

# A BILL

To authorize appropriations for fiscal year 2008 for the United States Coast Guard, and for other purposes.

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

## 3           **SECTION 1. SHORT TITLE.**

4           This Act may be cited as the “Coast Guard Authorization Act for Fiscal Year  
5           2008”.

## 6           **SEC. 2. TABLE OF CONTENTS.**

7           The table of contents for this Act is as follows:

- Sec. 1. Short title.
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- Sec. 701. Maritime alien smuggling.

**TITLE I—AUTHORIZATIONS**

**SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

Funds are authorized to be appropriated for necessary expenses of the Coast Guard for fiscal year 2008 as follows:

(1) For the operation and maintenance of the Coast Guard, \$5,894,295,000, of which \$24,500,00 is authorized to be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990.

(2) For the acquisition, construction, renovation, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including equipment related thereto, \$998,068,000, of which \$20,000,000 shall be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990, to remain available until expended;

1 and such funds appropriated for personnel compensation and benefits and related  
2 costs of acquisition, construction, and improvements shall be available for  
3 procurement of services necessary to carry out the Integrated Deepwater Systems  
4 program.

5 (3) For retired pay (including the payment of obligations otherwise  
6 chargeable to lapsed appropriations for this purpose), payments under the Retired  
7 Serviceman's Family Protection and Survivor Benefit Plans, and payments for  
8 medical care of retired personnel and their dependents under chapter 55 of title  
9 10, United States Code, \$1,184,720,000.

10 (4) For environmental compliance and restoration functions under chapter  
11 19 of title 14, United States Code, \$12,079,000.

12 (5) For research, development, test, and evaluation programs related to  
13 maritime technology, \$17,583,000.

14 (6) For operation and maintenance of the Coast Guard reserve program,  
15 \$126,883,000.

16 **SEC. 102. AUTHORIZED LEVELS OF MILITARY STRENGTH AND**  
17 **TRAINING.**

18 (a) ACTIVE DUTY STRENGTH.—The Coast Guard is authorized an end-of-year  
19 strength of active duty personnel of 45,500 as of September 30, 2008.

20 (b) MILITARY TRAINING STUDENT LOADS.—For fiscal year 2008, the Coast Guard  
21 is authorized average military training student loads as follows:

22 (1) For recruit and special training, 2,5000 student years.

23 (2) For flight training, 165 student years.

1 (3) For professional training in military and civilian institutions, 350  
2 student years.

3 (4) For officer acquisition, 1,200 student years.

4 **SEC. 103. TRANSFER OF BRIDGE ADMINISTRATION PROGRAM**

5 **AUTHORITY AND FUNCTIONS.**

6 (a) TRANSFER.—

7 (1) AUTHORITY AND FUNCTIONS.— Notwithstanding section 888(b) of the  
8 Homeland Security Act of 2002 (6 U.S.C. § 468(b)) or any other provision of law,  
9 the authorities of the Secretary of Homeland Security to approve the construction,  
10 alteration, or operation of a bridge, drawbridge, or causeway across or over the  
11 navigable waters of the United States and to require the alteration, repair, or  
12 removal of such bridge, drawbridge, or causeway, pursuant to the Bridge Act of  
13 1906 (34 Stat. 84; 33 U.S.C. § 491 *et seq.*), the General Bridge Act of 1946 (60  
14 Stat. 847, 33 U.S.C. § 525 note), the Truman-Hobbs Act (54 Stat. 497; 33 U.S.C.  
15 § 511 *et seq.*), and the International Bridge Act of 1972 (60 Stat. 847; 33 U.S.C.  
16 525 *et seq.*), as well as the functions related thereto, are hereby transferred to the  
17 Secretary of Transportation.

18 (2) TRANSFER AND ADMINISTRATION OF BALANCES.—Any unobligated  
19 balances of prior appropriations provided for the alteration of bridges shall be  
20 transferred to appropriation accounts for carrying out such activities by the  
21 Secretary of Transportation, and the balances so transferred shall be merged with  
22 funds in the applicable established accounts and thereafter shall be accounted for,  
23 and administered as, one fund.

1 (3) CERTIFICATION.—Prior to the approval of the construction, alteration,  
2 operation, repair, or removal of any bridge, drawbridge, or causeway over the  
3 navigable waters of the United States, the Secretary of Homeland Security shall  
4 certify whether such action will unreasonably obstruct navigation or threaten the  
5 security of the United States.

6 (b) LIMITATIONS.—Nothing in this section shall be construed to diminish or affect  
7 the authority of—

8 (1) the Commandant of the Coast Guard to regulate lights and signals on a  
9 bridge, drawbridge, or causeway over the navigable waters of the United States  
10 pursuant to section 4 of the Bridge Act of 1906 (34 Stat. 84, 85; 33 U.S.C. § 494);  
11 or

12 (2) the Secretary of Homeland Security pursuant to the Maritime  
13 Transportation Security Act of 2002 (Public Law 107-295, 116 Stat. 2064) or the  
14 Ports and Waterways Safety Act, as amended (33 U.S.C. §§ 1221, *et seq.*)

## 15 **TITLE II—ORGANIZATION**

### 16 **SEC. 201. VICE COMMANDANT; VICE ADMIRALS.**

17 (a) VICE COMMANDANT.—The fourth sentence of section 47 of title 14, United  
18 States Code, is amended by striking “vice admiral” and inserting “admiral”.

19 (b) VICE ADMIRALS.— Section 50 of such title is amended to read as follows:

#### 20 **“§ 50. Vice admirals**

21 “(a)(1) The President may designate no more than four positions of importance  
22 and responsibility that shall be held by officers who—

1                   “(A) while so serving, shall have the grade of vice admiral, with the pay  
2                   and allowances of that grade; and

3                   “(B) shall perform such duties as the Commandant may prescribe.

4                   “(2) The President may appoint, by and with the advice and consent of the Senate,  
5                   and reappoint, by and with the advice and consent of the Senate, to any such position an  
6                   officer of the Coast Guard who is serving on active duty above the grade of captain. The  
7                   Commandant shall make recommendations for such appointments.

8                   “(b)(1) The appointment and the grade of vice admiral shall be effective on the  
9                   date the officer assumes that duty and, except as provided in paragraph (2) of this section  
10                  or in section 51(d) of this title, shall terminate on the date the officer is detached from  
11                  that duty.

12                  “(2) An officer who is appointed to a position designated under subsection (a)  
13                  shall continue to hold the grade of vice admiral—

14                   “(A) while under orders transferring the officer to another position  
15                   designated under subsection (a), beginning on the date the officer is detached  
16                   from that duty and terminating on the date before the day the officer assumes the  
17                   subsequent duty, but not for more than 60 days;

18                   “(B) while hospitalized, beginning on the day of the hospitalization and  
19                   ending on the day the officer is discharged from the hospital, but not for more  
20                   than 180 days; and

21                   “(C) while awaiting retirement, beginning on the date the officer is  
22                   detached from duty and ending on the day before the officer’s retirement, but not  
23                   for more than 60 days.

1           “(c)(1) An appointment of an officer under subsection (a) does not vacate the  
2 permanent grade held by the officer.

3           “(2) An officer serving in a grade above rear admiral who holds the permanent  
4 grade of rear admiral (lower half) shall be considered for promotion to the permanent  
5 grade of rear admiral as if the officer was serving in the officer’s permanent grade.

6           “(d) Whenever a vacancy occurs in a position designated under subsection (a), the  
7 Commandant shall inform the President of the qualifications needed by an officer serving  
8 in that position or office to carry out effectively the duties and responsibilities of that  
9 position or office.”.

10           (c) REPEAL.—Section 50a of such title is repealed.

11           (d) CONFORMING AMENDMENTS.—Section 51 of such title is amended—

12                   (1) by amending subsections (a), (b), and (c) of such title to read as  
13 follows:

14           “(a) An officer, other than the Commandant, who, while serving in the grade of  
15 admiral or vice admiral, is retired for physical disability shall be placed on the retired list  
16 with the highest grade in which that officer served.

17           “(b) An officer, other than the Commandant, who is retired while serving in the  
18 grade of admiral or vice admiral, or who, after serving at least two and one-half years in  
19 the grade of admiral or vice admiral, is retired while serving in a lower grade, may in the  
20 discretion of the President, be retired with the highest grade in which that officer served.

21           “(c) An officer, other than the Commandant, who, after serving less than two and  
22 one-half years in the grade of admiral or vice admiral, is retired while serving in a lower  
23 grade, shall be retired in his permanent grade.”; and

1 (2) in subsection (d)(2), by striking “Area Commander, or Chief of Staff”  
2 and inserting “or Vice Admirals”.

3 (e) CLERICAL AMENDMENTS.—(1) The heading for section 47 of such title is  
4 amended by striking “**ASSIGNMENT**” and inserting “**APPOINTMENT**”;

5 (2) The analysis at the beginning of chapter 3 of such title is amended—

6 (A) by amending the item relating to section 47 to read as follows:

7 “**47. Vice Commandant; appointment.**”;

8 (B) by amending the item relating to section 50 to read as follows:

9 “**50. Vice admirals.**”; and

10 (C) by striking the item relating to section 50a.

11 (f) TECHNICAL CORRECTION.—Section 47 of such title is further amended by  
12 striking “subsection” in the fifth sentence and inserting “section”.

13 **SEC. 202. MERCHANT MARINER MEDICAL ADVISORY COMMITTEE.**

14 (a) IN GENERAL.—Chapter 3 of title 14, United States Code, is amended by  
15 adding at the end the following new section:

16 “**§ 55. Merchant Mariner Medical Advisory Committee**

17 “(a) ESTABLISHMENT; MEMBERSHIP; STATUS.—(1) There is established a  
18 Merchant Mariner Medical Advisory Committee (hereinafter referred to as the  
19 “Committee”).

20 “(2) The Committee shall consist of twelve members, none of whom shall be a  
21 Federal employee, including—

1           “(A) ten of whom shall be health-care professionals with particular  
2 expertise, knowledge, or experience regarding the medical examinations of  
3 merchant mariners or occupational medicine; and

4           “(B) two of whom shall be professional mariners with knowledge and  
5 experience in mariner occupational requirements.

6           “(3) Members of the Committee shall not be considered Federal employees or  
7 otherwise in the service or the employment of the Federal Government, except that  
8 members shall be considered special Government employees, as defined in section 202(a)  
9 of title 18, United States Code, and any administrative standards of conduct applicable to  
10 the employees of the Department in which the Coast Guard is operating.

11           “(b) APPOINTMENTS; TERMS; VACANCIES; ORGANIZATION.—(1) The Secretary  
12 shall appoint the members of the Committee, and each member shall serve at the pleasure  
13 of the Secretary.

14           “(2) The members shall be appointed for a term of three years, except that, of the  
15 members first appointed, three members shall be appointed for a term of two years and  
16 three members shall be appointed for a term of one year.

17           “(3) Any member appointed to fill the vacancy prior to the expiration of the term  
18 for which such member’s predecessor was appointed shall be appointed for the remainder  
19 of such term.

20           “(4) The Secretary shall designate one member as the Chairman and one member  
21 as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or  
22 incapacity of, or in the event of a vacancy in the office of, the Chairman.

1           “(5) No later than six months after the date of enactment, the Committee shall  
2 hold its first meeting.

3           “(c) FUNCTION.—The Committee shall advise the Secretary on matters relating  
4 to—

5                   “(1) medical certification determinations for issuance of merchant mariner  
6 credentials;

7                   “(2) medical standards and guidelines for the physical qualifications of  
8 operators of commercial vessels;

9                   “(3) medical examiner education; and

10                   “(4) medical research.

11           “(d) COMPENSATION; REIMBURSEMENT.—Members of the Committee shall serve  
12 without compensation, except that, while engaged in the performance of duties away  
13 from their homes or regular places of business of the member, the member of the  
14 Committee may be allowed travel expenses, including per diem in lieu of subsistence, as  
15 authorized by section 5703 of title 5.

16

17           “(e) STAFF; SERVICES.— The Secretary shall furnish to the Committee such  
18 personnel and services as are considered necessary for the conduct of its business.”.

19           (b) CLERICAL AMENDMENT.—The analysis for chapter 3 of such title is amended  
20 by adding at the end the following new item:

21           **“55. Merchant Mariner Medical Advisory Committee.”.**

22           **SEC. 203. AUTHORITY TO DISTRIBUTE FUNDS THROUGH GRANTS,**

23                           **COOPERATIVE AGREEMENTS, AND CONTRACTS TO**

24                           **MARITIME AUTHORITIES AND ORGANIZATIONS.**

1 Section 149 of title 14, United States Code, is amended by adding at the end the  
2 following new subsection:

3 “(c) GRANTS TO INTERNATIONAL MARITIME ORGANIZATIONS.—The Commandant  
4 may, after consultation with the Secretary of State, make grants to, or enter into  
5 cooperative agreements, contracts, or other agreements with, international maritime  
6 organizations for the purpose of acquiring information or data about merchant vessel  
7 inspections, security, safety, classification, and port state or flag state law enforcement or  
8 oversight.”.

9 **SEC. 204. ASSISTANCE TO FOREIGN GOVERNMENTS AND MARITIME**  
10 **AUTHORITIES.**

11 Section 149 of title 14, United States Code, is amended by adding at the end the  
12 following new subsection:

13 “(d) AUTHORIZED ACTIVITIES.—(1) The Commandant may transfer or expend  
14 funds from any appropriation available to the Coast Guard for the following activities and  
15 expenses:

16 “(A) the activities of traveling contact teams, including any transportation  
17 expense, translation services expense, or administrative expense that is related to  
18 such activities;

19 “(B) the activities of maritime authority liaison teams of foreign  
20 governments making reciprocal visits to Coast Guard units, including any  
21 transportation expense, translation services expense, or administrative expense  
22 that is related to such activities;



1 (2) by striking “prescribed by the Secretary of Defense,” and inserting  
2 “prescribed by Secretary of Defense and the Secretary of Homeland Security,  
3 with respect to the Coast Guard when it is not operating as a service of the  
4 Navy,”.

5 **SEC. 303. REIMBURSEMENT FOR CERTAIN MEDICAL-RELATED TRAVEL**  
6 **EXPENSES.**

7 Section 1074i(a) of title 10, United States Code, is amended—

8 (1) by striking “IN GENERAL.—In” and inserting “IN GENERAL.—(1) In”;  
9 and

10 (2) by adding at the end the following new paragraph:

11 “(2) In any case in which a covered beneficiary resides on an INCONUS  
12 island that lacks public access roads to the mainland and is referred by a primary  
13 care physician to a specialty care provider on the mainland who provides services  
14 less than 100 miles from the location in which the beneficiary resides, the  
15 Secretary shall reimburse the reasonable travel expenses of the covered  
16 beneficiary and, when accompaniment by an adult is necessary, a parent or  
17 guardian of the covered beneficiary or another member of the covered  
18 beneficiary's family who is at least 21 years of age.”.

19 **SEC. 304. NUMBER AND DISTRIBUTION OF COMMISSIONED OFFICERS**  
20 **ON THE ACTIVE DUTY PROMOTION LIST.**

21 (a) IN GENERAL.—Section 42 of title 14, United States Code, is amended—

22 (1) by amending subsections (a), (b), and (c) to read as follows:

1           “(a) The total number of Coast Guard commissioned officers on the active duty  
2 promotion list, excluding warrant officers, shall not exceed 6,700. This total number,  
3 however, may be temporarily increased up to two percent for no more than the sixty days  
4 that follow the commissioning of a Coast Guard Academy class.

5           “(b) The total number of commissioned officers authorized by this section shall be  
6 distributed in grade not to exceed the following percentages: 0.375 percent for rear  
7 admiral; 0.375 percent for rear admiral (lower half); 6.0 percent for captain; 15.0 percent  
8 for commander; and 22.0 percent for lieutenant commander. The Secretary shall  
9 prescribe the percentages applicable to the grades of lieutenant, lieutenant (junior grade),  
10 and ensign. The Secretary may, as the needs of the Coast Guard require, reduce any of  
11 the percentages mandated above and apply that total percentage reduction to any other  
12 lower grade, or combination of lower grades.

13           “(c) The Secretary shall, at least once a year, compute the total number of  
14 commissioned officers authorized to serve in each grade by applying the grade  
15 distribution percentages of this section to the total number of commissioned officers  
16 listed on the current active duty promotion list. In making such calculations, any fraction  
17 shall be rounded to the nearest whole number. The number of commissioned officers on  
18 the active duty promotion list serving with other departments or agencies on a  
19 reimbursable basis or excluded under the provisions of section 324(d) of title 49, shall not  
20 be counted against the total number of commissioned officers authorized to serve in each  
21 grade.”;

22           (2) by amending subsection (e) to read as follows:

1 “(e) The number of officers authorized to be serving on active duty in each grade  
2 of the permanent commissioned teaching staff of the Coast Guard Academy and of the  
3 Reserve serving in connection with organizing, administering, recruiting, instructing, or  
4 training the reserve components shall be prescribed by the Secretary.”; and

5 (3) in the heading for such section, by inserting “**ON THE ACTIVE**  
6 **DUTY PROMOTION LIST**” after “**OFFICERS**”.

7 (b) CLERICAL AMENDMENT.—(1) The item relating to section 42 in the analysis  
8 for chapter 3 of such title is amended to read as follows:

9 “**42. Number and distribution of commissioned officers on the active duty promotion list.**”.

10 **SEC. 305. RESERVE COMMISSIONED WARRANT OFFICER TO**  
11 **LIEUTENANT PROGRAM.**

12 Section 214(a) of title 14, United States Code, is amended to read as follows:

13 “(a) The President may appoint temporary commissioned officers—

14 “(1) in the Regular Coast Guard in a grade, not above lieutenant,  
15 appropriate to their qualifications, experience, and length of service, as the needs  
16 of the Coast Guard may require, from among the commissioned warrant officers,  
17 warrant officers, and enlisted members of the Coast Guard, and from licensed  
18 officers of the United States merchant marine; and

19 “(2) in the Coast Guard Reserve in a grade, not above lieutenant,  
20 appropriate to their qualifications, experience, and length of service, as the needs  
21 of the Coast Guard may require, from among the commissioned warrant officers  
22 of the Coast Guard Reserve.”.

23 **SEC. 306. ENHANCED STATUS QUO OFFICER PROMOTION SYSTEM.**

24 Chapter 11 of title 14, United States Code is amended—

1 (1) in section 253(a)—

2 (A) by inserting “and” after “considered,”; and

3 (B) by striking “, and the number of officers the board may  
4 recommend for promotion”;

5 (2) in section 258—

6 (A) by designating the existing text as subsection (a); and

7 (B) by adding at the end the following new subsection:

8 “(b) In addition to the information provided pursuant to subsection (a), the  
9 Secretary may furnish the selection board with:

10 “(1) specific direction relating to the needs of the service for officers  
11 having particular skills, including direction relating to the need for a minimum  
12 number of officers with particular skills within a specialty; and

13 “(2) such other guidance that the Secretary believes may be necessary to  
14 enable the board to properly perform its functions.

15 Selections made based on the direction and guidance provided under this subsection shall  
16 not exceed the maximum percentage of officers who may be selected from below the  
17 announced promotion zone at any given selection board convened under section 251 of  
18 this title.”;

19 (3) in section 259(a), by inserting after “whom the board” the following:

20 “, giving due consideration to the needs of the service for officers with particular  
21 skills so noted in the specific direction furnished pursuant to section 258 of this  
22 title,”; and

1 (4) in section 260(b), by inserting after “qualified for promotion” the  
2 following: “to meet the needs of the service (as noted in the specific direction  
3 furnished the board under section 258 of this title)”.

4 **SEC. 307. APPOINTMENT OF CIVILIAN COAST GUARD JUDGES**

5 Section 875 of the Homeland Security Act of 2002 (6 U.S.C. § 455) is  
6 amended—

7 (1) by redesignating subsection (c) as subsection (d); and

8 (2) by inserting after subsection (b) the following new subsection:

9 “(c) APPOINTMENT OF JUDGES.—The Secretary may appoint civilian employees of  
10 the Department of Homeland Security as appellate military judges, available for  
11 assignment to the Coast Guard Court of Criminal Appeals as provided for in 10 U.S.C.  
12 866(a).”.

13 **SEC. 308. COAST GUARD PARTICIPATION IN THE ARMED FORCES**

14 **RETIREMENT HOME (AFRH) SYSTEM.**

15 (a) ELIGIBILITY UNDER THE ARMED FORCES RETIREMENT HOME ACT.—Section  
16 1502 of the Armed Forces Retirement Home Act of 1991 (24 U.S.C. § 401) is  
17 amended—

18 (1) in paragraph (4), by striking “does not include the Coast Guard when it  
19 is not operating as a service of the Navy.” and inserting “has the meaning given  
20 such term in section 101(4) of title 10.”;

21 (2) in paragraph (5)—

22 (A) in subparagraph (C), by deleting “and” at the end;

1 (B) in subparagraph (D), by striking the period at the end and  
2 inserting “; and”; and

3 (C) by adding at the end the following new subparagraph:

4 “(E) the Assistant Commandant of the Coast Guard for Human  
5 Resources.”; and

6 (3) in paragraph (6), by adding at the end the following new subparagraph:

7 “(E) The Master Chief Petty Officer of the Coast Guard.”.

8 (b) DEDUCTIONS.—(1) Section 2772 of title 10, United States Code, is amended—

9 (A) in subsection (a), by striking “of the military department”;

10 (B) in subsection (b), by striking “Armed Forces Retirement Home Board”  
11 and inserting “Chief Operating Officer of the Armed Forces Retirement Home”;  
12 and

13 (C) by striking subsection (c).

14 (2) Section 1007(i) of title 37, United States Code, is amended—

15 (A) in paragraph (3), by striking “Armed Forces Retirement Home Board”  
16 and inserting “Chief Operating Officer of the Armed Forces Retirement Home”;  
17 and

18 (B) in paragraph (4), by striking “does not include the Coast Guard when  
19 it is not operating as a service of the Navy.” and inserting “has the meaning given  
20 such term in section 101(4) of title 10.”.

21 (c) EFFECTIVE DATE.—The amendment made by this section shall take effect on  
22 the first day of the first pay period beginning on or after January 1, 2008.

23 **TITLE IV—ADMINISTRATION**

1 **SEC. 401. COOPERATIVE AGREEMENTS FOR INDUSTRIAL ACTIVITIES**

2 Section 151 of title 14, United States Code, is amended—

3 (1) in the existing text, by inserting “(a) IN GENERAL.—” before “All orders”; and

4 (2) by adding at the end the following new subsection:

5 “(b) ORDERS AND AGREEMENTS FOR INDUSTRIAL ACTIVITIES.—Under this section,  
6 the Coast Guard industrial activities may accept orders and enter into reimbursable  
7 agreements with establishments, agencies, and departments of the Department of Defense  
8 and the Department of Homeland Security.”.

9 **SEC. 402. DEFINING COAST GUARD VESSELS AND AIRCRAFT.**

10 (a) IN GENERAL.—Chapter 17 of title 14, United States Code, is amended by  
11 inserting after section 638 the following new section:

12 **“§ 638a. Coast Guard vessels and aircraft**

13 “For the purposes of sections 637 and 638 of this title, the term ‘Coast Guard  
14 vessels and aircraft’ (in singular or plural form) shall mean—

15 “(1) Any vessel or aircraft owned, leased, transferred to, or operated by the Coast  
16 Guard and under the command of a Coast Guard member; or

17 “(2) Any other vessel or aircraft under the tactical control of the Coast Guard on  
18 which one or more members of the Coast Guard are assigned and conducting Coast  
19 Guard missions.”.

20 (b) CLERICAL AMENDMENT.—The analysis for chapter 17 of such title is amended  
21 by inserting after the item relating to section 638 the following new item:

22 **“638a. Coast Guard vessels and aircraft.”.**

23 **SEC. 403. SPECIALIZED INDUSTRIAL FACILITIES.**

24 (a) IN GENERAL.—Section 648 of title 14, United States Code, is amended—

1 (1) by striking “ACCOUNTING FOR INDUSTRIAL WORK” in the  
2 heading and inserting “SPECIALIZED INDUSTRIAL FACILITIES”;

3 (2) by designating the existing undesignated text as subsection (a); and

4 (3) by adding at the end the following new subsection:

5 “(b) For purposes of entering into joint public-private partnerships or other  
6 cooperative arrangements for the performance of work, the Coast Guard Yard, the  
7 Aviation Repair and Supply Center, or other similar Coast Guard industrial  
8 establishments may —

9 “(1) enter into agreements or other arrangements with public or private  
10 entities, foreign or domestic;

11 “(2) pursuant to contracts or other arrangements, receive and retain funds  
12 from, or pay funds to, such public or private entities; or

13 “(3) accept contributions of funds, materials, services, or the use of  
14 facilities from such public or private entities, subject to regulations promulgated  
15 by the Coast Guard.

16 Amounts received under this subsection may be credited to the Coast Guard Yard  
17 Revolving Fund or other appropriate Coast Guard account.”.

18 (b) CLERICAL AMENDMENT.—The item relating to section 648 in the analysis for  
19 chapter 17 of such title is amended to read as follows:

20 “648. Specialized Industrial Facilities.”.

21 **TITLE V—SHIPPING**

22 **SEC. 501. EXTENSION OF LICENSES, CERTIFICATES OF REGISTRY, AND**

23 **MERCHANT MARINER’S DOCUMENTS.**

1 (a) LICENSES AND CERTIFICATES OF REGISTRY.—Chapter 71 of title 46, United  
2 States Code, is amended—

3 (1) by amending section 7106 to read as follows:

4 **“§ 7106. Duration of licenses**

5 “(a) A license issued under this part is valid for not more than 5 years and may be  
6 renewed for periods of not more than 5 years.

7 “(b) The Secretary, acting through the Commandant of the Coast Guard, may  
8 temporarily extend, for a reasonable period of time, the expiration date of a license when  
9 such action is deemed appropriate and necessary. Any such extension may be granted to  
10 an individual, a class of individuals specifically identified, or a combination thereof.

11 “(c) The validity of a license issued to a radio officer is conditioned on the  
12 continuous possession by the holder of a first-class or second-class radiotelegraph  
13 operator license issued by the Federal Communications Commission.”; and

14 (2) by amending section 7107 to read as follows—

15 **“§ 7107. Duration of certificates of registry**

16 “(a) A certificate of registry issued under this part is valid for not more than 5  
17 years and may be renewed for periods of not more than 5 years.

18 “(b) The Secretary, acting through the Commandant of the Coast Guard, may  
19 temporarily extend, for a reasonable period of time, the expiration date of a certificate of  
20 registry when such action is deemed appropriate and necessary. Any such extension may  
21 be granted to an individual, a class of individuals specifically identified, or a combination  
22 thereof.

1           “(c) The validity of a certificate issued to a medical doctor, a physician assistant,  
2 or a registered nurse is conditioned on the continuous possession by the holder of a  
3 license as a medical doctor, a physician assistant, or a registered nurse, respectively,  
4 issued by a State.”.

5           (b) MERCHANT MARINER’S DOCUMENTS.—Section 7302(f) of such title is  
6 amended to read as follows:

7           “(f)(1) Except as provided in subsection (g), a merchant mariner’s document  
8 issued under this chapter is valid for not more than 5 years and may be renewed for  
9 periods of not more than 5 years.

10           “(2) The Secretary, acting through the Commandant of the Coast Guard, may  
11 temporarily extend, for a reasonable period of time, the expiration date of a merchant  
12 mariner’s document when such action is deemed appropriate and necessary. Any such  
13 extension may be granted to an individual, a class of individuals specifically identified, or  
14 a combination thereof.”.

15           (c) RECORDS.—Section 7502 of such title is amended to read as follows:

16           **“§ 7502. Records**

17           “(a) The Secretary shall maintain records, including electronic records, consistent  
18 with laws regarding maintenance and destruction of federal records, on the issuance,  
19 denial, suspension, and revocation of each license, certificate of registry, merchant  
20 mariner’s document, and endorsement on such license, certificate, or document. Access  
21 to such records shall be governed by section 552 of title 5, United States Code  
22 (commonly referred to as the Freedom of Information Act) and section 552a of title 5,  
23 United States Code (commonly referred to as the Privacy Act of 1974).

1           “(b) The Secretary may prescribe regulations requiring vessel owners, operators,  
2 or employers of commercial vessels to maintain records of mariners on matters of  
3 engagement, discharge, and service for not less than 5 years from the date of the  
4 completion of the service. A vessel owner, operator, or employer shall make these  
5 records available to the mariner and the Coast Guard on request.

6           “(c) A person violating this section, or a regulation issued under this section, is  
7 liable to the United States Government for a civil penalty of not more than \$5,000.”.

8           (d) TECHNICAL CORRECTIONS.—

9                   (1) TABLE OF CHAPTERS.—The item relating to chapter 73 in the table of  
10 chapters at the beginning of subtitle II of such title is amended to read as follows:

11           **“73. Merchant mariner’s documents ..... 7301”.**

12                   (2) TABLE OF SECTIONS.—(A) The table of sections at the beginning of  
13 chapter 73 of such title is amended—

14                           (i) in the chapter heading, by striking “**MARINERS**” and  
15 inserting “**MARINER’S**”; and

16                           (ii) by amending the item relating to section 7302 to read as  
17 follows:

18           **“7302. Issuing merchant mariner’s documents and continuous discharge books.”;**

19                           (iii) by amending the item relating to section 7303 to read as  
20 follows:

21           **“7303. Possession and description of merchant mariner’s documents.”;**

22                           (iv) by amending the item relating to section 7304 to read as  
23 follows:

1 **“7304. Citizenship notation on merchant mariner’s documents.”;**

2 (v) by amending the item relating to section 7305 to read as

3 follows:

4 **“7305. Oaths for holders of merchant mariner’s documents.”; and**

5 (vi) by amending the item relating to section 7319 to read as

6 follows:

7 **“7319. Records of merchant mariner’s documents.”.**

8 (B) The item relating to section 10306 in the table of sections at the

9 beginning of chapter 103 of such title is amended to read as follows:

10 **“10306. Exhibiting merchant mariner’s documents.” .**

11 (C) The item relating to section 10503 in the table of sections at the

12 beginning of chapter 105 of such title is amended to read as follows:

13 **“10503. Exhibiting merchant mariner’s documents.” .**

14 (3) SECTION HEADINGS.—(A) The headings for sections 7302, 7303, 7304,

15 7305, 7319, 10306, and 10503 of such title are amended by striking

16 “MARINERS” each place it appears and inserting “MARINER’S”.

17 **SEC. 502. DELETION OF EXEMPTION OF LICENSE REQUIREMENT FOR**  
18 **OPERATORS OF CERTAIN TOWING VESSELS.**

19 Section 8905 of title 46, United States Code, is amended—

20 (1) by striking subsection (b); and

21 (2) by redesignating subsection (c) as subsection (b).

22 **SEC. 503. TECHNICAL AMENDMENTS TO CHAPTER 313 OF TITLE 46,**  
23 **UNITED STATES CODE.**

1 (a) IN GENERAL.—Chapter 313 of title 46, United States Code, is amended—

2 (1) in sections 31302, 31306, 31321, 31330, and 31343, by striking “of

3 Transportation” each place such term appears; and

4 (2) in section 31301, by adding at the end the following new paragraph:

5 “(7) ‘Secretary’ means Secretary of the Department of Homeland Security,  
6 unless otherwise noted.”.

7 (b) SECRETARY AS MORTGAGEE.—Section 31308 of such title is amended by

8 striking “When the Secretary of Commerce or Transportation is a mortgagee under this

9 chapter, the Secretary” and inserting “The Secretary of Commerce or Transportation, as a

10 mortgagee under this chapter.”.

11 (c) SECRETARY OF TRANSPORTATION.—Section 31329(d) of such title is amended

12 by inserting “of Transportation” after “Secretary”.

13 (d) MORTGAGEE.—Section 31330(a) of such title is amended—

14 (1) in paragraph (1)—

15 (A) by inserting “or” at the end of subparagraph (B);

16 (B) in subparagraph (C), by striking “; or” and inserting a period;

17 and

18 (C) by striking subparagraph (D); and

19 (2) in paragraph (2)—

20 (A) in subparagraph (B), by inserting “or” at the end;

21 (B) in subparagraph (C), by striking “; or” and inserting a period;

22 and

23 (C) by striking subparagraph (D).

1 **SEC. 504. CLARIFICATION OF RULEMAKING AUTHORITY.**

2 (a) IN GENERAL.—Chapter 701 of title 46, United States Code, is amended by  
3 adding at the end the following new section:

4 **“§ 70122. Regulations**

5 “Unless otherwise provided, the Secretary may issue regulations necessary to  
6 implement this chapter.”.

7 (b) CLERICAL AMENDMENT.—The analysis at the beginning of chapter 701 of  
8 such title is amended by adding at the end the following new item:

9 **“70122. Regulations.”.**

10 **TITLE VI—ENFORCEMENT, SAFETY, SECURITY, AND**  
11 **ENVIRONMENTAL PROTECTION**

12 **SEC. 601. PILOT PROGRAM FOR DOCKSIDE CREW SURVIVABILITY**  
13 **EXAMS FOR UNINSPECTED COMMERCIAL FISHING**  
14 **VESSELS.**

15 (a) PILOT PROGRAM.—The Secretary may conduct a pilot program to determine  
16 the effectiveness of mandatory Dockside Crew Survivability Examinations on U.S.  
17 Uninspected Commercial Fishing Vessels to reduce the number of fatalities and property  
18 losses in this industry.

19 (b) AUTHORITY.—The Secretary may issue regulations to implement this pilot  
20 program for mandatory Dockside Crew Survivability Examinations.

21 (c) DEFINITIONS.—For purposes of this section—

22 (1) “Dockside Crew Survivability Examination” means an examination by  
23 a Coast Guard Representative of an uninspected fishing vessel, to include the

1 vessel's crew, at the dock or pier to identify and examine the safety and survival  
2 equipment required by law for that vessel, as well as the vessel stability standards  
3 applicable by law to that vessel. Additionally, the Coast Guard Representative  
4 will identify and observe proper crew training on the vessel's safety and survival  
5 equipment, and the crew's familiarity with vessel stability and emergency  
6 procedures designed to save life at sea and avoid loss or damage to the vessel.

7 (2) "Coast Guard Representative" means a Coast Guard member, civilian  
8 employee, Coast Guard Auxiliarist, or person employed by an organization  
9 accepted or approved by the Coast Guard to examine commercial fishing industry  
10 vessels.

11 (3) "Uninspected fishing vessel" means a vessel, not including fish  
12 processing vessels or fish tender vessels as defined in 46 U.S.C. § 2101, that  
13 commercially engages in the catching, taking, or harvesting of fish or an activity  
14 that can reasonably be expected to result in the catching, taking, or harvesting of  
15 fish.

16 (d) SCOPE OF PILOT PROGRAM.—The pilot program shall be conducted—

17 (1) in two different geographic regions of the United States as selected by  
18 the Secretary;

19 (2) for a period of 5 years following the date of the enactment of this Act;

20 (3) in consultation with those organizations and persons identified by the  
21 Secretary as directly affected by the pilot program;

1 (4) to gather data identified by the Secretary as necessary to conclude  
2 whether Dockside Crew Survivability Examinations reduce fatalities and property  
3 losses in the fishing industry.

4 (e) REPORT.—Not later than 180 days after the end of the pilot program, the  
5 Secretary shall submit to the Committee on Commerce, Science and Transportation of the  
6 Senate and the Committee on Transportation and Infrastructure of the House of  
7 Representatives a report on the results of the pilot program. The report shall include the  
8 following:

9 (1) An assessment of the costs and benefits of the pilot program including  
10 costs to the industry and lives and property saved as a result of the pilot program.

11 (2) An assessment of the costs and benefits to the United States  
12 government of the pilot program including operational savings such as personnel,  
13 maintenance, etc., from reduced search and rescue or other operations.

14 (3) Any other findings and conclusions of the Secretary with respect to the  
15 pilot program.

16 **SEC. 602. RECREATIONAL VESSEL OPERATOR PROFICIENCY.**

17 Section 4302(a) of title 46, United States Code, is amended—

18 (1) in paragraph (3), by striking the period at the end and inserting “; and”; and

19 (2) by adding at the end the following new paragraph:

20 “(4) establishing minimum requirements for recreational vessel operator  
21 proficiency with proof of identification.”.

22 **SEC. 603. TECHNICAL AMENDMENTS TO TONNAGE MEASUREMENT**

23 **LAW.**

1 (a) DEFINITIONS.—Paragraph (4) of section 14101 of title 46, United States Code,  
2 is amended—

3 (1) in the matter preceding subparagraph (A), by striking “‘vessel engaged  
4 on a foreign voyage’ means a vessel—” and inserting “‘vessel that engages in a  
5 foreign voyage’ means a vessel that—”;

6 (2) in subparagraph (A), by striking “arriving” and inserting “arrives”;

7 (3) in subparagraph (B)—

8 (A) by striking “making” and inserting “makes”; and

9 (B) by striking “(except a foreign vessel engaged on that voyage)”;

10 and

11 (4) in subparagraph (C), by striking “departing” and inserting “departs”;

12 and

13 (5) in subparagraph (D), by striking “making” and inserting “makes”.

14 (b) DELEGATION OF AUTHORITY.—Section 14103(c) of such title is amended by  
15 striking “intended to be engaged on” and inserting “that engages in”.

16 (c) APPLICATION.—Section 14301 of such title is amended—

17 (1) by amending subsection (a) to read as follows:

18 “(a) Except as otherwise provided in this section, this chapter applies to  
19 any vessel for which the application of an international agreement or other law of  
20 the United States to the vessel depends on the vessel’s tonnage.”;

21 (2) in subsection (b)—

1 (A) in paragraph (1), by striking the period at the end and inserting  
2 “, unless requested by the government of the country to which the vessel  
3 belongs.”;

4 (B) in paragraph (3)—

5 (i) by inserting “of United States or Canadian registry or  
6 nationality, or one operated under the authority of the United  
7 States or Canada, and that is” after “vessel”; and

8 (ii) by inserting “otherwise” after “requests”;

9 (C) in paragraph (4)—

10 (i) by striking “a vessel (except a vessel engaged” and  
11 inserting “a vessel of United States registry or nationality, or one  
12 operated under the authority of the United States (except a vessel  
13 that engages”;

14 (ii) in subparagraph (A), by inserting “otherwise” after  
15 “requests”;

16 (D) by striking paragraph (5);

17 (E) by redesignating paragraph (6) as paragraph (5); and

18 (F) by amending paragraph (5), as redesignated, to read as follows:

19 “(5) a barge of United States registry or nationality, or one  
20 operated under the authority of the United States (except a barge that  
21 engages on a foreign voyage) unless the owner requests otherwise.”;

22 (3) by striking subsection (c);

1 (4) by redesignating subsections (d) and (e) as subsections (c) and (d),  
2 respectively; and

3 (5) in subsection (c), as redesignated, by striking “After July 18, 1994, an  
4 existing vessel (except an existing vessel referred to in subsection (b)(5) (A) or  
5 (B) of this section)” and inserting “An existing vessel that has not undergone a  
6 change that the Secretary finds substantially affects the vessel’s gross tonnage (or  
7 a vessel to which IMO Resolutions A.494 (XII) of November 19, 1981, A.540  
8 (XIII) of November 17, 1983, or A.541 (XIII) of November 17, 1983 apply)”.

9 (d) MEASUREMENT.—Section 14302(b) of such title is amended to read as  
10 follows:

11 “(b) A vessel measured under this chapter may not be required to be measured  
12 under another law.”.

13 (e) INTERNATIONAL TONNAGE CERTIFICATE (1969).—Section 14303(a) of such  
14 title is amended by striking “under this chapter,” and inserting “to which the Convention  
15 applies,”.

16 (f) OPTIONAL REGULATORY MEASUREMENT.—Section 14305(a) of such title is  
17 amended by striking “documented vessel measured under this chapter,” and inserting  
18 “vessel measured under this chapter that is of United States registry or nationality, or one  
19 operated under the authority of the United States,”.

20 (g) APPLICATION.—Section 14501(1) of such title is amended to read as follows:

21 “(1) a vessel not measured under chapter 143 of this title if the application of an  
22 international agreement or other law of the United States to the vessel depends on the  
23 vessel’s tonnage.”.

1 (h) STANDARD TONNAGE MEASUREMENT.—Section 14512(a) of such title is  
2 amended by striking “4151 and 4153” and inserting “4151, 4153, and 4154” in both  
3 places it appears.

4 (i) DUAL TONNAGE MEASUREMENT.—Section 14513(c) of such title is amended—

5 (1) in paragraph (1)—

6 (A) by striking “vessel’s tonnage mark is below the uppermost part  
7 of the load line marks,” and inserting “vessel is assigned two sets of gross  
8 and net tonnages under this section,”; and

9 (B) by inserting “vessel’s tonnage” before “mark”; and

10 (2) in paragraph (2), by striking the period at the end and inserting “as  
11 assigned under this section.”.

## 12 **SEC. 604. MARITIME DRUG LAW ENFORCEMENT.**

13 (a) IN GENERAL.—Chapter 705 of title 46, United States Code, is amended by  
14 adding at the end the following new section:

### 15 **“§ 70508. Simple possession**

16 “Any individual at a maritime facility or on a vessel of the United States who is  
17 found by the Secretary, after notice and an opportunity for a hearing, to have knowingly  
18 or intentionally possessed a controlled substance that is listed in Schedules I through V,  
19 as promulgated pursuant to section 202 of the Controlled Substance Act (21 U.S.C. §  
20 812), and in an amount that is a personal use amount, as specified by regulation of the  
21 Attorney General pursuant to section 404 of that Act (21 U.S.C. 844), shall be liable to  
22 the United States for a civil penalty not to exceed \$27,500 for each violation. The  
23 Secretary shall notify the individual in writing of the amount of the civil penalty. In

1 determining the amount of the penalty, the Secretary shall consider the nature,  
2 circumstances, extent, and gravity of the prohibited acts committed and, with respect to  
3 the violator, the degree of culpability, any history of prior offenses, ability to pay, and  
4 other matters that justice requires. Assessment of a civil penalty under this statute should  
5 not be considered a conviction for purposes of state or federal law. However, it may be  
6 considered proof of possession when such a determination is relevant. Nothing in this  
7 section shall preclude application of any provision of the Controlled Substances Act 21  
8 U.S.C. § 801 *et seq.*), including, but not limited to, section 1005 of that Act (21 U.S.C. §  
9 955).”.

10 (b) CLERICAL AMENDMENT.—The analysis for chapter 705 of such title is  
11 amended by adding at the end the following new item:

12 “70508. Simple possession.”.

13 **SEC. 605. SEAWARD EXTENSION OF ANCHORAGE GROUNDS**

14 **JURISDICTION.**

15 Section 7 of the Act of Mar. 4, 1915 (33 U.S.C. § 471), is amended—

16 (1) in the section heading, by striking “**BY SECRETARY OF**  
17 **TRANSPORTATION**”;

18 (2) by designating the existing text as subsection (a);

19 (3) in subsection (a), as redesignated—

20 (A) by striking “Secretary of Transportation” wherever it appears  
21 and inserting “Secretary of the department in which the Coast Guard is  
22 operating”;

1 (B) by striking “\$100; and the” and inserting “up to \$10,000. Each  
2 day of a continuing violation shall constitute a separate violation. The”;

3 (C) striking “Chief of Engineers,” and inserting “Chief of  
4 Engineers or, in the case of anchorage grounds on the outer Continental  
5 Shelf, the Secretary of the Interior,”; and

6 (D) striking “Chief of Engineers under the direction of” and  
7 inserting “Chief of Engineers or the Secretary of the Interior, as the case  
8 may be, under the direction of”; and

9 (4) by adding at the end the following new subsection:

“(b) As used in this section ‘navigable waters of the United States’ includes all  
waters of the territorial sea of the United States as described in Presidential Proclamation  
No. 5928 of December 27, 1988.”.

10 **SEC. 606. ADJUSTMENT OF LIABILITY LIMITS FOR NATURAL GAS**

11 **DEEPWATER PORTS.**

12 Section 1004(d)(2) of the Oil Pollution Act of 1990 (33 U.S.C. § 2704(d)(2)) is  
13 amended by adding at the end the following new subparagraph:

14 “(D) The Secretary may establish, by regulation, a limit of liability  
15 of not less than \$12,000,000 for a deepwater port used only in connection  
16 with transportation of natural gas.”.

17 **SEC. 607. OIL SPILL LIABILITY TRUST FUND AVAILABILITY FOR**

18 **CERTAIN COSTS.**

19 (a) IN GENERAL.—Section 1012(a)(4) of the Oil Pollution Act of 1990, Pub. L.  
20 101-380 (33 U.S.C § 2712(a)(4)), is amended by striking “title,” and inserting “title,

1 including payment of direct Federal costs for contracting onsite, scientific, or technical  
2 support services to adjudicate claims.”.

3 (b) CONFORMING AMENDMENT.—Subsection (f) of section 9509 of the Internal  
4 Revenue Code of 1986 (26 U.S.C. § 9509(f)) is amended by striking “this subsection”  
5 and inserting “the Coast Guard and Maritime Transportation Act of 2006”.

6 **SEC. 608. PERIOD OF LIMITATIONS FOR CLAIMS AGAINST THE OIL**  
7 **SPILL LIABILITY TRUST FUND.**

8 Section 1012(h)(1) of the Oil Pollution Act of 1990 (33 U.S.C. § 2712(h)(1)) is  
9 amended by striking “6” and inserting “3”.

10 **TITLE VII—MARITIME ALIEN SMUGGLING**

11 **SEC. 701. MARITIME ALIEN SMUGGLING.**

12 Subtitle VII of title 46, United States Code, is amended by adding at the end the  
13 following new chapter:

14 **“CHAPTER 707—MARITIME ALIEN SMUGGLING LAW ENFORCEMENT**

**“Sec.**

**“70701. Offense.**

**“70702. Penalties.**

**“70703. Seizure and forfeiture of property.**

**“70704. Jurisdiction.**

**“70705. Claim of failure to comply with international law.**

**“70706. Federal activities.**

**“70707. Definitions.**

15 **“§ 70701. Offense**

16 “(a) Any person who knowingly transports, harbors, or conceals an alien on board  
17 a vessel described in subsection (d) of this section, knowing or in reckless disregard of  
18 the fact that such alien is attempting to enter the United States unlawfully, shall be  
19 punished as provided in section 70702.

1           “(b) Any person who attempts or conspires to commit a violation under this  
2 section shall be punished in the same manner as a person who completes a violation of  
3 this section.

4           “(c) It is an affirmative defense to a prosecution under this chapter of any master,  
5 operator, or person in charge of a vessel only, which the defendant must prove by a  
6 preponderance of the evidence, that—

7                   “(1) the alien was on board pursuant to a rescue at sea, or was a stowaway;  
8 and

9                   “(2) the defendant, as soon as reasonably practicable, informed the United  
10 States Coast Guard of the presence of the alien on the vessel and the  
11 circumstances of the rescue:

12 Provided, that the defendant complies with all orders given by U.S. law enforcement  
13 officials and does not bring or attempt to bring any alien into the land territory of the  
14 United States unless the alien is in imminent threat of death or serious bodily injury, in  
15 which case the defendant shall report to the U.S. Coast Guard the circumstances of the  
16 rescue immediately upon delivering that alien to emergency medical personnel or to U.S.  
17 law enforcement or immigration authorities ashore.

18           “(d) The following vessels are covered by this section—

19                   “(1) a vessel of the United States that is less than 300 gross tons (as  
20 measured under chapter 145 or an alternate tonnage measurement as prescribed  
21 by the Secretary under section 14104),

22                   “(2) a vessel subject to the jurisdiction of the United States that is less than  
23 300 gross tons (as so measured), or

1                   “(3) a vessel of any size that is abandoned, stateless, or stolen.

2   **“§ 70702. Penalties**

3                   “Any person who commits a violation under this chapter shall—

4                   “(1) be imprisoned for not less than 3 years and not more than 20 years,  
5                   fined under title 18, or both;

6                   “(2) in the case where any the violation created a substantial risk of death  
7                   or serious bodily injury to another person (including, without limitation,  
8                   transporting a person in a shipping container, storage compartment, other  
9                   confined space, in dangerously overcrowded conditions or at a speed in excess of  
10                  the rated capacity of the vessel), be imprisoned not less than 5 years and not more  
11                  than 20 years, fined under title 18, or both;

12                  “(3) in the case where the violation caused serious bodily injury to any  
13                  person, regardless of where the injury occurred, be imprisoned for not less than 7  
14                  years and more than 30 years, fined under title 18, or both; and

15                  “(4) in the case where the violation caused or resulted in the death of any  
16                  person regardless of where the death occurred, be imprisoned for not less than 10  
17                  years, any term of years, or life, fined under title 18, or both.

18   **“§ 70703. Seizure and forfeiture of property**

19                  “(1) Any real or personal property used or intended to be used to commit or to  
20                  facilitate the commission of a violation of this chapter, the gross proceeds of such  
21                  violation, and any real or personal property traceable to such property or proceeds, shall  
22                  be subject to forfeiture.

1           “(2) Seizures and forfeitures under this subsection shall be governed by the  
2 provisions of chapter 46 of title 18, United States Code, relating to civil forfeitures,  
3 except that such duties as are imposed upon the Secretary of the Treasury under the  
4 customs laws described in section 981(d) shall be performed by such officers, agents, and  
5 other persons as may be designated for that purpose by the Secretary of Homeland  
6 Security.

7           **“§ 70704. Jurisdiction**

8           “(1) There is extraterritorial jurisdiction of an offense under this chapter.

9           “(2) Jurisdiction of the United States with respect to vessels and persons subject  
10 to this chapter is not an element of any offense. All jurisdictional issues arising under  
11 this title are preliminary questions of law to be determined by the trial judge.

12           **“§ 70705. Claim of failure to comply with international law**

13           “Failure to comply with international law shall not be the basis for any defense of  
14 a person charged with a violation of this chapter. A claim of failure to comply with  
15 international law in the enforcement of this chapter may be invoked solely by a foreign  
16 nation, and a failure to comply with international law shall not divest a court of  
17 jurisdiction or otherwise constitute a defense to any proceeding under this section.

18           **“§ 70706. Federal activities**

19           “Nothing in this chapter shall apply to otherwise lawful activities carried out by or  
20 at the direction of the United States Government.

21           **“§ 70707. Definitions.**

22           “As used in this chapter—

23                   “(1) the term ‘alien’ has the meaning given that term in section 101(a)(3)

1 of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(3));

2 “(2) the term ‘proceeds’ includes any property or interest in property  
3 obtained or retained as a consequence of an act or omission in violation of this  
4 section;

5 “(3) the term ‘United States’ has the meaning given that term in section  
6 2101 of this title;

7 “(4) the term ‘vessel subject to the jurisdiction of the United States’ has  
8 the meaning given that term in section 70502 of this title; and

9 “(5) the term ‘vessel of the United States’ has the meaning given that term  
10 in section 70502 of this title.”.

11 (b) CLERICAL AMENDMENTS.—(1) The heading of subtitle VII of such title is  
12 amended to read as follows:

13 **“SUBTITLE VII—PORT AND MARITIME SECURITY; DRUG AND ALIEN SMUGGLING LAW**  
14 **ENFORCEMENT”**.

15 (2) The analysis for such subtitle is amended by adding at the end the following  
16 new item:

17 **“707. Maritime Alien Smuggling Law Enforcement 70701”**.

## **SECTION-BY-SECTION ANALYSIS**

### **SECTION 1. SHORT TITLE.**

The first section titles this Act as the “Coast Guard Authorization Act for Fiscal Year 2008”.

## **TITLE I—AUTHORIZATIONS**

### **SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

This section would authorize funds for fiscal year 2008 at the levels requested.

### **SEC. 102. AUTHORIZED LEVELS OF MILITARY STRENGTH AND TRAINING.**

This section would authorize a Coast Guard end-of-year strengths for active duty military personnel for fiscal year 2008. The authorized strength does not include members of the Ready Reserve called to active duty for special or emergency augmentation of regular Coast Guard forces for periods of 180 days or less. This section also would authorize average military training student loads for fiscal year 2008.

### **SEC. 103. TRANSFER OF BRIDGE ADMINISTRATION PROGRAM AUTHORITY AND FUNCTIONS.**

In accordance with the President’s Budget for fiscal year 2008, this proposal would effect the transfer of authorities and functions pertaining to the construction, alteration, or operation of bridges, drawbridges, and causeways and to require the alteration, repair, or removal of the same—presently, vested in the Secretary of Homeland Security and executed through the Commandant of the Coast Guard through the Bridges Administration Program—to the Secretary of Transportation. The proposal would reserve to the Secretary of Homeland Security the authority to determine whether the proposed construction, alteration, operation, repair, or removal of a bridge, drawbridge, or causeway would constitute either an unreasonable obstruction to navigation or unreasonably threaten the Nation’s security. The reservation and certification are critical as the assessment of the safety, security, and efficiency of vessel traffic on the navigable waters of the United States are and will remain among the critical functions of Coast Guard Captains of the Port, in consultation with bridge administration personnel.

Authorizing transfer of “unobligated” balances, rather than “unexpended” balances is important to avoid the necessity of canceling pending transactions and will reduce impact on ongoing projects.

## **TITLE II—ORGANIZATION**

## **SEC. 201. VICE COMMANDANT; VICE ADMIRALS.**

The Coast Guard now operates in an evolving, dynamic multi-mission environment that requires both increased alignment with the other armed forces and greater organizational flexibility than the existing, geocentric command structure provides.

Subsection (a) of the proposal fixes the grade of the Vice Commandant at admiral while serving in that capacity, aligning the Coast Guard with the leadership structure of all of the other armed forces whose vice service chiefs all serve in the grade of general or admiral. *See* 10 U.S.C. §§ 3034, 5035, 5044, 8034. This change will enable the Vice Commandant to better represent the Coast Guard and Commandant in frequent interactions with other service counterparts, as well as interactions with the Vice Chairman of the Joint Chiefs of Staff and the Commanders of the Combatant Commands, all of whom serve currently in the grade of general or admiral.

Subsection (b) of the proposal provides for temporary appointment of vice admirals to “positions of importance and responsibility,” similar to like appointments in the other armed services, to provide organizational flexibility, while preserving executive command and congressional oversight. Specifically—

- Proposed section 50(a)(1) authorizes the President to appoint no more than four “positions of importance and responsibility.” *See* 10 U.S.C. § 601(a). This provision does not set a percentage distribution of commissioned officers on active duty in general officer or flag officer grades as in the other armed forces. 10 U.S.C. § 525. Instead, the provision parallels command structure of the Marine Corps, fixing the number of vice admirals at no more than four. *See* 10 U.S.C. § 5045. This will provide flexibility to increase the number of vice admirals if circumstances warrant, but does not compel it. Each position will be held by an officer who, like the existing Chief of Staff and Area Commanders, will have the grade of vice admiral, while so serving, and perform such duties as the Commandant prescribes. *See* 14 U.S.C. §§ 50(a) and 50a(a). The existing senior leadership positions would be subsumed within and preserved by this statutory scheme unless and until changing circumstances prompt their realignment.
- Proposed section 50(a)(2) retains the existing scheme for the nomination, appointment, and confirmation of officers. *See* 14 U.S.C. §§ 50(a) and 50a(a). However, the provision contemplates the reappointment of officers and expressly provides for Senate confirmation prior to such reappointment. The confirmation process ensures the ability of Congress to exercise its oversight authority concerning the Coast Guard.
- Proposed section 50(b)(1) carries forward the language of 14 U.S.C. §§ 50(b) and 50a(b) with regard to the effective and termination dates that the officer assumes and detaches from duty.

- Proposed section 50(b)(2) provides the treatment of grade of officers who are transferred from one appointment, hospitalized, or awaiting retirement. *See* 10 U.S.C. § 601(b)(2), (3), and (4). Similarly, proposed section 50(c) adopts like treatment of permanency of grade and promotion afforded such officers of the other armed forces. *See* 10 U.S.C. § 601(c)(1) and (2). Further, this provision resolves the ambiguity of relative precedence induced by 14 U.S.C. § 52.
- Finally, proposed section 50(d) borrows the notification and recommendation concept of 10 U.S.C. § 601(d)(2).

Subsection (c) abolishes the statutory office of Chief of Staff, as the duties of that position will be assigned to one of the four Vice Admirals. Subsections (d), (e), and (f) provide for the necessary conforming, clerical, and technical amendments.

## **SEC. 202. MERCHANT MARINER MEDICAL ADVISORY COMMITTEE.**

The recent maritime tragedy in Staten Island, New York, involving the M/V ANDREW J. BARBERI, has demonstrated a need to establish an advisory group of medical subject matter specialists familiar with the unique maritime occupational environment. These subject matter specialists would advise the Secretary on medical matters relating to the issuance of Merchant Mariner Credentials (MMCs). In particular, the advisory group would be responsible for establishing the medical standards and guidelines for the physical qualifications of operators of vessels for use by those medical professionals who examine and qualify mariners as “fit” for occupational duty.

Regulation I/9 of the International Maritime Organization (IMO) Standards of Training, Certification, and Watchkeeping (STCW) Convention requires that each party establish standards of medical fitness for seafarers. The STCW and title 46, C.F.R., Parts 10, 12, and 13, include requirements for mariners to provide evidence that they are physically able to perform the duties expected of a holder of a mariner’s credential. However, neither contains standards, beyond visual acuity and color vision, which are useful in determining whether a mariner is physically qualified. With the exception of the vision standards, the regulations are non-specific and use terms such as “general physical condition” or “good health.” Frequently, medical practitioners conducting examinations of mariners do not have experience at sea and are not qualified to judge the MMC applicant’s medical and physical fitness to perform the required occupational duties.

Currently, the Secretary, through the Coast Guard, relies on Navigation and Vessel Inspection Circular No. 2-98 (NVIC 2-98) (“Physical Evaluation Guidelines for Merchant Mariner’s Documents and Licenses”) to help screen mariners for occupational fitness. There are problems, however, in uniformly applying these broad NVIC guidelines, and more importantly there is no policy or mechanism for obtaining recommendations from medical subject matter experts regarding the physical qualifications of mariners. Furthermore, a recent NTSB report has mandated a review of the Coast Guard’s medical certification process, including a revision of NVIC 2-98. In

order for any revision of the medical and fitness standards to achieve the Department's (and NTSB's) objective of enhancing the safety aboard vessels, an advisory group of the caliber proposed herein is required. This advisory group comprised of health-care professionals and professional mariners, serving at the Secretary's pleasure, will provide the much needed expertise needed to ensure both the industry and the Department have reliable and meaningful standards to determine what physically qualified means in the maritime environment.

**SEC. 203. AUTHORITY TO DISTRIBUTE FUNDS THROUGH GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS TO MARITIME AUTHORITIES AND ORGANIZATIONS.**

This provision would allow the Coast Guard to provide funds to international maritime authorities and organizations that collect and maintain databases in order to obtain information on foreign vessels and ports that is directly linked to maintaining and enhancing U.S. maritime safety and security. The provision requires the Commandant to consult with the Secretary of State when providing such support to international authorities and organizations.

Thorough screening of incoming foreign vessels *prior* to their arrival in the United States is critical to the safety and security of our ports. Approximately 150 foreign vessels arrive at U.S. ports on a daily basis, and each vessel has its history screened for past safety, security, and environmental compliance. The current screening process only considers a foreign vessel's past U.S. Port State Control (PSC) compliance record from the Coast Guard's Marine Information Safety and Law Enforcement System (MISLE) database. In order to make accurate threat assessments and properly prioritize scarce personnel resources, the Coast Guard also needs access to databases that can quickly scan a vessel's global compliance history. Currently, international authorities provide this type of information through programs such as the European Quality Shipping Information System (EQUASIS).

In order to access critical safety and security information, the United States entered into an agreement with six foreign maritime authorities to form EQUASIS, which has the potential to be the global clearinghouse for Port State Control information from all countries with a reputable enforcement program. EQUASIS has demonstrated its importance as a global maritime safety and security risk-based decision making tool. However, current statutory authority does not permit the Coast Guard to use appropriated funds to support, maintain, and expand these international Port State Control efforts of EQUASIS and other similar systems that may be needed in the future.

This provision would give the Coast Guard limited authority to provide financial support (approx. \$100K per year) to such international programs and ensure adequate U.S. participation and benefits in the international environment.

**SEC. 204. ASSISTANCE TO FOREIGN GOVERNMENTS AND MARITIME AUTHORITIES.**

This proposal would clarify the Coast Guard’s authority to expend funds to assist and partner with maritime authorities of foreign governments through a range of international outreach activities intended to improve maritime security and operations.

Section 202 of the Coast Guard Maritime and Transportation Act of 2006 recently amended 14 U.S.C. § 149. As amended, 14 U.S.C. §149 authorizes the Coast Guard to provide technical assistance, including law enforcement and maritime safety and security training, to foreign maritime authorities in conjunction with regular Coast Guard operations. The Coast Guard may provide such technical assistance in coordination with the Secretary of State.

The proposal clarifies the Coast Guard’s authority to expend funds to assist foreign governments and maritime authorities, including the detail of personnel, convening conferences and seminars, and distributing publications designed to develop the maritime capabilities of key partner nations, all of which might be considered outside the scope of traditional “technical assistance.” The proposed language parallels Department of Defense authority to conduct and expend funds on military-to-military contacts, contained in 10 U.S.C. § 168, that are designed to encourage a democratic orientation of defense establishments and foreign military forces. Similarly, the development or enhancement of foreign maritime capabilities by the Coast Guard will support U.S. national security and foreign policy objectives by promoting cooperation and compliance with international laws, as well as encouraging the establishment of international standards.

The proposed clarification is desirable to ensure that legally sufficient fiscal law authority is established to support development of international partners for a secure maritime domain as required by the National Strategy for Maritime Security. Enactment of the proposed authority will allow the Coast Guard to undertake the enumerated activities, in addition to “technical assistance,” necessary to build international force multiplying partnerships with foreign maritime services. These partnerships will better enable the Coast Guard to accomplish many of its missions and to improve U.S. maritime security.

### **TITLE III—PERSONNEL**

#### **SEC. 301. EMERGENCY LEAVE RETENTION AUTHORITY.**

This proposal would allow service members to retain leave they would otherwise forfeit due to support of major disasters or other emergencies declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288, 42 U.S.C. § 5121 *et seq.*).

In recent years, several occurrences of major events such as the September 11, 2001 attacks, and Hurricanes Katrina, Rita and Wilma have prevented many Coast Guard members from taking leave, which they had already accrued, before the end of a fiscal year. Since only 60 days of leave may be carried over from one fiscal year to the next,

this has resulted in members of the armed forces losing leave they have already earned. For example, if nothing is done in the current fiscal year, Coast Guard members stand to lose a total of over 12,000 days of leave service-wide due to operations in response to Hurricanes Katrina, Rita and Wilma.

Under Section 701 of title 10, United States Code, the secretaries of the armed forces have permanent authority to authorize leave retention for members serving in support of contingency operations. Broadly, “contingency operations” refers to military operations in a war or national emergency declared by the President or Congress. This proposal expands that authority by adding major disasters or other emergencies declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. This change is needed because Stafford Act events such as the hurricanes are not “contingency operations” under the existing statute.

This change will allow the Coast Guard and other armed forces the permanent authority to ensure that their members do not lose leave they have earned because they are responding to such events.

### **SEC. 302. LEGAL ASSISTANCE FOR COAST GUARD RESERVISTS.**

Pursuant to 10 U.S.C. § 1044, active duty members of the armed forces, retired members of the armed forces, active duty and retired members of the Commissioned Corps of the Public Health Service, and their respective dependents are eligible for legal assistance in connection with their personal civil affairs. In 2000, post active-duty reservists, as well as their dependents, were made eligible for legal assistance upon release for a limited period of time. Yet, similarly situated Coast Guard reservists were not covered. As such, they are ineligible for legal advice and support on a range of rights—including rights under the Uniformed Services Reemployment Rights Act, the Servicemember’s Civil Relief Act, and federal consumer and tax laws—that are made available to other reservists upon release.

This proposal would amend 10 U.S.C. § 1044(a)(4) to establish parity among all similarly situated reservists by making Coast Guard reservists, who have served on active duty for more than 30 days under mobilization authority, eligible for legal assistance upon release from active duty.

### **SEC. 303. REIMBURSEMENT FOR CERTAIN MEDICAL-RELATED TRAVEL EXPENSES.**

This proposal amends 10 U.S.C. § 1074*i* to allow for the reimbursement of travel-related expenses, when a service member is stationed on an INCONUS island and his/her family member is referred to a specialty care provider off-island that is less than 100 miles from the primary care provider. Currently, there is authorization for the reimbursement of travel-related expenses incurred by the beneficiaries of active duty military personnel when their primary care physician refers such beneficiary to a specialty care provider

who provides services more than 100 miles from the location in which the primary care provider provides services.

While the number of service members stationed on applicable INCONUS islands are few (currently 21 families on Martha's Vineyard & Nantucket Island), when their family members are referred for specialty care they often incur expensive and time-consuming travel. Although the medical-related travel costs are covered for active duty members receiving treatment, such expenses incurred by family members are currently not reimbursable because the travel distance is less than 100 miles. This provision addresses the special circumstances of active duty families that reside on INCONUS islands with no road access to specialty medical and dental care providers on the mainland. Medical-related travel expenses incurred by these service members and their dependants often consist of expensive ferry or airfare costs, followed by car rentals, or costly cab rides because they do not have the option of using regular transportation means when traveling off-island to obtain the services of specialty medical or dental care providers. These costs can accumulate quickly and are particularly burdensome to junior enlisted families.

#### **SEC. 304. NUMBER AND DISTRIBUTION OF COMMISSIONED OFFICERS ON THE ACTIVE DUTY PROMOTION LIST.**

This proposal would amend 14 U.S.C. § 42 to permit the Secretary to continue the 6,700 Coast Guard commissioned officer cap beyond fiscal year 2006, make that number applicable only to the commissioned officers on the Coast Guard Active Duty Promotion List (ADPL), and provide clear guidance for the management of these commissioned officers.

In the Coast Guard, the number of authorized officer billets determines the number of commissioned officers on active duty. ADPL officers fill the majority of the billets authorized. The remaining billets, those not filled by ADPL officers, are typically filled by "non-ADPL" officers (*i.e.*, retired recall officers, permanent commissioned teaching staff (PCTS) at the Academy, the Coast Guard Band Director, and Reserve Program Administrators). The number of authorized "non-ADPL" officers is controlled by separate legislation.

Proposed 14 U.S.C. § 42(a), in addition to continuing the 6,700 beyond Fiscal Year 2006, provides for a temporary two percent (2%) increase, or buffer, to accommodate a recurrent and temporary, annual spike in the number of Coast Guard commissioned officers. The current officer management practice is to incorporate a buffer of approximately 200 into the officer cap to accommodate the number of commissioned officers the Coast Guard Academy graduates annually, thereby ensuring the statutory cap of 6,700 is not exceeded. In all respects such a practice is impractical from a management perspective, because shortly thereafter (*i.e.*, within 60 days), a large number of Coast Guard commissioned officers leave the service as a result of mandatory retirements or voluntary resignations. By not having to annually provide for such a large buffer, the total number of officer billets authorized could more accurately reflect the

needs of the Coast Guard and the number of officers filling those billets, leading to a significant improvement in officer management practices.

Currently, 14 U.S.C. § 42(b) only authorizes the Secretary to reduce percentages for grades above Lieutenant Commander and redistribute that percentage reduction to any lower grade. It is unclear from the statutory language whether a redistributed percentage could be divided between more than one lower pay grade. For example, taking a 1% reduction in the grade of Commander and dividing that percentage equally between Lieutenant Commander and Lieutenant. The proposed 14 U.S.C. § 42(b) will provide the Secretary with greater flexibility to better meet the number of commissioned officers actually needed in each grade. The proposed language permits the percentage reduction made to any higher grade to be aggregated and distributed in any combination not to exceed the total reduction made to all higher grades. For example, a 1% reduction in Captain and a 2% reduction in Lieutenant Commander, could result in a combination of .5% increase in Commander and a 2.5% increase in Lieutenant.

Proposed 14 U.S.C. § 42(c) is intended to clarify the computation process. Additionally, the third sentence in the paragraph is language, taken from subsection (e), which is more coherent in and relevant to the context of subsection (c). Finally, this language taken from subsection (e) was also amended to remove the antiquated reference of Lighthouse Service officers (*i.e.*, section 432) as well as the reference to repealed section 433.

### **SEC. 305. RESERVE COMMISSIONED WARRANT OFFICER TO LIEUTENANT PROGRAM.**

Presently, there are more commissioned warrant officers (CWOs) than vacant billets on the Reserve Personnel Allowance List; inversely, there are fewer junior officers than authorized billets. Moreover, the Selected Reserve Direct Commission (SRDC) Officer program has not stimulated the expected response to fill vacant junior officer billets (the SRDC program is one for which most CWOs do not qualify due to time in service, age, or education). Exacerbating these circumstances is the absence of presidential authority to appoint temporary commissioned officers in the Reserves (in a grade not above lieutenant) from among the Reserve CWOs.

To address this staffing anomaly, as well as ensure parity between the Active and Reserve components, this proposal would expand the President's existing authority to appoint temporary commissioned officers in the Regular Coast Guard from among CWOs to cover the appointment of temporary commissioned officers in the Reserves (in a grade not above lieutenant) from among Reserve CWOs. The qualifications and requirements that apply to appointments from among the CWOs in the Regular Coast Guard would apply to those appointments from the Reserve CWOs.

### **SEC. 306. ENHANCED STATUS QUO OFFICER PROMOTION SYSTEM.**

Developed in 1963, the existing Coast Guard officer promotion system provides for orderly promotion and attrition within the officer ranks. For 40 years, the system has

endured, demonstrating its utility and sufficiency with regard to meeting the needs of the service. Yet, the 2002-2003 Office Corps Management System studies identified a deficiency in the existing system—*i.e.*, the existing system, which populates the officer corps with generalists, does not readily allow for officer specialties—that is exacerbated by the dynamic missions environment in which the Coast Guard operates.

To address this deficiency, this proposal would preserve the existing “best qualified” promotion system while affording the Commandant the flexibility, when needed, to furnish selection boards with specific direction to consider the specialty needs of the officer corps during the selection programs. Such specialty needs selections would be limited, as are “below promotion zone” selections.

### **SEC. 307. APPOINTMENT OF CIVILIAN COAST GUARD JUDGES**

As an armed force, the Coast Guard is required to operate an Appellate Court to hear appeals from courts-martial. In accordance with Article 66(a) of the Uniform Code of Military Justice, the judges on this court are a mixture of military and civilian personnel. In *Edmond v. United States*, the U.S. Supreme Court held that civilian judges on the Coast Guard Court of Criminal Appeals are “inferior officers” for purposes of the appointments clause and upheld their appointments as military judges by the Secretary of Transportation under authority of 49 U.S.C. § 323. The Judge Advocate General of the Coast Guard does not have authority to appoint these “inferior officers.”

The Secretary of Homeland Security does not currently have statutory authority similar to 49 U.S.C. § 323. This section provides a limited authority to enable the Secretary to appoint civilian judges to the Coast Guard Court as vacancies occur.

### **SEC. 308. COAST GUARD PARTICIPATION IN THE ARMED FORCES RETIREMENT HOME (AFRH) SYSTEM**

Under current law, certain retired and former members of the armed forces are eligible for admission to, and services through, the Armed Forces Retirement Home (AFRH). Armed Forces Retirement Home Act of 1991, Pub. L. No. 101-510, § 1511, 104 Stat. 1485, 1723 (1990). Retired and former members of the Coast Guard, however, are not eligible. *Id.* § 1502(6). This proposal would make certain Coast Guard members eligible for admission and services, thus establishing parity with those enlisted and warrant officer retirees from the other military services.

The AFRH system is funded by a trust fund that receives revenues from small monthly deductions from all active duty enlisted and warrant officer personnel pay and a portion of all enlisted and warrant officer Uniform Code of Military Justice fines and forfeitures. The cost of participation in the AFRH system is approximately fifty cents to one dollar per month for active duty enlisted and warrant officer personnel. The proposal would provide for deductions from Coast Guard members’ pay.

The AFRH Board of Trustees has expressed support for Coast Guard participation in the AFRH system. Neither AFRH campus is currently at full capacity, nor have they been at full capacity in recent years. Not only would Coast Guard participation be beneficial to Coast Guard veterans as a retirement home option, it would also provide an additional source of potential residents, as well as a new revenue source for the AFRH Trust Fund.

## **TITLE IV—ADMINISTRATION**

### **SEC. 401. COOPERATIVE AGREEMENTS FOR INDUSTRIAL ACTIVITIES**

This proposal would simplify accounting requirements by authorizing appropriations to remain available for payment beyond the year in which they are appropriated for industrial work performed by the Coast Guard for the Department of Defense or Department of Homeland Security. Currently, the Economy Act, 31 U.S.C. §§ 1535, 1536, provides authority for inter-agency agreements and the transfer of appropriations between Federal agencies. When work is performed by government employees and the servicing agency has not incurred obligations before the end of the period of availability, however, 31 U.S.C. § 1535 (d) requires the de-obligation and return of the transferred appropriations. This accounting requirement often creates year-end challenges such as unanticipated production and billing inefficiencies.

The Project Orders Statutes, 14 U.S.C. § 151 and 41 U.S.C. § 23, are used to administer intra-service and intra-departmental project orders issued to industrial activities or establishments within the Coast Guard and DOD, respectively. DOD policy and the Comptroller General have determined that 41 U.S.C. § 23 provides DOD authority, separate from the Economy Act, for transactions between DOD military departments and DOD government-owned establishments. This proposal seeks authority within 14 U.S.C. § 151 for transactions between the Coast Guard and DHS or DOD establishments.

In December 2003, Booz-Allen-Hamilton prepared a report titled *Assessment of Aviation Operations and Support* for the Department of Homeland Security (DHS). The report presented a baseline of the current DHS aviation environment and assessed DHS aviation capabilities. The report also identified overlaps in aviation capabilities, assets, training, maintenance/logistics, facilities and acquisitions that could be leveraged for improved operating efficiency. The report recommended expanding and utilizing the Coast Guard's Aircraft Repair and Supply Center (ARSC) facility as a DHS "Center of Excellence" for information technology systems, aircraft and component overhauls, and logistics management. The first step in achieving this, however, is authorizing a workable reimbursable funding method between DHS agencies, as this proposal seeks.

### **SEC. 402. DEFINING COAST GUARD VESSELS AND AIRCRAFT.**

This proposal amends title 14, United States Code, by adding section 638a. The proposed section defines "Coast Guard vessels and aircraft" for the purposes of 14 U.S.C. §§ 637 and 638. The proposed definition includes non-traditional vessels and aircraft from which Coast Guard personnel may conduct Coast Guard missions and exercise

Coast Guard authority. The proposed amendment, when read with 14 U.S.C. §§ 637 and 638, would increase the Coast Guard's ability to leverage adaptive force packaging options for deployable operations and ensure protection for Coast Guard members employing warning shots or disabling fire from any vessel under the tactical control of the Coast Guard on which its members are assigned and conducting Coast Guard missions.

Currently, ambiguities in the law undermine the Coast Guard's full use of its operational capabilities. In particular, the statutes and regulations that grant immunity for firing at or into a vessel rely on the undefined term "Coast Guard vessel and aircraft". Historically, the Coast Guard performed missions on Coast Guard owned or operated vessels and cutters which were clearly marked as Coast Guard vessels and commanded by Coast Guard personnel. As such, the question of whether the asset was a Coast Guard vessel or aircraft was not at issue. The Coast Guard's expanding partnership with other federal, state and local agencies, however, has created situations where the Coast Guard's exercise of its statutory authority during national security and homeland defense missions are from non-traditional (*e.g.*, another agency) vessels and aircraft.

For example, a recent memorandum of agreement between DOD and the Department of Homeland Security places DOD forces under the tactical control of the Coast Guard for time-critical, short duration, homeland security missions. Such missions place Coast Guard members on DOD vessels or aircraft in situations which may require exercise of Coast Guard authorities. Although Coast Guard members on traditional Coast Guard vessels are statutorily indemnified for any injuries or damages arising from their use of warning shots or disabling fire, those aboard DOD vessels and aircraft under Coast Guard tactical control and those conducting a Coast Guard homeland security mission are not clearly afforded the same protection.

While Coast Guard personnel have the authority to conduct Coast Guard missions and exercise Coast Guard authority from non-Coast Guard vessels and aircraft, the lack of a definition for "Coast Guard vessels and aircraft" in 14 U.S.C. §§ 637 and 638, coupled with the requirement for such vessels and aircraft to display marks of authority while undertaking active measures in connection with boarding, examining, seizing, and stopping vessels, may cause confusion with the public and create exposure for Coast Guard members executing a full range of deployable operations in support of federal, state and local partners under 14 U.S.C. § 141. Enactment of the proposed legislation will expand the type of assets from which the Coast Guard may exercise its authority to enforce United States law, while ensuring that the men and women of the Coast Guard are afforded the appropriate statutory protections.

#### **SEC. 403. SPECIALIZED INDUSTRIAL FACILITIES.**

Section 403 would authorize the Coast Guard Yard ("Yard") and other industrial facilities to enter into public-private partnerships. The proposed authority parallels similar DOD authority found at 10 U.S.C. § 2474.

The Yard and other Coast Guard industrial establishments are critical components of the Coast Guard's core logistics capability that directly support fleet readiness. Allowing the Yard and other industrial facilities to enter into partnering arrangements with the private sector, using authority similar to DOD, would provide the Coast Guard greater flexibility in the management of the facilities and provide increased support for operations.

The Coast Guard seeks to enter into public-private partnerships to leverage the best of public and private competencies—not to compete against commercial industry. Indeed, on several occasions in recent past, commercial industry has initiated contact with the Yard in situations where the Yard's services could offer a unique benefit for a project or where the Yard's location was geographically convenient to allow another shipyard to compete for work. It is the Yard's unique skills, equipment, and facility location which make it a prime candidate for teaming and partnership arrangements. Accordingly, the proposed authority will not have the net effect of reducing available work from the private sector. Rather, the proposed authority would allow the Yard and other facilities to create opportunities to better ensure their viability as core logistics facilities for Coast Guard and national contingencies while offering a unique benefit to commercial industry.

Enactment of the proposed authority will allow the Coast Guard to preserve fundamental core logistics capability and allow Coast Guard industrial facilities and their workforce to continue to be a tremendously valuable asset to the Coast Guard in maintaining operational readiness of the Coast Guard fleet. It will also enable the facilities to serve as valuable partners with private industry.

## **TITLE V—SHIPPING**

### **SEC. 501. EXTENSION OF LICENSES, CERTIFICATES OF REGISTRY, AND MERCHANT MARINER'S DOCUMENTS; RECORDS.**

Under current law, licenses, certificates of registry, and merchant mariner's documents (hereinafter collectively, "credentials") are valid for exactly five years. This proposal would amend 46 U.S.C. §§ 7106, 7107, and 7302(f) to allow credentials to be issued for periods of five years or less, bringing U.S. law into direct alignment with Regulation I/2 of the Standards of Training, Certification and Watchkeeping (STCW) Convention, 1978, as amended in 1995 and thereafter. Regulation I/2 of STCW states that credentials may be issued "not more than five years after their date of issue."

Under the existing credentialing scheme, it is not uncommon for a mariner to hold a license and a merchant mariner's document (MMD) with different expiration dates. This proposal would provide flexibility for the Coast Guard to align the different expiration dates by issuing one of the credentials for less than 5 years. Under the new proposed combined merchant mariner credential (MMC) scheme (*see* 72 Fed. Reg. 3605), where a single MMC is issued with multiple endorsements, the proposal clarifies the statutory flexibility to add endorsements without changing the date of the underlying MMC. Under either the existing or new proposed credentialing schemes, once all of the dates are

aligned into a single unified expiration date, subsequent renewal of the credentials will be simplified and more cost effective for both the mariner and the Coast Guard.

As well, this proposal would permit the Coast Guard to issue a credential for less than five years in the instance when a medical condition would otherwise preclude issuance of the credential. Under current law, the Coast Guard may not issue a credential if the mariner's health precludes work for the entire five-year period—even if the mariner may be able to work for some portion of that period (*e.g.*, one to four years). Rather than deny the mariner work for the entire period, the Coast Guard believes that a credential for a period of less than five years would be economically more just and more valuable to the mariner.

Additionally, this proposal would grant the Secretary, acting through the Commandant of the Coast Guard, authority to extend the expiration date of credentials when deemed appropriate or necessary (*e.g.*, during natural disasters or in the interest of national security). Under such circumstances, merchant mariners may be faced with lost or destroyed credentials or the inability to obtain a renewal or duplicate credentials. In times of armed conflict or war, mariners may be called upon to serve on vessels in remote and often hostile locations for extended periods of time. A mariner cannot work aboard a vessel without a valid credential in his possession. Yet, it is during these times of extreme regional hardship or national emergency when merchant vessels and the individuals who crew them are most needed by their country. This provision is modeled on section 3 of the Hurricane Relief Act of 2005 (Public Law No. 109-141, 119 Stat. 2654, 2655 (2005)), which authorized extensions due to regional devastation caused by Hurricane Katrina through February 2006, and section 702 of the Coast Guard and Maritime Transportation Act of 2006 (Public Law No. 109-241, 102 Stat. 151, 560 (2006)), which authorized extensions through April 2007.

Hurricane Katrina, as well as major military operations such as Operation Iraqi Freedom, identified the need for the Coast Guard to temporarily extend credentials when, for reasons of natural disaster or national security, the mariner cannot apply for renewal before the credential expires. The United States has approximately 350 seagoing merchant vessels, over 5,000 towing vessels and barges, and about 200,000 mariners who operate them. The number of vessels and persons affected would, of course, be dependent on the locale, extent, and duration of a domestic natural disaster, as well as the location, severity, and situational alternatives of an overseas conflict. Enactment of this proposal will enable the Secretary of Homeland Security and the Coast Guard an ongoing and efficient means to react quickly and take positive action in assisting the affected mariner during natural disasters and other times of national crisis.

Finally, the proposal would amend 46 U.S.C. § 7502 to modernize record keeping for such certificates and to provide for their protection and safekeeping. 46 C.F.R. 10.205(e), 10.207(c)(2), 10.209(c)(1)(i), and 12.02-9(c) require mariners to submit documentary evidence of sea service for transactions – such as original credentials, renewals, and raises of grade – to the Coast Guard. Masters of deep-sea vessels are required to give mariners Coast Guard Certificates of Discharges upon separating from

employment. These are official forms that detail vessel specifics, the mariner's position, and dates of employment. However, for inland mariners, the only evidence of service is a letter on company letterhead that states these particular details.

Depending on the reason for severance of employment, length of time passed since employment, or other basis, mariners have often been either denied service letters or have had to wait extraordinary lengths of time to receive them. There are no statutes or regulations that govern how a shipping company treats the dissemination of these documents.

Proposed section 7502(b) would assist both the Coast Guard and mariners in obtaining and processing letters of service when mariners apply for credential transactions. Long delays for both the Coast Guard and the mariner cost unnecessary lost time and wages. For the mariner, he/she will be able to expediently obtain one of the many forms of evidence required for such credential transactions. For the Coast Guard, if these letters of service are promptly obtained, the chances for a complete application arriving at the Regional Examination Center with everything necessary for processing will be greater than is currently experienced. The Coast Guard's efficiency in serving the mariner likewise will improve.

#### **SEC. 502. DELETION OF EXEMPTION OF LICENSE REQUIREMENT FOR OPERATORS OF CERTAIN TOWING VESSELS.**

The exemption created by 46 U.S.C. § 8905(b), exempting operators of certain tow vessels from U.S. Coast Guard licensing requirements, is no longer a viable exception to the rule, and creates a potential serious threat to navigational safety and homeland security. Those vessels exempted are greater than 26 feet (*see* 46 U.S.C. § 8904 (a)) and engage in the offshore mineral and oil industry where the vessel has offshore mineral and oil industry sites or equipment as its ultimate destination or place of departure.

Section 8905(b) was originally codified in 1972 (*see* Pub. L. No. 98-89), and our statutory research finds that the exemption was created primarily to address issues mostly germane to the Gulf of Mexico at that time: literacy/education of mariners operating in the Gulf, the competitive disadvantages of requiring a license for such mariners, and it was reasoned that vessels engaged in the offshore mineral and oil industry at that time operated in waters having relatively little vessel congestion when compared to inland towing vessels. Though such concerns may have been legitimate thirty-plus years ago, they are unfounded today.

From a navigational safety perspective, there has been substantial development of the offshore industry since 1972 in the Gulf of Mexico, and as a result, these offshore waters are much more heavily trafficked. As noted previously, the § 8905(b) exemption applies to a vessel having offshore mineral and oil industry sites or equipment "as its ultimate destination or place of departure." This translates into these vessels today having to transit through heavily trafficked, highly congested inland waters to arrive at and return from those offshore destinations. Coast Guard units in the Eighth District (which

includes the Gulf region) have documented many casualties and incidents involving towing vessels engaged in the offshore mineral and oil industry that have occurred in offshore waters since the exemption was created in 1972. Furthermore, this exemption means these towing vessel operators need not comply with the 12 hour work rule (*see* 46 U.S.C. § 8104(h)), seriously undermining the Coast Guard's efforts to enforce this critical safety rule. Study after study has shown that operator fatigue is routinely a contributing factor in many marine casualties involving towing vessels. Finally, the Coast Guard is precluded from proceeding against any of these exempted operators with Suspension and Revocation actions for any acts of misconduct or negligence committed by them.

In a post-9/11 environment, the § 8905(b) exemption creates the potential to expose the United States' offshore oil infrastructure to terrorist activities. Since the law exempts the operators of certain towing vessels engaged in the offshore mineral and oil industry, these operators are exempt from the Coast Guard mariner licensing program, which currently includes fingerprints and background checks on all mariners applying for such licenses. Today, a terrorist could use the exemption to legally operate a towing vessel without a license, giving him full, inconspicuous and long-term access to these offshore sites (e.g., the Louisiana Offshore Oil Platform or any other offshore drilling rig, etc.).

The Coast Guard has industry-wide support for this proposal. In the fall of 2005, the Coast Guard presented this proposal at public meetings sponsored by the Merchant Marine Personnel Advisory Committee (MERPAC), the Towing Safety Advisory Committee (TSAC) and the National Offshore Safety Advisory Committee (NOSAC). Each Committee expressed their support for a legislative change proposal to remove 46 U.S.C. § 8905(b). They also stated that they believed the exemption has outlived its intended purpose and may now pose a threat to navigational safety and a potential threat to homeland security. The Coast Guard has received additional support in the form of correspondence from the Gulf Coast Mariners Association and OMSA (which agrees that the exemption was designed to serve as a temporary measure).

### **SEC. 503. TECHNICAL AMENDMENTS TO CHAPTER 313 OF TITLE 46, UNITED STATES CODE.**

This proposal makes two technical corrections to Chapter 313 of title 46, United States Code. The first correction is to clean up the Chapter by replacing references to the Secretary of Transportation (SECDOT) with the Secretary of the Department of Homeland Security (SECDHS), as appropriate. Replacing SECDOT with SECDHS is necessary to avoid confusion since certain Chapter functions and responsibilities were transferred, along with the responsible agency (*i.e.*, the U.S. Coast Guard), to the Department of Homeland Security. The second involves the Chapter's penalty provision, section 31330, and its incorrect application of punishment for a mortgagor.

The U.S. Coast Guard, under the Department of Transportation, was primarily responsible for the execution of Chapter 313, though some authority in the Chapter remained with SECDOT. When the Coast Guard was moved to the Department of Homeland Security under the Homeland Security Act of 2002 (Pub. L. No. 107-296),

section 888(b) of that Act transferred to the Department of Homeland Security the responsibility for those Chapter 313 sections which the Coast Guard had been executing under the authority of SECDOT (*see also* Section 1512(d) and Section 1517). The Coast Guard today continues to be responsible for the execution of those same sections. Since this is the case, rather than to have the reader rely on a savings provision which appears only in the Act, it is recommended that the appropriate sections of Chapter 313 be amended to correctly indicate that the authority now lies with SECDHS, and not SECDOT.

In section 31330 (Penalties), it is the “mortgagor” who is subjected to fines and imprisonment. Subparagraphs (A) through (C) of that section represent actions which, when performed by the mortgagor, result in a penalty for that mortgagor. However, the penalty for non-compliance outlined by subparagraph (D) of section 31330 cannot possibly be performed by the “mortgagor”. Currently, subparagraph (D) references section 31321(h), and this section requires an action to be performed by a “mortgagee” (and not the “mortgagor”) at the request of the “the Secretary, a State, or *mortgagor*” (emphasis added). To penalize a mortgagor for non-compliance with an action that is required to be performed by the “mortgagee” is an obvious drafting oversight that needs to be corrected. The recommended correction is to delete subparagraph (D) from section 31330(a)(1) and (2).

#### **SEC. 504. CLARIFICATION OF RULEMAKING AUTHORITY.**

Section 102(a) of the Maritime Transportation Security Act of 2002 (Pub. L. No. 107-295), which is codified at Chapter 701 of title 46, United States Code, forms the framework for the port security regulations which are an integral component of the Nation’s maritime security efforts. The authority necessary to implement Chapter 701 is found in section 102(d) of that Act, which provides the Secretary with an interim final rule authority, as well as authority to “initiate” a rulemaking necessary to implement that Chapter. This subsection was not codified, most likely because its intended purpose was merely to expedite the Chapter 701 rulemaking process under extraordinary circumstances.

Since publication of the final rule then, while it is clear that section 102(d) supplemented, rather than defined, the Secretary’s regulatory authority to implement Chapter 701, it may not be so clear to the regulated public. There is some potential to read Section 102(d) as limiting the Secretary’s ability to implement Chapter 701 beyond one year, rather than to give the Secretary an APA waiver. This proposal would clarify that the Secretary may issue regulations to implement, as necessary, Chapter 701 at any time.

## **TITLE VI—ENFORCEMENT, SAFETY, SECURITY, AND ENVIRONMENTAL PROTECTION**

**SEC. 601. PILOT PROGRAM FOR DOCKSIDE CREW SURVIVABILITY  
EXAMS FOR UNINSPECTED COMMERCIAL FISHING  
VESSELS.**

This proposal would authorize the Secretary to establish a pilot program to conduct mandatory dockside crew survivability examinations on uninspected U.S. commercial fishing vessels in two geographic areas of the country over the next five (5) years. The purpose and scope of the pilot program would be to examine fishing vessels, Federally-Documented and State-numbered, and their crews dockside, twice within the five-year period, to ensure required safety equipment is on board the vessel and that the crew is trained and exercised in its proper use. The proposed geographic areas will be subdivided to encompass the fishing vessel fleets of New England (the First Coast Guard District within the Atlantic Area - Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, and New Jersey) and the Gulf Coast (the Eighth Coast Guard District and part of the Seventh Coast Guard District within the Atlantic Area – Texas, Louisiana, Mississippi, Alabama, and Florida). Higher participation in the voluntary program has been experienced on the west coast of the United States. The industry has experienced higher loss of lives and vessels in the First and Eighth Coast Guard Districts.

In 2005, the Bureau of Labor Statistics found that commercial fishermen working aboard uninspected fishing vessels died at a rate of 118 per 100,000 workers, while the rate for American workplace as a whole was 4 deaths per 100,000. Between the years 1999 and 2005 the uninspected fishing vessel industry reported 346 deaths and 825 vessels lost. For statistical comparison, the deaths in the towing vessel industry, another uninspected segment of the marine industry, were only 17 per 100,000 workers. These figures clearly demonstrate that death rate for the uninspected commercial fishing vessel industry is unacceptable in comparison to other segments of the maritime industry and the American workforce in general.

Currently, the Secretary does not have the authority to conduct mandatory Dockside Crew Survivability Examinations on U.S. Uninspected Commercial Fishing Vessels in order to reduce the number of fatalities and vessel losses that are prevalent in this industry. Data compiled from voluntary dockside examinations now carried out by the Coast Guard show conclusively that increased survivability of an uninspected fishing vessel's crew (and vessel) during a casualty or loss at sea is directly proportional to the availability and maintenance of the safety and survivability systems on the vessel, particularly when the crew has been properly trained to use these systems effectively in emergency response scenarios. Currently, only about 7% of the owners or operators of the approximately 83,500 uninspected commercial fishing vessels operating in the United States today make their vessels (and crew) available to the Coast Guard for a voluntary dockside examination. Since 1991, when the Coast Guard first began offering voluntary examinations, history has demonstrated that the crews of fishing vessels examined under such a program have a much higher survivability rate when an accident or loss to the vessel occurred while underway or during fishing operations.

The investigation into the circumstances surrounding the April 2, 2001 sinking of the Fishing Vessel ARCTIC ROSE, a 92-ft Seattle-based vessel that resulted in 15 crewmember fatalities, indicated the vessel was lost due to down-flooding through an open doorway to machinery and workspaces located below the main deck. The spate of clam and conch fishing vessel losses that occurred between December 28, 1998 and January 18, 1999 (the PREDATOR, BETH DEE BOB, CAPE FEAR, and ADRIATIC) was the impetus for chartering a Coast Guard Fishing Vessel Casualty Task Force on January 27, 1999 and the Task Force's report "Living to Fish, Dying to Fish." The report identified recurring scenarios for these and other recent casualties. Crew deaths occurred due to safety equipment failures during an emergency as a result of improper maintenance of the safety systems or crews who were not prepared to or failed to get into survival gear on vessels because they had not been trained on and drilled with the equipment ahead of time. Additional scenarios revealed that crews were unfamiliar with the stability and watertight integrity issues that affect fishing vessels at sea and during fishing operations. All these areas which unquestionably affect the survivability of the crew and potential loss of the vessel are the focus of the Dockside Crew Survivability Examination now offered by the Secretary – but on a voluntary basis only.

While the Commercial Fishing Industry Vessel Safety Act of 1988 (P.L. 100-424) provided for the establishment of additional safety requirements for commercial fishing industry vessels by amending Title 46, United States Code, Chapter 45, the Act has not been completely effective. Section 4502, entitled Safety Standards, authorized the Secretary to prescribe regulations that required each commercial fishing vessel to be equipped with certain safety gear and to meet additional standards based upon such risk variables as area or type of operation, length of the vessel, number of individuals on board, and documentation status. The Act made no provisions to allow the Secretary to prescribe rules to enforce compliance with the safety standards for vessels other than for fish processing vessels and fish tender vessels engaged in the Aleutian trade. The Secretary's efforts, therefore, to continue to improve crew survivability in the fishing industry remain hampered by a lack of statutory authority to require operators to present their vessel for a mandatory dockside crew availability examination before it leaves the dock.

The Secretary's only tools for promoting compliance with the existing regulations found in 46 CFR, Part 28, are the voluntary dockside examinations, industry education, and at-sea law enforcement boardings conducted by the Coast Guard. The voluntary dockside examination affords the commercial fishing industry and the Secretary tremendous advantages over industry education and at-sea boardings. Foremost, dockside examinations do not interfere with the uninspected commercial fishing vessel's scheduled underway operations because the examination is done at the pier or dock before the vessel departs. On the other hand, at-sea law enforcement boardings can significantly disrupt vessel operations. During such a boarding, the vessel must reduce speed or completely halt operations so the Coast Guard can board; and if the inspection results in material deficiencies endangering the vessel or crew the vessel could be ordered not to resume fishing operations, or worse, be forced to return directly to port for repairs, etc. In any case, the result is the same: a reduced opportunity to conduct fishing operations in

favorable weather conditions during a licensed fishing season which tends to be compressed already. Clearly, a reduction in catch or a no catch at all can cost the fishing vessel owner or operator money, as well as reduced wages for the crew - neither of which would be the case if an examination were conducted dockside instead.

Though the voluntary dockside examination program has proven effective to reduce crew fatalities and vessel losses for the 6% of the commercial fishing vessel fleet that has participated, it is not enough, and education and at-sea law enforcement boardings only go so far. Besides the staggering toll on fishermen's lives, non-compliance with existing safety standards continues to result in fishing vessel accidents which cost the commercial fishing industry over \$250 million annually. The costs do not stop there. Data reveals that in fiscal year 2000, the Coast Guard conducted over 2,100 search and rescue (SAR) cases for commercial fishing vessels, expending over 11,000 resource hours at a cost of over \$18 million. While the number of SAR cases and resource hours may have decreased in subsequent years, the total cost has certainly increased. It is expected that mandatory Dockside Crew Survivability Examinations will significantly reduce the number of lives and vessels lost and minimize the costs now experienced by the commercial fishing industry and the U.S. Government.

#### **SEC. 602. RECREATIONAL VESSEL OPERATOR PROFICIENCY.**

This proposal would amend section 4302 of title 46, U.S Code to grant the Secretary authority to promulgate regulations that require proficiency standards for recreational vessel operators through education and certification, including an identification requirement. Currently, 47 of 56 states and territories have established some level of operator proficiency requirement. The state requirements vary drastically, however, and no two programs are the same. This provision would allow the Coast Guard to issue regulations that would apply a minimum federal standard, and thereby foster uniformity mandated under Chapter 131 of title 46, United States Code.

Both the National Boating Safety Advisory Council and the Towing Safety Advisory Committee have adopted resolutions and made recommendations urging the Coast Guard to seek statutory authority to require recreational vessel operators to have certified operator proficiencies. Further, as identified in the recent Performance Assessment Rating Tool (PART) Review conducted by OMB and Program Review conducted by GAO, this proposal would have a significant impact on the ability of the National Recreational Boating Safety Program to meet its performance goals and objectives to reduce recreational boating casualties by increasing the knowledge of operators in boat operations and safety practices. The support of the industry is well founded considering that in 80% of boating accidents where operator proficiency was reported, the operator had no boating safety training. Additionally, the success of recently implemented proficiency requirements in such states as Alabama and Connecticut supports the conclusion that Coast Guard regulations contemplated by this proposal would help reduce accidents, injuries and fatalities.

Moreover, the changing security environment and the recognized waterside vulnerabilities of critical infrastructure and key resources require enhanced situational awareness in the maritime domain. As identified in The National Strategy for Maritime Security, the use of smaller commercial and recreational vessels closer to our shores and areas of interest to carryout terrorist activities is a significant concern. The MDA Essential Task List from the National Plan to Achieve Maritime Domain Awareness clearly states the Coast Guard’s intent to “persistently monitor vessels and craft in the global maritime domain”. Recreational boaters do enter restricted navigation areas on the nation’s waterways whether intentionally or inadvertently. The nation’s maritime security would be improved if the Coast Guard were able to positively identify recreational boat operators who enter these areas and track the occurrence and frequency of violations. It would also be beneficial to the safety and security of the nation if all operators were trained in what constitutes restricted navigation areas and the means to identify such areas.

This proposal would have no direct significant policy or resource implications, but would enable promulgation of minimum proficiency requirements that apply to operators of recreational vessels. No additional federal resources would be required since there are multiple organizations and agencies that already offer nationally-recognized boating safety education and instruction. The certificates of successful course completion issued to the operator, in addition to state-issued forms of identification (driver’s license or state issued identification card), would provide proof of operator proficiency and positive identification of the operator. In states where there is no existing program, the operator proficiency course and certification/identification will be a new distributed cost to boaters. Enforcement would be conducted as part of the ongoing recreational vessel boarding effort already conducted by the various federal and state agencies.

### **SEC. 603. TECHNICAL AMENDMENTS TO TONNAGE MEASUREMENT LAW.**

This proposal would make technical amendments to 46 U.S.C. §§ 14101, 14103, 14301, 14302, 14303, 14305, 14501, 14512, and 14513. These amendments would permit the Secretary to improve the existing law to eliminate conflicts and inconsistencies, strengthen tonnage requirements for foreign flag vessels, and incorporate clarifications and administrative updates and corrections, since the tonnage measurement law took effect in 1986. Currently, the Secretary finds the law as it exists now difficult to apply to some categories of U.S. flag vessels and has found that it can create tonnage loopholes for certain foreign flag vessels.

This proposal will:

- remove conflicting language suggesting a U.S. flag vessel is ineligible for regulatory measurement if the vessel was measured under the convention measurement system at the request of the owner by amending Section 14301;

- remove conflicting language suggesting that only "existing vessels" are eligible for tonnage grandfathering under international agreements and laws of the United States by amending Section 14301;
- eliminate inconsistencies in the measurement treatment of documented as opposed to undocumented U.S. flag vessels in favor of extending mandatory convention measurement to some undocumented vessels and allowing all undocumented vessels to be assigned optional regulatory tonnage by amending Sections 14301, 14305, and 14501;
- eliminate inconsistencies in the measurement treatment of U.S. warships as opposed to foreign warships in favor of allowing U.S. warships the option to be measured under the convention measurement system by amending Sections 14301 and 14303;
- incorporate corrections to requirements for International Tonnage Certificates (ITCs) to reflect that certain vessels are ineligible to be issued an ITC (including vessels under 79 feet in convention length) by amending Section 14303;
- allow assignment of two sets of tonnages under the dual measurement system regardless of whether or not a load line is assigned to the vessel by amending Section 14513;
- expand requirements to ensure that foreign flag vessels on domestic voyages (including Great Lakes voyages) out of U.S. ports are subject to the same requirements for convention measurement as foreign flag vessels on foreign voyages by amending Section 14301;
- clarify that for foreign flag vessels not subject to convention measurement that the Secretary may accept the tonnages assigned under the national measurement system of the flag state by the inclusion of a reference to a section of the Revised Statutes of the United States which addresses foreign flag vessel measurement by amending Section 14512;
- clarify that the requirements for convention measurement apply at all times to vessels that engage on foreign voyages and are not limited only to those times when the vessel is engaged on a foreign voyage by amending Sections 14101, 14103, and 14301;
- remove reference to a U.S. law on Panama Canal measurement that is no longer in effect by amending Section 14302;
- remove reference to a 12-year grace period for transition to the convention measurement system which expired in 1994 by amending Section 14301; and

- update requirements on dual measurement to reflect that certificates may show both regulatory and convention tonnages by amending Section 14513.

#### **SEC. 604. MARITIME DRUG LAW ENFORCEMENT ACT AMENDMENTS.**

This proposal would establish a civil penalty offense and process to be administered by the Coast Guard that will serve as an effective deterrent to the simple possession of narcotics in maritime environments. It would create a new civil penalty offense that complements the existing laws and provides a means to effectuate Congress's intent to prohibit possession of controlled substances. In order to enable the Coast Guard to ensure the safety and security of maritime facilities and vessels of the United States, this proposal would amend the Maritime Drug Law Enforcement Act to include a new section 1905 in title 46, which would establish a civil penalty provision for individuals who possess personal use quantities of narcotics.

Possession of a personal use quantity of a controlled substance ("simple possession of narcotics") is a Federal crime periodically committed at maritime facilities and on vessels of the United States. Since 2002, there have been 228 reported cases of an officer of the United States Coast Guard boarding a vessel and finding an individual in simple possession of narcotics. Even though Congress expressly established simple possession as a Federal criminal offense, various gaps and weaknesses in existing federal drug laws and implementation policies often leave the maritime law enforcement officer no choice but to dispose of the contraband and allow the individual to continue without any legal consequences.

The proposed civil penalty provision would not present a change in existing federal drug policy. Congress expressly forbade possession of a personal use quantity of narcotics in the Controlled Substance Act (21 U.S.C. §§ 844, 844a). This simple possession civil penalty provision would only apply to the maritime environment. The distinction between the maritime and land environments with respect to Federal narcotics enforcement is well-settled and was the underlying reason for establishing the Maritime Drug Law Enforcement Act to deal with drug smuggling. In contrast to land, there are no State law simple possession offenses from 3-12 nautical miles from the United States, which precludes any municipal law enforcement action directed against simple possession in these waters.

The proposed civil penalty provision may result in increased revenue and would have little to no negative resource implications. Any negative implications associated with adjudication would fall only on the Coast Guard. Using its existing informal civil penalty resources, the additional costs to the Coast Guard would be minimal.

#### **SEC. 605. SEAWARD EXTENSION OF ANCHORAGE GROUNDS JURISDICTION**

This proposal would extend the seaward jurisdiction for anchorage grounds from 3 nautical miles to 12 nautical miles, and also update the civil penalty fines imposed from

\$100 to up to \$10,000 with each day a constituting continuing violation. Currently, between 3 and 12 nautical miles from the baseline, the Coast Guard lacks clear statutory authority to establish anchorage grounds. Consequently, when it becomes necessary for the Coast Guard to deny vessels entry into a U.S. port for safety or security reasons, increased congestion at the port entrance most likely will occur which may result in a greater probability of vessel collisions.

Section 471 of title 33, United States Code, allows the Coast Guard to establish anchorage grounds. For purposes of 33 U.S.C. § 471 and its implementing regulations at 33 CFR parts 109 and 110, the term “navigable waters of the United States” includes the “territorial seas of the United States” as well as internal waters. The Coast Guard has issued regulations at 33 CFR Part 2 defining “territorial seas of the United States,” which, consistent with a 1988 opinion issued by the Office of Legal Counsel (OLC) at the Department of Justice, defines the territorial sea out to 3 nautical miles for purposes of 33 U.S.C. § 471.

Congress has determined that some statutes expressly apply out to 3 nautical miles, not 12 nautical miles. 33 U.S.C. § 471 is not among the enumerated statutes because at the time 33 U.S.C. § 471 was enacted the navigable waters of the United States, including the territorial sea, extended only to 3 nautical miles from the baseline. Thus, some ambiguity exists regarding the seaward jurisdiction of 33 U.S.C. § 471 and its implementing regulations, and that ambiguity would likely be construed against the Government in any criminal action arising under 33 U.S.C. § 471 due to the rule of lenity, which requires “ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.”

With increased regulations pertaining to maritime commercial traffic due to a heightened security environment as well as an increase in the size and number of vessels calling on U.S. ports, a growing number of vessels will have the potential to be temporarily denied entry into port. This will result in an increased number of vessels maneuvering in the vicinity of the entrances to major ports for extended periods of time. Having a large number of vessels operating in close proximity to each other will greatly increase the chance for collisions and resultant environmental impacts. In an attempt to minimize the potential for major maritime incidents, the Coast Guard needs the authority to create anchorages near the entrances to U.S. ports. These anchorages will be located within the territorial sea, near pilot transfer zones, away from existing traffic lanes. Vessels will not be required to use these anchorages if denied entry to port, unless specifically directed by the Captain of the Port.

#### **SEC. 606. ADJUSTMENT OF LIABILITY LIMITS FOR NATURAL GAS DEEPWATER PORTS.**

The Oil Pollution Act of 1990 (33 U.S.C. § 2701, *et seq.*) (OPA '90) addresses liability for oil spills from deepwater ports licensed under the Deepwater Port Act of 1974 (33 U.S.C. §§ 1501-1524) (DPA). Additionally, OPA '90 provides that the Secretary may establish, by regulation, a limit of liability of less than \$350 million, but not less than \$50

million, for deepwater ports “in connection with the transportation of oil” when lower operational or environmental risks warrant an adjustment. *Id.* § 1004(d)(2)(C).

In 2002, Congress amended the DPA to cover licensing of facilities for the importation, transportation, and production of natural gas. The 2002 amendments made natural gas deepwater ports subject to the \$350 million liability, but did not clarify whether the aforementioned adjustment provision applied to such ports. Moreover, even if the adjustment provision is read to cover both oil and natural gas deepwater ports, the minimum liability limit of \$50 million is far in excess of the actual operational or environmental risk.

This proposal would amend section 1004(d)(2) of OPA '90 by adding a new adjustment provision that addresses natural gas deepwater ports and establishes a minimum liability of \$12,000,000. The minimum liability amount is derived from the minimum liability for onshore facilities under §1004(d)(1) of \$8,000,000, adjusted for inflation of approximately 50 percent since OPA '90 was enacted in 1990. Adoption of the minimum liability limit that may be established for onshore facilities is appropriate because the risk of oil pollution from the operation of a natural gas deepwater port is comparable to the risk from an onshore facility where both use oil for operations but where neither is engaged in transporting oil.

#### **SEC. 607. OIL SPILL LIABILITY TRUST FUND AVAILABILITY FOR CERTAIN COSTS.**

This proposal would provide for limited access to the Oil Spill Liability Trust Fund (OSLTF or Fund), established by the Oil Pollution Act of 1990 (OPA '90), to pay certain *direct costs* of processing claims. The current proposal addresses Congressional concerns with past proposals by significantly narrowing the types of costs that could be paid to include only direct costs, such as setting up an onsite claims-paying organization in the wake of a major oil spill or the cost of contracting for scientific or technical support needed to properly adjudicate claims. The proposal is retroactive to the date of enactment of OPA '90. The need for this proposal is even more critical in the aftermath of Hurricanes Katrina and Rita. The damages from those storms resulted in a large number of oil spills in the affected areas, many of which will likely be the subject of claims to the OSLTF. Rapid recovery will require timely adjudication of these many claims and will further strain already overtaxed Coast Guard resources in this area.

In enacting OPA '90, Congress recognized that the Fund should be available to compensate claimants quickly, without the delay and uncertainty of the appropriations process.<sup>1</sup> Congressional intent in enacting § 2712(a)(4), and the clear and unequivocal effect of the exception under 33 U.S.C. § 2752(b) from the requirement for further

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<sup>1</sup> “[T]he primary purpose of this Act is to guarantee that claimants will receive rapid and equitable compensation for any economic loss suffered as a result of an oil spill.” House Report 101-242 Part 2, Sept 18, 1989, p. 67. “The principal concept of this bill is to provide ready and complete compensation for any party suffering damages...” Senate Report 101-94, July 27, 1989, p. 10.

appropriations, is the prompt compensation of oil spill victims. This purpose is defeated if the President's *adjudication* of that compensation (*i.e.*, the act of paying, is subject to delays in acquiring an appropriation). Such a result could impede the President's ability to compensate victims and cannot have been intended by Congress.<sup>2</sup>

When there is a major spill and hundreds of persons lose their property or earning capacity, Congress provided the President with the responsibility to immediately set up claims-paying organizations. For example, in the wake of the Morris J. Berman spill in 1994 the Fund was immediately available to set up claims offices in Puerto Rico and pay damaged parties. There was no requirement that the President seek a supplemental appropriation in order to process the flood of thousands of claims. Claims for OPA '90 lost profit and natural resource damages can be highly complex, requiring the use of scientific and technical experts to clarify fact issues and ensure the Fund is used appropriately. Requiring the President to seek supplemental appropriations before proceeding to determine amounts to pay would be inconsistent with Congress' intent that compensation be ready and rapid.

Applying the clear intent of Congress outlined above, the Coast Guard's interpretation of 33 U.S.C. § 2712(a)(4) and 33 U.S.C. § 2752(b) was that funding for direct costs of processing claims as well as the indirect costs of processing claims was available without further appropriation. However, the General Accounting Office (GAO) determined in May 2003 that the Coast Guard's use of the Oil Spill Liability Trust Fund (OSLTF or Fund), under OPA '90 § 1012(a)(4) (33 U.S.C. § 2712(a)(4)), to pay the direct and indirect costs of adjudicating and processing claims, is not authorized by that provision. Thus, this proposal would address the GAO determination with respect to funding for certain direct costs of processing claims and make it clear that funding of those costs is available without further appropriation.

#### **SEC. 608. PERIOD OF LIMITATIONS FOR CLAIMS AGAINST THE OIL SPILL LIABILITY TRUST FUND.**

A claimant has a three-year limitation period within which to file any action against a responsible party to recover removal costs or damages pursuant to the Oil Pollution Act of 1990 (OPA '90). In lieu of filing an action against a responsible party, OPA permits a claimant to present claims for damages or removal costs for payment from the Oil Spill Liability Trust Fund (OSLTF). In the case of damages, OPA '90 establishes the same three-year period of limitations for claims to the OSLTF as for actions in court against the responsible party; in the case of removal costs, however, OPA '90 establishes a six-year period of limitations for claims to the OSLTF. The Act's legislative history does not

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<sup>2</sup> In the Conference Report, House Report No. 101-653 at page 114 the conferees explained that "amounts are available, under [§1012] category (4), without further appropriation, to pay uncompensated claims in accordance with section 1013." At page 117, the conferees explained that "in implementing this section [1013] the President may use the facilities and services of private insurance and claims adjustment organizations or State agencies in processing claims against the Fund and may contract to pay compensation for those facilities and services. The Conferees also intend that the President may make advance payments to the contractor to be used for the payment of claims."

provide an underlying rationale for this disparate treatment of claims. Moreover, the six-year period of limitations can be problematic whenever a removal cost claimant whose action in court against a responsible party is otherwise time-barred cures the timeliness issue by presenting a claim to the OSLTF. Likewise, the six-year limitation period can frustrate efforts to reach final settlement of OSLTF costs with the responsible party and/or finality with regard to OSLTF exposure for a specific spill. Finally, the National Pollution Fund Center experience is that removal cost claims presented more than three years after removal is complete are more costly to adjudicate because information becomes stale and witnesses cannot be located. In the interest of establishing uniformity between the types of claims and to address the various problems associated with the six-year period of limitations, this proposal would reduce the limitation period for removal costs from six years to three.

## **TITLE VII—MARITIME ALIEN SMUGGLING**

This proposal, modeled after the Maritime Drug Law Enforcement Act (46 U.S.C. §§ 70501-70507), would enable the United States to improve the security of the U.S. ports-of-entry and coast against unlawful entry by those who seek to enter the United States without official permission or lawful authority, and to deny smugglers the use of maritime routes. Like the Maritime Drug Law Enforcement Act, this proposal would address the shortcomings of existing law that impede the prosecution of maritime smugglers.

Each year, maritime smugglers transport thousands of aliens to the United States with virtual impunity because the existing law does not sufficiently punish or deter such conduct. During FY 2004 and FY 2005, over 840 alien smugglers facilitated or attempted to facilitate the illegal entry of over 5,200 aliens into the United States at an estimated profit of \$13.9 million. During this period, less than three percent of interdicted maritime alien smugglers were referred for prosecution because they successfully circumvented the elements necessary for the Government to prevail on existing felony offenses.

Professional maritime smugglers often charge large fees and use high-speed craft and increasingly sophisticated deception techniques to avoid detection and apprehension, rapidly modifying their methods to counter changes in law enforcement tactics. Smuggling routes include travel to the Bahamas, Canada, Ecuador, Guatemala, Dominican Republic, Haiti, and Mexico for further transport to the United States. Smugglers use various deceptions to conceal from law enforcement that the venture is for-profit, including “coaching” smuggled aliens in how to respond to law enforcement interviews and feigning rescues at sea. Employing these and other methods and routes, maritime smugglers, including organized crime syndicates, often evade criminal prosecution while realizing annual revenues possibly ranging up to billions of dollars from these activities.

Presently, 8 U.S.C. § 1324 is the principal federal criminal statute under which alien smugglers, including maritime smugglers, are prosecuted. That law was not designed for

prosecuting maritime smuggling cases with their unique evidentiary and jurisdictional issues. Many of the difficulties encountered by the Coast Guard in maritime smuggling enforcement stem from a statutory framework that does not take into consideration the unique aspects of extraterritorial maritime law enforcement operations. Further, alien smuggling under § 1324 is only a felony if the Government can prove beyond a reasonable doubt that an alien smuggler sought commercial advantage or private financial gain, caused serious bodily injury, or placed in jeopardy the life of any person. Maritime smuggling is inherently dangerous, and felony prosecution should not be predicated on additional proof of that fact. Likewise, maritime smugglers have exploited the “profit” requirement for felony prosecution by offering incentives to the aliens to lie and coaching the aliens to tell criminal investigators that the smuggler was a “good Samaritan” who “rescued” them.

Thus, in the majority of cases, the Coast Guard is able to rescue and interdict the smuggled aliens, but the Government is not able to prosecute the crew or others involved in the smuggling operation. Such actions have little deterrent effect on the crews or the trafficking organizations. In the highly lucrative trade in human smuggling, smugglers consider such occasional seizures a part of the cost of doing business. This proposal would provide the government with the ability to enhance our national security and ensure the safety of lives at sea.

In 1980, Congress recognized and cured similar shortcomings in the Comprehensive Drug Abuse Prevention and Control Act of 1970 by enacting the Maritime Drug Law Enforcement Act.

Specifically, title VII would:

- Establish a new felony for any person on board a vessel less than 300 gross tons and subject to the jurisdiction of the United States who transports, facilitates the transportation of, harbors, or conceals an alien on board knowing or in reckless disregard of the fact that the alien is attempting to unlawfully enter the United States from another country—no proof of profit or inducement required because the act of transporting undocumented aliens on such vessels is inherently dangerous from both a safety and security perspective.
- Provide for mandatory three-year minimum sentence, which, coupled with the removal of the “for profit” element of the offense, will serve as both a deterrent and as leverage for vessel operators to “flip” on higher level smugglers and organizers.
- Provide protection for legitimate merchant mariners who encounter stowaways, as well as legitimate Good Samaritans, but establishes reasonable measures to preclude smugglers from successfully asserting a false rescue defense, as they often do today.
- Minimize the need to bring undocumented aliens ashore as material or exculpatory witnesses by recognizing the carriage is inherently dangerous and by removing the “for profit” and “inducement” elements found in 8 U.S.C. § 1324.

# COMPARATIVE TYPE

## TITLE 10—ARMED FORCES

### CHAPTER 40—LEAVE

#### § 701. Entitlement and accumulation

\* \* \* \* \*

(f)

\* \* \* \* \*

(2) Under the uniform regulations referred to in paragraph (1), a member of an armed force who serves on active duty in a duty assignment in support of a contingency operation **or a declaration of a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288, 42 U.S.C. § 5121 et seq.)** during a fiscal year and who, except for this paragraph—

\* \* \* \* \*

### CHAPTER 53—MISCELLANEOUS RIGHTS AND BENEFITS

#### § 1044. Legal assistance

(a) Subject to the availability of legal staff resources, the Secretary concerned may provide legal assistance in connection with their personal civil legal affairs to the following persons:

\* \* \* \* \*

(4) Members of reserve components not covered by paragraph (1) or (2) following release from active duty under a call or order to active duty for more than 30 days issued under a mobilization authority [**(as determined by the Secretary of Defense)**] [**(as determined by the Secretary of Defense and the Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service of the Navy)**], for a period of time, [**prescribed by the Secretary of Defense**] [**prescribed by the Secretary of Defense and the Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service of the Navy**], that begins on the date of the release and is not less than twice the length of the period served on active duty under that call or order to active duty.

\* \* \* \* \*

CHAPTER 55—MEDICAL AND DENTAL CARE

§ 1074i. Reimbursement for certain travel expenses

(a) [IN GENERAL.— In] IN GENERAL.— (1) In any case in which a covered beneficiary is referred by a primary care physician to a specialty care provider who provides services more than 100 miles from the location in which the primary care provider provides services to the covered beneficiary, the Secretary shall provide reimbursement for reasonable travel expenses for the covered beneficiary and, when accompaniment by an adult is necessary, for a parent or guardian of the covered beneficiary or another member of the covered beneficiary's family who is at least 21 years of age.

(2) In any case in which a covered beneficiary resides on an INCONUS island that lacks public access roads to the mainland, and is referred by a primary care physician to a specialty care provider on the mainland who provides services less than 100 miles from the location in which the beneficiary resides, the Secretary shall reimburse the reasonable travel expenses of the covered beneficiary and, when accompaniment by an adult is necessary, a parent or guardian of the covered beneficiary or another member of the covered beneficiary's family who is at least 21 years of age.

\* \* \* \* \*

CHAPTER 165—ACCOUNTABILITY AND RESPONSIBILITY

\* \* \* \* \*

Sec. 2772. Share of fines and forfeitures to benefit Armed Forces Retirement Home

(a) DEPOSIT REQUIRED.—The Secretary [of the military department] concerned shall deposit in the Armed Forces Retirement Home Trust Fund a percentage (determined under subsection (b)) of the following amounts:

\* \* \* \* \*

(b) DETERMINATION OF PERCENTAGE.—The [Armed Forces Retirement Home Board] Chief Operating Officer of the Armed Forces Retirement Home shall determine, on the basis of the financial needs of the Armed Forces Retirement Home, the percentage of the amounts referred to in subsection (a) to be deposited in the trust fund referred to in such subsection.

[(c) APPLICATION TO COAST GUARD.—In this section, the term "armed forces" does not include the Coast Guard when it is not operating as a service in the Navy.]

# TITLE 14—COAST GUARD

## CHAPTER 3—COMPOSITION AND ORGANIZATION

Sec.

\* \* \* \* \*

[42. Number and distribution of commissioned officers.]

42. Number and distribution of commissioned officers on the active duty promotion list.

[47. Vice Commandant; assignment.]

47. Vice Commandant; appointment.

[50. Area commanders.]

50. Vice admirals.

[50a. Chief of Staff.]

\* \* \* \* \*

55. Merchant Mariner Medical Advisory Committee.

\* \* \* \* \*

### § 42. Number and distribution of commissioned officers on the active duty promotion list

[(a) The total number of commissioned officers, excluding warrant officers, shall not exceed 6700 in each fiscal year 2004, 2005, and 2006.]

[(b) The commissioned officers on the active duty promotion list shall be distributed in grade in the following percentages, respectively: rear admiral 0.375; rear admiral (lower half) 0.375; captain 6.0; commander 15.0; lieutenant commander 22.0. The Secretary shall prescribe the percentages applicable to the grades of lieutenant, lieutenant (junior grade), and ensign. The Secretary may, as the needs of the Coast Guard require, reduce the percentage applicable to any grade above lieutenant commander, and in order to compensate for such reduction increase correspondingly the percentage applicable to any lower grade.]

[(c) The Secretary shall, at least once a year, make a computation to determine the number of officers on the active duty promotion list authorized to be serving in each grade. The number in each grade shall be computed by applying the applicable percentage to the total number of such officers serving on active duty on the date the computation is made. In making computations under this section the nearest whole number shall be regarded as the authorized number in any case where there is a fraction in the final result.]

[(a) The total number of Coast Guard commissioned officers on the active duty promotion list, excluding warrant officers, shall not exceed 6,700. This total number, however, may be temporarily increased up to two percent for no more than the sixty days that follow the commissioning of a Coast Guard Academy class.]

**(b) The total number of commissioned officers authorized by this section shall be distributed in grade not to exceed the following percentages: 0.375 percent for rear admiral; 0.375 percent for rear admiral (lower half); 6.0 percent for captain; 15.0 percent for commander; and 22.0 percent for lieutenant commander. The Secretary shall prescribe the percentages applicable to the grades of lieutenant, lieutenant (junior grade), and ensign. The Secretary may, as the needs of the Coast Guard require, reduce any of the percentages mandated above and apply that total percentage reduction to any other lower grade, or combination of lower grades.**

**(c) The Secretary shall, at least once a year, compute the total number of commissioned officers authorized to serve in each grade by applying the grade distribution percentages of this section to the total number of commissioned officers listed on the current active duty promotion list. In making such calculations, any fraction shall be rounded to the nearest whole number. The number of commissioned officers on the active duty promotion list serving with other departments or agencies on a reimbursable basis or excluded under the provisions of section 324(d) of title 49, shall not be counted against the total number of commissioned officers authorized to serve in each grade.**

\* \* \* \* \*

**[(e) Officers who are not included on the active duty promotion list, officers serving as extra numbers in grade under sections 432 and 433 of this title, and officers serving with other departments or agencies on a reimbursable basis or excluded under the provisions of section 324(d) of title 49, shall not be counted in determining authorized strengths under subsection (c) and shall not count against those strengths.]**

**(e) The number of officers authorized to be serving on active duty in each grade of the permanent commissioned teaching staff of the Coast Guard Academy and of the Reserve serving in connection with organizing, administering, recruiting, instructing, or training the reserve components shall be prescribed by the Secretary.**

\* \* \* \* \*

**§ 47. Vice Commandant; [assignment] appointment**

The President may appoint, by and with the advice and consent of the Senate, one Vice Commandant who shall rank next after the Commandant, shall perform such duties as the Commandant may prescribe and shall act as Commandant during the absence or disability of the Commandant or in the event that there is a vacancy in the office of Commandant. The Vice Commandant shall be selected from the officers on the active duty promotion list serving above the grade of captain. The Commandant shall make recommendation for such appointment. The Vice Commandant shall, while so serving, have the grade of [vice admiral] **admiral** with pay and allowances of that grade. The appointment and grade of a Vice Commandant shall be effective on the date the officer assumes that duty, and shall terminate on the date the officer is detached from that duty, except as provided in [subsection] **section** 51(d) of this title.

\* \* \* \* \*

**[§ 50. Area commanders**

**[(a) The President may appoint, by and with the advice and consent of the Senate, a Commander, Atlantic Area, and a Commander, Pacific Area, each of whom shall be an intermediate commander between the Commandant and the district commanders in his respective area and shall perform such duties as the Commandant may prescribe. The area commanders shall be appointed from officers on the active duty promotion list serving above the grade of captain. The Commandant shall make recommendations for such appointments.**

**[(b) An area commander shall, while so serving, have the grade of vice admiral with pay and allowances of that grade. The appointment and grade of an area commander shall be effective on the date the officer assumes that duty, and shall terminate on the date the officer is detached from that duty, except as provided in subsection 51(d) of this title.]**

**§ 50. Vice admirals**

**(a)(1) The President may designate no more than four positions of importance and responsibility that shall be held by officers who—**

**(A) while so serving, shall have the grade of vice admiral, with the pay and allowances of that grade; and**

**(B) shall perform such duties as the Commandant may prescribe.**

**(2) The President may appoint, by and with the advice and consent of the Senate, and reappoint, by and with the advice and consent of the Senate, to any such position an officer of the Coast Guard who is serving on active duty above the grade of captain. The Commandant shall make recommendations for such appointments.**

**(b)(1) The appointment and the grade of vice admiral shall be effective on the date the officer assumes that duty and, except as provide in paragraph (2) or in section 51(d) of this title, shall terminate on the date the officer is detached from that duty.**

**(2) An officer who is appointed to a position designated under subsection (a) shall continue to hold the grade of vice admiral—**

**(A) while under orders transferring the officer to another position designated under subsection (a), beginning on the date the officer is detached from that duty and terminating on the date before the day the officer assumes the subsequent duty, but not for more than 60 days;**

**(B) while hospitalized, beginning on the day of the hospitalization and ending on the day the officer is discharged from the hospital, but not for more than 180 days; and**

**(C) while awaiting retirement, beginning on the date the officer is detached from duty and ending on the day before the officer's retirement, but not for more than 60 days.**

**(c)(1) An appointment of an officer under subsection (a) does not vacate the permanent grade held by the officer.**

**(2) An officer serving in a grade above rear admiral who holds the permanent grade of rear admiral (lower half) shall be considered for promotion to the permanent grade of rear admiral as if the officer was serving in the officer's permanent grade.**

**(d) Whenever a vacancy occurs in a position designated under subsection (a), the Commandant shall inform the President of the qualifications needed by an officer serving in that position or office to carry out effectively the duties and responsibilities of that position or office.**

#### **[§ 50a. Chief of Staff**

**[(a) The President may appoint, by and with the advice and consent of the Senate, a Chief of Staff of the Coast Guard who shall rank next after the area commanders and who shall perform duties as prescribed by the Commandant. The Chief of Staff shall be appointed from the officers on the active duty promotion list serving above the grade of captain. The Commandant shall make recommendations for the appointment.**

**[(b) The Chief of Staff shall have the grade of vice admiral with the pay and allowances of that grade. The appointment and grade of the Chief of Staff shall be effective on the date the officer assumes that duty, and shall terminate on the date the officer is detached from that duty, except as provided in section 51(d) of this title.]**

#### **§ 51. Retirement**

**[(a) An officer who, while serving in the grade of vice admiral, is retired for physical disability shall be placed on the retired list with the grade of vice admiral.**

**[(b) An officer who is retired while serving in the grade of vice admiral, or who, after serving at least two and one-half years in the grade of vice admiral, is retired while serving in a lower grade, may in the discretion of the President, be retired with the grade of vice admiral.**

**[(c) An officer who, after serving less than two and one-half years in the grade of vice admiral, is retired while serving in a lower grade, shall be retired in his permanent grade.]**

**(a) An officer, other than the Commandant, who, while serving in the grade of admiral or vice admiral, is retired for physical disability shall be placed on the retired list with the highest grade in which that officer served.**

**(b) An officer, other than the Commandant, who is retired while serving in the grade of admiral or vice admiral, or who, after serving at least two and one-half years in the grade of admiral or vice admiral, is retired while serving in a lower grade, may in the discretion of the President, be retired with the highest grade in which that officer served.**

**(c) An officer, other than the Commandant, who, after serving less than two and one-half years in the grade of admiral or vice admiral, is retired while serving in a lower grade, shall be retired in his permanent grade.**

(d) An officer serving in the grade of admiral or vice admiral shall continue to hold that grade—

\* \* \* \* \*

(2) while awaiting retirement, beginning on the day that officer is relieved from the position of Commandant, Vice Commandant, [**Area Commander, or Chief of Staff**] **or Vice Admirals** and ending on the day before the officer's retirement, but not for more than 60 days.

\* \* \* \* \*

**§ 55. Merchant Mariner Medical Advisory Committee**

**(a) ESTABLISHMENT; MEMBERSHIP; STATUS.—(1) There is established a Merchant Mariner Medical Advisory Committee (hereinafter referred to as the “Committee”).**

**(2) The Committee shall consist of twelve members, none of whom shall be a Federal employee, including—**

**(A) ten of whom shall be health-care professionals with particular expertise, knowledge, or experience regarding the medical examinations of merchant mariners or occupational medicine; and**

**(B) two of whom shall be professional mariners with knowledge and experience in mariner occupational requirements.**

**(3) Members of the Committee shall not be considered Federal employees or otherwise in the service or the employment of the Federal Government, except that members shall be considered special Government employees, as defined in section 202(a) of title 18, United States Code, and any administrative standards of conduct applicable to the employees of the Department in which the Coast Guard is operating.**

**(b) APPOINTMENTS; TERMS; VACANCIES; ORGANIZATION.—(1) The Secretary shall appoint the members of the Committee, and each member shall serve at the pleasure of the Secretary.**

**(2) The members shall be appointed for a term of three years, except that, of the members first appointed, three members shall be appointed for a term of two years and three members shall be appointed for a term of one year.**

**(3) Any member appointed to fill the vacancy prior to the expiration of the term for which such member’s predecessor was appointed shall be appointed for the remainder of such term.**

**(4) The Secretary shall designate one member as the Chairman and one member as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of, or in the event of a vacancy in the office of, the Chairman.**

(5) No later than six months after the date of enactment, the Committee shall hold its first meeting.

(c) FUNCTION.—The Committee shall advise the Secretary on matters relating to—

(1) medical certification determinations for issuance of merchant mariner credentials;

(2) medical standards and guidelines for the physical qualifications of operators of commercial vessels;

(3) medical examiner education; and

(4) medical research.

(d) COMPENSATION; REIMBURSEMENT.—Members of the Committee shall serve without compensation, except that, while engaged in the performance of duties away from their homes or regular places of business of the member, the member of the Committee may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

(e) STAFF; SERVICES.—The Secretary shall furnish to the Committee such personnel and services as are considered necessary for the conduct of its business.

\* \* \* \* \*

#### CHAPTER 7—COOPERATION WITH OTHER AGENCIES

\* \* \* \* \*

#### § 149. Assistance to foreign governments and maritime authorities

\* \* \* \* \*

(c) GRANTS TO INTERNATIONAL MARITIME ORGANIZATIONS.—The Commandant may, after consultation with the Secretary of State, make grants to, or enter into cooperative agreements, contracts, or other agreements with, international maritime organizations for the purpose of acquiring information or data about merchant vessel inspections, security, safety, classification, and port state or flag state law enforcement or oversight.

(d) AUTHORIZED ACTIVITIES.—(1) The Commandant may transfer or expend funds from any appropriation available to the Coast Guard for the following activities and expenses:

(A) the activities of traveling contact teams, including any transportation expense, translation services expense, or administrative expense that is related to such activities;

(B) the activities of maritime authority liaison teams of foreign governments making reciprocal visits to Coast Guard units, including any transportation expense, translation services expense, or administrative expense that is related to such activities;

(C) seminars and conferences involving members of maritime authorities of foreign governments;

**(D) distribution of publications pertinent to engagement with maritime authorities of foreign governments; and**

**(E) personnel expenses for Coast Guard civilian and military personnel to the extent that those expenses relate to participation in an activity described in subparagraph (C) or (D).**

**(2) An activity may not be conducted under this subsection with a foreign country unless the Secretary of State approves the conduct of such activity in that foreign country.**

\* \* \* \* \*

**§ 151. Contracts with Government-owned establishments for work and material**

**(a) IN GENERAL.**—All orders or contracts for work or material, under authorization of law, placed with Government-owned establishments by the Coast Guard, shall be considered as obligations in the same manner as provided for similar orders or contracts placed with private contractors, and appropriations for such work or material shall remain available for payment therefore as in the case of orders or contracts placed with private contractors.

**(b) ORDERS AND AGREEMENTS FOR INDUSTRIAL ACTIVITIES.**—**Under this section, the Coast Guard industrial activities may accept orders and enter into reimbursable agreements with establishments, agencies, and departments of the Department of Defense and the Department of Homeland Security.**

\* \* \* \* \*

**CHAPTER 11—PERSONNEL**

\* \* \* \* \*

**§ 214. Appointment of temporary officers**

**[(a) The President may appoint temporary commissioned officers in the Regular Coast Guard in a grade, not above lieutenant, appropriate to their qualifications, experience, and length of service, as the needs of the Coast Guard may require, from among the commissioned warrant officers, warrant officers, and enlisted members of the Coast Guard, and from licensed officers of the United States merchant marine.]**

**(a) The President may appoint temporary commissioned officers—**

**(1) in the Regular Coast Guard in a grade, not above lieutenant, appropriate to their qualifications, experience, and length of service, as the needs of the Coast Guard may require, from among the commissioned warrant officers, warrant officers, and enlisted members of the Coast Guard, and from licensed officers of the United States merchant marine; and**

**(2) in the Coast Guard Reserve in a grade, not above lieutenant, appropriate to their qualifications, experience, and length of service, as the**

**needs of the Coast Guard may require, from among the commissioned warrant officers of the Coast Guard Reserve.**

\* \* \* \* \*

**§ 253. Selection boards; notice of convening; communication with board**

(a) Before a board is convened under section 251 of this title, notice of the convening date, the promotion zone to be considered, **and** the officers eligible for consideration[, **and the number of officers the board may recommend for promotion**] shall be given to the service at large.

\* \* \* \* \*

**§ 258. Selection boards; information to be furnished boards**

**(a)** The Secretary shall furnish the appropriate selection board convened under section 251 of this title with:

- (1) the number of officers that the board may recommend for promotion to the next higher grade;
- (2) the names and records of all officers who are eligible for consideration for promotion to the grade to which the board will recommend officers for promotion.

**(b) In addition to the information provided pursuant to subsection (a), the Secretary may furnish the selection board with:**

- (1) specific direction relating to the needs of the service for officers having particular skills, including direction relating to the need for a minimum number of officers with particular skills within a specialty; and**
- (2) such other guidance that the Secretary believes may be necessary to enable the board to properly perform its functions.**

**Selections made based on the direction and guidance provided under this subsection shall not exceed the maximum percentage of officers who may be selected from below the announced promotion zone at any given selection board convened under section 251 of this title.**

\* \* \* \* \*

**§ 259. Officers to be recommended for promotion**

(a) A selection board convened to recommend officers for promotion shall recommend those eligible officers whom the board, **giving due consideration to the needs of the service for the officers with particular skills so noted in the specific direction furnished pursuant to section 258 of this title,** considers best qualified of the officers under consideration for promotion. No officer may be recommended for promotion unless he receives the recommendation of at least a majority of the members of a board composed of five members, or at least two-thirds of the members of a board composed of more than five members.

\* \* \* \* \*

**§ 260. Selection boards; reports**

\* \* \* \* \*

(b) A board convened under section 251 of this title shall certify that, in the opinion of at least a majority of the members if the board has five members, or in the opinion of at least two-thirds of the members if the board has more than five members, the officers recommended for promotion are the best qualified for promotion **to meet the needs of the service (as noted in the specific direction furnished the board under section 258 of this title)** of those officers whose names have been furnished to the board.

\* \* \* \* \*

**CHAPTER 17—ADMINISTRATION**

Sec.

\* \* \* \* \*

**638a. Coast Guard vessels and aircraft.**

**[648. Accounting for industrial work.]**

**648. Specialized industrial facilities.**

\* \* \* \* \*

**§ 638a. Coast Guard vessels and aircraft**

**For the purposes of sections 637 and 638 of this title, the term ‘Coast Guard vessels and aircraft’ (in singular or plural form) shall mean—**

**(1) Any vessel or aircraft owned, leased, transferred to, or operated by the Coast Guard and under the command of a Coast Guard member; or**

**(2) Any other vessel or aircraft under the tactical control of the Coast Guard on which one or more members of the Coast Guard are assigned and conducting Coast Guard missions.**

\* \* \* \* \*

**§ 648. [Accounting for industrial work] Specialized industrial facilities**

(a) The Secretary may prescribe regulations governing accounting for industrial work, including charges for overhead for civilian labor and for maintenance of industrial plant and equipment, performed at the Coast Guard Yard or such similar Coast Guard industrial establishments as he may designate. Any orders placed for such industrial work shall be covered by a transfer or advance of funds to cover the estimated cost thereof, and shall be credited to such accounts as may be necessary and established by the

Secretary to carry out the provisions of this section. Accounts so established shall be available for materials, supplies, or equipment, and civilian labor, including overhead and maintenance, required in performing the work ordered. Upon completion of an order an adjustment will be made to make the amount transferred or advanced equal to the actual cost as computed in accordance with the accounting regulations prescribed by the Secretary.

**(b) For purposes of entering into joint public-private partnerships or other cooperative arrangements for the performance of work, the Coast Guard Yard, the Aviation Repair and Supply Center, or other similar Coast Guard industrial establishments may—**

**(1) enter into agreements or other arrangements with public or private entities, foreign or domestic;**

**(2) pursuant to contracts or other arrangements, receive and retain funds from, or pay funds to, such public or private entities; or**

**(3) accept contributions of funds, materials, services, or the use of facilities from such public or private entities, subject to regulations promulgated by the Coast Guard.**

**Amounts received under this subsection may be credited to the Coast Guard Yard Revolving Fund or other appropriate Coast Guard account.**

\* \* \* \* \*

## TITLE 37—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

### CHAPTER 19--ADMINISTRATION

#### § 1007. Deductions from pay

\* \* \* \* \*

(i)(1) There shall be deducted each month from the pay of each enlisted member, warrant officer, and limited duty officer of the armed forces on active duty an amount (determined under paragraph (3)) not to exceed \$1.00.

\* \* \* \* \*

(3) The Secretary of Defense, after consultation with the **[Armed Forces Retirement Home Board] Chief Operating Officer of the Armed Forces Retirement Home**, shall determine from time to time the amount to be deducted under paragraph (1) from the pay of enlisted members, warrant officers, and limited duty officers on the basis of the financial needs of the Armed Forces Retirement Home. The amount to be deducted may be fixed at different amounts on the basis of grade or length of service, or both.

(4) In this subsection, the term "armed forces" [does not include the Coast Guard when it is not operating as a service in the Navy] has the meaning given such term in section 101(4) of title 10.

\* \* \* \* \*

**TITLE 46—SHIPPING**

**SUBTITLE II—VESSELS AND SEAMAN**

\* \* \* \* \*

**PART E—MERCHANT SEAMAN LICENSES, CERTIFICATES, AND DOCUMENTS**

Chap. Sec.

\* \* \* \* \*

[73. Merchant mariners' documents 7301]

73. Merchant mariner's documents 7301

\* \* \* \* \*

**CHAPTER 43—RECREATIONAL VESSELS**

**§ 4302. Regulations**

(a) The Secretary may prescribe regulations—

\* \* \* \* \*

(3) requiring or permitting the display of seals, labels, plates, insignia, or other devices for certifying or evidencing compliance with safety regulations and standards of the United States Government for recreational vessels and associated equipment[.]; and

(4) establishing minimum requirements for recreational vessel operator proficiency with proof of identification.

\* \* \* \* \*

**CHAPTER 71—LICENSES AND CERTIFICATES OF REGISTRY**

\* \* \* \* \*

**§ 7106. Duration of licenses**

[A license issued under this part is valid for 5 years and may be renewed for additional 5-year periods. However, the validity of a license issued to a radio officer is conditioned on the continuous possession by the holder of a first-class or second-class radiotelegraph operator license issued by the Federal Communications Commission.]

(a) A license issued under this part is valid for not more than 5 years and may be renewed for periods of not more than 5 years.

(b) The Secretary, acting through the Commandant of the Coast Guard, may temporarily extend, for a reasonable period of time, the expiration date of a license when such action is deemed appropriate and necessary. Any such extension may be granted to an individual, a class of individuals specifically identified, or a combination thereof.

(c) The validity of a license issued to a radio officer is conditioned on the continuous possession by the holder of a first-class or second-class radiotelegraph operator license issued by the Federal Communications Commission.

§ 7107. Duration of certificates of registry

[A certificate of registry issued under this part is valid for 5 years and may be renewed for additional 5-year periods. However, the validity of a certificate issued to a medical doctor or professional nurse is conditioned on the continuous possession by the holder of a license as a medical doctor or registered nurse, respectively, issued by a State.]

(a) A certificate of registry issued under this part is valid for not more than 5 years and may be renewed for periods of not more than 5 years.

(b) The Secretary, acting through the Commandant of the Coast Guard, may temporarily extend, for a reasonable period of time, the expiration date of a certificate of registry when such action is deemed appropriate and necessary. Any such extension may be granted to an individual, a class of individuals specifically identified, or a combination thereof.

(c) The validity of a certificate issued to a medical doctor, a physician assistant, or a registered nurse is conditioned on the continuous possession by the holder of a license as a medical doctor, a physician's assistant, or registered nurse, respectively, issued by a State.

\* \* \* \* \*

CHAPTER 73—MERCHANT [MARINERS'] MARINER'S DOCUMENTS

Sec.

\* \* \* \* \*

[7302. Issuing merchant mariners' documents and continuous discharge books.]

7302. Issuing merchant mariner's documents and continuous discharge books.

[7303. Possession and description of merchant mariners' documents.]

7303. Possession and description of merchant mariner's documents.

[7304. Citizenship notation on merchant mariners' documents.]

7304. Citizenship notation on merchant mariner's documents.

[7305. Oaths for holders of merchant mariners' documents.]

7305. Oaths for holders of merchant mariner's documents.

\* \* \* \* \*

[7319. Records of merchant mariner's documents.]

7319. Records of merchant mariner's documents.

\* \* \* \* \*

**§ 7302. Issuing merchant [mariners'] mariner's documents and continuous discharge books**

\* \* \* \* \*

(f) Except as provided in subsection (g), a merchant mariner's document issued under this chapter is valid for 5 years and may be renewed for additional 5-year periods.]

(f)(1) Except as provided in subsection (g), a merchant mariner's document issued under this chapter is valid for not more than 5 years and may be renewed for periods of not more than 5 years.

(2) The Secretary, acting through the Commandant of the Coast Guard, may temporarily extend, for a reasonable period of time, the expiration date of a merchant mariner's document when such action is deemed appropriate and necessary. Any such extension may be granted to an individual, a class of individuals specifically identified, or a combination thereof.

\* \* \* \* \*

**§ 7303. Possession and description of merchant [mariners'] mariner's documents**

\* \* \* \* \*

**§ 7304. Citizenship notation on merchant [mariners'] mariner's documents**

\* \* \* \* \*

**§ 7305. Oaths for holders of merchant [mariners'] mariner's documents**

\* \* \* \* \*

**§ 7319. Records of merchant [mariners'] mariner's documents**

\* \* \* \* \*

**CHAPTER 75—GENERAL PROCEDURES FOR LICENSING, CERTIFICATION, AND DOCUMENTATION**

\* \* \* \* \*

**§ 7502. Records**

[The Secretary shall maintain computerized records on the issuances, denials, suspensions, and revocations of licenses, certificates of registry, merchant mariners' documents, and endorsements on those licenses, certificates, and documents.]

(a) The Secretary shall maintain records, including electronic records, consistent with laws regarding maintenance and destruction of federal records, on the issuance, denial, suspension, and revocation of each license, certificate of registry, merchant mariner's document, and endorsement on such license, certificate, or document. Access to such records shall be governed by section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) and section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974).

(b) The Secretary may prescribe regulations requiring vessel owners, operators, or employers of commercial vessels to maintain records of mariners on matters of engagement, discharge, and service for not less than 5 years from the date of the completion of the service. A vessel owner, operator, or employer shall make these records available to the mariner and the Coast Guard on request.

(c) A person violating this section, or a regulation issued under this section, is liable to the United States Government for a civil penalty of not more than \$5,000.

\* \* \* \* \*

**CHAPTER 89—SMALL VESSEL MANNING**

**§ 8905. Exemptions**

\* \* \* \* \*

**[(b) Section 8904 of this title does not apply to a vessel of less than 200 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title engaged in the offshore mineral and oil industry if the vessel has offshore mineral and oil industry sites or equipment as its ultimate destination or place of departure.**

**[(c) (b) Section 8904 of this title does not apply to an oil spill response vessel while engaged in oil spill response or training activities.**

\* \* \* \* \*

**CHAPTER 103—FOREIGN AND INTERCOASTAL VOYAGE**

\* \* \* \* \*

Sec.

\* \* \* \* \*

[10306. Exhibiting merchant mariners' documents.]  
10306. Exhibiting merchant mariner's documents.

\* \* \* \* \*

§ 10306. Exhibiting merchant [mariners'] mariner's documents

\* \* \* \* \*

CHAPTER 105—COASTWISE VOYAGES

\* \* \* \* \*

Sec.

\* \* \* \* \*

[10503. Exhibiting merchant mariners' documents.]  
10503. Exhibiting merchant mariner's documents.

\* \* \* \* \*

§ 10503. Exhibiting merchant [mariners'] mariner's documents

\* \* \* \* \*

CHAPTER 141—GENERAL

§ 14101. Definitions

In this part—

\* \* \* \* \*

(4) [“vessel engaged on a foreign voyage” means a vessel—] “vessel that engages in a foreign voyage” means a vessel that—

(A) [arriving] arrives at a place under the jurisdiction of the United States from a place in a foreign country;

(B) [making] makes a voyage between places outside the United States [(except a foreign vessel engaged on that voyage)];

(C) **[departing] departs** from a place under the jurisdiction of the United States for a place in a foreign country; or

(D) **[making] makes** a voyage between a place within a territory or possession of the United States and another place under the jurisdiction of the United States not within that territory or possession.

\* \* \* \* \*

**§ 14103. Delegation of authority**

\* \* \* \* \*

(c) For a vessel **[intended to be engaged on] that engages in** a foreign voyage, the Secretary may delegate to another country that is a party to the Convention the authority to measure the vessel and issue an International Tonnage Certificate (1969) under chapter 143 of this title.

\* \* \* \* \*

**CHAPTER 143—CONVENTION MEASUREMENT**

**§ 14301. Application**

**[(a) Except as otherwise provided in this section, this chapter applies to the following:**

- [(1) a documented vessel.**
- [(2) a vessel that is to be documented under chapter 121 of this title.**
- [(3) a vessel engaged on a foreign voyage.]**

**(a) Except as otherwise provided in this section, this chapter applies to any vessel for which the application of an international agreement or other law of the United States to the vessel depends on the vessel's tonnage.**

(b) This chapter does not apply to the following:

- (1) a vessel of war[.], unless requested by the government of the country to which the vessel belongs.**

\* \* \* \* \*

**(3) a vessel of United States or Canadian registry or nationality, or one operated under the authority of the United States or Canada, and that is operating only on the Great Lakes, unless the owner requests otherwise.**

**(4) [a vessel (except a vessel engaged)] a vessel of United States registry or nationality, or one operated under the authority of the United States (except a vessel that engages in a foreign voyage) the keel of which was laid or that was at a similar stage of construction before January 1, 1986, unless—**

- (A) the owner requests otherwise; or**

(B) the vessel undergoes a change that the Secretary finds substantially affects the vessel's gross tonnage.

**[(5) before July 19, 1994, an existing vessel unless**

**[(A) the owner requests; or**

**[(B) the vessel undergoes a change that the Secretary finds substantially affects the vessel's gross tonnage.]**

**[(6) a barge (except a barge engaged on a foreign voyage) unless the owner requests.] (5) a barge of United States registry or nationality, or one operated under the authority of the United States (except a barge that engages on a foreign voyage) unless the owner requests otherwise.**

**[(c) A vessel made subject to this chapter at the request of the owner may be remeasured only as provided by this chapter.]**

**[(d)] (c) [After July 18, 1994, an existing vessel (except an existing vessel referred to in subsection (b)(5) (A) or (B) of this section)] An existing vessel that has not undergone a change that the Secretary finds substantially affects the vessel's gross tonnage (or a vessel to which IMO Resolutions A.494 (XII) of November 19, 1981, A.540 (XIII) of November 17, 1983, or A.541 (XIII) of November 17, 1983 apply) may retain its tonnages existing on July 18, 1994, for the application of relevant requirements under international agreements (except the Convention) and other laws of the United States. However, if the vessel undergoes a change substantially affecting its tonnage after July 18, 1994, the vessel shall be remeasured under this chapter.**

**[(e)] (d) This chapter does not affect an international agreement to which the United States Government is a party that is not in conflict with the Convention or the application of IMO Resolutions A.494 (XII) of November 19, 1981, A.540 (XIII) of November 17, 1983, and A.541 (XIII) of November 17, 1983.**

**§ 14302. Measurement**

\* \* \* \* \*

**[(b) Except as provided in section 1602(a) of the Panama Canal Act of 1979 (22 U.S.C. § 3792(a)), a vessel measured under this chapter may not be required to be measured under another law.]**

**(b) A vessel measured under this chapter may not be required to be measured under another law.**

\* \* \* \* \*

**§ 14303. International Tonnage Certificate (1969)**

**(a) After measuring a vessel [under this chapter] to which the Convention applies, the Secretary shall issue, on request of the owner, an International Tonnage Certificate (1969) and deliver it to the owner or master of the vessel.**

\* \* \* \* \*

**§ 14305. Optional regulatory measurement**

(a) On request of the owner of a **[documented vessel measured under this chapter] vessel measured under this chapter that is of United States registry or nationality, or one operated under the authority of the United States**, the Secretary also shall measure the vessel under chapter 145 of this title. The tonnages determined under that chapter shall be used in applying—

\* \* \* \* \*

**CHAPTER 145—REGULATORY MEASUREMENT**

**§ 14501. Application**

This chapter applies to the following:

**[(1) a vessel not measured under chapter 143 of this title if—**

**[(A) the vessel is to be documented under chapter 121 of this title; or**

**[(B) the application of a law of the United States to the vessel depends on the vessel's tonnage.]**

**(1) a vessel not measured under chapter 143 of this title if the application of an international agreement or other law of the United States to the vessel depends on the vessel's tonnage.**

\* \* \* \* \*

**§ 14512. Standard tonnage measurement**

(a) The Secretary shall prescribe regulations for measuring the gross and net tonnages of a vessel under this subchapter. The regulations shall provide for tonnages comparable to the tonnages that could have been assigned under sections **[4151 and 4153] 4151, 4153 and 4154** of the Revised Statutes of the United States, as sections **[4151 and 4153] 4151, 4153 and 4154** existed immediately before the enactment of this section.

\* \* \* \* \*

**§ 14513. Dual tonnage measurement**

\* \* \* \* \*

(c)(1) If a **[vessel's tonnage mark is below the uppermost part of the load line marks] vessel is assigned two sets of gross and net tonnages under this section**, each certificate stating the vessel's tonnages shall state the gross and net tonnages when the **vessel's tonnage** mark is submerged and when it is not submerged.

(2) Except as provided in paragraph (1) of this subsection, a certificate stating a vessel's tonnages may state only one set of gross and net tonnages [.] **as assigned under this section.**

**CHAPTER 313—COMMERCIAL INSTRUMENTS AND MARITIME LIENS**

\* \* \* \* \*

**§ 31301. Definitions**

In this chapter—

\* \* \* \* \*

**(7) “Secretary” means—Secretary of the Department Homeland Security, unless otherwise noted.**

\* \* \* \* \*

**§ 31302. Availability of instruments, copies, and information**

The Secretary [**of Transportation**] shall—

\* \* \* \* \*

**§ 31306. Declaration of citizenship**

(a) Except as provided by the Secretary [**of Transportation**], when an instrument transferring an interest in a vessel is presented to the Secretary for filing or recording, the transferee shall file with the instrument a declaration, in the form the Secretary may prescribe by regulation, stating information about citizenship and other information the Secretary may require to show the transaction involved does not violate section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. §§ 808, 835).

\* \* \* \* \*

**§ 31308. Secretary of Commerce or Transportation as mortgagee**

**[When the Secretary of Commerce or Transportation is a mortgagee under this chapter, the Secretary] The Secretary of Commerce or Transportation, as a mortgagee under this chapter,** may foreclose on a lien arising from a right established under a mortgage under title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. § 1271 *et seq.*), subject to section 362(b) of title 11.

\* \* \* \* \*

**§ 31321. Filing, recording, and discharge**

(a)(1) A bill of sale, conveyance, mortgage, assignment, or related instrument, whenever made, that includes any part of a documented vessel or a vessel for which an application for documentation is filed, must be filed with the Secretary **[of Transportation]** to be valid, to the extent the vessel is involved, against any person except—

\* \* \* \* \*

**§ 31329. Court sales of documented vessels**

\* \* \* \* \*

(d) The vessel may be operated by the mortgagee not eligible to own a documented vessel only with the approval of the Secretary **of Transportation.**

\* \* \* \* \*

**§ 31330. Penalties**

(a)(1) A mortgagor shall be fined under title 18, imprisoned for not more than 2 years, or both, if the mortgagor—

\* \* \* \* \*

(B) with intent to defraud, incurs a contractual obligation in violation of section 31323(b) of this title; **or**

(C) with intent to hinder or defraud an existing or future creditor of the mortgagor or a lienor of the vessel, files a mortgage with the Secretary **[of Transportation; or].**

**[(D) with intent to defraud, does not comply with section 31321(h) of this title.]**

(2) A mortgagor is liable to the United States Government for a civil penalty of not more than \$10,000 if the mortgagor—

\* \* \* \* \*

(B) incurs a contractual obligation in violation of section 31323(b) of this title; **or**  
(C) files with the Secretary a mortgage made not in good faith[; **or**].

**[(D) does not comply with section 31321(h) of this title.]**

\* \* \* \* \*

**§ 31343. Recording and discharging notices of claim of maritime lien**

(a) Except as provided under subsection (d) of this section, a person claiming a lien on a vessel documented, or for which an application for documentation has been filed, under chapter 121 may record with the Secretary [of Transportation] a notice of that person's lien claim on the vessel. To be recordable, the notice must—

\* \* \* \* \*

**CHAPTER 701—PORT SECURITY**

Sec.

\* \* \* \* \*

**70122. Regulations.**

\* \* \* \* \*

**§ 70122. Regulations**

**Unless otherwise provided, the Secretary may issue regulations necessary to implement this chapter.**

\* \* \* \* \*

**[SUBTITLE VII—SECURITY AND DRUG LAW ENFORCEMENT]**

**SUBTITLE VII—SECURITY, DRUG LAW ENFORCEMENT, AND ALIEN SMUGGLING**

Chap. Sec.

\* \* \* \* \*

**707. Maritime Alien Smuggling 70701**

\* \* \* \* \*

**CHAPTER 705—MARITIME DRUG LAW ENFORCEMENT**

\* \* \* \* \*

**§ 70508. Simple possession**

**\_\_\_\_\_ Any individual at a maritime facility or on a vessel of the United States who is found by the Secretary, after notice and an opportunity for a hearing, to have knowingly or intentionally possessed a controlled substance that is listed in Schedules I through V, as promulgated pursuant to section 202 of the Controlled**

Substance Act (21 U.S.C. § 812), and in an amount that is a personal use amount, as specified by regulation of the Attorney General pursuant to section 404 of that Act (21 U.S.C. 844), shall be liable to the United States for a civil penalty not to exceed \$27,500 for each violation. The Secretary shall notify the individual in writing of the amount of the civil penalty. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires. Assessment of a civil penalty under this statute should not be considered a conviction for purposes of state or federal law. However, it may be considered proof of possession when such a determination is relevant. Nothing in this section shall preclude application of any provision of the Controlled Substances Act 21 U.S.C. § 801 *et seq.*), including, but not limited to, section 1005 of that Act (21 U.S.C. § 955).

#### CHAPTER 707—MARITIME ALIEN SMUGGLING LAW ENFORCEMENT

Sec.

70701. Offense.

70702. Penalties.

70703. Seizure and forfeiture of property.

70704. Jurisdiction.

70705. Claim of failure to comply with international law.

70706. Federal activities.

70707. Definitions.

#### § 70701. Offense

(a) Any person who knowingly transports, harbors, or conceals an alien on board a vessel described in subsection (d) of this section, knowing or in reckless disregard of the fact that such alien is attempting to enter the United States unlawfully, shall be punished as provided in section 70702.

(b) Any person who attempts or conspires to commit a violation under this section shall be punished in the same manner as a person who completes a violation of this section.

(c) It is an affirmative defense to a prosecution under this chapter of any master, operator, or person in charge of a vessel only, which the defendant must prove by a preponderance of the evidence, that—

(1) the alien was on board pursuant to a rescue at sea, or was a stowaway; and

(2) the defendant, as soon as reasonably practicable, informed the United States Coast Guard of the presence of the alien on the vessel and the circumstances of the rescue:

Provided, that the defendant complies with all orders given by U.S. law enforcement officials and does not bring or attempt to bring any alien into the land territory of the United States unless the alien is in imminent threat of death or serious bodily injury, in which case the defendant shall report to the U.S. Coast Guard the circumstances of the rescue immediately upon delivering that alien to emergency medical personnel or to U.S. law enforcement or immigration authorities ashore.

(d) The following vessels are covered by this section—

(1) a vessel of the United States that is less than 300 gross tons (as measured under chapter 145 or an alternate tonnage measurement as prescribed by the Secretary under section 14104),

(2) a vessel subject to the jurisdiction of the United States that is less than 300 gross tons (as so measured), or

(3) a vessel of any size that is abandoned, stateless, or stolen.

§ 70702. Penalties

Any person who commits a violation under this chapter shall—

(1) be imprisoned for not less than 3 years and not more than 20 years, fined under title 18, or both;

(2) in the case where any the violation created a substantial risk of death or serious bodily injury to another person (including, without limitation, transporting a person in a shipping container, storage compartment, other confined space, in dangerously overcrowded conditions or at a speed in excess of the rated capacity of the vessel), be imprisoned not less than 5 years and not more than 20 years, fined under title 18, or both;

(3) in the case where the violation caused serious bodily injury to any person, regardless of where the injury occurred, be imprisoned for not less than 7 years and more than 30 years, fined under title 18, or both; and

(4) in the case where the violation caused or resulted in the death of any person regardless of where the death occurred, be imprisoned for not less than 10 years, any term of years, or life, fined under title 18, or both.

§ 70703. Seizure and forfeiture of property

(1) Any real or personal property used or intended to be used to commit or to facilitate the commission of a violation of this chapter, the gross proceeds of such violation, and any real or personal property traceable to such property or proceeds, shall be subject to forfeiture.

(2) Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of title 18, United States Code, relating to civil forfeitures, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in section 981(d) shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Secretary of Homeland Security.

§ 70704. Jurisdiction

(1) There is extraterritorial jurisdiction of an offense under this chapter.

(2) Jurisdiction of the United States with respect to vessels and persons subject to this chapter is not an element of any offense. All jurisdictional issues arising under this title are preliminary questions of law to be determined by the trial judge.

§ 70705. Claim of failure to comply with international law

Failure to comply with international law shall not be the basis for any

**defense of a person charged with a violation of this chapter. A claim of failure to comply with international law in the enforcement of this chapter may be invoked solely by a foreign nation, and a failure to comply with international law shall not divest a court of jurisdiction or otherwise constitute a defense to any proceeding under this section.**

**§ 70706. Federal activities**

**Nothing in this chapter shall apply to otherwise lawful activities carried out by or at the direction of the United States Government.**

**§ 70707. Definitions**

**As used in this chapter—**

**(1) the term “alien” has the meaning given that term in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(3));**

**(2) the term “proceeds” includes any property or interest in property obtained or retained as a consequence of an act or omission in violation of this section;**

**(3) the term “United States” has the meaning given that term in section 2101 of this title;**

**(4) the term “vessel subject to the jurisdiction of the United States” has the meaning given that term in section 70502 of this title; and**

**(5) the term “vessel of the United States” has the meaning given that term in section 70502 of this title.**

\* \* \* \* \*

**ACT OF MARCH 4, 1915**

\* \* \* \* \*

**§ 7. Establishment [by Secretary of Transportation] of anchorage grounds and regulations generally**

**(a) The [Secretary of Transportation] Secretary of the department in which the Coast Guard is operating is authorized, empowered, and directed to define and establish anchorage grounds for vessels in all harbors, rivers, bays, and other navigable waters of the United States whenever it is manifest to the said Secretary that the maritime or commercial interests of the United States require such anchorage grounds for safe navigation and the establishment of such anchorage grounds shall have been recommended by the [Chief of Engineers,] Chief of Engineers or, in the case of anchorage grounds on the outer Continental Shelf, the Secretary of the Interior, and to adopt suitable rules and regulations in relation thereto; and such rules and regulations shall be enforced by the Coast Guard under the direction of the [Secretary of Transportation] Secretary of the department in which the Coast Guard is operating: Provided, That at ports or places where there is no Coast Guard vessel available such rules and regulations may be enforced by the [Chief of Engineers under the direction**

of] Chief of Engineers or the Secretary of the Interior, as the case may be, under the direction of the [Secretary of Transportation] Secretary of the department in which the Coast Guard is operating. In the event of the violation of any such rules and regulations by the owner, master, or person in charge of any vessel, such owner, master, or person in charge of such vessel shall be liable to a penalty of [\$100; and the] up to \$10,000. Each day of a continuing violation shall constitute a separate violation. The said vessel may be holden for the payment of such penalty, and may be seized and proceeded against summarily by libel for the recovery of the same in any United States district court for the district within which such vessel may be and in the name of the officer designated by the [Secretary of Transportation] Secretary of the department in which the Coast Guard is operating.

(b) As used in this section “navigable waters of the United States” includes all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988.

**ARMED FORCES RETIREMENT HOME ACT OF 1991**  
(Pub. L. No. 101-510, 104 Stat. 1485, 1722 (1990))

\* \* \* \* \*

**§ Sec. 1502. Definitions.**

\* \* \* \* \*

(4) The term “Armed Forces” **[does not include the Coast Guard when it is not operating as a service in the Navy.] has the meaning given such term in section 101(4) of title 10.**

(5) The term "chief personnel officers" means—  
 (A) the Deputy Chief of Staff for Personnel of the Army;  
 (B) the Chief of Naval Personnel;  
 (C) the Deputy Chief of Staff for Personnel of the Air Force;**[and]**  
 (D) the Deputy Commandant of the Marine Corps for Manpower and Reserve Affairs**[,] and**

**(E) the Assistant Commandant of the Coast Guard for Human Resources.**

(6) The term "senior noncommissioned officers" means the following:  
 (A) The Sergeant Major of the Army.  
 (B) The Master Chief Petty Officer of the Navy.  
 (C) The Chief Master Sergeant of the Air Force.  
 (D) The Sergeant Major of the Marine Corps.  
**(E) The Master Chief Petty Officer of the Coast Guard.**

**HOMELAND SECURITY ACT OF 2002**  
(Public Law 107-296, 116 Stat. 2135 (2002))

\* \* \* \* \*

**§ 455. Miscellaneous authorities**

\* \* \* \* \*

**(c) Appointment of judges**

**The Secretary may appoint civilian employees of the Department of Homeland Security as appellate military judges available for assignment to the Coast Guard Court of Criminal Appeals as provided for in 10 U.S.C. § 866(a).**

**[(c)] (d) Redelelegation of functions**

Unless otherwise provided in the delegation or by law, any function delegated under this Act may be redelegated to any subordinate.

\* \* \* \* \*

**INTERNAL REVENUE CODE OF 1986**  
(26 U.S.C. § 9509)

**§ 13205. Oil Spill Liability Trust Fund**

\* \* \* \* \*

(f) REFERENCES TO OIL POLLUTION ACT OF 1990.—Any reference in this section to the Oil Pollution Act of 1990 or any other Act referred to in a subparagraph of subsection (c)(1) shall be treated as a reference to such Act as in effect on the date of the enactment of **[this subsection] the Coast Guard and Maritime Transportation Act of 2006.**

\* \* \* \* \*

**OIL POLLUTION ACT OF 1990**  
(Public Law 101-380, 104 Stat. 486 (1990))

\* \* \* \* \*

**§ 1004. Limits on liability**

\* \* \* \* \*

(d) Adjusting limits of liability

\* \* \* \* \*

(2) Deepwater ports and associated vessels

\* \* \* \* \*

**(D) The Secretary may establish, by regulation, a limit of liability of not less than \$12,000,000 for a deepwater port used only in connection with transportation of natural gas.**

\* \* \* \* \*

**§ 1012. Uses of Fund**

(a) Uses generally

\* \* \* \* \*

(4) the payment of claims in accordance with section 2713 of this [title,] **title, including, effective August 18, 1990, payment of direct Federal costs for contract onsite, scientific or technical support services to adjudicate claims,** for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages;

\* \* \* \* \*

(h) Period of limitations for claims

(1) Removal costs

No claim may be presented under this subchapter for recovery of removal costs for an incident unless the claim is presented within **[6] 3** years after the date of completion of all removal actions for that incident.

\* \* \* \* \*