorize the maritime industry to give away jobs that must be reserved for American citizens in order to maintain the strength and viability of the U.S. Merchant Marine. Although its immediate application is to the deep-sea merchant marine, we see this as a precursor of things to come for our mariners who serve on vessels of less than 1,600 gross register tons.

At present, there is a growing shortage of "lower-level" mariners. There are many reasons for this shortage that we cover in detail in a number of research reports that appear on our website listed above. One of these reports, GCMA Report #R-401, mailed to your office earlier this year, explains how employers have avoided making the investment of properly training the "lower-level" mariners who care for the machinery on their vessels.

The maritime industry mistakenly believes it can continue to survive by using cheap, untrained labor. However, the supply of American labor willing to work 84+ hour workweeks under the unsafe and the increasingly intolerable conditions we document in many of our research reports<sup>(1)</sup> is becoming scarce. Mariner "rights" are virtually non-existent!<sup>(2)</sup> We suggest that Congress needs to address the problems of properly training and supporting American merchant mariners before giving their jobs away to foreigners. Taking a convenient path of using foreign "riding crews" to do the work of American mariners will give a clear sign to our remaining mariners that they can expect to compete with hordes of undocumented foreigners at lower wages. [<sup>(1)</sup>For example GCMA Research Reports #R-258, #R-370, #R-375,

#R-412 available on our website. <sup>(2)</sup> Refer to GCMA Report #R-344.]

The implications of using undocumented riding crews, or for that matter any undocumented alien at any level on U.S.-flag vessels, clearly undercuts the national effort to improve maritime security since the terrorist attacks of September 11, 2001.

For these reasons, we urge you to remove **Section 425** from H.R. 889. s/Richard A. Block, Sec'y., GCMA