

and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### DISTANT WATER TUNA FLEET

Pub. L. 109-241, title IV, § 421, July 11, 2006, 120 Stat. 547, as amended by Pub. L. 111-281, title IX, § 904, Oct. 15, 2010, 124 Stat. 3011; Pub. L. 112-213, title VII, § 701, Dec. 20, 2012, 126 Stat. 1579, provided that:

“(a) **MANNING REQUIREMENTS.**—Notwithstanding section 8103(a) of title 46, United States Code, United States purse seine fishing vessels fishing exclusively for highly migratory species in the treaty area under a fishing license issued pursuant to the 1987 Treaty on Fisheries Between the Governments of Certain Pacific Islands States and the Government of the United States of America, or transiting to or from the treaty area exclusively for such purpose, may engage foreign citizens to meet the manning requirement (except for the master) until the date of expiration of this section if, after timely notice of a vacancy to meet the manning requirement, no United States citizen personnel are readily available to fill such vacancy.

“(b) **LICENSING RESTRICTIONS.**—

“(1) **IN GENERAL.**—Subsection (a) only applies to a foreign citizen who holds a credential that is equivalent to the credential issued by the Coast Guard to a United States citizen for the position, with respect to requirements for experience, training, and other qualifications.

“(2) **TREATMENT OF CREDENTIAL.**—An equivalent credential under paragraph (1) shall be considered as meeting the requirements of section 8304 of title 46, United States Code, but only while a person holding the credential is in the service of the vessel to which this section applies.

“(c) **LIMITATION.**—Subsection (a) applies only to vessels operating in and out of American Samoa or Guam.

“(d) **EXPIRATION.**—This section expires on the date the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America ceases to have effect for any party under Article 12.6 or 12.7 of such treaty, as in effect on the date of enactment of the Coast Guard and Maritime Transportation Act of 2012 [Dec. 20, 2012].

“(e) **SAFETY INSPECTIONS.**—A vessel may not engage a foreign citizen to meet a manning requirement under this section unless it has an annual safety examination by an individual authorized to enforce part B of subtitle II of title 46, United States Code.

“(f) **REPORTS.**—On March 1, 2007, and annually thereafter until the date of expiration of this section, the Coast Guard and the National Marine Fisheries Service shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committees on Transportation and Infrastructure and Resources [now Natural Resources] of the House of Representatives, providing the following information on the United States purse seine fleet referred to in subsection (a):

“(1) The number and identity of vessels in the fleet using foreign citizens to meet manning requirements pursuant to this section and any marine casualties involving such vessel.

“(2) The number of vessels in the fishery under United States flag as of January 1 of the year in which the report is submitted, the percentage ownership or control of such vessels by non-United States citizens, and the nationality of such ownership or control.

“(3) Description of any transfers or sales of United States flag vessels in the previous calendar year, and the disposition of such vessel, including whether the vessel was scrapped or sold, and, if sold, the nationality of the new owner and location of any fishery to which the vessel will be transferred.

“(4) Landings of tuna by vessels under flag in the 2 previous calendar years, including an assessment of landing trends, and a description of landing percentages and totals—

“(A) delivered to American Samoa and any other port in a State or territory of the United States; and

“(B) delivered to ports outside of a State or territory of the United States, including the identity of the port.

“(5) An evaluation of capacity and trends in the purse seine fleet fishing in the area covered by the South Pacific Regional Fisheries Treaty, and any transfer of capacity from such fleet or area to other fisheries, including those governed under the Western and Central Pacific Fisheries Convention and the Inter-American Tropical Tuna Convention.”

#### APPLICATION OF SECTION TO FISHING VESSELS IN CALIFORNIA

Pub. L. 101-595, title III, § 317, Nov. 16, 1990, 104 Stat. 2988, as amended by Pub. L. 104-324, title III, § 301(d)(2)(B), Oct. 19, 1996, 110 Stat. 3916, provided that:

“(a) **DEFINITION.**—For purposes of the application of sections 8103(a), 12102, 12110, 12111, and 12122(b) of title 46, United States Code, to a fishing vessel operating in waters subject to the jurisdiction of the United States off the coast of the State of California, the term ‘citizen of the United States’ includes an alien lawfully admitted to the United States for permanent residence.

“(b) **TERMINATION.**—This section shall terminate on October 1, 2000.”

#### § 8104. Watches

(a) An owner, charterer, managing operator, master, individual in charge, or other person having authority may permit an officer to take charge of the deck watch on a vessel when leaving or immediately after leaving port only if the officer has been off duty for at least 6 hours within the 12 hours immediately before the time of leaving.

(b) On an oceangoing or coastwise vessel of not more than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title (except a fishing, fish processing, or fish tender vessel), a licensed individual may not be required to work more than 9 of 24 hours when in port, including the date of arrival, or more than 12 of 24 hours at sea, except in an emergency when life or property are endangered.

(c) On a towing vessel (except a towing vessel operated only for fishing, fish processing, fish tender, or engaged in salvage operations) operating on the Great Lakes, harbors of the Great Lakes, and connecting or tributary waters between Gary, Indiana, Duluth, Minnesota, Niagara Falls, New York, and Ogdensburg, New York, a licensed individual or seaman in the deck or engine department may not be required to work more than 8 hours in one day or permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency when life or property are endangered.

(d) On a merchant vessel of more than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title (except a vessel only operating on rivers, harbors, lakes (except the Great Lakes), bays,

sounds, bayous, and canals, a fishing, fish tender, or whaling vessel, a fish processing vessel of not more than 5,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title, yacht, or vessel engaged in salvage operations), the licensed individuals, sailors, coal passers, firemen, oilers, and water tenders shall be divided, when at sea, into at least 3 watches, and shall be kept on duty successively to perform ordinary work incident to the operation and management of the vessel. The requirement of this subsection applies to radio officers only when at least 3 radio officers are employed. A licensed individual or seaman in the deck or engine department may not be required to work more than 8 hours in one day.

(e) On a vessel designated by subsection (d) of this section—

(1) a seaman may not be—

(A) engaged to work alternately in the deck and engine departments; or

(B) required to work in the engine department if engaged for deck department duty or required to work in the deck department if engaged for engine department duty;

(2) a seaman may not be required to do unnecessary work on Sundays, New Year's Day, July 4th, Labor Day, Thanksgiving Day, or Christmas Day, when the vessel is in a safe harbor, but this clause does not prevent dispatch of a vessel on a voyage; and

(3) when the vessel is in a safe harbor, 8 hours (including anchor watch) is a day's work.

(f) Subsections (d) and (e) of this section do not limit the authority of the master or other officer or the obedience of the seamen when, in the judgment of the master or other officer, any part of the crew is needed for—

(1) maneuvering, shifting the berth of, mooring, or unmooring, the vessel;

(2) performing work necessary for the safety of the vessel, or the vessel's passengers, crew, or cargo;

(3) saving life on board another vessel in jeopardy; or

(4) performing fire, lifeboat, or other drills in port or at sea.

(g)(1) On a towing vessel, an offshore supply vessel, or a barge to which this section applies, that is engaged on a voyage of less than 600 miles, the licensed individuals and crewmembers (except the coal passers, firemen, oilers, and water tenders) may be divided, when at sea, into at least 2 watches.

(2) Paragraph (1) applies to an offshore supply vessel of at least 6,000 gross tons as measured under section 14302 of this title if the individuals engaged on the vessel are in compliance with hours of service requirements (including recording and recordkeeping of that service) as prescribed by the Secretary.

(h) On a vessel to which section 8904 of this title applies, an individual licensed to operate a towing vessel may not work for more than 12 hours in a consecutive 24-hour period except in an emergency.

(i) A person violating subsection (a) or (b) of this section is liable to the United States Government for a civil penalty of \$10,000.

(j) The owner, charterer, or managing operator of a vessel on which a violation of subsection (c), (d), (e), or (h) of this section occurs is liable to the Government for a civil penalty of \$10,000. The seaman is entitled to discharge from the vessel and receipt of wages earned.

(k) On a fish processing vessel subject to inspection under part B of this subtitle, the licensed individuals and deck crew shall be divided, when at sea, into at least 3 watches.

(l) Except as provided in subsection (k) of this section, on a fish processing vessel, the licensed individuals and deck crew shall be divided, when at sea, into at least 2 watches if the vessel—

(1) entered into service before January 1, 1988, and is more than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; or

(2) entered into service after December 31, 1987, and has more than 16 individuals on board primarily employed in the preparation of fish or fish products.

(m) This section does not apply to a fish processing vessel—

(1) entered into service before January 1, 1988, and not more than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; or

(2) entered into service after December 31, 1987, and having not more than 16 individuals on board primarily employed in the preparation of fish or fish products.

(n) On a tanker, a licensed individual or seaman may not be permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency or a drill. In this subsection, "work" includes any administrative duties associated with the vessel whether performed on board the vessel or onshore.

(o)(1) Except as provided in paragraph (2) of this subsection, on a fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or less than 500 gross tons as measured under section 14302 of this title engaged in the Aleutian trade, the licensed individuals and crewmembers shall be divided, when at sea, into at least 3 watches.

(2) On a fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or less than 500 gross tons as measured under section 14502 of this title, or is less than 2,500 gross tons as measured under section 14302 of this title engaged in the Aleutian trade, the licensed individuals and crewmembers shall be divided, when at sea, into at least 2 watches, if the vessel—

(A) before September 8, 1990, operated in that trade; or

(B)(i) before September 8, 1990, was purchased to be used in that trade; and

(ii) before June 1, 1992, entered into service in that trade.

(p) The Secretary may prescribe the watchstanding and work hours requirements for an oil spill response vessel.

(Pub. L. 98-89, Aug. 26, 1983, 97 Stat. 549; Pub. L. 98-364, title IV, §402(11), July 17, 1984, 98 Stat. 448; Pub. L. 98-557, §33(c), Oct. 30, 1984, 98 Stat. 2876; Pub. L. 99-307, §1(12), May 19, 1986, 100 Stat. 445; Pub. L. 101-380, title IV, §§4114(b), 4302(f), Aug. 18, 1990, 104 Stat. 517, 538; Pub. L. 101-595, title VI, §602(e)(1), Nov. 16, 1990, 104 Stat. 2991; Pub. L. 102-587, title V, §5212, Nov. 4, 1992, 106 Stat. 5077; Pub. L. 103-206, title III, §322(a), Dec. 20, 1993, 107 Stat. 2428; Pub. L. 104-324, title VII, §728, title XI, §§1104(c), 1114, Oct. 19, 1996, 110 Stat. 3939, 3967, 3971; Pub. L. 109-241, title III, §311(b), July 11, 2006, 120 Stat. 530; Pub. L. 111-281, title VI, §617(d), title IX, §903(a)(1), Oct. 15, 2010, 124 Stat. 2973, 3010.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
8104 .....	46:235 46:405(b) 46:673

Section 8104 prescribes certain working hours and conditions under which working hours are set. The Committee intends that these sections be interpreted in a manner consistent with one another.

Subsection (a) permits an individual to take charge of the deck watch on leaving port and immediately thereafter only if the individual has been off duty for 6 of the 12 hours immediately prior to departure.

Subsection (b) prohibits a licensed individual from being required to work more than 9 of 24 hours in port or more than 12 of 24 hours at sea on an oceangoing or coastwise vessel of not more than 100 gross tons, except in an emergency.

Subsection (c) prescribes a maximum 8-hour day for licensed individuals and seamen on towing vessels operating on the Great Lakes and certain connecting or tributary waters.

Subsection (d) requires certain members of the complement of certain merchant vessels of more than 100 gross tons to be divided into at least 3 successive watches when at sea. This requirement applies to radio officers only when at least 3 radio officers are employed. Subsection (d) also prescribes a maximum 8-hour work day for licensed individuals and seamen on these vessels.

For the Great Lakes towing vessels and merchant vessels in subsections (c) and (d), subsection (e) requires that seamen be hired only for work in either the deck or the engine department. When in a safe harbor, seamen may be required to do only necessary work on Sundays and certain holidays, unless the vessel is getting underway on a voyage. Further, when in a safe harbor, this subsection restates the maximum 8-hour work day which applies even for anchor watch.

Subsection (f) states that the limitations in subsections (d) and (e) do not apply if the master or other officer decides the crew is needed for certain routine, safety, or rescue activities.

Subsection (g) provides that for a towing vessel (except a Great Lakes towing vessel under subsection (c)), offshore supply vessel, or barge on a voyage of less than 600 miles, the licensed officers and certain crewmembers may be divided into not less than two watches when at sea.

Subsection (h) provides that the licensed operator for a towing vessel at least 26 feet long may not be required to work more than 12 of 24 hours, except in an emergency.

Subsections (i) and (j) prescribe penalties for violations of the provisions of this section and, in certain in-

stances, entitles the seaman to discharge and payment of wages.

AMENDMENTS

2010—Subsec. (g). Pub. L. 111-281, §617(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (o). Pub. L. 111-281, §903(a)(1), made technical amendment to directory language of Pub. L. 109-241, §311(b). See 2006 Amendment note below.

2006—Subsec. (o). Pub. L. 109-241, as amended by Pub. L. 111-281, §903(a)(1), substituted “or less than 500 gross tons as measured under section 14502 of this title, or is less than 2,500 gross tons as measured under section 14302 of this title” for “or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title” in pars. (1) and (2).

1996—Subsec. (b). Pub. L. 104-324, §728(1), inserted “as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title” after “100 gross tons”.

Subsec. (c). Pub. L. 104-324, §1114(a), struck out “or permitted” after “required” and inserted “or permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period” after “day”.

Subsec. (d). Pub. L. 104-324, §728(2), inserted “as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title” after “100 gross tons” and after “5,000 gross tons”.

Subsec. (e). Pub. L. 104-324, §1114(b), substituted “subsection (d)” for “subsections (c) and (d)” in introductory provisions.

Subsec. (g). Pub. L. 104-324, §1114(c), struck out “(except a vessel to which subsection (c) of this section applies)” after “On a towing vessel”.

Subsec. (l)(1). Pub. L. 104-324, §728(3), inserted “as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title” after “1,600 gross tons”.

Subsec. (m)(1). Pub. L. 104-324, §728(4), inserted “as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title” after “1,600 gross tons”.

Subsec. (o)(1). Pub. L. 104-324, §728(5), inserted “as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title” after “500 gross tons”.

Subsec. (o)(2). Pub. L. 104-324, §728(6), inserted “as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title” after “500 gross tons”.

Subsec. (p). Pub. L. 104-324, §1104(c), amended subsec. (p) generally. Prior to amendment, subsec. (p) read as follows: “On a vessel used only to respond to a discharge of oil or a hazardous substance, the licensed individuals and crewmembers may be divided into at least two watches when the vessel is engaged in an operation less than 12 hours in duration.”

1993—Subsec. (g). Pub. L. 103-206, §322(a)(1), struck out “a vessel used only to respond to a discharge of oil or a hazardous substance,” after “an offshore supply vessel.”

Subsec. (p). Pub. L. 103-206, §322(a)(2), added subsec. (p).

1992—Subsec. (g). Pub. L. 102-587, §5212(1), inserted “a vessel used only to respond to a discharge of oil or a hazardous substance,” after “an offshore supply vessel.”

Subsecs. (n), (o). Pub. L. 102-587, §5212(2), redesignated subsec. (n), relating to fish tender vessels of not more than 500 gross tons engaged in Aleutian trade, as (o).

1990—Subsecs. (i), (j). Pub. L. 101-380, §4302(f), substituted “\$10,000” for “\$100” in subsec. (i) and for “\$500” in subsec. (j).

Subsec. (n). Pub. L. 101-595 added subsec. (n) relating to fish tender vessels of not more than 500 gross tons engaged in Aleutian trade.

Pub. L. 101-380, § 4114(b), added subsec. (n) relating to tankers.

1986—Subsec. (k). Pub. L. 99-307 substituted “watchers” for “watchers”.

1984—Subsec. (b). Pub. L. 98-364, § 402(11)(A), substituted “100 gross tons (except a fishing, fish processing, or fish tender vessel)” for “100 gross tons”.

Subsec. (c). Pub. L. 98-364, § 402(11)(B), substituted “fishing, fish processing, fish tender,” for “fishing”.

Subsec. (d). Pub. L. 98-364, § 402(11)(C), substituted “a fishing, fish tender, or whaling vessel, a fish processing vessel of not more than 5,000 gross tons” for “a fishing or whaling vessel”.

Subsec. (k). Pub. L. 98-557 substituted “shall” for “may”.

Pub. L. 98-364, § 402(11)(D), added subsec. (k).

Subsec. (l). Pub. L. 98-557 substituted “shall” for “may” in provisions preceding par. (l).

Pub. L. 98-364, § 402(11)(D), added subsec. (l).

Subsec. (m). Pub. L. 98-364, § 402(11)(D), added subsec. (m).

#### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-281, title IX, § 903(a), Oct. 15, 2010, 124 Stat. 3010, provided that the amendment by section 903(a)(1) is effective with enactment of Pub. L. 109-241.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-380 applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101-380, set out as an Effective Date note under section 2701 of Title 33, Navigation and Navigable Waters.

### § 8105. Fishing vessel exemption

Notwithstanding any other provision of law, neither the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, nor any amendment to such convention, shall apply to a fishing vessel, including a fishing vessel used as a fish tender vessel.

(Added Pub. L. 104-324, title XI, § 1146(a), Oct. 19, 1996, 110 Stat. 3992.)

#### PRIOR PROVISIONS

A prior section 8105, Pub. L. 98-89, Aug. 26, 1983, 97 Stat. 550, authorized Secretary to prescribe regulations to carry out this part prior to repeal by Pub. L. 101-595, title VI, § 603(7)(A), Nov. 16, 1990, 104 Stat. 2993.

### § 8106. Riding gangs

(a) IN GENERAL.—The owner or managing operator of a freight vessel of the United States on voyages covered by the International Convention for Safety of Life at Sea, 1974 (32 UST 47m) shall—

(1) ensure that—

(A) subject to subsection (d), each riding gang member on the vessel—

(i) is a United States citizen or an alien lawfully admitted to the United States for permanent residence; or

(ii) possesses a United States non-immigrant visa for individuals desiring to enter the United States temporarily for business, employment-related and personal identifying information, and any other documentation required by the Secretary;

(B) all required documentation for such member is kept on the vessel and available for inspection by the Secretary; and

(C) each riding gang member is identified on the vessel’s crew list;

(2) ensure that—

(A) the owner or managing operator attests in a certificate that the background of each riding gang member has been examined and found to be free of any credible information indicating a material risk to the security of the vessel, the vessel’s cargo, the ports the vessel visits, or other individuals onboard the vessel;

(B) the background check consisted of a search of all information reasonably available to the owner or managing operator in the riding gang member’s country of citizenship and any other country in which the riding gang member works, receives employment referrals, or resides;

(C) the certificate required under subparagraph (A) is kept on the vessel and available for inspection by the Secretary; and

(D) the information derived from any such background check is made available to the Secretary upon request;

(3) ensure that each riding gang member, while on board the vessel, is subject to the same random chemical testing and reporting regimes as crew members;

(4) ensure that each such riding gang member receives basic safety familiarization and basic safety training approved by the Coast Guard as satisfying the requirements for such training under the International Convention of Training, Certification, and Watchkeeping for Seafarers, 1978;

(5) prevent from boarding the vessel, or cause the removal from the vessel at the first available port, and disqualify from future service on board any other vessel owned or operated by that owner or operator, any riding gang member—

(A) who has been convicted in any jurisdiction of an offense described in paragraph (2) or (3) of section 7703;

(B) whose license, certificate of registry, or merchant mariner’s document has been suspended or revoked under section 7704; or

(C) who otherwise constitutes a threat to the safety of the vessel;

(6) ensure and certify to the Secretary that the sum of—

(A) the number of riding gang members on board a freight vessel, and

(B) the number of individuals in addition to crew permitted under section 3304,

does not exceed 12;

(7) ensure that every riding gang member is employed on board the vessel under conditions that meet or exceed the minimum international standards of all applicable international labor conventions to which the United States is a party, including all of the merchant seamen protection and relief provided under United States law; and

(8) ensure that each riding gang member—

(A) is supervised by an individual who holds a license issued under chapter 71; and

(B) only performs work in conjunction with individuals who hold merchant mari-