

U.S. Department of
Homeland Security

United States
Coast Guard



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CG-543 Policy Letter
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To: Distribution

Subj: SAFETY REQUIRMENTS AND MANNING EXEMPTION ELIGIBILITY ON
DISTANT WATER TUNA FLEET VESSELS

Ref: (a) Coast Guard and Marine Transportation Act (CGMTA) of 2006 section 421
(b) Coast Guard Authorization Act (CGAA) of 2010 section 904 and 608
(c) 46 USC § 4502
(d) Title 46 Code of Federal Regulations Part 28
(e) Title 46 Code of Federal Regulations Part 15
(f) USCG Marine Safety Manual, Volume III, Marine Industry Personnel
(g) STCW Regulation I/10 & A-I/10
(h) MSC.1 Circ.1163/Rev.6

1. Purpose. The purpose of this policy letter is to provide guidance to District and Sector offices regarding vessel eligibility for a manning exemption letter to temporarily fill a licensed position with a foreign citizen (excluding the master) on Distant Water Tuna Fleet (DWTF) vessels if no United States citizens are readily available. Additionally, this policy letter clarifies when a safety examination is required and reiterates certain safety requirements already in effect for DWTF vessels.

2. Directives Affected. None.

3. Action. District Commanders and Officers in Charge Marine Inspection (OCMI), shall utilize these guidelines when ensuring manning exemption compliance on DWTF vessels under the Coast Guard and Marine Transportation Act (CGMTA) of 2006 (section 421) as amended by the Coast Guard Authorization Act (CGAA) of 2010 (section 904). This policy guidance is effective July 1, 2011.

4. Background.

a. The CGMTA of 2006, section 421, authorized United States-documented purse seine vessels fishing for highly migratory species (under a license issued pursuant to the 1987 South Pacific Tuna Treaty [SPTT]) and operating in and out of American Samoa to use foreign citizens, except for the master, to meet manning requirements subject to certain restrictions. That authorization was for a 48-month period and ended on July 11, 2010. Section 904 of the 2010 CGAA (P.L. 111-281), signed into law on October 15, 2010 temporarily authorized foreign citizen manning for licensed positions other than the master aboard documented purse seine vessels fishing under licenses issued pursuant to the SPTT. The manning exemption authorization is subject to certain

provisions and requirements, and will expire December 31, 2012. The goal of this authorization is an opportunity for the DWTF to develop capacity and skills of United States mariners to fill licensed positions on their vessels.

b. Under the provisions of reference (b), a vessel may not employ a foreign citizen to meet a manning requirement unless it first successfully completes an annual dockside safety examination by an individual authorized to enforce part B of subtitle II of title 46, United States Code.

c. Section 604 of the 2010 CGAA amended 46 USC § 4502, establishing requirements for an individual in charge of a vessel to keep a record of equipment maintenance and required instruction and drills, and for a vessel to be issued a certificate of compliance after a dockside examination indicates compliance with requirements applicable to the vessel.

d. Section 608 of the 2010 CGAA expanded the Coast Guard's authority to terminate a vessel's voyage for unsafe operations. Individuals authorized to enforce Title 46 of the United States Code may remove "the certificate required" from a vessel operating in a condition that does not comply with the provisions of the certificate. In addition, if the vessel does not have the required certificate onboard or if the vessel is being operated in an unsafe condition, it may be ordered to return to a mooring and remain there until the certificate is issued/reissued or the hazardous condition is corrected.

5. Discussion.

a. The CGMTA of 2006 as amended by the CGAA of 2010 clearly states the requirements, restrictions and limitations of the manning exemption. However, there is a need to clarify how the Coast Guard will apply and enforce those requirements. All owners/operators of a DWTF purse seine fishing vessel licensed to fish under the SPTT who believe their vessel is eligible for the manning exemption, must provide documentation with a request to the Commandant (CG-543) to validate, and receive a determination for a manning exemption applicable to their vessel. Those vessels that are found to satisfy the requirements and provisions of section 421, will receive a foreign manning exemption letter from the Coast Guard, authorizing the use of foreign citizens in licensed positions (excluding the master).

b. A vessel's owner/operator may not employ a foreign citizen to meet a manning requirement for a licensed officer until they have demonstrated to the satisfaction of the Coast Guard that the vessel is eligible and has met all safety requirements with a current safety examination, that no United States citizen personnel are readily available to fill a vacancy, and that the foreign citizen being considered for the position meets the licensing restrictions set forth in section 421.

6. Guidance.

a. For a vessel to be eligible for the manning exemption under section 421, the owner/operator of a DWTF purse seine fishing vessel fishing exclusively for highly migratory species in the SPTT area or transiting to or from the SPTT area for such purpose must:

- (i) Have a current fishing license issued pursuant to the Treaty (section 421(a)).

(ii) In accordance with section 421(e), satisfactorily complete an annual Coast Guard safety examination complying with all applicable requirements. Forms CG-5587 and CG-5587B may be used for this purpose. Completion of the examination may be documented by issuance of a safety decal, or a certificate of compliance if available during the time of the manning exemption authorization. The safety examination may be conducted in a foreign port, subject to foreign examination fees and travel reimbursements in accordance with 46 USC §3317, and may be conducted when the vessel's annual International Oil Pollution Prevention (IOPP) certificate is checked/issued and endorsed.

(iii) Ensure a safety examination has been satisfactorily completed within the past 12 months and a valid safety decal or certificate of compliance is on board the vessel. The vessel must be re-examined for compliance within 12 months of the date of the previous examination and be issued a new safety decal or certificate of compliance (section 421(e)).

(iv) Ensure that the subject vessel(s) are operating in and out of American Samoa (section 421(c)). The Coast Guard will consider a vessel to be operating in and out of American Samoa when a vessel calls on American Samoa at least once per calendar year, for the purposes of, but not limited to, obtaining a safety examination, an IOPP inspection or certificate check, landing catch, taking on provisions, exchanging crewmember(s), and/or completing vessel repairs or dry-docking. In accordance with 33 CFR Part 160 subpart C, a vessel over 300 gross tons must notify the Coast Guard at least 96 hours in advance of its intention to call in American Samoa. Vessel owners/operators should contact the Coast Guard at least one week in advance of a call to American Samoa if requesting a safety examination or IOPP check.

(v) Demonstrate that there are no United States citizen personnel readily available to fill a vacant position (section 421(a)). To do so, the vessel owner/operator must show there was issuance of a timely notice of a position vacancy. The Coast Guard will consider timely notice of a position vacancy on a DWTF vessel, to the extent practicable, to be at least 30 days in advance of the position becoming vacant. This advance notice will provide the owner/operator time to identify a United States-licensed mariner for the position. If none is available, the owner/operator should prepare information and documentation to request a determination and validation for a manning exemption from the Coast Guard. A request to determine eligibility for a manning exemption should be received by the Coast Guard 10 days prior to the date a foreign citizen is to be engaged in a licensed position. This will allow time for the Coast Guard to validate whether or not a qualified United States-licensed mariner is readily available.

(vi) Engage only those foreign citizens who hold valid licenses or certificates issued in accordance with the standards established by the IMO Convention on Standards of Training, Certification and Watchkeeping (STCW) and issued by an authority recognized by the Coast Guard as meeting or exceeding the United States' standards of competency and training (section 421(b)). The Coast Guard will determine if the foreign citizen engaged or to be engaged on the vessel meets this requirement. If the foreign citizen engaged does not hold an accepted license or certificate, that individual must be removed from the vessel and replaced during the next port call.

(vii) Comply with title 46 United States Code § 10601(Fishing Agreements). This section requires the owner/operator to make a written agreement with each seaman employed on the vessel, on a voyage from a port in the United States, stating the period of the agreement, the terms of compensation, and other agreed terms. For the purposes of calling on American Samoa, Guam, or other United States possessions or territories vessel owner/operators must comply with title 46 United States Code §1061.

b. A manning exemption validation request is to be submitted in writing by the owner/operator of a DWTF vessel to the Coast Guard (Commandant CG-543) and should include:

(i) Documentation/proof of a port call in American Samoa within the current or previous calendar year.

(ii) Documentation/proof of satisfactorily completing a Coast Guard dockside safety examination within the previous 12 months.

(iii) Identification of the certified Drill Conductor(s) who provides the monthly instruction and emergency drills on the vessel. This should include the name of the qualified individual, date certification received, and training organization issuing the certification.

(iv) A copy of the position vacancy notice(s) for each position considered for the manning exemption. This should include the job description with a list of qualifications for the position being offered.

(v) Documentation/proof of attempts to find United States citizens through normal private sources that may include, but not limited to:

(A) Advertisements in widely circulated United States based newspaper(s), by position.

(B) Advertising in large-circulation United States-based commercial fishing industry publications in print and/or online, by position.

(C) Record of correspondence including name and phone number of contact with United States maritime personnel organizations and other appropriate suppliers of workers, e.g. union halls, maritime academies, and maritime trade schools.

(D) A summary listing the number of applications/résumés/inquiries received, number of interviews granted, and reasons applicants were not acceptable for position.

(vi) For the foreign citizen intended to be hired pursuant to an approved manning exemption, a copy of that individual's STCW95 license or certificate. All foreign citizens that may be hired by the vessel owner/operator shall hold a valid license or certificate issued in accordance with STCW95 standards by an authority recognized by the Coast Guard. Until further guidance is issued, the Coast Guard will determine STCW recognition by using MSC.1 Circ.1164/Rev.6 (reference (h)) and that the license/certificate meets competency and training standards equivalent to those of the United States.

c. Upon receipt of a manning exemption validation request, the Coast Guard (Commandant CG-543) will determine if a manning exemption approval is appropriate by evaluating the adequacy of worker recruiting.

(i) If the information provided by the owner/operator is judged insufficient to support the manning exemption request, the owner/operator will be contacted stating the reason and/or a request for additional substantiating data.

(ii) If qualified United States licensed mariners are identified, the Coast Guard may forward that information to the owner/operator with information where contact can be made.

(iii) If the identified mariner(s) are not suitable for employment, the owner/operator should provide the Coast Guard a summary of why the mariner(s) were not considered acceptable for the position(s).

(iv) If after evaluating the explanation(s) given, the Coast Guard is satisfied that the personnel identified were not suitable for employment, the manning exemption validation request will be processed.

d. Upon satisfactory review and acceptance of the information provided in accordance with paragraph 6. b. above for meeting the criteria for a manning exemption on a DWTF vessel, and

once the evaluation of the licensed mariner recruiting efforts is completed, the Coast Guard will issue a temporary foreign manning exemption letter. The exemption will be valid for a period of not more than 12 months. No exemption letter will be valid after December 31, 2012, in accordance with section 421. Manning exemption requests may be resubmitted for renewal up until that date. All procedures followed for the initial manning exemption request (as described in paragraphs 6. b. and 6. c. above) are applicable to renewals, with the addition of information on efforts made to recruit qualified individuals and/or train personnel to fill those positions in the intervening 12 months. If any foreign citizen is hired to replace an existing foreign citizen worker for emergency or other reasons during the exemption period approved by the exemption letter, that individual's STCW documentation, valid license, and an up-to-date vessel crew manifest list must be provided to the Coast Guard within 72 hours for validation. Additionally, at any time during the approved exemption period the Coast Guard may request a copy of the vessel's current crew manifest, and it must be provided within 72 hours to the requesting office.

e. The Commandant (CG-543) will issue the manning exemption letter(s) to the owner/operator. A copy of the letter must be maintained on board the vessel at all times. The exemption will be documented in the Coast Guard's Marine Information System for Law Enforcement (MISLE) database.

7. Disclaimer. This guidance is not a substitute for applicable legal requirements, nor is it in itself a regulation. It is not intended to nor does it impose legally-binding requirements on any party. It represents the Coast Guard's current interpretation on the application of the DWTF manning exemption as set forth in section 421 and is intended to assist industry, mariners, the general public, and the Coast Guard, as well as other Federal and state regulators, in applying statutory and regulatory requirements. An alternative approach for complying with the requirements will be considered, if the approach satisfies requirements of the applicable law and regulations. The point of contact regarding the foreign citizen manning exemption on DWTF vessels is Mr. Jack Kemerer, Chief of the Fishing Vessel Safety Division, Office of Vessel Activities, United States Coast Guard Headquarters. He can be reached at (202-372-1249), or Jack.A.Kemerer@uscg.mil.