

§ 784.127

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) exemptions would apply to its members. For a further explanation of the seaman's exemption, see part 783 of this chapter.

§ 784.127 Office and clerical employees under section 13(a)(5).

Office and clerical employees, such as bookkeepers, stenographers, typists, and others who perform general office work of a firm engaged in operating fishing boats are not for that reason within the section 13(a)(5) exemption. Under the principles stated in § 784.106, their general office activities are not a part of any of the named operations even when they are selling, taking, and putting up orders, on recording sales, taking cash or making telephone connections for customer or dealer calls. Employment in the specific activities enumerated in the preceding sentence would ordinarily, however, be exempt under section 13(b)(4) since such activities constitute "marketing" or "distributing" within the meaning of that exemption (see § 784.153). In certain circumstances, office or clerical employees may come within the section 13(a)(5) exemption. If, for example, it is necessary to the conduct of the fishing operations that such employees accompany a fishing expedition to the fishing grounds to perform certain work required there in connection with the catch, their employment under such circumstances may, as a practical mat-

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ter, be directly and necessarily a part of the operations for which exemption was intended, in which event the exemption would apply to them.

FIRST PROCESSING, CANNING, OR PACKING OF MARINE PRODUCTS UNDER SECTION 13(a)(5)

§ 784.128 Requirements for exemption of first processing, etc., at sea.

A complete exemption from minimum and overtime wages is provided by section 13(a)(5) for employees employed in the operations of first processing, canning, or packing of marine products at sea as an incident to, or in conjunction with "such" fishing operations—that is, the fishing operations of the fishing vessel (S. Rep. 145, 87th Cong., first session, p. 33). To qualify under this part of the exemption, there must be a showing that: (a) The work of the employees is such that they are, within the meaning of the Act, employed in one or more of the named operations of first processing, canning or packing, (b) such operations are performed as an incident to, or in conjunction with, fishing operations of the vessel, (c) such operations are performed at sea, and (d) such operations are performed on the marine product specified in the statute.

§ 784.129 "Marine products".

The marine products which form the basis of the exemption are the "fish, shellfish, crustaceas, sponges, seaweeds, or other aquatic forms of animal and vegetable life" mentioned in section 13(a)(5). The exemption contemplates aquatic products currently or recently acquired and in the form obtained from the sea, since the language of the exemption clearly indicates the named operations of first processing, canning, or packing must be performed "at sea" and "as an incident to or in conjunction with", fishing operations. Also, such "marine products" are limited to aquatic forms of "life."

§ 784.130 "At sea."

The "at sea" requirement must be construed in context and in such manner as to accomplish the statutory objective. The section 13(a)(5) exemption