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U.S. mariners urge action against foreign offshore oil vessels

Citing the idling of dozens of U.S. vessels and the loss of hundreds of U.S. jobs in the Gulf of Mexico, advocates for American mariners are stepping up pressure on federal officials to tighten enforcement of the Jones Act and the Outer Continental Shelf Lands Act (OCSLA).

Provisions of the Jones Act, officially known as the Merchant Marine Act of 1920, are designed to protect U.S. maritime interests by restricting the transportation of goods between American ports and offshore facilities to U.S.-made, U.S.-flagged vessels. The OCSLA does not restrict foreign vessels from operating on the U.S. outer continental shelf, but it does require the employment of U.S. citizens or resident aliens on those vessels.

Both laws, however, allow for the granting of waivers or exemptions. The exceptions have led to anger among many U.S. mariners over foreign vessels and personnel operating in the Gulf of Mexico.

The dispute centers on the Gulf's oil and gas industry, which suffered a devastating blow from Hurricane Katrina in August 2005. In response to the damage inflicted on the area's refineries and petroleum distribution network, former U.S. Homeland Security Secretary Michael Chertoff waived Jones Act restrictions for 19 days for foreign vessels carrying oil and natural gas. That opened the door, critics say, to an increased foreign presence in the Gulf.

"I think just about everyone

agrees that it was necessary at the time," but the need has long since passed "and the number of foreign-flagged and foreign-manned vessels has only continued to grow," said Steve Gordon, an attorney at Houston-based Jones Act law firm Gordon & Elias LLP.

The granting of Jones Act waivers — typically only in national emergencies like Katrina or in cases of strategic defense interest — is regulated by U.S. Customs and Border Protection and the U.S. Maritime Administration (MarAd). After a request is filed, the two agencies determine whether U.S. tonnage is available to do the work. If not, a waiver can be granted for a foreign vessel. This can occur when a specialized vessel is needed and U.S. vessels can't meet the demand.

Ken Wells, president of the Offshore Marine Service Association (OMSA) in Harahan, La., said the U.S.-flagged fleet can handle the needs of customers in the Gulf of Mexico and across the country if the Jones Act is enforced. American interests can suffer, he said, when companies try to skirt the law.

"Where there are not vessels for specific jobs, we can work with customers to build them," Wells said. "However, many oil and gas companies wait until a project is ready to go to charter vessels. Then they argue that there are no boats available. In a way they are gaming the system when they do that. Fortunately, the process for granting waivers is not an easy one."

A bigger problem, Wells said, is "outright cheating" to get around provisions of the Jones Act.

"What we find is that foreign boats may come into the oil and gas offshore areas to do a job that they can legally perform, but then they stay and act illegally, or they push the limits of what is legal," he said. "For example, they may be here to install parts of an offshore facility or perform dive operations, but then they can't resist the temptation to carry cargo from a (U.S.) port out to a facility. The first activity is legal; the second one is illegal."

More than 30 foreign vessels are working in the Gulf with foreign crews, Gordon said. The OCSLA specifies that "all units operating on the OCS must employ only U.S. citizens or lawful permanent resident aliens." Subsequent guidelines issued by the U.S. Coast Guard — Code of Federal Regulations, Title 33, Part 141 — cite the need "to prevent a disruption of mineral and oil exploration and production, and specify certain circumstances wherein exemptions to the citizenship requirements may be granted."

An exemption to employ foreign workers may be granted if there is not "a sufficient number of U.S. citizens or resident aliens qualified and available for work" on a vessel. A foreign-flagged vessel also can be exempt if it is more than 50 percent foreign-owned, a stipulation that some U.S. companies are exploiting, Gordon said.

"U.S. companies are taking

advantage of loopholes to hire foreign workers, who get paid a pittance compared to U.S. workers," he said. "The U.S. companies that are giving out these contracts are effectively outsourcing. They don't hire the foreign workers directly; the foreign vessel and foreign workers come as a package."

A vessel owner or operator who believes there are insufficient U.S. citizens or resident aliens to handle a given project must petition the Coast Guard, which decides if the operator has made a suitable effort to find such employees. If so, the documented proof — newspaper or trade journal help-wanted ads, for example — is forwarded to the U.S. Department of Labor. The department then makes a final determination and notifies the Coast Guard about whether to issue the exemption.

In 2008, the Coast Guard issued 23 foreign employment exemptions in the Gulf of Mexico compared with 15 in 2009, according to Lt. Cmdr. Kevin Ullrich, program manager for Offshore Compliance and Commercial Diving Programs. Ullrich said the exemptions were "based upon a lack of available and qualified U.S. workers and an advisory opinion by the Department of Labor."

Gordon and Wells both disagreed that there aren't enough qualified U.S. citizens or resident aliens to meet employment needs offshore in the Gulf. Gordon was reluctant to single out the Coast Guard for blame in granting the exemptions.

"It's not the Coast Guard's fault," he said. "They're good people who just don't have the time and resources

to deal with all of these applications. They just get passed along."

Repeated attempts to contact officials at the Department of Labor's Office of Foreign Labor Certification were unsuccessful. Voicemail and e-

mail messages left with division personnel were not returned.

Gordon said the decline in foreign employment exemptions from 2008 to 2009 was mainly due to a decrease in petroleum activity in the Gulf.

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“There isn’t much work out there right now,” he said. “There will be more (requests) when the price of oil starts to rise again.”

To stem the anticipated tide, OMSA has bolstered its efforts in

Washington and on the water to protect U.S. maritime jobs. Wells said protests filed with Customs and Border Protection and MarAd have helped stop some Jones Act waiver requests, and OMSA has hired a

Jones Act compliance officer to track foreign vessels and “keep them honest,” he said.

“(The officer) is getting a lot of help from offshore mariners who see foreign boats working in the Gulf and know that for every foreign mariner ... an American has lost out on a job,” Wells said.

Despite the increase in foreign competition and the idling of many U.S. vessels, Wells said he is confident that OMSA’s efforts to reduce Jones Act violations are bearing fruit.

“Foreign boats are being much more careful about their activities in the Gulf, and more and more customers now realize that if they use a foreign boat for a Jones Act move they are breaking the law,” he said.

Gordon launched an online petition drive in an effort to convince lawmakers to place a moratorium on waivers and exemptions in the Gulf. After navigating to the Web site — <http://capwiz.com/jonesactquestions> — interested parties can write their own message or sign on to a pre-drafted letter. The message can then be sent to a list of officials including President Obama, Coast Guard Commandant Adm. Thad Allen and Congress. More than 2,000 people have participated so far, Gordon said.


“I’m not making money from this,” he said. “My impetus is not to get a U.S. vessel out there (instead of a foreign one) and sue after a worker gets hurt. We’re in the worst economic situation since the Depression and qualified U.S. mariners are being displaced. Something has to be done. It’s just not right.”

Rich Miller

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