

## U.S. Legislation Introduced Restricting Use of Foreign Vessels in U.S. Offshore Projects

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The U.S. Congress has been actively considering legislation since 2022 that would restrict the use of foreign vessels in U.S. offshore projects. Both oil and gas and renewable energy projects would be affected. The latest version of that legislation was introduced on October 5, 2023, by Senator Bill Cassidy (R-LA) entitled the “American Worker Fairness Act.”

Earlier this year, the U.S. House and Transportation and Infrastructure Committee reported favorably H.R. 2741, the Coast Guard Authorization Act of 2023, which included a provision overlapping with the Cassidy bill. Specifically, foreign vessels operating on projects on the U.S. outer continental shelf would generally no longer be able to employ foreign crews. Such a provision passed the U.S. House twice in 2022 although the House has not yet considered this year’s Coast Guard authorization legislation. The U.S. Senate did not adopt the foreign manning requirement in 2022.

Under current law which has existed since 1978, foreign vessels which can show that they are not under American control can employ whomever they wish when operating on the U.S. OCS. Although sometimes referred to as a “loophole,” this provision was plainly intended to help protect U.S. companies operating in foreign countries from local manning requirements.

All the offshore manning restrictive proposals to date would effectively eliminate this authority in favor of requiring all foreign vessels to either have U.S. citizen crews (with some provision for permanent residents) or crews who are nationals of the country which registered the vessel. That would mean that only U.S. citizens/Green Card holders or Panamanian citizens could be employed on a Panamanian-flag vessel operating on the U.S. OCS. The only exception was when a vessel owner can prove that no U.S. citizens are available for a position on a case-by-case basis.

Cassidy’s bill both provides for other exceptions to the proposed manning requirement and adds various procedural requirements going beyond any manning requirement affecting all operations by foreign vessels on the U.S. OCS.

With respect to exceptions, there is a three-year delayed phase-in for vessels which “pay out” “export cables, inter-array cables, umbilical cables, or pipes.” The bill does not delay the phase in for vessels engaged in “repair or other activities incidental to the paying out” of cable or pipe such as “site clearance,” “trenching” or “cable tie-ins.” The three years can be extended further if the Secretary of Transportation determines that no coastwise eligible vessel is available for a project.

There is also a permanent exception in the Cassidy bill for certain heavy lift vessels such as ones that can “perform an offshore lift in excess of 1,000 metric tons” and which have “a crane with a height capability of 180 meters.” Moreover, there is an exemption for any “rig, or mobile offshore drilling unit, while performing offshore drilling operations” and any “floating production storage and offloading unit.”

The Cassidy bill would also make changes to the current Jones Act penalty process and introduce a new notification process for foreign vessels operating in U.S. waters and a new process by which the Jones Act community can challenge CBP Jones Act-related actions. The “Jones Act” is a collection of federal laws generally reserving U.S. domestic trade to qualified U.S.-flag vessels.

On penalties, the proposed legislation would require CBP to publish the issuance of final Jones Act penalty actions. Currently, there is no public notice of such actions.

With regard to notification, every foreign vessel working on the U.S. OCS would have to notify the Secretary of Homeland Security in advance of how intended operations comply with the Jones Act, and the Secretary would provide public notice of such notifications. Certain offshore heavy lift vessels would be exempted.

With regard to a new process, the proposed legislation identifies Jones Act community members, such as “manufacturers of coastwise qualified vessels,” who would have the right to seek an “interpretive ruling” from the Department of Homeland Security to the effect that a proposed foreign vessel operation would violate the Jones Act. No provision is apparently being proposed to notify the affected foreign vessel owner or to give that owner any rights in the interpretive ruling proceeding.

3 Min Read

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