



Testimony of Aaron Smith on behalf of the Offshore Marine Service Association

To

The U.S. House Committee on Natural Resources'  
Subcommittee on Energy and Mineral Resources

Hearing entitled "Trump Administration Broken Promises on Renewable Energy"

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Chairman Lowenthal, Ranking Member Gosar, and Members of the Subcommittee, thank you for allowing me to speak this morning. My name is Aaron Smith, and I have the pleasure of serving as the President and CEO of the Offshore Marine Service Association (OMSA).

We respectfully submit that this Committee needs to rectify a shocking disparity in the treatment of U.S. workers in the renewable energy sector. If one were to propose the construction of a windfarm in, for example, Oklahoma utilizing a team of Russian, Chinese, and citizens of other similar nations, such a project would and should face widespread and bipartisan opposition. However, those foreign nationals are the ones constructing and slated to construct the offshore wind projects within sight of Massachusetts, Rhode Island, New Jersey, Virginia and the rest of our East Coast. In our testimony, OMSA will highlight how this happens and provide simple, bipartisan steps that Congress can take to ensure that the good paying jobs associated with offshore wind construction can be returned to U.S. workers.

#### **About OMSA and the U.S. Offshore Energy Industry:**

OMSA is the association of the owners and operators of U.S.-flagged vessels engaged in constructing, maintaining, and servicing energy infrastructure on the Outer Continental Shelf (OCS). In total, we represent 170 U.S. companies and their more than 12,000 U.S. employees.

While OMSA members have traditionally operated in the Gulf of Mexico, our industry supports a nationwide supply chain, with vessels being built in Washington State and operated in Maine. Additionally, we have members operating vessels in California and Puerto Rico.

As offshore energy fields have migrated from shallow water to deep water, the equipment necessary to construct and service these fields has gotten bigger and more complex. As a result, OMSA members have invested in new vessels and technology to keep up, thereby providing work for thousands of U.S. shipyard workers. Many of these same shipyards also build for our Armed Forces and Coast Guard. Thus, the investment OMSA members make to service offshore energy assists our military in defending our homeland and projecting our national power abroad. In fact, many OMSA members have vessels on charter to the U.S. military. These vessels were designed

to support offshore energy development but prove useful to the warfighter due to their versatility and unique sets of assets.

Similarly, the U.S. mariners that work onboard OMSA-member vessels are also eligible to serve as part of MARAD's Ready Reserve Force, the body of civilian mariners that crews the National Defense Ready Reserve Fleet, the group of ships that supports and provides for the rapid worldwide deployment of our military forces. Due to how mariner licenses work, these mariners must continue working and gaining sea time days to satisfy the license renewal requirements. As such, when market conditions—or unfair foreign competition—prevent these men and women from working, not only do they suffer, but our nation risks losing these mariner's ability to operate the vessels required to move our warfighters.

In addition to their national security benefits, these jobs provide economic security for our fellow Americans. Jobs in our industry are good-paying, family-supporting jobs. The U.S. Bureau of Labor Statistics reports a median annual wage of \$72,340 for the 33,370 American men and women that serve as captains, mates, and pilots for U.S. vessels. The median wage for the entirety of the industry is \$57,330.

While traditionally most OMSA members have constructed, maintained, repaired, and supplied the offshore oil and gas industry, OMSA members deeply support the offshore wind industry. Our organization and our membership view this burgeoning industry as a generational market. One with the potential to employ hundreds of vessels and thousands of mariners.

In some respects, this is a homecoming for our industry. The mainstay and workhorse of our industry is a vessel class called an offshore supply vessel, or OSV. While OSVs were utilized sailing from Louisiana ports to energy assets in the Gulf of Mexico, the design for the OSV originated in Rhode Island. In 1956, Luther Blount loaded his station wagon onto the back of the BOTRUC and sailed this vessel down to Cheramie Brothers of Golden Meadow, Louisiana. Minor Cheramie, the Grandfather of my current Chairman, was considering purchasing the vessel as he had been impressed by stories of this type of vessel's capabilities of the design and thought the vessel might transition well into the offshore oil and gas industry. Upon seeing the vessel he was

not disappointed and purchased the vessel—yes, Luther had brought the vessel to the Gulf of Mexico on speculation. Mr. Blount unloaded his station wagon and drove back to Rhode Island, with an order for an addition six vessels in his pocket.

As a testament to the vision of that vessel’s design, most offshore energy vessels found in the Gulf of Mexico, and any other energy port around the world have a look similar to that first botruc.

And just as Luther brought that first OSV from Rhode Island to Louisiana to work in the burgeoning offshore oil industry, OMSA members now seek to take the modern iteration of the BOTRUC from Louisiana to Rhode Island and the rest of the Northeast to develop offshore wind fields. In the process, they seek to make investments in those states and provide good paying jobs for U.S. mariners in that region.

### **Challenges Facing U.S. Companies Attempting to Enter the U.S. Offshore Wind Industry:**

Some OMSA members have already achieved success in the offshore wind industry. For example, Falcon Global, a leader in the liftboat industry, brought two of its liftboats up from Louisiana to Rhode Island to ferry components for the Block Island Wind Farm from the shore to the installation vessel, which sat stationary off the coast. These vessels’ unique design enabled them to provide a safe transportation while also providing a stable platform from which the installation vessel could pick up the wind turbine pieces during the installation process.

Unfortunately, many OMSA members have found challenges entering the offshore wind market. Many OMSA members report their vessels have the technological capability and their crews have the experience and competency to safely operate in this industry, but these vessels are not chosen for the offshore wind contracts. Instead, we find that these contracts are often provided to European vessels, flagged in the U.K., Norway, or Luxembourg, or flying a flag of convenience, such as Vanuatu, the Marshall Islands, or Panama.

In fact, over the course of the summer OMSA has been tracking the vessels serving the northeast windfarm areas. In this effort, we have found that every day there are at least 12 to 15 foreign

vessels doing wind farm work off the coasts of Massachusetts, Rhode Island, and Virginia. On those same days there are usually eight to 10 U.S.-flagged vessels working in these fields. One offshore wind developer recently released a notice to mariners explaining what vessels they had on charter. This developer had, at that time, seven vessels on charter, only two of which were U.S.-flagged, while five were foreign flagged - and the two U.S. vessels were less than 100 feet long.

The reason is the cost of cheap foreign labor.

As U.S. owned companies, OMSA members are required to employ U.S. citizens as mariners when their vessels are operating in U.S. waters. While this is a legal requirement, it is also a preferred position, as our members appreciate the fact that they are providing good paying jobs for American mariners.

In addition to their national security benefits, these jobs provide economic security for our fellow Americans. As noted, earlier, jobs in our industry are good-paying, family-supporting jobs. Many of the OMSA member vessels that desire to operate in the offshore wind market are on the higher end of this spectrum, with the captains of these vessels making, at times \$600 per day.

These are the jobs U.S. public policy should encourage. These jobs do not require a college diploma, yet the entry level positions provide a clear and achievable pathway to advancement. Often, vessel operators or unions will pay for the courses required to advance a mariner's credential or license. In the offshore energy industry, we pride ourselves that during good times employment as a mariner can turn a high school graduate into a six-figure wage earner in six years.

Moreover, now is a perfect time for U.S. mariners to be capturing offshore wind jobs. The oil and gas downturn that has resulted from the COVID-19 pandemic has decimated the U.S. offshore oil and gas industries. Workboat Magazine recently estimated that only 22 percent of available industry vessels are currently working. The market research firm Vessels Value reports that of the 502 U.S.-flagged OSVs, 226 haven't moved once in the last eight weeks. As a result, OMSA estimates that more than 11,000 U.S. mariner jobs have been lost.

Despite this abundance of U.S. mariners, international crewing agents are constantly looking for foreign mariners to staff vessels around the world. As such, one can easily view and track what foreign mariners are being offered for wages. One recent employment advertisement for crew positions aboard an international energy vessel offered an individual hired as the master of the vessel \$350 to \$380 per day, the chief engineer, \$320 per day, the second engineer \$90 to \$110 per day, and the deck crew \$750 to \$800 per month, or about only \$2 per hour.

According to a Maritime Executive interview of Henrik Jensen, founder of the Danica Group, and managing director of Danica Maritime, a maritime crewing agent, there are 500,000 mariners in the world with China, the Philippines, and India having the most mariners in the world. However, as stated by this marine crewing expert, most senior officers on international vessels come from Eastern European countries, with Ukraine and Russia topping the list.

This matches what OMSA members have encountered when they have obtained the crew manifests of foreign vessels. In 2014, an OMSA member acquired the manifest for a Norwegian-owned, Bahamas-flagged multipurpose supply vessel (MPSV) that was in U.S. waters doing energy work. The vessel's crew included at least four Russian nationals, an equal number of Ukrainians, two Polish citizens, and at least five from the Philippines. What nationalities were not represented on this vessel's marine crew was U.S. and Norwegian citizens. They're not there because the wages they command are too expensive.

As stated, when working in the U.S., U.S. companies cannot employ these mariners, even if our member companies wanted to. However, international ship owners can and almost universally do employ foreign mariners, creating a market under U.S. sovereign authority which vastly and unfairly benefits foreign actors over U.S. employers and employees. In short, current U.S. policy prevents U.S. citizens from capitalizing off the development of U.S. wind power.

OMSA members have certainly encountered these foreign vessels when competing for offshore energy contracts. When such an encounter happens, the U.S. vessel almost always loses out on the work.

In fact, one OMSA member recently saw an offshore energy contract cancelled because the charterer had been offered a foreign flagged vessel that was approximately 25 percent cheaper than the U.S. vessel. Obviously, it was impossible for this U.S. company to cut their costs by 25 percent.

### **OCSLA Manning Provision:**

And while there are a variety of reasons for this cost disparity, including greater regulatory compliance and tax costs for U.S. vessels, the largest reason—an estimated 60 percent of the disparity—is the difference between U.S. and international wage levels.

This disparity is caused by incorrect implementation of an important provision of the Outer Continental Shelf Lands Act, and the 1978 amendments thereto. Specifically, when Congress amended OCSLA in 1978, they created a national manning requirement, whereby only U.S. citizens or aliens lawfully admitted for permanent residence may be employed for “manning or crewing” of vessels used for OCS operations.

However, Congress also saw that completely restricting foreign nationals from crewing vessels on the U.S. OCS could result in retaliation from foreign nations, preventing U.S. citizens from working on a foreign nation’s OCS.

To prevent such retaliation, Congress included a caveat to the manning standard, allowing vessels more than 50 percent foreign owned and controlled to employ foreign mariners. The OCSLA Conference Committee Report (Conference Report No. 95-1474, to accompany S.9, August 10, 1978) clearly stated Congress’ intent:

To reconcile the dual concerns of providing the fullest possible employment for Americans in U.S. Outer Continental Shelf activities and eliminating to the fullest possible extent the likelihood of retaliation by foreign nations against American workers in foreign offshore activities.

This quote demonstrates Congress' assumption that the nation's operating vessels in our waters would have their own citizens on those vessels. Otherwise, there is no conceivable way for such reciprocity to adequately function. It's implausible to believe that Congress was concerned about retaliation from landlocked countries or countries without OCS development retaliating against U.S. workers. Instead, Congress was concerned about those countries that have constituent companies that operate offshore energy vessels and countries that allow energy activity on their OCS.

As further proof of this intent, Congress included another provision within OCSLA allowing the President to override the ability of foreign owned vessels to be foreign manned if:

the President determines that the government of such foreign nation or any of its political subdivisions has implemented, by statute, regulation, policy, or practice, a national manning requirement for equipment engaged in the exploration, development, or production of oil and gas in its offshore areas. (43 U.S.C. 1356 (c)(2)).

Again, this provision indicates that Congress intended the allowance within OCSLA to be for mariners from the same nation as the vessel they were working on. Otherwise there is no practical way for such a Presidential determination to work.

Despite this overwhelming evidence of Congressional intent, when the U.S. Coast Guard (USCG) issued the enacting regulations for OCSLA, it decoupled the citizenship of foreign persons who are permitted to work on the U.S. OCS from the citizenship of the vessel owner. Thereby making the reciprocal relationship worthless and allowing companies from high-wage nations to send vessels to U.S. waters with mariners from low-wage nations. The resulting decreased crewing costs allows these vessels to operate far below the price of U.S. vessels.



As a result, OMSA members have lost offshore wind contracts in recent months to foreign vessels.

### **Letters of OCSLA Non-Applicability for Foreign Vessels:**

In addition to the incorrect implementation of OCSLA that allows foreign vessels the ability to undercut the cost of U.S. vessels, the USCG's implementation of OCSLA also provides other advantages to foreign owners. Specifically, the USCG makes the exemption from the U.S. manning requirement for foreign vessels good for the life of a vessel, while U.S. vessel owners are required to prove their ownership once a year for Coastwise privileges.

As implemented, foreign vessel owners petition the USCG for a letter stating that their vessel is excluded from the OCSLA U.S. manning requirement. The USCG requests that these applications provide approximately 10 points of information in a certified statement. The required information is rudimentary, including the vessel's name and identification numbers; its scope of work; identity of the vessel's parent company and said company's CEO, Board, and shareholders; and any contracts currently held on the vessel.

Once the USCG reviews this information, they provide the vessel owner with a letter stating that the manning requirements of OCSLA do not apply to this vessel. This letter, usually referred to as a "letter of non-applicability" or "manning exemption letter" has no expiration date; instead the USCG relies upon foreign vessel owners to "self-report" any material changes in its ownership to the USCG in order for new letters to be issued. OMSA is unaware how often this self-reporting requirement is adhered to.

The issue of ownership is important as many offshore energy vessels have complex ownership structures that span numerous nations and these structures change frequently. For example, in 2017 the Greek-owned, Bermuda-chartered, Toisa, Ltd. filed for bankruptcy within the U.S. Bankruptcy Court in Manhattan. Subsequently, in 2019 the majority of Toisa's assets were sold off with at least 13 different companies purchasing at least one vessel. Included in this sale was the TOISA VIGILANT, a Bahamas-flagged, multipurpose support vessel (MPSV) that had been constructed in a Chinese shipyard in 2005. The vessel was purchased by Gequip Marine, a

Switzerland-based company which owns and operates vessels conducting geophysical survey work. However, a majority stake of Geoquip Marine is owned by Njord Partners, a U.K.-based investment fund. Today, the vessel formerly known as the TOISA VIGILANT sails as the GEOQUIP SAENTIS. This vessel recently completed a geophysical exploration campaign off the coast of Rhode Island and Massachusetts and is apparently heading to Virginia to work on those offshore wind projects.

Of course, it is possible that during each of the above-described ownership changes, the owners have reapplied for new letters of non-applicability. However, considering the large number of vessels that operate in our waters and the frequent number of changes it is also very possible that foreign owners don't self-report these changes to the USCG and the foreign vessels continue to sail in our waters. Considering the critical nature of the operations these vessels conduct, it is unfortunate that the USCG is leaving the reporting of these changes up to the good will of the foreign owners.

#### **Issuance of Visas to Foreign Mariners Working in U.S. Waters:**

How these letters of non-applicability are utilized to provide foreign mariners access to the U.S. OCS is also problematic. Under the USCG's implementation of OCSLA, 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.

This system allows for crewing agents to scour the globe to find mariners that will work for the cheapest rates allowing these vessels to not only undercut the price of U.S. vessels but also causing a safety risk. Again, the vessels in question are conducting complex safety work. This work requires the crew to be knowledgeable and experienced in not only the operation and their role, but also in the particulars of the vessel itself.

The cobbling together of an international crew does not lend itself to promoting such knowledge or competency. Instead, under this system the crew comes from different countries and they often speak different languages. They have little understanding of their vessel or each other, facts which cause obvious safety risks.

#### **Stand Alone Immigration Provision:**

In addition to the safety risks, this situation is also a homeland security risk, because the OCSLA manning exemption for foreign vessels serves as a “stand alone immigration control provision” which supersedes the ability of the U.S. Citizenship and Immigration Services (USCIS) to screen these crewmembers. At issue is a position taken by the General Counsel of the Immigration and Naturalization Service (the precursor to the USCIS) and by the Office of Legal Counsel of the Department of Justice that the OCSLA manning exemption created a “stand alone” immigration control provision outside of the Immigration and Naturalization Act. Therefore, the INS determined that it could not take action against foreign mariners being categorized as part of a foreign vessel crew. In short, INS has stated they have no role to play in the control of foreign mariners coming to the U.S.

INS reached this decision based upon a review of the Congressional intent in drafting the provision stating in a memo:

The only conclusion that makes sense, however, is to assume that [the OCSLA manning exception] is intended to be a self-contained statement of the extent to which principles of immigration control are to be applied. The purpose of the Conference Committee was to “reconcile the dual concerns of providing the fullest possible employment for Americans in U.S. Continental Shelf activities and eliminating to the fullest possible extent to [sic] the likelihood of retaliation by foreign nationals against American workers in foreign offshore activities. . . . Thus the specific coverage of [the OCSLA manning exemption] should be given precedence over the more general application of the provision for assimilating Federal laws.

It is worrisome that the USCG is serving as a stand-alone immigration agency because the USCG has demonstrated that it has limited knowledge about how many letters of non-applicability it has issued, how many are being utilized, and how many B-1 / OCS visas have been issued as a result of these letters. Following the DEEPWATER HORIZON tragedy, the U.S. House Subcommittee on Coast Guard and Maritime Transportation conducted an oversight hearing. During that hearing, Subcommittee Chairman Elijah Cummings (D-MD) asked USCG Rear Admiral Kevin Cook, Director of Prevention, Policy how many vessels were operating in the Gulf of Mexico under letters of non-applicability. The Admiral was not able to answer the question. Subsequently, other Members of Congress have asked how many B-1 / OCS are currently being utilized and the USCG could not answer the question.

Increasing the security concerns is the fact that when a foreign mariner mans vessels in our OCS, the USCG does not run these individuals through the rigorous personal verification procedures that it conducts when a foreign vessel arrives in U.S. waters following a foreign transit.

Obviously, this system is of concern to our national, homeland, and economic security.

The system decreases our national security by decreasing the number American civilian mariners that can participate in the Ready Reserve Force and undermines U.S. commercial shipbuilding, thereby lessening the shipyards able to construct military vessels.

The system decreases our homeland security by introducing into the United States an unknown number of unidentified mariners, many of whom are from Russia, China, and other nations that do share our national interests, creating an easily exploitable entry-loophole.

Finally, by taking opportunities away from U.S. employers and employees, this system decreases the economic security of our industry and nation.

**Solution:**

Fortunately, Congress can correct this situation via the enactment of a collection of very simple fixes to the OCSLA.

First, to ensure that the USCG has quality marine domain awareness, Congress should amend OCSLA to limit the duration of letters of non-applicability to 12 months. This change would ensure that the owners of foreign vessels are required to prove their ownership structures on an annual basis. In addition to enhancing the USCG's understanding of the vessels that our operating in our waters and who owns these vessels, this change would also put the owners of foreign vessels on the same schedule that U.S. vessels must prove their ownership structure.

Second, OCSLA should be amended to limit the number of B-1 / OCS visas that can be produced by each vessel that has a letter of non-applicability. Specifically, the law should be changed to limit each letter of non-applicability to produce a number of visas equal to two and half times the number of crew serving onboard the vessel. Such a limit would ensure that the B-1 / OCS visas a vessel produces are being utilized for that vessel and preventing former crewmembers from holding on to and leveraging these visas to gain work on other foreign vessels operating in U.S. waters. This change would help our government track mariners that may be coming into U.S. waters by limiting the number of visas that could be utilized at any one time.

Such a provision would not interfere with the operation of these foreign vessels. Offshore energy vessels usually use a two crew system, whereby one crew serve on the vessel for a period of time ranging from one to six months and replaced by a second crew that takes over and operates the vessel for a similar time period. By allowing each vessel to create two and half times the number of crew required, such a change would ensure the vessel more than a sufficient number of crew to operate.

Third, OCSLA should be changed to restore Congressional intent by requiring that the mariners that serve on foreign vessels are from the same country as the vessel. This change would prevent owners of foreign vessels from exploiting workers from low wage countries to undercut U.S. mariners. Alternatively, these owners always have the ability to employ U.S. mariners if the mariners from their countries are too expensive for them to make their vessels operate at profitable levels.

Finally, Congress should enhance the oversight of foreign mariners operating in our waters by requiring the USCG and the Department of State to coordinate on the visas that are being issued and utilized. The USCG should also be given the ability – and the responsibility - to board and inspect the manning of foreign vessels to ensure all foreign mariners have valid visas, and Congress should require the USCG to produce annual reports on the number of letters of non-applicability and visas being issued and utilized.

**Conclusion:**

Many have stated that the offshore wind industry holds amazing potential for the development of good paying jobs. OMSA believes this assessment to be accurate. However, the question is who will be the beneficiary of these good paying jobs? As currently enforced, foreign ship owners are able to exploit the OCSLA to bring foreign mariners into U.S. waters and undercut American workers. Congress should ensure the promise of offshore wind is realized by enacting these common-sense, simple changes to OCSLA.