

U.S. Department of  
Homeland Security

United States  
Coast Guard



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## MEMORANDUM

JUN 8 2005

From: CAPT W.D. BAUMGARTNER  
(Chief, COMDT (G-LMI))

Reply to: G-LMI  
Attn of: LT Krajewski

To: COMDT (G-MOC-3)

Subj: CITIZENSHIP REQUIREMENTS – CREWMEN ABOARD UNDOCUMENTED  
COMMERCIAL FISHING VESSELS

1. This responds to your request for an interpretation of 46 USC 8103. You asked whether or not the requirement under 46 U. S. C. §8103 (i)(2) that, “Not more than 25 percent of the unlicensed seamen on a [fishing, fish processing, or fish tender vessel that is engaged in the fisheries in the navigable waters of the United States or the exclusive economic zone] may be aliens . . .,” applies to undocumented commercial fishing vessels. Based on a plain reading of the statute, the public law and the legislative history, I have determined that the citizenship requirements of 46 U. S. C. §8103 (i)(2) are applicable to all documented and state registered vessels engaged in commercial fishing.

2. Section 8103 of Title 46, United States Code provides citizenship requirements for certain positions and for the crew compliment on average aboard U.S. vessels. Four of the eight provisions originally contained in §8103, by their plain language, apply specifically to documented vessels. The provision contained at 46 U.S.C. §8103(i) was added to the original eight pursuant to P.L. 100-239, also known as, “The Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987.” In addition to amending Federal law to revise the definition of “vessel of the United States” and “rebuilt” for the purpose of preventing foreign built vessels from entering the fishery, the act was amended at the request of then Congressman Biaggi (D-NY) to amend §8103 by adding the entirety of paragraph (i) as it appears today. Neither the plain language of Public Law 100-293, nor the plain language of §8103(i) as codified, indicate that it is applicable only to documented vessels.<sup>1</sup> The section-by-section analysis prepared by the Committee on Merchant Marine and Fisheries summarized the effect of the bill as follows:

A fishing, fish processing, or fish tender vessel (as defined in sections 2101(11a), (11b), and 11(c) that is engaged in the navigable waters of the United States or the EEZ need not comply with the 100 percent citizenship requirement [of §8103(b)(1)]. However, for the first time, 75 percent of the unlicensed seamen (all individuals onboard, including those engaged in fish processing) must be citizens of the United States or aliens lawfully admitted to the United States for permanent residence.

<sup>1</sup> Additionally, the language in 46 U. S. C. 8103(i)(1) applying Section 8103(i) to vessels, “engaged in the fisheries in the navigable waters of the United States or the exclusive economic zone” and the language in Section 8103(i)(3) exempting “fishing vessels fishing for highly regulatory species” can be read as consistent and complimentary to the provisions in 8103(b)(2)(B) and (C) which exclude the same vessels.

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16721

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The definitions of fishing, fish processing, and fish tender vessel referenced in the report do not require that a vessel be documented or carry a fishery endorsement. Instead, for example, the definition of fishing vessel means, "a vessel that commercially engages in the catching, taking, or harvesting of fish . . ." As specified in 46 U. S. C. §12102 and implementing regulations at 46 CFR §67.5 a vessel must measure more than 5 net tons to be eligible for documentation. Vessels measuring less than 5 net tons which are not eligible for documentation but are engaged in the commercial catching of fish are still, by definition, fishing vessels. Vessels of this size (e.g. a lobster boat) often require a permit issued by the National Marine Fisheries Service pursuant to section 303 (b)(1) of the Magnuson-Stevens Fishery Conservation and Management Act in order to participate in the fishery regardless of whether or not they are documented.

3. The plain language of the statute indicates that §8103(i) is applicable to fishing vessels and does not indicate that those vessels must be documented. The statutory definitions contained at 46 U. S. C. §2101 further indicate that fishing vessels include any vessel commercially engaged in the catching of fish. In addition, the legislative history clearly references the 46 U. S. C. §2101 definitions as the standard for determining which vessels are deemed fishing vessels. Furthermore, this interpretation is consistent with other Magnuson-Stevens Act restrictions on foreign participation in the U.S. fishery. Accordingly, vessels less than 5 net tons which are engaged in commercial fishing must meet the citizenship requirements of 46 U. S. C. §8103(i)(2).

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