



## **GLOBAL SHIPPING INDUSTRY POSITION ON THE PROPOSED AMERICAN OFFSHORE WORKERS FAIRNESS ACT (H.R. 6728) AS INCLUDED AS SECTION 518 OF THE US COAST GUARD AUTHORIZATION ACT OF 2022**

### **1. OVERVIEW**

- The American Offshore Workers Fairness Act (AOWFA), while intended to level the playing field between US and foreign flagged vessels working on activities in the US Outer Continental Shelf (OCS), would in practice undermine and disrupt a regulatory scheme that has worked well for decades.
- The proposed legislation would impose additional and onerous new crew citizenship requirements on the global shipping industry, in contravention to customary international law and to the ultimate detriment of the US Offshore Energy sector, which directly benefits from the use and expertise of foreign-flagged construction vessels and specialised crew.
- The AOWFA would lead to the abrupt loss of essential technical personnel required to work on specialised vessels in the US OCS, causing severe disruption to offshore projects. This in turn would risk lay-up and disruption to the US domestic OCS fleet of crucial Offshore Support Vessels (OSV), which could no longer support the developers and foreign flag vessels performing OCS work.
- The proposed legislation would place US offshore energy production at risk at a time when geopolitical instability in Eastern Europe, coupled with the US ambitions to increase offshore wind production to 30 gigawatts by 2030, has made safeguarding US energy security interests more vital than ever.
- The AOWFA would ultimately weaken the US offshore energy sector, without yielding any security benefits or economic advantage to the United States.

### **2. SPECIFIC INDUSTRY CONCERNS WITH THE PROPOSED LEGISLATION**

#### *2.1 Lack of trained eligible crew risks increased safety concerns*

If passed, the AOWFA would require mariners on foreign flagged vessels to be either U.S. citizens, permanent residents (green card holders), or citizens of the nation of the flag state of the vessel. These restrictions pose impractical and commercially unviable requirements for foreign flagged vessels engaged in US OCS activities.

As an example, an offshore construction vessel flagged to Marshall Islands would, under the proposed legislation, be required to crew its vessels with either US citizens/green card holders or seafarers from the Marshall Islands. The industry notes that the demand for US crew to work on US flagged vessels in the regular shipping and OCS markets has severely limited the employment pool of US mariners available to service specialised offshore projects. We further note that there is not currently sufficient provision of training centres in the US to build up and maintain a stable pool of trained and qualified crew which could replace specialized foreign crew members serving the OCS construction markets.

Moreover, the numbers of qualified Marshall Islands nationals available to serve specialised offshore OCS projects is severely limited, restricting still further the pool of eligible crews able to operate these essential vessels under the proposed legislation. As an example, industry data of seafarer numbers reported by the Marshall Islands cite fewer than 10 available seafarers certified under that flag<sup>1</sup>, indicative of the lack of crew associated to the flag state which incidentally registers over 12% of the global share of deadweight tonnage<sup>2</sup>.

The limitation of eligible crews with the appropriate experience level to service specialised offshore projects would likely pose an unacceptable safety risk to US offshore energy operators. The immediate impact of this would be that virtually all foreign flagged vessels, including mission critical services for US offshore energy activities, would be forced to halt operating on the OCS while adequately qualified and eligible crew were sourced. This disruption would be further enhanced by the length of training programmes needed to fully qualify eligible crewmembers in the specialised offshore activities. It should be noted, for example, that Master training for offshore vessel projects can last between 2-3 years.

## *2.2 Limitations on visas for foreign vessels adds administrative burden for US Authorities*

The current US legal framework allows eligible foreign flagged vessels to be granted an exemption from US crewing requirements via a Letter of Non-Applicability, which remains valid until there is a change in ownership or control, for all crewmembers serving aboard the vessel. This Letter of Non-Applicability enables non-US crew to apply for the required B-1(OCS) visa to serve on board eligible vessels in the OCS. Once issued, this visa is non-vessel specific, enabling non-US crew to work on board any eligible foreign flagged vessel, which holds a Letter of Non-Applicability, for the duration of the visa.

However, the American Offshore Workers Act would impose vessel-specific limitations on the number of visas available to non-US crew, restricting the number of

---

<sup>1</sup> [ICS/BIMCO Seafarer Workforce Report 2021](#)

<sup>2</sup> [UNCTAD Review of Maritime Transport 2021](#)

visas available per vessel to only 2.5 times the crew complement. This would in practice create a complex new administrative burden on the State Department and US Coast Guard, effectively requiring both agencies to play a hands-on oversight role in the deployment of individual workers on foreign units on the OCS. It would also, in many cases, pose unworkable restrictions on the numbers of available, qualified and specialised non-US seafarers, able to engage in mission-critical activities on the US OCS, including pipe and cable laying, offshore construction and seismic survey activities.

### *2.3 Transport Worker Identification Cards increase unnecessary administrative burden*

The proposed legislation would also require that all crew members on foreign flagged vessels working on US OCS activities carry Transport Worker Identification Cards (TWIC) cards from the U.S. Department of Homeland Security. These cards are currently a requirement under the US Maritime Transportation Security Act for workers who need unescorted access to secure areas of the nation's maritime facilities and vessels.

For crew working on the US OSC, there is currently no need for an exempt non-US crewmember to access secure areas without an escort, making the TWIC provision an unnecessary administrative burden. This burden would fall both on foreign crewmembers, who would be required to engage with the US Transportation Security Agency in person to obtain the card, and on US authorities required to issue an additional level of accreditation. Such a requirement would also surplus to the credentialing procedure for crews which is already required and verified by the individual vessel's flag state, in compliance with international convention.

### *2.4 AOWFA contravenes International Customary Law*

In addition to the above safety and administrative concerns, the global shipping industry notes that any requirement that crew on foreign flagged vessels be either U.S. citizens, permanent residents (green card holders), or citizens of the nation of the flag state of the vessel, contravenes longstanding international customary law, consistent with the UN Convention of the Law of the Sea (UNCLOS), which provides that the flag state has the sole authority to establish crewing requirements for its vessels. Moreover, under international customary law, it is recognised that the citizenship of the foreign flag vessel's crew are not required to be the same as the flag state unless that specific flag state mandates such a requirement. Therefore no country, including the United States, has the authority to dictate citizenship requirements for foreign nationals working aboard a foreign flag vessel.

## **3. IMPACT OF PROPOSED LEGISLATION ON US OFFSHORE ENERGY INTERESTS**

### *3.1 Reducing market access to foreign specialised vessels jeopardises US offshore energy security interests*

It is important to note that the restrictions placed on foreign flagged vessels under the AOWFA would not only impose impractical difficulties for specialised offshore construction vessels to find qualified crew, but (if adopted) it would have a catastrophically disruptive effect on the US offshore energy market, including both renewable and fossil fuel extraction industries. This is because, as mentioned, foreign flagged vessels engaged in various types of specialized OCS activities must employ vessels and crew members from maritime nations with particular skill sets that cannot be replaced easily.

The specialised nature of the offshore wind sector provides a good example of the limited resources in the US domestic fleet available to service this industry of vital US interest. The AOWFA has been proposed at a time when long-term US renewable energy goals, including the ambition to deploy 30 gigawatts of offshore wind in the United States by 2030, are at the centre of long term energy security considerations. However, according to American Clean Power, there are currently no US flagged heavy-lift installation vessels which are able to construct a 14 MW offshore wind turbine.<sup>3</sup> Approximately 2 of these very specialized vessels are available worldwide, and they are both foreign-flagged, meaning that the proposed restrictive crewing citizenship requirements would apply if adopted by Congress.

Furthermore, the specialised construction vessels required for natural resource exploration in the offshore oil and natural gas sector, including installation, pipe/cable lay, survey vessels, many drilling rigs, accommodation rigs and geoscience/geophysical activities, also require highly experienced crews to service the vessels involved. These projects are currently served overwhelmingly by non-US vessels and crews as similarly capable vessels do not exist in the US flagged fleet.

Should the proposed legislation come into effect, the short term implications of the restrictive crewing requirements could lead to substantial disruption in the offshore energy sector, as a result of the abrupt loss of the essential technical personnel required to work on specialised vessels in the OCS. In addition, the US domestic OCS fleet of crucial OSV (offshore support vessels) would have no requirement to support the developers and foreign flag vessels performing OCS work, resulting in their potential lay-up and disruption to long term employment opportunity.

### *3.2 Imposing regulatory barriers weakens US market attractiveness and may lead to retaliatory measures in foreign markets*

Further still, the attraction of construction projects for US offshore OCS activities will be drastically reduced for specialised foreign vessels and crews, due to the added

---

<sup>3</sup> [American Clean Power \(ACP\) Jones Act Fact Sheet](#)

administrative burden and lack of eligible US and flag state crew available for these tasks. In short, the barriers imposed by the proposed legislation may therefore further damage the US offshore energy sector by driving investment, expertise, and projects away from the United States, an outcome which is not in keeping with the current administrations goal of substantially increasing the offshore wind sector by 2030. Long term, the implications of these restrictions on market access may also result in retaliatory measures imposed on US crew operating in foreign offshore projects, a consequence which the current exemption is expressly designed to avoid.

### **Global Industry Recommendations**

In light of the above concerns, the global shipping industry is strongly of the view that the current regulatory system governing activities in the US Outer Continental Shelf is comprehensive and satisfactory, benefitting to the fullest extent possible the US offshore energy sector. As such, we would sincerely encourage lawmakers in the United States Congress not to support the inclusion of the American Offshore Workers Act provision in the US Coast Guard Reauthorization Act of 2022.

We sincerely hope that the comments and recommendations hereby submitted will be given careful consideration during this process, to safeguard economic growth and offshore energy interests in the United States.