

FLSA-818

September 21, 1982

This is in further reply to your letter concerning, in part, the application of the Fair Labor Standards Act to employees employed as seamen on vessels other than American vessels. We regret the delay in responding to your inquiry.

You are specifically concerned with the application of the Act to a foreign processing vessel under the Portuguese flag, the ***, that was berthed in Fall River, Massachusetts, and processed on board fish purchased from United States harvesting vessels.

The Fair Labor Standards Act is the Federal law of most general application concerning minimum wage and overtime pay standards. Employees who are engaged in commerce or in the production of goods for commerce, and employees employed in certain enterprises are covered under the Act, and must be paid in accordance with the law's minimum wage and overtime pay provisions, unless specifically exempt.

Section 13(a)(12) of the Act provides a complete minimum wage and overtime exemption for any employee employed as a seaman on vessels other than American vessels. A seaman is considered as one who performs, aboard a vessel and subject to the direction and control of the master, service which is rendered primarily as an aid in the operation of the vessel as a means of transportation. The term seaman ordinarily includes members of the crew such as sailors, engineers, radio operators, firemen, pursers, cooks, and stewards.

Since one is not employed as a seaman within the meaning of the Act unless his or her services are rendered primarily as an aid in the operation of the vessel as a means of transportation, it is our opinion that the crew of the vessel in question is not exempt under section 13(a)(12) of the Act when engaged in the processing of fish while berthed in a United States' port. Such employees are engaged in the production of goods for interstate or foreign commerce and must be paid in accordance with the monetary provisions of the Fair Labor Standards Act.

We have been advised that the Occupational Safety and Health Administration does not issue citations with respect to the working conditions of foreign crew members employed on foreign flag vessels, regardless of their location, pursuant to the principle of comity set forth in international law. See McCulloch v. Sociedad Nacional, etc., 372 U.S. 10 (1963).

Questions concerning the application of 8 USC 1182(a)(14), should be directed to Mr. Andrew Carmichael, Jr., Associate Commissioner for Examination, Immigration and Naturalization Service of the Department of Justice at 425 I Street, N.W. Washington, D.C. 20536.

If you have any further questions concerning the application of the Fair Labor Standards Act on this matter, please do not hesitate to let us know.

Sincerely,

William M. Otter
Administrator