

Offshore Marine Service Association (OMSA) Response to Questions from the U.S. Representative Garret Graves:

Question 1: Could you further describe the visa process for foreign mariners, and how the United States tracks how many of these visas are granted? Are foreign mariners that are provided B-1 / OCS visas required to hold a TWIC like U.S. mariners are?

The process to secure a B-1 / OCS visa essentially has three parts. The first item that is required is that the vessel a mariner will be working on or intends to work on needs to have a document from the U.S. Coast Guard (USCG) called a “letter of non-applicability” or “manning exemption letter.” Vessel owners can obtain this letter by petitioning the USCG and demonstrating that the vessel is at least 50 percent foreign owned and controlled. Once this letter is obtained, it is good for the life of the vessel.

Second, Once the letter of non-applicability has been issued to the vessel owner, he or she provides copies of this letter to crewing agencies around the world. Those agencies then provide copies of the letters to mariners selected to work on the vessel.

Subsequently, those mariners take a copy of the letter of non-applicability, their mariner license, and a U.S. State Department Non-Immigrant Visa Application Form (DS-160) to any U.S. Consulate. Following a short interview, the mariners are provided a U.S. B-1/OCS visa valid for five years.

Unlike other visas, there are no checks to see if there are U.S. mariners that are able to conduct the work the foreign mariner is doing. In fact, while the mariner’s service on a particular vessel—and the fact that that vessel has a letter of non-applicability—is what allows the mariner to secure the visa, the visa is not tied to the vessel, it is simply good for five years provided the mariner carries a copy of the letter of non-applicability for the vessel he or she will be serving on.

Under 49 C.F.R. 1572.105 holders of a B-1 / OCS visa are eligible to apply for and receive a TWIC but they are not required to make such an application or hold and keep current this credential.

Question 2: How often does the U.S. Coast Guard review the ownership of foreign vessels? How often do you think these reviews should be performed in order to ensure compliance?

Letters of non-applicability are good for the life of the vessel, provided there is not an ownership change. The USCG requires such ownership changes to be self-reported. OMSA has asked the USCG to provide us a list with the number of self-reported changes that have been made and the USCG has not answered this question. Considering the large amount of turnover in the maritime industry, the privilege foreign owners are receiving by being able to work in U.S. waters at below-market manning costs, and the fact that U.S. vessel owners must report their ownership on an annual basis, we believe it is only fair and safe that foreign owners report on the same schedule.

Question 3: Some offshore wind groups have recently noted that, of the vessels required for offshore wind development and construction, 16 out of 18 are available in the United States. Are all available U.S. vessels under contract to work on wind projects currently being developed? Why or why not?

OMSA is aware of these groups and their use of this talking point but this methodology is not a standard categorization or classification of vessels, and as such, OMSA is unaware of exactly which vessels fall into which of the supposed 18 categories or classes. However, we further note that these groups state the two categories of vessels which are not found in the U.S. fleet are floating and jack-up heavy lift vessels. Again, this categorization is somewhat perplexing to OMSA because OMSA is unaware of any windfarm developer that intends to utilize floating heavy lift vessels to conduct wind farm work. As such, we don't know why these vessels are being included in this talking point.

As for development, OMSA is aware of reports that a jack up wind turbine installation vessel (WTIV) is being developed, however, to date OMSA is unaware if there is a firm contract for such a vessel. The apparent reason for the hesitancy of U.S. investors, vessel owners, and potential owners is the uncertainty that a U.S.-flagged WTIV will be utilized. Under traditional understanding of the Jones Act, foreign-flagged WTIVs are allowed to operate in U.S. waters provided they do not engage in the transportation of merchandise. When they operate in this manner, these vessels are allowed to employ foreign mariners who work at wages far below what any U.S. mariner would work for. U.S. vessel operators are legally not permitted to hire these foreign mariners—not that any want to—and thus these foreign WTIVs will be able to operate at a much lower cost than any U.S.-flagged WTIV. This disparity could explain the hesitancy to invest in a U.S.-flagged WTIV.

Adding to the problem is a decision from Customs and Border Protection (CBP) last December which created a broad loophole which allows foreign-flagged WTIVs to move merchandise between U.S. points when these vessels are engaged in ill-defined lifting operators. This loophole was so broadly written that it appears to give foreign-flagged WTIVs the ability to engage in coastwise movements which under the law are reserved for U.S.-flagged vessels. The uncertainty created by this loophole could certainly also be undercutting U.S. investment in these vessels.

Moreover, it does not appear that geophysical or geotechnical vessels fit into the two categories of vessels these groups claim are not represented in the U.S.-flagged fleet, however, in OMSA's testimony it is noted that there have been 12 to 15 foreign-flagged survey vessels operating in U.S. waters this summer. OMSA believes it would be interesting to hear why these foreign flagged vessels are being utilized if there are U.S.-flagged vessels available in these vessel classes.