American Offshore Worker Fairness Act Explained:

As described further below, the American Offshore Worker Fairness Act (AOFWA) amends the Outer Continental Shelf Lands Act (OCSLA) to improve parity between U.S. flagged vessels and foreign flagged vessels working in offshore energy activities in U.S. waters. The changes also improve the oversight of foreign-flagged vessels and the mariners that work on these vessels.

Existing law (43 U.S.C. Section 1356) requires that all vessels, rigs, platforms, or other structures on the U.S. Outer Continental Shelf (OCS) be manned by U.S. citizens or lawful permanent residents. Current law also provides that vessels, rigs, platforms, or other structures that are more than 50 percent foreign owned are exempt from the requirement that they be manned by U.S. citizens.

This requirement and exemption were enacted to—as stated in the Conference Report accompanying the 1978 Amendments to OCSLA—"reconcile dual concerns of providing fullest possible employment for Americans in [OCS] activities and eliminating to the fullest extent ... retaliation by foreign nations against American workers in foreign offshore activities"

In practice, the exemption has not provided reciprocal access to foreign waters for U.S. mariners but has instead created a loophole that allows foreign vessels from some of the wealthiest countries in the world to utilize mariners not from their home or flag nation, but from low-wage nations. For example, under current law, a Norwegian-flagged vessel operating in U.S. waters will be manned by Russian, Ukrainian, Filipino, and Chinese mariners, not U.S. or Norwegian citizens. The cost savings provided by utilizing such mariners has allowed foreign flagged vessels to operate at an unfair advantage compared to U.S.-flagged vessels.

To address this fact, the American Offshore Worker Fairness Act restores congressional intent by ensuring that the mariners manning foreign-flagged vessels engaged in offshore energy activities in U.S. waters are either U.S. mariners (U.S. citizens or legal permanent residents) or are citizens of the nation where the vessel is flagged. Further, the proposal requires foreign mariners serving in U.S. waters under this language to secure a Transportation Worker Identification Credential (TWIC). Current regulations do not require these mariners obtain a TWIC.

Additionally, the AOFWA confirms 43 U.S.C. Section 1536 with the changes to OCSLA that were made in the 2021 NDAA by removing a reference to "oil and gas," thereby affirming that this section applies to all resource development on the U.S. OCS, including offshore wind development.

The proposal also provides more structure and oversight to how the above-described OCSLA manning exemption is implemented and how foreign vessels are documented when they operate in U.S. waters.

Under current practice, when a foreign-flagged vessel seeks to operate in U.S. waters with a foreign crew, the vessel owner will seek a letter of OCSLA non-applicability from the U.S. Coast Guard. This letter states that the OCSLA manning authority does not apply to the vessel because it is more than 50 percent foreign owned. As currently structured, these letters are evergreen, good for the life of the vessel and U.S. Coast Guard only requires foreign vessels to apply for this exemption once, and subsequently urges foreign vessels to self-report any material changes in their ownership. This current system fails to recognize the fact that U.S. vessel owners are required to prove their ownership on an annual basis and the reality that the maritime industry has always been marked by a high turnover of companies, with vessel sales happening frequently.

To address these facts, the proposed language sunsets all current letters of OCSLA non-applicability six months after the bill's enactment and requires foreign vessels to reapply for a new letters based upon their current ownership. Furthermore, the proposal limits future letters of OCSLA non-applicability to be valid for 12 months from the date of issue.

Further, under current practice, the above-described OCSLA letters of non-applicability can be provided to an unlimited number of foreign mariners. In turn, these mariners utilize the letter to secure a visa which is valid for five years. As a result, the USCG is uncertain how many visas have been issued or are currently valid but they have previously estimated that approximately 4,000 are issued per year. Ample evidence indicates that these mariners publicly tout their visas to secure positions on other foreign-flagged vessels operating in U.S. waters.

To combat any overuse of these B-1 / OCS Visas, the AOWFA limits the number of foreign mariners that may receive a visa sponsored by a vessel's letter of OCSLA non-applicability to 2.5 times the number of persons required by the vessel's safe manning document. This amount allows for a vessel's current crew, plus a reasonable amount of extra personnel to secure and utilize the visas, but provides a check against mariners from utilizing the visas for longer periods of time or leveraging the U.S. visa that was provided to work on one vessel to secure a position on a second vessel.

The American Offshore Worker Fairness Act also provides the USCG with more enforcement tools, requiring the USCG to inspect foreign vessels annually to review compliance of the crewing requirements added by this proposal. Additionally, the proposal adds language specifying that an exemption provided to a foreign vessel can be revoked if the vessel is found to be out of compliance or if errors are found on its application. The language sets a penalty of $10,000 per day for violations.

In addition to these enforcement tools, the AOWFA also requires the USCG to notify the Secretary of State of each exemption provided by this language. This requirement is intended to ensure that only those foreign mariners who meet the requirements for a visa listed above, are provided a visa.

Finally, the American Offshore Worker Fairness Act requires the USCG to report annually to Congress on the number of foreign vessels operating in the U.S. each year and how their exemption applications have changed from year-to-year.