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Referred to the Committee on the Judiciary, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Drug Trafficking Ves-
3 sel Interdiction Act of 2008”.

4 **TITLE I—CRIMINAL PROHIBITION**

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

6 Congress finds and declares that operating or em-
7 barking in a submersible vessel or semi-submersible vessel
8 without nationality and on an international voyage is a
9 serious international problem, facilitates transnational
10 crime, including drug trafficking, and terrorism, and pre-
11 sents a specific threat to the safety of maritime navigation
12 and the security of the United States.

13 **SEC. 102. OPERATION OF SUBMERSIBLE VESSEL OR SEMI-**
14 **SUBMERSIBLE VESSEL WITHOUT NATION-**
15 **ALITY.**

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

19 **“§ 2285. OPERATION OF SUBMERSIBLE VESSEL OR**
20 **SEMI-SUBMERSIBLE VESSEL WITHOUT**
21 **NATIONALITY.**

22 “(a) OFFENSE.—Whoever knowingly operates, or at-
23 tempts or conspires to operate, by any means, or embarks
24 in any submersible vessel or semi-submersible vessel that
25 is without nationality and that is navigating or has navi-
26 gated into, through, or from waters beyond the outer limit

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

5 “(b) EVIDENCE OF INTENT TO EVADE DETEC-
 6 TION.—For purposes of subsection (a), the presence of
 7 any of the indicia described in paragraph (1)(A), (E), (F),
 8 or (G), or in paragraph (4), (5), or (6), of section
 9 70507(b) of title 46 may be considered, in the totality of
 10 the circumstances, to be prima facie evidence of intent to
 11 evade detection.

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

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

19 “(1) possession on board the vessel and produc-
 20 tion of documents evidencing the vessel's nationality
 21 as provided in article 5 of the 1958 Convention on
 22 the High Seas;

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

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

1 “(e) AFFIRMATIVE DEFENSES.—

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

8 “(A) a vessel of the United States or law-
9 fully registered in a foreign nation as claimed
10 by the master or individual in charge of the ves-
11 sel when requested to make a claim by an offi-
12 cer of the United States authorized to enforce
13 applicable provisions of United States law;

14 “(B) classed by and designed in accord-
15 ance with the rules of a classification society;

16 “(C) lawfully operated in government-regu-
17 lated or licensed activity, including commerce,
18 research, or exploration; or

19 “(D) equipped with and using an operable
20 automatic identification system, vessel moni-
21 toring system, or long range identification and
22 tracking system.

23 “(2) PRODUCTION OF DOCUMENTS.—The af-
24 firmative defenses provided by this subsection are
25 proved conclusively by the production of—

1 “(A) government documents evidencing the
2 vessel’s nationality at the time of the offense, as
3 provided in article 5 of the 1958 Convention on
4 the High Seas;

5 “(B) a certificate of classification issued by
6 the vessel’s classification society upon comple-
7 tion of relevant classification surveys and valid
8 at the time of the offense; or

9 “(C) government documents evidencing li-
10 censure, regulation, or registration for com-
11 merce, research, or exploration.

12 “(f) FEDERAL ACTIVITIES EXCEPTED.—Nothing in
13 this section applies to lawfully authorized activities carried
14 out by or at the direction of the United States Govern-
15 ment.

16 “(g) APPLICABILITY OF OTHER PROVISIONS.—Sec-
17 tions 70504 and 70505 of title 46 apply to offenses under
18 this section in the same manner as they apply to offenses
19 under section 70503 of such title.

20 “(h) DEFINITIONS.—In this section, the terms ‘sub-
21 mersible vessel’, ‘semi-submersible vessel’, ‘vessel of the
22 United States’, and ‘vessel without nationality’ have the
23 meaning given those terms in section 70502 of title 46.”.

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

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

“2285. Operation of submersible vessel or semi-submersible vessel without na-
 tionality”.

3 **SEC. 103. SENTENCING GUIDELINES.**

4 (a) IN GENERAL.—Pursuant to its authority under
 5 section 994(p) of title 28, United States Code, and in ac-
 6 cordance with this section, the United States Sentencing
 7 Commission shall promulgate sentencing guidelines (in-
 8 cluding policy statements) or amend existing sentencing
 9 guidelines (including policy statements) to provide ade-
 10 quate penalties for persons convicted of knowingly oper-
 11 ating by any means or embarking in any submersible ves-
 12 sel or semi-submersible vessel in violation of section 2285
 13 of title 18, United States Code.

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

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

21 (2) account for any aggravating or mitigating
 22 circumstances that might justify exceptions, includ-
 23 ing—

1 (A) the use of a submersible vessel or
2 semi-submersible vessel described in section
3 2285 of title 18, United States Code, to facili-
4 tate other felonies;

5 (B) the repeated use of a submersible ves-
6 sel or semi-submersible vessel described in sec-
7 tion 2285 of title 18, United States Code, to fa-
8 cilitate other felonies, including whether such
9 use is part of an ongoing criminal organization
10 or enterprise;

11 (C) whether the use of such a vessel in-
12 volves a pattern of continued and flagrant viola-
13 tions of section 2285 of title 18, United States
14 Code;

15 (D) whether the persons operating or em-
16 barking in a submersible vessel or semi-sub-
17 mersible vessel willfully caused, attempted to
18 cause, or permitted the destruction or damage
19 of such vessel or failed to heave to when di-
20 rected by law enforcement officers; and

21 (E) circumstances for which the sentencing
22 guidelines (and policy statements) provide sen-
23 tencing enhancements;

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

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

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

11 TITLE II—CIVIL PROHIBITION

12 **SEC. 201. OPERATION OF SUBMERSIBLE VESSEL OR SEMI-** 13 **SUBMERSIBLE VESSEL WITHOUT NATION-** 14 **ALITY.**

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

17 (1) by inserting “(1)” after “that”; and

18 (2) by striking “States.” and inserting “States
19 and (2) operating or embarking in a submersible
20 vessel or semi-submersible vessel without nationality
21 and on an international voyage is a serious inter-
22 national problem, facilitates transnational crime, in-
23 cluding drug trafficking, and terrorism, and presents
24 a specific threat to the safety of maritime navigation
25 and the security of the United States.”.

1 **SEC. 202. OPERATION PROHIBITED.**

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

5 **“§ 70508. Operation of submersible vessel or semi-**
6 **submersible vessel without nationality**

7 “(a) IN GENERAL.—An individual may not operate
8 by any means or embark in any submersible vessel or
9 semi-submersible vessel that is without nationality and
10 that is navigating or has navigated into, through, or from
11 waters beyond the outer limit of the territorial sea of a
12 single country or a lateral limit of that country’s territorial
13 sea with an adjacent country, with the intent to evade de-
14 tection.

15 “(b) EVIDENCE OF INTENT TO EVADE DETEC-
16 TION.—In any civil enforcement proceeding for a violation
17 of subsection (a), the presence of any of the indicia de-
18 scribed in paragraph (1)(A), (E), (F), or (G), or in para-
19 graph (4), (5), or (6), of section 70507(b) may be consid-
20 ered, in the totality of the circumstances, to be prima facie
21 evidence of intent to evade detection.

22 “(c) DEFENSES.—

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

1 “(A) a vessel of the United States or law-
2 fully registered in a foreign nation as claimed
3 by the master or individual in charge of the ves-
4 sel when requested to make a claim by an offi-
5 cer of the United States authorized to enforce
6 applicable provisions of United States law;

7 “(B) classed by and designed in accord-
8 ance with the rules of a classification society;

9 “(C) lawfully operated in government-regu-
10 lated or licensed activity, including commerce,
11 research, or exploration; or

12 “(D) equipped with and using an operable
13 automatic identification system, vessel moni-
14 toring system, or long range identification and
15 tracking system.

16 “(2) PRODUCTION OF DOCUMENTS.—The de-
17 fenses provided by this subsection are proved conclu-
18 sively by the production of—

19 “(A) government documents evidencing the
20 vessel’s nationality at the time of the offense, as
21 provided in article 5 of the 1958 Convention on
22 the High Seas;

23 “(B) a certificate of classification issued by
24 the vessel’s classification society upon comple-

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

3 “(C) government documents evidencing li-
4 censure, regulation, or registration for research
5 or exploration.

6 “(d) CIVIL PENALTY.—A person violating this sec-
7 tion shall be liable to the United States for a civil penalty
8 of not more than \$1,000,000.”

9 (b) CONFORMING AMENDMENTS.—

10 (1) The chapter analysis for chapter 705 of title
11 46, United States Code, is amended by inserting
12 after the item relating to section 70507 the fol-
13 lowing:

“70508. Operation of submersible vessel or semi-submersible vessel without na-
tionality”.

14 (2) Section 70504(b) of title 46, United States
15 Code, is amended by inserting “or 70508” after
16 “70503”.

17 (3) Section 70505 of title 46, United States
18 Code, is amended by striking “this title” and insert-
19 ing “this title, or against whom a civil enforcement
20 proceeding is brought under section 70508,”.

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

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

1 “(f) SEMI-SUBMERSIBLE VESSEL; SUBMERSIBLE
2 VESSEL.—In this chapter:

3 “(1) SEMI-SUBMERSIBLE VESSEL.—The term
4 ‘semi-submersible vessel’ means any watercraft con-
5 structed or adapted to be capable of operating with
6 most of its hull and bulk under the surface of the
7 water, including both manned and unmanned
8 watercraft.

9 “(2) SUBMERSIBLE VESSEL.—The term ‘sub-
10 mersible vessel’ means a vessel that is capable of op-
11 erating completely below the surface of the water,
12 including both manned and unmanned watercraft.”.

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

Attest:

NANCY ERICKSON,

Secretary.