

§ 784.124

apply, for example, to an employee employed by a vessel owner to watch the fishing vessel, its equipment, and the catch when it comes to port, checks the mooring lines, operate bilge pumps and heating and cooling systems on the vessel, and assist in the loading and unloading of the fishing equipment and the catch. Work of the kinds referred to may be exempt when performed by the fisherman himself or necessary to the conduct of the fishing organization. However, the exemption would not apply to employees of a manufacturer of supplies or to employees of independent shops which repair boats and equipment. (*Dize v. Maddix*, 144 F. 2d 584, affirmed 324 U.S. 697.)

§ 784.124 Going to and returning from work.

The phrase "including the going to and returning from work" relates to the preceding named operations which pertain to the procuring and appropriation of seafood and other forms of aquatic life from nature. The expression obviously includes the time spent by fishermen and others who go to and from the fishing grounds or other locations where the aquatic life is reduced to possession. If going to work requires fishermen to prepare and carry the equipment required for the fishing operation, this would be included within the exemption. In performing such travel the fishermen may be required to row, guide or sail the boat or otherwise assist in its operation. Similarly, if an employee were digging for clams or other shellfish or gathering seaweed on the sand or rocks it might be necessary to drive a truck or other vehicle to reach his destination. Such activities are exempt within the meaning of this language. However, the phrase does not apply to employees who are not employed in the activities involved in the acquisition of aquatic animal or vegetable life, such as those going to or returning from work at processing or refrigerator plants or wholesale establishments.

§ 784.125 Loading and unloading.

The term "loading and unloading" applies to activities connected with the removal of aquatic products from the fishing vessel and their initial move-

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ment to markets or processing plants. The term, however, is not without limitation. The statute by its clear language makes these activities exempt only when performed by any employee employed in the procurement activities enumerated in section 13(a)(5). This limitation is confirmed by the legislative history of the 1961 amendments which effectuated this change in the application of this term (S. Rep. 145, 87th Cong., first session, p. 33). Consequently, members of the fishing crew engaged in loading and unloading the catch of the vessel to another vessel at sea, or at the dockside would be engaging in exempt activities within the meaning of section 13(a)(5). On the other hand, dock workers performing the same kind of tasks would not be within the exemption.

§ 784.126 Operation of the fishing vessel.

In extending the minimum wage to seamen on American vessels by limiting the exemption from minimum wages and overtime provided by section 13(a)(12) of the Act to "any employee employed as a seaman on a vessel other than an American vessel", and at the same time extending the minimum wage to "onshore" but not "offshore" operations concerned with aquatic products, the Congress, in the 1961 amendments to the Act, did not indicate any intent to remove the crews of fishing vessels engaged in operations named in section 13(a)(5) from the exemption provided by that section. The exemption provided by section 13(a)(12), above noted, and the general exemption in section 13(b)(6) from overtime for "any employee employed as a seaman" (whether or not on an American vessel) apply, in general to employees, working aboard vessels, whose services are rendered primarily as an aid to navigation. It appears, however, that it is not the custom or practice in the fishing industry for a fishing vessel to have two crews; namely, a fishing crew whose duty it is primarily to fish and to perform other duties incidental thereto and a navigational crew whose duty it is primarily to operate the boat. Where, as is the typical situation, there is but one crew which performs all these functions, the section 13(a)(5)