

115TH CONGRESS
1ST SESSION

S. 2071

To authorize the temporary entry into the United States of alien crewmen employed on longline fishing vessels originating in Hawaii, to ensure that such aliens receive reasonable wages and working conditions, and to provide for appropriate enforcement and oversight of fishing companies employing such aliens.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 2017

Ms. HIRONO (for herself and Mr. SCHATZ) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To authorize the temporary entry into the United States of alien crewmen employed on longline fishing vessels originating in Hawaii, to ensure that such aliens receive reasonable wages and working conditions, and to provide for appropriate enforcement and oversight of fishing companies employing such aliens.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Sustainable Fishing
5 Workforce Protection Act”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) ASSOCIATION OF EMPLOYERS.—The term
 4 “association of employers” means any nonprofit or
 5 membership association of owners, charterers, or
 6 managing operators of a longline fishing vessel, or
 7 the legal representative of any such individual or en-
 8 tity, that has its home port or an operating base in
 9 the State of Hawaii.

10 (2) D–3 NONIMMIGRANT.—The term “D–3 non-
 11 immigrant” means a nonimmigrant described in sec-
 12 tion 101(a)(15)(D)(iii) of the Immigration and Na-
 13 tionality Act, as added by section 3(a)(2).

14 (3) EMPLOYER.—The term “employer” means
 15 the owner, charterer, or managing operator of a
 16 longline fishing vessel, or the legal representative of
 17 any such individual or entity, that has its home port
 18 or an operating base in the State of Hawaii.

19 (4) LONGLINE FISHING VESSEL.—The term
 20 “longline fishing vessel” means a vessel which—

21 (A) is operating in accordance with section
 22 8103(b)(2)(B) of title 46, United States Code;

23 (B) has its home port or an operating base
 24 in the State of Hawaii; and

1 (C) uses pelagic longline (as defined in sec-
 2 tion 600.10 of title 50, Code of Federal Regula-
 3 tions) in its fishing operations.

4 **SEC. 3. NONIMMIGRANT VISA FOR ALIEN CREWMEN ON**
 5 **FISHING VESSELS OPERATING OUT OF HA-**
 6 **WAI.**

7 (a) IN GENERAL.—Section 101(a)(15)(D) of the Im-
 8 migration and Nationality Act (8 U.S.C. 1101(a)(15)(D))
 9 is amended—

10 (1) in clause (ii), by adding “and” at the end;

11 and

12 (2) by adding at the end the following:

13 “(iii) an alien crewman serving in good faith as
 14 such in any capacity required for normal operations
 15 and service aboard a longline fishing vessel having
 16 its home port or an operating base in Hawaii who
 17 intends to land temporarily in Hawaii solely in pur-
 18 suit of work as a crewman and to depart from Ha-
 19 waii with the vessel on which the crewman arrived
 20 or some other vessel or aircraft;”.

21 (b) TREATMENT OF DEPARTURES.—In the adminis-
 22 tration of section 101(a)(15)(D) of the Immigration and
 23 Nationality Act, as added by subsection (a), an alien crew-
 24 man shall be considered to have departed from Hawaii,
 25 Guam, or the Commonwealth of the Northern Mariana Is-

1 lands after leaving the territorial waters thereof, without
2 regard to whether the alien arrives in a foreign state be-
3 fore returning to Hawaii, Guam, or the Commonwealth
4 of the Northern Mariana Islands.

5 (c) DURATION.—A visa issued to an alien crewman
6 under section 101(a)(15)(D)(iii) of the Immigration and
7 Nationality Act—

8 (1) shall remain in effect during the 3-year pe-
9 riod beginning on the date on which the visa is
10 issued by the Secretary of State; and

11 (2) may be renewed for successive 3-year peri-
12 ods under the same terms and conditions applicable
13 to the issuance of a new visa to a nonimmigrant
14 under such section.

15 (d) EFFECT OF TERMINATION OF EMPLOYMENT ON
16 VISA STATUS.—

17 (1) IN GENERAL.—Except as provided under
18 paragraph (2), a D-3 nonimmigrant whose employ-
19 ment is lawfully terminated by his or her employer,
20 or by an association of employers, before the end of
21 the period described in subsection (c) shall depart
22 the United States not later than 10 days after the
23 effective date of such termination. The employer or
24 association of employers, as applicable, shall pay for

1 the cost of transportation and subsistence necessary
 2 to return the alien to his or her country of origin.

3 (2) CHANGE IN EMPLOYMENT.—An employer or
 4 association of employers may employ a D–3 non-
 5 immigrant described in paragraph (1) or a D–3 non-
 6 immigrant who amicably terminates employment
 7 with another employer if the employer or associa-
 8 tion—

9 (A) enters into a written agreement with
 10 the D–3 nonimmigrant that complies with the
 11 requirements under section 4; and

12 (B) submits a copy of such agreement to
 13 the Secretary of Homeland Security, the Sec-
 14 retary of Labor, and such State and local enti-
 15 ties as may be required for compliance with
 16 State and local licensing and oversight of the
 17 employer.

18 **SEC. 4. PETITION REQUIREMENTS AND EMPLOYER RE-**
 19 **SPONSIBILITIES.**

20 (a) PETITION.—

21 (1) IN GENERAL.—An employer or association
 22 of employers may not employ an alien crewman on
 23 a longline fishing vessel unless—

24 (A) the employer or association has filed a
 25 petition with the Secretary of State to employ

1 the alien as a D–3 nonimmigrant on a longline
2 fishing vessel; and

3 (B) the Secretary of State has approved
4 the petition.

5 (2) FORM; CONTENTS.—The petition required
6 under paragraph (1) shall be in such form as deter-
7 mined by the Secretary of State, in consultation with
8 the Secretary of Homeland Security, and shall in-
9 clude—

10 (A) the name, contact information, and
11 mailing address of the place of business of—

12 (i) the employer; or

13 (ii) if the petition is submitted by an
14 association of employers, the employers
15 that are members of the association;

16 (B) an attestation that workers who will be
17 issued visas under section 101(a)(15)(D)(iii) of
18 the Immigration and Nationality Act, as added
19 by section 3(a), are being employed in accord-
20 ance with section 8103(b)(2)(B) of title 46,
21 United States Code;

22 (C) the number of visas sought by the em-
23 ployer or association of employers;

24 (D) the name, place of business, and de-
25 scription of services provided by any foreign

1 third party engaged by the employer or associa-
2 tion of employers; and

3 (E) such other information as the Sec-
4 retary of State deems necessary.

5 (3) VISA ISSUANCE.—Upon receipt of a com-
6 pleted petition from an employer pursuant to para-
7 graph (1), the Secretary of State is authorized to
8 issue the requested number of D–3 nonimmigrant
9 visas to aliens to meet the employer’s need.

10 (4) ROLE OF ASSOCIATIONS OF EMPLOYERS.—

11 (A) FILING BY ASSOCIATIONS OF EMPLOY-
12 ERS.—A petition to employ an alien or aliens as
13 D–3 nonimmigrants under this subsection may
14 be filed by an association of employers.

15 (B) TREATMENT OF ASSOCIATIONS ACTING
16 AS EMPLOYERS.—If an association is a joint or
17 sole employer of D–3 nonimmigrants, the visas
18 issued pursuant to an approved petition sub-
19 mitted by the association under this subsection
20 may be used for the certified job opportunities
21 of any of its members and such workers may be
22 transferred among its members.

23 (5) TRANSITIONAL VISAS.—

24 (A) IN GENERAL.—Employers or associa-
25 tions of employers shall petition the Secretary

1 of State for temporary nonimmigrant visas for
2 all alien crewmembers employed by the em-
3 ployer or association as of the date of the en-
4 actment of this Act. The Secretary of State
5 shall issue such temporary visas to such alien
6 crewmembers in accordance with this para-
7 graph.

8 (B) NATIONAL SECURITY REVIEWS.—

9 (i) IN GENERAL.—The Secretary shall
10 ensure that the presence of alien crew-
11 members for whom D-3 nonimmigrant
12 visas are sought under this subsection does
13 not pose a national security threat.

14 (ii) EVALUATIONS.—In evaluating the
15 potential national security threat of alien
16 crewmembers under this subparagraph, the
17 Secretary may—

18 (I) conduct individual or group
19 interviews of alien crewmembers in
20 Hawaii; and

21 (II) take any other action the
22 Secretary determines necessary to de-
23 termine whether alien crewmembers
24 pose a national security threat.

1 (iii) ACTION.—If the Secretary deter-
2 mines that an alien crewmember poses a
3 national security threat, the Secretary
4 shall take appropriate action in accordance
5 with Federal law.

6 (iv) EXPEDITIOUS REVIEWS.—The
7 Secretary shall conduct interviews and re-
8 lated evaluations under this subparagraph
9 as expeditiously as possible to minimize the
10 disruption to the commercial fishing work-
11 force.

12 (C) PERIOD OF VALIDITY.—Visas issued
13 under subparagraph (A) shall be valid for the
14 longer of—

15 (i) 1 year; or

16 (ii) the period beginning on the date
17 of issuance and ending 90 days after the
18 date on which the Secretary of State issues
19 regulations or other written guidance relat-
20 ing to the issuance of visas to D–3 immi-
21 grants in accordance with section
22 101(a)(15)(D)(iii) of the Immigration and
23 Nationality Act, as added by section 3(a).

24 (D) PETITION.—Not later than 90 days
25 after the issuance of the regulations or other

1 written guidance described in subparagraph
2 (C)(ii) or within an alternate timeframe deter-
3 mined by the Secretary of State, employers and
4 associations of employers shall petition for D-
5 3 nonimmigrant visas for all of their alien crew-
6 members, including those who were issued tem-
7 porary visas under subparagraph (A). Employ-
8 ers or associations of employers may not seek
9 compensation or reimbursement from D-3 non-
10 immigrants for costs associated with applica-
11 tions for transitional visas or D-3 non-
12 immigrant visas.

13 (b) LABOR AGREEMENTS.—

14 (1) COMPONENTS.—After the approval of a pe-
15 tition and the issuance of D-3 nonimmigrant visas,
16 but before proceeding on a voyage of a longline fish-
17 ing vessel, an employer or association of employers
18 shall enter into a written agreement directly with
19 each D-3 nonimmigrant, in accordance with section
20 10601 of title 46, United States Code, that de-
21 scribes—

22 (A) the responsibilities of, and costs to be
23 covered by, the employer or association of em-
24 ployers during the contract period;

1 (B) the job duties to be performed and the
2 expected work during the contract period;

3 (C) the terms of the wage, share, or other
4 compensation the employer or association of
5 employers will provide to the employee during
6 the contract period;

7 (D) the responsibility of the employer or
8 association of employers—

9 (i) to pay for or reimburse the em-
10 ployee in his or her first workweek for all
11 visa, visa processing, border crossing, and
12 other related fees (including those man-
13 dated by the Government) incurred by the
14 employee, other than passport expenses or
15 other charges primarily for the benefit of
16 the employee;

17 (ii) to pay all recruitment costs; and

18 (iii) to provide, or reimburse the em-
19 ployee for the costs of, transportation and
20 subsistence to and from the United States;

21 (E) the terms of payment and provision or
22 reimbursement for transportation and subsist-
23 ence costs from the United States if the worker
24 is dismissed or otherwise fails to complete con-
25 tract term;

1 (F) the crewmember's rights (with respect
2 to occupational safety and health protections)—

3 (i) to freely report any labor, safety,
4 or health abuses without fear of retaliation;
5

6 (ii) to have access to remediation, as
7 needed;

8 (iii) to free and timely access to their
9 passports or other identity documents; and

10 (iv) to adequate living conditions
11 aboard the vessel, including access to food,
12 water, medical care, and other necessary
13 provisions;

14 (G) a summary of the remedies for viola-
15 tions of the terms of the labor agreement avail-
16 able to the employee in accordance with para-
17 graph (2); and

18 (H) other agreed terms and conditions of
19 employment.

20 (2) ENFORCEMENT OF AGREEMENTS.—Employ-
21 ers or associations of employers and D-3 non-
22 immigrants have the right to avail themselves of ap-
23 propriate legal recourse in the United States, includ-
24 ing voluntary arbitration, in the event of disputes

1 arising due to nonperformance of any provision of
2 an agreement.

3 (3) LANGUAGE BARRIERS AND RECORD-
4 KEEPING.—

5 (A) IN GENERAL.—Employers or associa-
6 tions of employers shall secure such language
7 services as may be necessary to ensure that D-
8 3 nonimmigrants understand the terms of the
9 labor agreement described in paragraph (1)
10 that is presented to them before embarking on
11 their first voyage on a longline fishing vessel
12 and may not seek compensation or reimburse-
13 ment from D-3 nonimmigrants for the provi-
14 sion of such services.

15 (B) RECORD RETENTION REQUIRE-
16 MENTS.—A signed copy of each labor agree-
17 ment shall be kept on file by the employer in
18 English and in the language of the D-3 non-
19 immigrant. Copies of signed labor agreements
20 shall be submitted to the Secretary of Home-
21 land Security, the Secretary of Labor, and such
22 State and local entities as may be required for
23 compliance with State and local licensing and
24 oversight of the employer or association of em-
25 ployers.

1 (4) RECRUITMENT COSTS AND OVERSIGHT.—

2 (A) EMPLOYEE REIMBURSEMENT.—Em-
3 ployers or associations of employers shall pay or
4 reimburse each D–3 nonimmigrant, in his or
5 her first workweek, for all visa, visa processing,
6 border crossing, and other related fees (includ-
7 ing those mandated by the Government) in-
8 curred by the D–3 nonimmigrant, but are not
9 required to reimburse D–3 nonimmigrants for
10 passport expenses or other charges primarily
11 for the benefit of the D–3 nonimmigrants.

12 (B) OTHER COSTS AND OVERSIGHT.—Em-
13 ployers or associations of employers may engage
14 agents or firms in the United States or else-
15 where to recruit D–3 nonimmigrants only if the
16 employer or association—

17 (i) solely assumes all costs associated
18 with such recruitment services, including—

19 (I) fees for the employers’ attor-
20 neys and agents;

21 (II) placement and referral fees;
22 and

23 (III) other fees required to be
24 paid directly to the third party pro-
25 viding recruitment services; and

1 (ii) discloses the agents or firms used
2 for such recruitment to the Secretary of
3 State.

4 (C) REPORT ON THIRD-PARTY RECRUIT-
5 MENT PRACTICES.—

6 (i) REVIEW.—The Secretary of Labor
7 shall review and evaluate the laws and
8 business practices governing third-party re-
9 cruitment of workers in Southeast Asian
10 countries to determine whether third-party
11 recruitment firms in such countries engage
12 in—

13 (I) forced labor practices, includ-
14 ing debt bondage; or

15 (II) practices that violate Inter-
16 national Labour Organization stand-
17 ards or other relevant standards with
18 respect to the recruitment of workers
19 for jobs in the United States.

20 (ii) REPORT.—The Secretary of Labor
21 shall submit a report to Congress that—

22 (I) summarizes the findings of
23 the review conducted pursuant to
24 clause (i); and

25 (II) may include—

1 (aa) suggested legislation or
2 other recommendations for Con-
3 gress and executive branch agen-
4 cies; or

5 (bb) recommendations for
6 private sector businesses regard-
7 ing best practices for avoiding
8 third-party recruitment firms in
9 countries that the Secretary de-
10 termines allow for, or engage in,
11 forced labor practices that violate
12 international law or other rel-
13 evant standards and practices.

14 **SEC. 5. ENFORCEMENT AND OVERSIGHT.**

15 (a) EXAMINATIONS; REFERRALS.—

16 (1) IN GENERAL.—The Commandant of the
17 Coast Guard, in conjunction with the Secretary of
18 Labor, shall ensure that employers operating vessels
19 that employ D–3 nonimmigrants are subject to regu-
20 lar dockside examinations not less than biennially
21 to ensure compliance with applicable laws and regu-
22 lations affecting the safety and health of seamen, in-
23 cluding D–3 nonimmigrants, aboard longline fishing
24 vessels that have their home port or an operating
25 base in Hawaii.

1 (2) ADDITIONAL EXAMINATIONS.—The Sec-
2 retary of Homeland Security, in conjunction with the
3 Secretary of Labor—

4 (A) may conduct additional examinations,
5 as they consider necessary to ensure compliance
6 with labor agreement terms and conditions or
7 health and safety conditions; and

8 (B) shall conduct additional examinations
9 upon receipt of information from a D–3 non-
10 immigrant, or from such State or local entity as
11 may be responsible for licensing and oversight
12 of the employer, that an employer may be vio-
13 lating the requirements under this Act or appli-
14 cable health and safety requirements.

15 (b) PENALTIES FOR NONCOMPLIANCE.—The Sec-
16 retary of Labor and the Secretary of Homeland Security
17 are authorized to take such actions, including imposing
18 appropriate penalties and seeking appropriate injunctive
19 relief and specific performance of contractual obligations,
20 as may be necessary to ensure employer compliance with
21 the terms and conditions of employment required under
22 this Act.

23 **SEC. 6. RULEMAKING.**

24 The Secretary of State, the Secretary of Homeland
25 Security, and the Secretary of Labor are authorized to

1 issue such regulations and written guidance as may be
2 necessary to carry out the activities required under this
3 Act.

4 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

5 There are authorized to be appropriated such sums
6 as may be necessary to carry out this Act.

○