

115TH CONGRESS
1ST SESSION

H. R. 4224

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 HOUSE OF REPRESENTATIVES

NOVEMBER 2, 2017

Ms. HANABUSA (for herself and Ms. GABBARD) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and the Workforce, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Sustainable Fishing
3 Workforce Protection Act”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

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

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

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

22 (4) **LOGLINE FISHING VESSEL.**—The term
23 “longline fishing vessel” means a vessel which—

24 (A) is operating in accordance with section
25 8103(b)(2)(B) of title 46, United States Code;

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

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

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

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

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

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

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

23 (b) TREATMENT OF DEPARTURES.—In the adminis-
 24 tration of section 101(a)(15)(D) of the Immigration and
 25 Nationality Act, as added by subsection (a), an alien crew-

1 man shall be considered to have departed from Hawaii,
2 Guam, or the Commonwealth of the Northern Mariana Is-
3 lands after leaving the territorial waters thereof, without
4 regard to whether the alien arrives in a foreign state be-
5 fore returning to Hawaii, Guam, or the Commonwealth
6 of the Northern Mariana Islands.

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

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

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

17 (d) EFFECT OF TERMINATION OF EMPLOYMENT ON
18 VISA STATUS.—

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

1 association of employers, as applicable, shall pay for
2 the cost of transportation and subsistence necessary
3 to return the alien to his or her country of origin.

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

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

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

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

21 (a) PETITION.—

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

1 (A) the employer or association has filed a
2 petition with the Secretary of State to employ
3 the alien as a D–3 nonimmigrant on a longline
4 fishing vessel; and

5 (B) the Secretary of State has approved
6 the petition.

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

12 (A) the name, contact information, and
13 mailing address of the place of business of—

14 (i) the employer; or

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

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

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

1 (D) the name, place of business, and de-
2 scription of services provided by any foreign
3 third party engaged by the employer or associa-
4 tion of employers; and

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

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

12 (4) ROLE OF ASSOCIATIONS OF EMPLOYERS.—

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

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

25 (5) TRANSITIONAL VISAS.—

1 (A) IN GENERAL.—Employers or associa-
2 tions of employers shall petition the Secretary
3 of State for temporary nonimmigrant visas for
4 all alien crewmembers employed by the em-
5 ployer or association as of the date of the en-
6 actment of this Act. The Secretary of State
7 shall issue such temporary visas to such alien
8 crewmembers in accordance with this para-
9 graph.

10 (B) NATIONAL SECURITY REVIEWS.—

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

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

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

23 (II) take any other action the
24 Secretary determines necessary to de-

1 termine whether alien crewmembers
2 pose a national security threat.

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

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

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

17 (i) 1 year; or

18 (ii) the period beginning on the date
19 of issuance and ending 90 days after the
20 date on which the Secretary of State issues
21 regulations or other written guidance relat-
22 ing to the issuance of visas to D–3 immi-
23 grants in accordance with section
24 101(a)(15)(D)(iii) of the Immigration and
25 Nationality Act, as added by section 3(a).

1 (D) PETITION.—Not later than 90 days
2 after the issuance of the regulations or other
3 written guidance described in subparagraph
4 (C)(ii) or within an alternate timeframe deter-
5 mined by the Secretary of State, employers and
6 associations of employers shall petition for D-
7 3 nonimmigrant visas for all of their alien crew-
8 members, including those who were issued tem-
9 porary visas under subparagraph (A). Employ-
10 ers or associations of employers may not seek
11 compensation or reimbursement from D-3 non-
12 immigrants for costs associated with applica-
13 tions for transitional visas or D-3 non-
14 immigrant visas.

15 (b) LABOR AGREEMENTS.—

16 (1) COMPONENTS.—After the approval of a pe-
17 tition and the issuance of D-3 nonimmigrant visas,
18 but before proceeding on a voyage of a longline fish-
19 ing vessel, an employer or association of employers
20 shall enter into a written agreement directly with
21 each D-3 nonimmigrant, in accordance with section
22 10601 of title 46, United States Code, that de-
23 scribes—

1 (A) the responsibilities of, and costs to be
2 covered by, the employer or association of em-
3 ployers during the contract period;

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

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

10 (D) the responsibility of the employer or
11 association of employers—

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

20 (ii) to pay all recruitment costs; and

21 (iii) to provide, or reimburse the em-
22 ployee for the costs of, transportation and
23 subsistence to and from the United States;

24 (E) the terms of payment and provision or
25 reimbursement for transportation and subsist-

1 ence costs from the United States if the worker
2 is dismissed or otherwise fails to complete con-
3 tract term;

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

6 (i) to freely report any labor, safety,
7 or health abuses without fear of retalia-
8 tion;

9 (ii) to have access to remediation, as
10 needed;

11 (iii) to free and timely access to their
12 passports or other identity documents; and

13 (iv) to adequate living conditions
14 aboard the vessel, including access to food,
15 water, medical care, and other necessary
16 provisions;

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

21 (H) other agreed terms and conditions of
22 employment.

23 (2) ENFORCEMENT OF AGREEMENTS.—Employ-
24 ers or associations of employers and D-3 non-
25 immigrants have the right to avail themselves of ap-

1 appropriate legal recourse in the United States, includ-
2 ing voluntary arbitration, in the event of disputes
3 arising due to nonperformance of any provision of
4 an agreement.

5 (3) LANGUAGE BARRIERS AND RECORD-
6 KEEPING.—

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

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

oversight of the employer or association of employers.

(4) RECRUITMENT COSTS AND OVERSIGHT.—

(A) EMPLOYEE REIMBURSEMENT.—Employers or associations of employers shall pay or reimburse each D–3 nonimmigrant, in his or her first workweek, for all visa, visa processing, border crossing, and other related fees (including those mandated by the Government) incurred by the D–3 nonimmigrant, but are not required to reimburse D–3 nonimmigrants for passport expenses or other charges primarily for the benefit of the D–3 nonimmigrants.

(B) OTHER COSTS AND OVERSIGHT.—Employers or associations of employers may engage agents or firms in the United States or elsewhere to recruit D–3 nonimmigrants only if the employer or association—

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

(I) fees for the employers’ attorneys and agents;

(II) placement and referral fees;

and

1 (III) other fees required to be
2 paid directly to the third party pro-
3 viding recruitment services; and

4 (ii) discloses the agents or firms used
5 for such recruitment to the Secretary of
6 State.

7 (C) REPORT ON THIRD-PARTY RECRUIT-
8 MENT PRACTICES.—

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

16 (I) forced labor practices, includ-
17 ing debt bondage; or

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

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

1 (I) summarizes the findings of
2 the review conducted pursuant to
3 clause (i); and

4 (II) may include—

5 (aa) suggested legislation or
6 other recommendations for Con-
7 gress and executive branch agen-
8 cies; or

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

18 **SEC. 5. ENFORCEMENT AND OVERSIGHT.**

19 (a) **EXAMINATIONS; REFERRALS.**—

20 (1) **IN GENERAL.**—The Commandant of the
21 Coast Guard, in conjunction with the Secretary of
22 Labor, shall ensure that employers operating vessels
23 that employ D–3 nonimmigrants are subject to reg-
24 ular dockside examinations not less than biennially
25 to ensure compliance with applicable laws and regu-

1 lations affecting the safety and health of seamen, in-
2 cluding D–3 nonimmigrants, aboard longline fishing
3 vessels that have their home port or an operating
4 base in Hawaii.

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

8 (A) may conduct additional examinations,
9 as they consider necessary to ensure compliance
10 with labor agreement terms and conditions or
11 health and safety conditions; and

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

19 (b) PENALTIES FOR NONCOMPLIANCE.—The Sec-
20 retary of Labor and the Secretary of Homeland Security
21 are authorized to take such actions, including imposing
22 appropriate penalties and seeking appropriate injunctive
23 relief and specific performance of contractual obligations,
24 as may be necessary to ensure employer compliance with

1 the terms and conditions of employment required under
2 this Act.

3 **SEC. 6. RULEMAKING.**

4 The Secretary of State, the Secretary of Homeland
5 Security, and the Secretary of Labor are authorized to
6 issue such regulations and written guidance as may be
7 necessary to carry out the activities required under this
8 Act.

9 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

10 There is authorized to be appropriated such sums as
11 may be necessary to carry out this Act.

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