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110TH CONGRESS
2D SESSION

# S. 3598

# AN ACT

To amend titles 46 and 18, United States Code, with respect to the operation of submersible vessels and semi-submersible vessels without nationality.

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Drug Trafficking Vessel Interdiction Act of 2008''.

TITLE I—CRIMINAL PROHIBITION

**SEC. 101. FINDINGS AND DECLARATIONS.**

Congress finds and declares that operating or embarking in a submersible vessel or semi-submersible vessel without nationality and on an international voyage is a serious international problem, facilitates transnational crime, including drug trafficking, and terrorism, and presents a specific threat to the safety of maritime navigation and the security of the United States.

**SEC. 102. OPERATION OF SUBMERSIBLE VESSEL OR SEMI-SUBMERSIBLE VESSEL WITHOUT NATIONALITY.**

(a) IN GENERAL.—Chapter 111 of title 18, United States Code, is amended by adding at the end the following new section:

**''§ 2285. OPERATION OF SUBMERSIBLE VESSEL OR SEMI-SUBMERSIBLE VESSEL WITHOUT NATIONALITY.**

''(a) OFFENSE.—Whoever knowingly operates, or attempts or conspires to operate, by any means, or embarks in any submersible vessel or semi-submersible vessel that is without nationality and that is navigating or has navigated into, through, or from waters beyond the outer limit

of the territorial sea of a single country or a lateral limit of that country's territorial sea with an adjacent country, with the intent to evade detection, shall be fined under this title, imprisoned not more than 15 years, or both.

"(b) EVIDENCE OF INTENT TO EVADE DETECTION.—For purposes of subsection (a), the presence of any of the indicia described in paragraph (1)(A), (E), (F), or (G), or in paragraph (4), (5), or (6), of section 70507(b) of title 46 may be considered, in the totality of the circumstances, to be prima facie evidence of intent to evade detection.

"(c) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section, including an attempt or conspiracy to commit such an offense.

"(d) CLAIM OF NATIONALITY OR REGISTRY.—A claim of nationality or registry under this section includes only—

"(1) possession on board the vessel and production of documents evidencing the vessel's nationality as provided in article 5 of the 1958 Convention on the High Seas;

"(2) flying its nation's ensign or flag; or

"(3) a verbal claim of nationality or registry by the master or individual in charge of the vessel.

"(e) AFFIRMATIVE DEFENSES.—

"(1) IN GENERAL.—It is an affirmative defense to a prosecution for a violation of subsection (a), which the defendant has the burden to prove by a preponderance of the evidence, that the submersible vessel or semi-submersible vessel involved was, at the time of the offense—

"(A) a vessel of the United States or lawfully registered in a foreign nation as claimed by the master or individual in charge of the vessel when requested to make a claim by an officer of the United States authorized to enforce applicable provisions of United States law;

"(B) classed by and designed in accordance with the rules of a classification society;

"(C) lawfully operated in government-regulated or licensed activity, including commerce, research, or exploration; or

"(D) equipped with and using an operable automatic identification system, vessel monitoring system, or long range identification and tracking system.

"(2) PRODUCTION OF DOCUMENTS.—The affirmative defenses provided by this subsection are proved conclusively by the production of—

"(A) government documents evidencing the vessel's nationality at the time of the offense, as provided in article 5 of the 1958 Convention on the High Seas;

"(B) a certificate of classification issued by the vessel's classification society upon completion of relevant classification surveys and valid at the time of the offense; or

"(C) government documents evidencing licensure, regulation, or registration for commerce, research, or exploration.

"(f) FEDERAL ACTIVITIES EXCEPTED.—Nothing in this section applies to lawfully authorized activities carried out by or at the direction of the United States Government.

"(g) APPLICABILITY OF OTHER PROVISIONS.—Sections 70504 and 70505 of title 46 apply to offenses under this section in the same manner as they apply to offenses under section 70503 of such title.

"(h) DEFINITIONS.—In this section, the terms 'submersible vessel', 'semi-submersible vessel', 'vessel of the United States', and 'vessel without nationality' have the meaning given those terms in section 70502 of title 46.".

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 111 of title 18, United States Code, is amend-

ed by inserting after the item relating to section 2284 the following:

"2285. Operation of submersible vessel or semi-submersible vessel without nationality".

**SEC. 103. SENTENCING GUIDELINES.**

(a) IN GENERAL.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall promulgate sentencing guidelines (including policy statements) or amend existing sentencing guidelines (including policy statements) to provide adequate penalties for persons convicted of knowingly operating by any means or embarking in any submersible vessel or semi-submersible vessel in violation of section 2285 of title 18, United States Code.

(b) REQUIREMENTS.—In carrying out this section, the United States Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offense described in section 2285 of title 18, United States Code, and the need for deterrence to prevent such offenses;

(2) account for any aggravating or mitigating circumstances that might justify exceptions, including—

(A) the use of a submersible vessel or semi-submersible vessel described in section 2285 of title 18, United States Code, to facilitate other felonies;

(B) the repeated use of a submersible vessel or semi-submersible vessel described in section 2285 of title 18, United States Code, to facilitate other felonies, including whether such use is part of an ongoing criminal organization or enterprise;

(C) whether the use of such a vessel involves a pattern of continued and flagrant violations of section 2285 of title 18, United States Code;

(D) whether the persons operating or embarking in a submersible vessel or semi-submersible vessel willfully caused, attempted to cause, or permitted the destruction or damage of such vessel or failed to heave to when directed by law enforcement officers; and

(E) circumstances for which the sentencing guidelines (and policy statements) provide sentencing enhancements;

(3) ensure reasonable consistency with other relevant directives, other sentencing guidelines and policy statements, and statutory provisions;

(4) make any necessary and conforming changes to the sentencing guidelines and policy statements; and

(5) ensure that the sentencing guidelines and policy statements adequately meet the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code.

## TITLE II—CIVIL PROHIBITION

### SEC. 201. OPERATION OF SUBMERSIBLE VESSEL OR SEMI-SUBMERSIBLE VESSEL WITHOUT NATIONALITY.

(a) FINDING AND DECLARATION.—Section 70501 of title 46, United States Code, is amended—

(1) by inserting ''(1)'' after ''that''; and

(2) by striking ''States.'' and inserting ''States and (2) operating or embarking in a submersible vessel or semi-submersible vessel without nationality and on an international voyage is a serious international problem, facilitates transnational crime, including drug trafficking, and terrorism, and presents a specific threat to the safety of maritime navigation and the security of the United States.''.

**SEC. 202. OPERATION PROHIBITED.**

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

**"§ 70508. Operation of submersible vessel or semi-submersible vessel without nationality**

''(a) IN GENERAL.—An individual may not operate by any means or embark in any submersible vessel or semi-submersible vessel that is without nationality and that is navigating or has navigated into, through, or from waters beyond the outer limit of the territorial sea of a single country or a lateral limit of that country's territorial sea with an adjacent country, with the intent to evade detection.

''(b) EVIDENCE OF INTENT TO EVADE DETECTION.—In any civil enforcement proceeding for a violation of subsection (a), the presence of any of the indicia described in paragraph (1)(A), (E), (F), or (G), or in paragraph (4), (5), or (6), of section 70507(b) may be considered, in the totality of the circumstances, to be prima facie evidence of intent to evade detection.

''(c) DEFENSES.—

''(1) IN GENERAL.—It is a defense in any civil enforcement proceeding for a violation of subsection (a) that the submersible vessel or semi-submersible vessel involved was, at the time of the violation—

"(A) a vessel of the United States or lawfully registered in a foreign nation as claimed by the master or individual in charge of the vessel when requested to make a claim by an officer of the United States authorized to enforce applicable provisions of United States law;

"(B) classed by and designed in accordance with the rules of a classification society;

"(C) lawfully operated in government-regulated or licensed activity, including commerce, research, or exploration; or

"(D) equipped with and using an operable automatic identification system, vessel monitoring system, or long range identification and tracking system.

"(2) PRODUCTION OF DOCUMENTS.—The defenses provided by this subsection are proved conclusively by the production of—

"(A) government documents evidencing the vessel's nationality at the time of the offense, as provided in article 5 of the 1958 Convention on the High Seas;

"(B) a certificate of classification issued by the vessel's classification society upon comple-

tion of relevant classification surveys and valid at the time of the offense; or

"(C) government documents evidencing licensure, regulation, or registration for research or exploration.

"(d) CIVIL PENALTY.—A person violating this section shall be liable to the United States for a civil penalty of not more than $1,000,000."

(b) CONFORMING AMENDMENTS.—

(1) The chapter analysis for chapter 705 of title 46, United States Code, is amended by inserting after the item relating to section 70507 the following:

"70508. Operation of submersible vessel or semi-submersible vessel without nationality".

(2) Section 70504(b) of title 46, United States Code, is amended by inserting "or 70508" after "70503".

(3) Section 70505 of title 46, United States Code, is amended by striking "this title" and inserting "this title, or against whom a civil enforcement proceeding is brought under section 70508,".

**SEC. 203. SUBMERSIBLE VESSEL AND SEMI-SUBMERSIBLE VESSEL DEFINED.**

Section 70502 of title 46, United States Code, is amended by adding at the end thereof the following:

"(f) SEMI-SUBMERSIBLE VESSEL; SUBMERSIBLE VESSEL.—In this chapter:

"(1) SEMI-SUBMERSIBLE VESSEL.—The term 'semi-submersible vessel' means any watercraft constructed or adapted to be capable of operating with most of its hull and bulk under the surface of the water, including both manned and unmanned watercraft.

"(2) SUBMERSIBLE VESSEL.—The term 'submersible vessel' means a vessel that is capable of operating completely below the surface of the water, including both manned and unmanned watercraft.".

Passed the Senate September 25, (legislative day, September 17), 2008.

Attest:

*Secretary.*

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