Calendar No. 402

108TH CONGRESS *1st Session*	SENATE	REPORT 108–202

COAST GUARD REAUTHORIZATION ACT OF 2003

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 733

NOVEMBER 19, 2003.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

29–010 WASHINGTON : 2003

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JOHN MCCAIN, Arizona, *Chairman*

TED STEVENS, Alaska	ERNEST F. HOLLINGS, South Carolina
CONRAD BURNS, Montana	DANIEL K. INOUYE, Hawaii
TRENT LOTT, Mississippi	JOHN D. ROCKEFELLER IV, West Virginia
KAY BAILEY HUTCHISON, Texas	JOHN F. KERRY, Massachusetts
OLYMPIA J. SNOWE, Maine	JOHN B. BREAUX, Louisiana
SAM BROWNBACK, Kansas	BYRON L. DORGAN, North Dakota
GORDON SMITH, Oregon	RON WYDEN, Oregon
PETER G. FITZGERALD, Illinois	BARBARA BOXER, California
JOHN ENSIGN, Nevada	BILL NELSON, Florida
GEORGE ALLEN, Virginia	MARIA CANTWELL, Washington
JOHN E. SUNUNU, New Hampshire	FRANK LAUTENBERG, New Jersey

JEANNE BUMPUS, *Staff Director and General Counsel*
ANN BEGEMAN, *Deputy Staff Director*
ROBERT W. CHAMBERLIN, *Chief Counsel*
KEVIN D. KAYES, *Democratic Staff Director and Chief Counsel*
GREGG ELIAS, *Democratic General Counsel*

(II)

Calendar No. 402

108TH CONGRESS *1st Session* | SENATE | REPORT 108–202

COAST GUARD REAUTHORIZATION ACT OF 2003

NOVEMBER 19, 2003.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, submitted the following

R E P O R T

[To accompany S. 733]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 733) to authorize appropriations for fiscal year 2004 for the United States Coast Guard, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 733, the Coast Guard Authorization Act of 2003, as amended, is to authorize appropriations for Fiscal Year (FY) 2004 and FY 2005 for the United States Coast Guard covering six accounts:

(1) operation and maintenance expenses;
(2) acquisition, construction, and improvement of facilities and equipment (AC&I);
(3) research, development, testing, and evaluation (RDT&E);
(4) retired pay;
(5) environmental compliance and restoration; and
(6) alteration or removal of bridges.

The bill also would authorize end-of-year military strength and training loads and make other changes to existing law to address issues related to the Coast Guard.

BACKGROUND AND NEEDS

The Coast Guard was established on January 28, 1915, as part of the Department of the Treasury, through the consolidation of the Revenue Cutter Service (established in 1790) and the Lifesaving

Service (established in 1848). The Coast Guard later assumed the duties of three other agencies: the Lighthouse Service (established in 1789), the Steamboat Inspection Service (established in 1838), and the Bureau of Navigation (established in 1884).

The Coast Guard remained a part of the Department of the Treasury until 1967, when it was transferred to the newly created Department of Transportation. Under the Homeland Security Act of 2002 (P.L. 107-296), the Coast Guard was transferred to the new Department of Homeland Security on March 1, 2003, whereby under the law, it is to be maintained as a distinct entity within that Department. The Coast Guard provides many critical services for our nation grouped into five fundamental roles: maritime security; maritime safety; maritime mobility; protection of natural resources; and national defense.

The Coast Guard, the Federal government's principal maritime law-enforcement agency, is a branch of the armed forces. As the fifth armed force of the United States, the Coast Guard maintains defense readiness to operate as a specialized service in the Navy upon the declaration of war or when the President directs. The Coast Guard has defended the Nation in every war since 1790. During the recent combat operations in Iraq, the Coast Guard deployed two 378-foot high endurance cutters, one 225-foot ocean going buoy tender, eight 110-foot Island Class patrol boats, and four port security units to the Middle East. This was the first deployment of Coast Guard cutters in support of a wartime contingency since the Vietnam War.

Under title 14, United States Code, the Coast Guard has primary responsibility for enforcing or assisting in the enforcement of all applicable Federal laws on, under, and over the high seas and waters subject to the jurisdiction of the U.S.; to ensure safety of life and property at sea; to protect the marine environment; to carry out domestic and international icebreaking activities; and to ensure the safety and security of vessels, ports, waterways, and related facilities. In carrying out these responsibilities, the Coast Guard activities include maritime security, commercial and recreational vessel safety inspection, the rescue of life and property at sea, fisheries law enforcement, marine environmental protection, and the interdiction of drug traffickers and illegal alien migrants.

The Coast Guard is composed of approximately 38,000 active duty military personnel, 9,000 reservists, 6,400 civilian employees, and 32,000 volunteers of the Coast Guard Auxiliary. In 2002, the Coast Guard responded to over 37,000 calls for assistance, assisted $1.5 billion in property, and saved 3,653 lives. In 2002, the Coast Guard seized 117,780 pounds of cocaine and 40,316 pounds of marijuana. It also stopped 4,140 illegal migrants from reaching our shores. The Coast Guard conducted more than 36,000 port security patrols, boarded over 10,000 vessels, escorted over 6,000 vessels, and maintained more than 115 security zones. It also conducted patrols to protect our fisheries stocks and responded to over 11,000 pollution incidents.

Transfer to the Department of Homeland Security

The Homeland Security Act of 2002 (P.L. 107-296) was signed into law on November 25, 2002, establishing the Department of Homeland Security (DHS) and transferring the Coast Guard from

the Department of Transportation to the new department. This historic law positions the Coast Guard as a cornerstone of the new Department, but also recognizes that the Coast Guard is responsible for many other missions which the American people depend on it to accomplish.

Section 888 of the Homeland Security Act ensures that the Coast Guard's non-homeland security missions will not be compromised or decreased in any substantial way by the transfer of the Coast Guard to the DHS. Section 888 maintains the Coast Guard as a distinct agency under the Secretary of Homeland Security and mandates that the Coast Guard Commandant will directly report to the Secretary, rather than to or through a Deputy Secretary. It ensures that the Coast Guard will continue in its role as one of the five armed services. The Coast Guard plays a unique role in our government, in which it serves as both an armed service as well as a law enforcement agency. The Senate Committee on Commerce, Science, and Transportation (the Committee) believes strongly that the Coast Guard's important role must not be changed or altered.

Section 888 also specifically prevents the Secretary of Homeland Security from making substantial or significant changes to the Coast Guard's non-homeland security missions or its capabilities to carry out these missions. It also prohibits the Secretary from transferring any Coast Guard personnel or assets to another agency except for personnel details and assignments that do not reduce its capability to perform its non-homeland security missions. Section 888 also requires the new Department's Inspector General to annually audit the Coast Guard's performance of its non-homeland security missions and report its findings to the Congress.

Mission Balance

In November 2002, the General Accounting Office (GAO) released its report, "*Coast Guard: Strategy Needed for Setting and Monitoring Levels of Effort for All Missions*", which was requested by the Chair and Ranking Member of the Subcommittee on Oceans, Fisheries, and Coast Guard. In this report, the GAO found a dramatic shift in the levels of effort for the Coast Guard's various missions immediately after the September 11, 2001, terrorist attacks. As expected, the Coast Guard's levels of effort related to homeland security were at much higher levels than before September 11th. Other missions, such as search and rescue, after initially decreasing, returned to their historical levels. In contrast, several other missions, most notably fisheries enforcement and drug interdiction, dropped sharply after September 11th and continued to be conducted with fewer resource hours than historical levels.

The GAO updated this report in its testimony during the subcommittee's March 27, 2003, hearing on the Coast Guard FY 2004 budget request. In its testimony, entitled "*Coast Guard: Comprehensive Blueprint Needed to Balance and Monitor Resource Use and Measure Performance for All Missions*", the GAO found the search and rescue and aids to navigation missions were being conducted at their pre-September 11th levels. By contrast, fisheries enforcement and drug interdiction operations continued to be conducted substantially below their historical levels. The GAO found that compared with the first quarter of 1998, the resource hours for drug interdiction and fisheries enforcement for the first quarter of

FY 2003 represented declines of 60 and 38 percent respectively. While some of these declines can be attributed to the increased terrorist alerts over the past year, they demonstrate that these two missions are conducted less frequently as a result of the Coast Guard's increased homeland security role.

The GAO has testified that the Coast Guard's continued homeland security and military demands will make it unlikely that, in the short run, it will be able to increase its efforts in the missions that have declined. The Committee has requested the GAO continue to monitor the Coast Guard's mission performance and awaits the Coast Guard's strategic plan required by Section 348 of the Maritime Transportation Security Act of 2002.

Integrated Deepwater System

The Committee is concerned that the Coast Guard is an agency conducting 21st century operations with 20th century technology. To accomplish its many vital missions, the Coast Guard needs to recapitalize its offshore fleet of cutters and aircraft. The Coast Guard operates the third oldest of the world's 41 comparable naval fleets with several cutters dating back to World War II. These platforms are technologically obsolete, require excessive maintenance, lack essential speed, and have poor interoperability, which in turn, limit their overall mission effectiveness and efficiency. Compounding the problem is the fact that they are reaching the end of their serviceable life just as the Coast Guard needs them the most.

The Committee is concerned by the Coast Guard's funding shortfalls in its deepwater procurement in its first two years. Furthermore, some Committee members are particularly concerned with the project's lengthy timeline. This project was conceived as an approximately 20-year, $10 billion acquisition program to recapitalize its fleet of offshore cutters and aircraft. While this program was developed prior to September 11, 2001, it is needed now more than ever to enable the Coast Guard to carry out all of its many important missions.

The September 11, 2001, attacks decidedly changed the Coast Guard's priorities and clearly increased its scope of activities. Understandably, homeland security has taken a higher priority, but this has come at the expense of many of the Coast Guard's other missions. The Coast Guard's significant budget increases in recent years stand in stark contrast to the Deepwater program's current funding shortfalls. The original Deepwater plan was predicated on a solid annual stream of $500 million in FY 1998 dollars for the life of the plan. Consequently, the project must receive funding increases each year commensurate with the rate of inflation to remain on target.

The Consolidated Appropriations Resolution of 2003 (P.L. 108-7) provided $478 million for the Deepwater program, which was less than the $500 million requested by the Administration and the $540 million called for in the Deepwater plan, adjusted for inflation. The Administration's FY 2004 budget request again proposed $500 million for the Deepwater program, but not the almost $550 million needed to account for inflation. If this funding disparity continues, the Deepwater project time line would likely be extended beyond 20 years to 30 or more years.

Including project management costs, the GAO estimated during its testimony before the Subcommittee on Oceans, Fisheries, and Coast Guard on March, 27, 2003, that if the Administration's FY 2004 request were enacted, the cumulative shortfall will be $202 million. The Committee believes these funding shortfalls will likely prevent the Coast Guard from effectively accomplishing all of its missions and it will take longer and cost more in the long run to fully implement the Deepwater program.

The GAO testified that the Deepwater program's growing funding shortfalls "could jeopardize the Coast Guard's future ability to effectively and efficiently carry out its missions, and its law enforcement activities—that is, drug and migrant interdiction and fisheries enforcement—would likely be affected the most, since they involve extensive use of Deepwater cutters and aircraft."

The Committee is strongly concerned that these funding shortfalls will prevent the Coast Guard from restoring operation in support of all its mission to their pre-September 11, 2001, levels. It strongly believes the Coast Guard should be provided with the tools it needs to carry out its homeland security responsibilities as well as its many other important traditional missions. Accordingly, this bill, as reported, would authorize $702 million for the Deepwater project for FY 2004—$202 million more than the President's request.

The first contract implementing the Deepwater project was awarded on June 25, 2002. This contract is for a five year term, and can be extended for five additional five-year terms. In the fourth year of the contract, the Coast Guard will make an award term decision, based on the performance of the contractor, as to whether to extend the contract.

The Deepwater project is the single largest procurement program that the Coast Guard has managed to date. A GAO analysis of the Deepwater project published in May 2001 entitled, "*Coast Guard: Progress Being Made on Deepwater Project, but Risks Remain*", highlighted risks with the project, including concerns with the Coast Guard's ability to control costs by ensuring competition among subcontractors, and the Coast Guard's ability to effectively manage and oversee the acquisition phase of the project. The GAO is continuing to examine how well the Coast Guard has implemented measures to ensure the success of the project. S.733 also would require a report from the Coast Guard which would include an analysis of the prime contractor's performance in meeting the two key goals of providing operational effectiveness and minimizing total ownership costs.

Section 888(i) of the Homeland Security Act of 2003 required the Secretary of Homeland Security to submit a report to Congress within 90 days of enactment analyzing the feasibility of accelerating the rate of procurement in the Coast Guard's Integrated Deepwater System from 20 years to 10 years. In March 2003, the Coast Guard released the required report, entitled "*Report to Congress on the Feasibility of Accelerating the Integrated Deepwater System*." This report found that the 10-year acceleration time-line would be feasible, would save an additional $4 billion (29 percent) in acquisition costs as compared to the 20-year plan, would provide significantly increased operational capability sooner, and would provide approximately 943,000 additional (and more capable) mis-

sion hours over the current 20-year plan. The report states that these additional capabilities and efficiencies would enable the Coast Guard to better conduct its maritime homeland security responsibilities as well as its many other traditional missions. According to the report, to accelerate the Deepwater program, the Coast Guard would need an estimated $4 billion in acquisition funding sooner, but this would be offset by the overall $4 billion savings which would be realized by compressing the timeline. To date there has been no independent review of this report.

Rescue 21

Rescue 21 is the Coast Guard's project to modernize its National Distress and Response System (NDRS) which is a significant component of Coast Guard's search and rescue program, and serves as its primary short-range communications network. This project was formerly known as the National Distress and Response System Modernization Project (NDRSMP), but was renamed Rescue 21 in 2002 after the primary contractor was selected. Congress has directed the Coast Guard to complete this project by the end of FY 2006. The reported bill would authorize $134 million for FY 2004 for Rescue 21 as requested by the Administration.

The existing NDRS was established in the 1970s and is antiquated, expensive to maintain, difficult to upgrade, and no longer supports the Coast Guard's needs. System deficiencies include communication coverage gaps and limited direction finding capabilities, which complicate the Coast Guard's ability to effectively and efficiently perform search and rescue missions and identify hoax calls. There are currently at least 88 major communication coverage gaps where Coast Guard cannot hear calls from mariners in distress. Totaling about 21,500 square nautical miles, these communication coverage gaps represent 14 percent of the total NDRS coverage area and range in size from 6 to more than 1,600 square nautical miles.

Administration's Proposed Bill

In its FY 2004 budget proposal, the Administration requested approximately $6.655 billion in funding for the Coast Guard. In addition, the Administration requested an FY 2004 end-of-year strength of 45,500 for its active duty military personnel. On March 27, 2003, the Subcommittee on Oceans, Fisheries, and Coast Guard held a hearing on the Coast Guard's FY 2004 budget request and heard testimony from Admiral Thomas Collins, Commandant of the Coast Guard, and Mrs. JayEtta Hecker, Director of the GAO Physical Infrastructure Team. The Coast Guard budget accounts that would be authorized in S. 733 are included in the summary of the Administration's proposal below.

- OPERATING EXPENSES (OE).

  The Coast Guard consumes over two-thirds of its total budget conducting operations in support of its primary mission areas: protecting public safety and the marine environment; safeguarding our ports, waterways, and coastal areas; enforcing laws and treaties, including preventing illegal drug trafficking, interdicting illegal aliens, and enforcing fisheries laws; maintaining aids to navigation; and preserving defense readiness. For FY 2004, the Administration requested $4.707 bil-

lion, an increase of approximately $185 million above the FY 2003 appropriated level (including the supplemental bills). The request assumes that $25 million would be transferred from the Oil Spill Liability Trust Fund to the operating expenses account. S. 733, as reported, would authorize $4.913 billion for this account.

- ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS (AC&I).

  AC&I funds are used to pay for major capital improvements, including vessel and aircraft acquisition and rehabilitation, information management, and construction programs at selected facilities. Major AC&I projects include replacement of seagoing buoy tenders and coastal patrol boats; recapitalizing the NDRS; aircraft sensor, avionics, and engine upgrades; the Integrated Deepwater System project; and various communications and computer software systems. For FY 2004, the Administration requested $775 million; of that amount $500 million would fund the Integrated Deepwater System and $134 million would fund Rescue 21. The AC&I request assumes that $20 million would be transferred from the Oil Spill Liability Trust Fund to the AC&I account. S. 733, as reported, would authorize $1.017 billion for this account.

- RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (RDT&E).

  Funds from this account are used to develop hardware, procedures, and systems that directly contribute to increasing the productivity of Coast Guard operating and regulatory programs. The Administration requested $22 million for this account for FY 2004. The request assumes that $3.5 million would be transferred from the Oil Spill Liability Trust Fund to this account. S. 733, as reported, would authorize $22 million for this account.

- RETIRED PAY.

  Funds from this account are used for retired pay, annuities, and medical care for retired Coast Guard military personnel and former Lighthouse Service members, their dependents, and their survivors under chapter 55 of title 10, United States Code. The Administration requested $1.02 billion for this account for FY 2004. S. 733, as reported, would authorize $1.02 billion for this account.

- ALTERATION OF BRIDGES.

  Under the Truman-Hobbs Act, the Federal government shares with the States the cost of altering publicly-owned highway and railroad bridges that obstruct the free movement of marine traffic. The Administration did not request any funding for FY 2004 to carry out Truman-Hobbs Act projects. S. 733, as reported, would authorize $18.5 million for this account.

- ENVIRONMENTAL COMPLIANCE AND RESTORATION.

  This account provides resources to bring current and former Coast Guard facilities into compliance with national environmental standards. The Administration requested $17 million for FY 2004, a slight increase above the FY 2003 appropriated level of $16.89 million. S. 733, as reported, would authorize $17 million for this account.

The Administration's proposed bill would authorize the Coast Guard's active duty military personnel end-of-year strength as well as its average military training student loads. S. 733, as reported,

would authorize the Coast Guard's levels of military strength and training for FY 2004, as requested, with the exception of professional training.

Finally, the Administration's proposed authorization bill suggests various changes to existing law to address issues and problems identified by the Coast Guard. These proposals include provisions to seek efficiencies in Coast Guard operations and parity with Department of Defense (DOD) personnel laws and regulations. S. 733, as reported, would address some of these issues.

SUMMARY OF PROVISIONS

The Maritime Transportation Security Act of 2002 (P.L. 107-295) authorized appropriations and levels of military strength and training for the Coast Guard for FY 2003. S. 733 would authorize appropriations and levels of military strength and training for the Coast Guard for FYs 2004 and 2005 and make other changes to existing law to address issues related to the Coast Guard.

TITLE I—AUTHORIZATION

S. 733, as reported, would authorize appropriations for the Coast Guard accounts covered in the bill totaling $7.032 billion for FY 2004 and such sums as may be necessary for FY 2005. Appropriations for FY 2004 would be authorized at the levels equal to or greater than the Administration's request.

For operating expenses, $4,913,000,000 would be authorized. Of this amount, $70,000,000 would be authorized for the analysis of port security plans, required pursuant to the Maritime Transportation Security Act of 2002; $100,000,000 would be authorized to address the Coast Guard's increased operating expenses due to homeland security alerts; and $36,000,000 would be authorized for commissioning three additional Marine Safety and Security Teams.

Within the AC&I account, the Committee is supportive of the Coast Guard's need to upgrade its Deepwater assets. As discussed previously, this multi-year effort to recapitalize the service's offshore surface fleet, aviation assets, and command and control system is critical to the long-term viability of Coast Guard operations in offshore waters. With an aging fleet of cutters and aircraft, maintenance and personnel costs will rise dramatically unless the fleets are replaced. Further, the multi-mission nature of the Coast Guard requires a modern and flexible fleet that will continue operating as a unique element in national security efforts. The reported bill would authorize $702 million for this program for FY 2004.

The Committee is also very supportive of the need to modernize the NDRS through the Coast Guard's Rescue 21 procurement project. This system is crucial for the Coast Guard to improve its capabilities to respond to and aid mariners in distress. The reported bill would authorize $134 million for FY 2004.

The reported bill also would authorize $40 million for FY 2004 for the Automatic Information System (AIS) mandated by the Maritime Transportation Security Act of 2002.

The reported bill would authorize an end-of-year active duty military strength level of 45,500 for FY 2004 as requested by the Administration. Additionally, as the Coast Guard continues to expand to meet its homeland security missions while continuing to perform its traditional missions, it needs to increase its authorized per-

sonnel training levels. As such, the Annual Training Student Levels would be authorized as requested by the Administration.

TITLE II—COAST GUARD PERSONNEL, FINANCIAL, AND PROPERTY MANAGEMENT

The reported bill would authorize several measures to improve the Coast Guard's ability to recruit, reward, and retain high-quality personnel; ensure parity with similar DOD provisions; and make several technical changes to the statutes pertaining to the Coast Guard Auxiliary.

The reported bill contains a provision which would allow the Coast Guard to offer an incentive bonus to encourage already enlisted members to enter certain critical skill specialties. This authority would assist the Coast Guard in filling its shortages of enlisted members on active duty in certain critical skill ratings, such as Electricians Mate, Electronics Technician, Food Service Specialist, Machinery Technician, Operations Specialist, and Storekeeper.

This bill would provide parity with the DOD in several ways. It would permit an increase in the percentage of Coast Guard Commanders and Lieutenant Commanders to an average percentage level comparable to those authorized for the other armed services; provide a comparable expansion of Coast Guard Housing Authorities; change the mandatory retirement age for Coast Guard reserve officers from 62 to 60; authorize terms of enlistment for other than full years; permit Coast Guard and other Federal agencies to purchase goods and services from the Coast Guard Exchange System and utilize other Morale, Welfare, and Recreation (MWR) activities; authorize the Coast Guard to disburse travel reimbursement directly to the issuer of a contractor-issued travel charge card; and provide children of Coast Guard members the same access as children of DOD members to DOD child care facilities.

Under current law, it is unclear whether unincorporated elements of the Coast Guard Auxiliary may own property. The reported bill would amend section 821 of title 14 to clarify that Auxiliary elements and units may own personal property in order to carry out the purpose of the Auxiliary as set forth in section 822 of title 14.

When the Auxiliary statutes were overhauled in 1996, organization elements of the Auxiliary were statutorily deemed "instrumentalities of the U.S." for tort liability purposes only, if unincorporated. The statutes are silent as to the status of the Auxiliary itself, and its various organizational elements with regard to Federal and State income, property, sales, or other taxation. Organizational elements of the Auxiliary (districts, regions, divisions, flotillas, etc.) are increasingly receiving donations of property - vessels, trailers, fax machines, real property, etc. In some cases, the elements are incorporated. In others, they are unincorporated. The Coast Guard is concerned about the liability of individual members (whether or not a given unit is incorporated) that could arise if Auxiliary unit-owned personal property were to cause personal injury or property damage while being available for Auxiliary use, but not actually in use. An example would be a stored vessel owned by a flotilla that catches fire and damages other vessels located nearby. This section would provide that real and personal property

owned by a unit of the Auxiliary shall be considered Federal property for liability purposes at all times unless the property is being used outside the scope of the Auxiliary mission under section 822 of title 14.

Section 205 would amend section 821 of title 14 to clarify the tax exempt status of the Coast Guard Auxiliary elements and units with respect to Federal and State income, property, sales, and other taxation. It provides that organizational elements and units of the Auxiliary "shall be deemed to be instrumentalities and political subdivisions of the United States for taxation purposes and for those exemptions as provided under section 107 of title 4, United States Code." Such a provision allows donations to the Auxiliary to be deductible, and provides a basis for exempting Auxiliary units from having to pay State property taxes on the real and personal property they own, and levy and remit State sales tax for any goods and services that they may sell. This is consistent with an Internal Revenue Service (IRS) determination that the "Coast Guard Auxiliary" is tax-exempt.

TITLE III—LAW ENFORCEMENT, MARINE SAFETY, AND ENVIRONMENTAL PROTECTION

The reported bill would include technical corrections to the Coast Guard's suspension and revocation and law enforcement authorities, align the release of merchant mariners documents with the Privacy Act and the Freedom of Information Act (FOIA), exempt unmanned barges on foreign voyages from the requirement to be under the control of a U.S. citizen crewmember, and authorize the Coast Guard to enter into partnerships and cooperative ventures with non-Federal entities in carrying out its Ports and Waterways Safety Act vessel operating requirements. Additional provisions would authorize the Secretary to prohibit the use on vessels of certain electric and electronic devices that interfere with communications or navigation equipment, increase the civil penalties for failure to comply with recreational vessel and associated equipment safety standards, and increase the penalties for violations of bridge statutes. It also would include a number of provisions with respect to implementation of the Oil Pollution Act of 1990, including a provision that would provide loans to fisherman impacted by oil spills. It also would require the Coast Guard and NOAA to work more closely together in enforcing fisheries laws.

Section 312 of the reported bill would eliminate the requirement to fire a warning shot prior to using disabling fire when use of a warning shot is not practical. Under 14 U.S.C. 89, the Coast Guard is authorized to board, examine, and search vessels to detect violations of U.S. law. It may use "all necessary force to compel compliance", including the use of disabling fire to stop a vessel that refuses to comply with a lawful order to stop. 14 U.S.C. 637 indemnifies government personnel operating from Coast Guard vessels or aircraft, and Naval vessels to which Coast Guard members are assigned from damages resulting from the use of disabling fire. However, the indemnity applies only if a warning shot is given prior to the use of disabling fire. In some instances, it may be dangerous or impracticable to fire warning shots. Warning shots are generally fired near, but not at, a non-compliant vessel, which may pose a risk to others if used in congested waters or near shore. Disabling

fire is specifically targeted at a particular vessel so it presents minimal risks to others. This section also would renew the application of this provision to other military aircraft to which one or more Coast Guard members are assigned.

The reported bill would remove the Inland Navigation Rules from 33 U.S.C. 2001 and codify them in title 33 of the Code of Federal Regulations. This change would streamline the process for allowing changes to the Inland Navigation Rules, and allow them to enter into force on the same day as changes to the International Rules for Preventing Collisions at Sea.

Section 317 of the reported bill would add a definition for non-tank vessels and amend section 4202(a)(6) of the Oil Pollution Act of 1990 (33 U.S.C. 1321(j)) to allow the Coast Guard to issue regulations requiring non-tank vessels of 400 gross tons and greater that carry oil as fuel for main propulsion to prepare vessel response plans that are the same as the vessel response plans currently required under the Oil Pollution Act of 1990 (OPA 90) for tank vessels that carry oil in bulk as cargo. Coast Guard data indicate that since enactment of OPA 90, some of the reduction in the quantity and impact of oil spilled can be directly attributed to increased preparedness fostered by the Vessel Response Plan regulations. Spill data also indicate that the volume of oil spilled from non-tank vessels was higher in 1997 and 1998 than the volume spilled from tank vessels in each of those years.

Section 319 would require the Coast Guard to provide a report to Congress concerning a number of recent issues pertaining OPA 90. In particular, the Committee is concerned that the Oil Spill Liability Trust Fund has, for the first time in history, declined below $1 billion, and is predicted to continue to decline. The report is expected to analyze this situation, and also will examine the impacts of accelerating the phase out of single hull tank vessels from 2015 to 2010.

The Committee is also concerned that fishermen and aquaculture producers who are impacted by oil spills often have to wait long periods of time for financial assistance under the claim procedures of OPA 90. Section 320 would authorize interim assistance to impacted fishermen and aquaculture producers through loans from the Oil Spill Liability Trust Fund.

As the GAO testimony indicates, the level of effort for fisheries enforcement continues to be lower than their pre-September 11, 2001, levels. This continues to be an issue of concern to the Committee. Other entities, including the National Oceanic and Atmospheric Administration (NOAA) and State and local officials, also have a role in fisheries enforcement. Section 321 would require the Coast Guard and NOAA to improve their consultations with each other and with State and local authorities in coordinating the enforcement of fisheries laws.

Section 322 would require the Coast Guard to provide a report on the performance of the prime contractor under the first five-year term of the contract for the Integrated Deepwater Program. Given that the Deepwater project is the Coast Guard's single largest procurement program to date, the Coast Guard is facing numerous challenges in effectively managing a program of this size.

Section 323 would require the Secretary of Homeland Security to report to Congress regarding the enforcement efforts and the over-

all degree of compliance regarding the 1996 amendments to the Small Passenger Vessel Regulations (title 46, Code 22 of Federal Regulations, part 185) that established these safety requirements. Some Committee members are concerned about the tragic capsizing of the charter boat, TAKI-TOOO, off the Oregon coast on June 14, 2003, in which nine people are known to have died and two more are missing. The TAKI-TOOO was a commercial small passenger vessel, subject to Coast Guard inspection, and was required to have a licensed master. The Coast Guard currently has regulations requiring masters of commercial small passenger vessels to have their passengers don their life jackets in potentially hazardous conditions. These regulations specifically include transiting hazardous bars or inlets.

TITLE IV—MISCELLANEOUS

The reported bill would provide several provisions related to lighthouse and decommissioned cutter conveyances, the LORAN-C radio navigation system, and other miscellaneous provisions.

The reported bill would require the Secretary of the Interior to monitor any already executed or proposed lighthouse conveyance and take any steps necessary to protect the U.S.'s reversionary interest. Over the years, the Federal government has transferred numerous lighthouses to non-profit groups across the country and the Committee believes the government needs to ensure that these groups continue to be responsible stewards of these historic landmarks. Unfortunately, the Committee has learned of lighthouses which have been allowed to deteriorate and others that have been offered for sale as private residences. This provision will ensure that these national treasures are protected and will allow the Secretary of Interior to monitor future lighthouse conveyances and ensure that they meet all of the conditions of the original transfers.

The reported bill would authorize the Secretary of Transportation to transfer $25 million in FY 2004 from the Federal Aviation Administration to the Coast Guard. This funding is intended to recapitalize the aging LORAN-C radio navigation system. The LORAN-C system remains the primary navigation tool for many vessels and general aviation aircraft, and a viable back-up system for some military aircraft. It is critical to maritime traffic and should be available for future use.

The reported bill would designate a cove lying off the southern coast of Erlington Island in Alaska as "Koss Cove", in honor of the late Able Bodied Seaman Eric Steiner Koss. Seaman Koss served aboard the NOAA vessel Rainer, and died in the performance of a nautical charting mission in this cove.

The Committee is aware of the Coast Guard's interest in considering composite material construction for Integrated Deepwater Systems Project vessels. The Committee encourages the Coast Guard to work with the Office of Naval Research (ONR) to maximize the benefits to the Deepwater program of ONR's research on composite material ship construction.

LEGISLATIVE HISTORY

S. 733 was introduced on March 27, 2003, by Senator Snowe and referred to the Senate Committee on Commerce, Science, and Transportation. On July 31, 2003, the bill was considered by the

Committee in an open executive session. Senators Snowe, Kerry, Hollings, Breaux, and Smith offered an amendment in the nature of a substitute. The Committee, without objection, ordered S. 733 to be reported with the amendment.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 26, 2003.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 733, the Coast Guard Authorization Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 733—Coast Guard Authorization Act of 2003

Summary: S. 733 would authorize appropriations for U.S. Coast Guard (USCG) activities for fiscal years 2004 and 2005. CBO estimates that appropriation of the authorized amounts would cost $4.1 billion in fiscal year 2004 and $11.8 billion over the 2004–2008 period. (About $0.3 billion would be spent after 2008.) We estimate that enacting S. 733 also would increase outlays from previously appropriated funds for bridge alterations by $2 million for each of fiscal years 2004 and 2005. This increase would be considered a change in direct spending. Finally, enacting the legislation could increase revenues from civil penalties, but CBO estimates that any increase be less than $500,000 a year.

For fiscal year 2004, S. 733 would authorize the appropriation of about $6 billion for USCG operating expenses, capital projects, and research. Of this amount, $48.5 million would be derived from the Oil Spill Liability Trust Fund (OSLTF). The bill also would authorize the appropriation of $1 billion for Coast Guard retirement benefits for that year. For fiscal year 2005, the bill would authorize the appropriation of whatever amounts are necessary for these purposes. Finally, S. 733 would authorize the appropriation of $25 million to the Department of Transportation (DOT) in 2004 to reimburse the Coast Guard for operating the LORAN–C navigation system.

S. 733 contains an intergovernmental mandate and several private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost of the intergovernmental mandate and the total costs of the private-sector mandates would

not exceed the annual thresholds established by UMRA ($59 million in 2003 for intergovernmental mandates, adjusted annually for inflation; and $117 million in 2003 for private-sector mandates, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary effects of S. 733 are summarized in the following table. The costs of this legislation fall within budget functions 300 (natural resources and environment) and 400 (transportation).

	By fiscal year, in millions of dollars—					
	2003	2004	2005	2006	2007	2008
USCG spending under current law:						
Authorization level [1]	5,702	29	29	0	0	0
Estimated outlays	5,207	1,068	300	75	12	1
Proposed changes:						
Authorization level	0	5,984	6,120	0	0	0
Estimated outlays	0	4,149	5,293	1,480	586	289
USCG spending under S. 733:						
Authorization level [1]	5,702	6,013	6,149	0	0	0
Estimated outlays	5,207	5,217	5,593	1,555	598	290
CHANGES IN DIRECT SPENDING [2]						
Estimated budget authority	0	0	0	0	0	0
Estimated outlays	0	2	2	0	0	0

[1] The 2003 level is the amount appropriated for that year for USCG activities, reduced by across-the-board reductions and by a $17 million rescission in Capital Acquisition funds. The amount includes $400 million of Iraqi Freedom funds recently allocated to the Coast Guard from the Department of Defense and $25 million appropriated to DOT and transferred to the USCG for LORAN–C expenses. The existing authorization level of $29 million in 2004 and in 2005 is the amount already authorized to be appropriated from the OSLTF for USCG operating expenses and research.

[2] S. 733 also could affect revenues (from civil penalties), but CBO estimates that any such effects are likely to be insignificant.

Basis of estimate: For this estimate, CBO assumes that S. 733 will be enacted in the fall of 2003 and that the amounts authorized or estimated to be necessary will be appropriated for fiscal years 2004 and 2005, respectively. Estimated outlays are based on historical spending patterns for similar or existing programs.

Amounts authorized by the bill for Coast Guard retirement are not included in the table because such pay is an entitlement under current law and is not subject to appropriation.

Spending subject to appropriation

The authorization level for 2004 is the amount stated in the bill for USCG discretionary accounts, excluding $28.5 million of the $48.5 million to be derived from the OSLTF. (This amount, which consists of $25 million for the agency's operations and $3.5 million for research, is not a change in the agency's authorization level because such funding is already authorized under existing law). For 2005, CBO estimated the necessary authorization level for the USCG based on the proposed 2004 funding level, adjusted for anticipated inflation and assuming the same amount of contributions from the OSLTF as assumed for 2004.

Under the bill, the $25 million authorized to be appropriated to DOT for 2004 is included in this estimate as a proposed change to USCG discretionary spending. DOT would use most of this funding to reimburse the Coast Guard for the LORAN–C navigation services that the USCG provides to the Federal Aviation Administration and other transportation agencies. The Coast Guard operates the LORAN–C system using a combination of direct appropriations and reimbursements from funds appropriated to other agencies.

(No funding for this purpose would be authorized by the bill for 2005.)

Section 320 of the bill would direct the Coast Guard to make direct loans from the OSLTF to fishing and aquaculture businesses that have been harmed by oil spills but have not yet been compensated by the parties responsible for such spills. Based on historical experience involving oil spills that have affected such businesses and because of the small size and number of direct loans that are likely to be made, CBO estimates that implementing this section would cost less than $500,000 annually for direct loan subsidy costs under credit reform procedures.

Direct spending

Section 203 would authorize the Coast Guard to use certain previously appropriated funds to finance alterations to bridges that obstruct navigation, as authorized under the Truman-Hobbs Act. This provision would authorize the agency to reprogram unspent funds remaining from completed bridge alteration projects. Based on information provided by the Coast Guard, CBO estimates that this new authority would increase outlays by $4 million over the next two years. Because the agency could spend the previously appropriated funds (which CBO estimates would not have been spent otherwise) without further Congressional action, this would be considered an increase in direct spending.

Changes to Coast Guard housing authorities

S. 733 would expand the Coast Guard's authority to finance the construction of military housing. CBO expects that enacting this section is unlikely to have a significant effect on the federal budget.

Under current law, the Coast Guard is authorized to use loan guarantees, barter arrangements, long-term leases, limited partnerships, and similar means to finance housing projects. Current law authorizes the appropriation of $40 million to the Coast Guard for housing projects and mandates that the total value of all federal obligations entered into for such projects may not exceed $40 million. That authority expires at the end of fiscal year 2007. To date, the agency has not initiated any housing projects under this authority.

The bill would amend current law to allow the USCG to provide direct loans to eligible parties for housing projects and to enable the agency to enter into housing partnerships with state or local governments. CBO does not expect that these changes would alter the timing or level of the costs of the USGS housing program. We expect that the authority to make direct loans probably would be no more or less useful to the Coast Guard than the financing tools it already has (but has not used) and is no more likely to be exercised. Further, the ability to directly negotiate partnerships with state and local governments is likely to be of use only in very limited situations involving leasing of state or local land. Because of the relatively small scale of Coast Guard housing projects, using the new authority provided under the bill to obtain state or local bond financing may not be possible or particularly beneficial. Financing of this type is likely to be useful only in localities where it may be possible to participate in larger Department of Defense (DoD) projects, but the Coast Guard's legal authority to cooperate

with DoD in this or any other types of joint financing is uncertain and would not be clarified or otherwise affected by the enactment of S. 733.

Revenues

S. 733 would set greater maximum civil penalties for violations of various statutes enforced by the Coast Guard. Such penalties are recorded in the budget as revenues. CBO estimates that imposing the higher penalties would increase federal revenues by less than $500,000 annually.

Estimated impact on state, local, and tribal governments: Section 205 would expand the U.S. Coast Guard Auxiliary's status as an instrumentality of the United States to all of its activities, not just those in direct support of the Coast Guard. This designation would expand the Auxiliary's exemption from taxation to certain sales, purchases, and inventories. Such an extension expands an existing preemption and would therefore be an intergovernmental mandate as defined in UMRA. The direct costs of the mandate would be the revenue loss incurred by the few states (about five) that currently collect sales taxes from the Auxiliary. CBO estimates that those losses would be minimal and would not exceed the annual threshold established by UMRA ($59 million in 2003, adjusted annually for inflation).

Estimated impact on the private sector: S. 733 would impose private-sector mandates as defined in UMRA. Based on information from government and industry sources, CBO estimates that the total cost of those mandates would fall below the annual threshold for private-sector mandates established by UMRA ($117 million in 2003, adjusted annually for inflation).

Section 302 would authorize the Coast Guard to prohibit the use of electronic or other devices on the bridge of a vessel that interfere with communications and navigation equipment. Currently, the Coast Guard, under certain circumstances, can establish vessel operating conditions as it determines necessary for the control of the vessel and safety of the port or the marine environment. Section 302 would expand and clarify this authority. According to the Coast Guard, the authority would continue to be used under the same circumstances and only with certain electronic devices. CBO estimates that the incremental costs to the private sector of complying with the mandate would be minimal.

Section 303 would require entities that charter documented vessels engaged in coastwise commercial trade and fishing to submit reports to the Coast Guard regarding the qualifications of their vessels to engage in such activities. According to the agency, those entities would be required to submit their operating documents to comply with the mandate. Because such entities already have their documentation available, the cost to submit the information would be minimal.

Section 317 would impose a private-sector mandate on owners and operators of nontank vessels by requiring them to prepare and submit to the President a plan for responding to a worst-case discharge, and to a substantial threat of such discharge, of oil or a hazardous substance. Nontank vessels are defined in the bill as self-propelled vessels of 400 gross tons or greater, other than tank vessels, which carry oil of any kind as fuel for main propulsion and

are vessels of the United States. Currently, the International Maritime Organization (IMO) requires all vessels engaged in international shipping and transportation to have shipboard oil pollution emergency plans. According to the Coast Guard, the proposed requirement under the bill would parallel the IMO-required plans. According to industry sources, developing an oil spill response plan costs, on average, $1,000. Currently, there are no data on the number of U.S. nontank vessels which would be required to develop the oil response plans. However, according to the Coast Guard, no more than 40,000 of the nontank vessels exist worldwide. Thus, the incremental cost for owners and operators of U.S. nontank vessels to comply with the oil response plan requirement would fall well below the statutory threshold.

Section 317 also would impose a private-sector mandate on owners and operators of tank vessels and facilities by requiring them to prepare and submit to the federal government a plan for responding to a worst-case discharge, and to a substantial threat of such discharge, of a noxious liquid substance. According to the Coast Guard, approximately 2,900 tank vessels and facilities would be affected by the mandate. Tank vessels and facilities are currently required to comply with hazardous substance response planning under the Oil Pollution Act of 1990. The response plans for noxious liquid substances would be substantially similar to the response plans that are currently required for oil under that act. Thus, CBO estimates that the cost for the owners and operators to comply with the mandate would be small.

Previous CBO estimate: On July 22, 2003, CBO submitted a cost estimate for H.R. 2443, the Coast Guard Authorization Act of 2003, as ordered reported by the House Committee on Transportation and Infrastructure on June 25, 2003. The two bills contain different authorization levels and authorization periods, different provisions affecting direct spending, and different intergovernmental and private-sector mandates.

Estimate prepared by: Federal Costs: Deborah Reis. Impact on State, Local, and Tribal Governments: Gregory Waring. Impact on the Private Sector: Cecil McPherson.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 733 as reported would authorize appropriations to continue existing Coast Guard programs through FY 2005 and make a number of changes to current law. The bill should have little, if any, regulatory impact, but a few of the bill's sections could impact some individuals and businesses, and the effects of these sections are discussed in the paragraphs below.

ECONOMIC IMPACT

S. 733 overall should have little economic impact, but the following sections could have a limited economic impact. Section 302 would authorize the Coast Guard to prohibit the use of electronic or other devices on the bridge of a vessel that interferes with communication and navigation equipment.

Section 310 would increase the maximum civil administrative penalty for violations related to the wrongful manufacture, sale or labeling, and failure to notify of a recall regarding a recreational boat from $2,000 to a maximum of $5,000, and increases the maximum penalty for a related series of violations from $100,000 to $250,000.

Section 315 would give the Secretary authority to prohibit departure of a foreign passenger vessel carrying U.S. passengers from a U.S. port if the vessel does not comply with Safety of Life at Sea (SOLAS) standards.

Section 316 would require foreign flagged vessels on "voyages to nowhere" to comply with the International Safety Management Code (ISM). It would amend section 3201 of title 46 to require foreign flagged vessels departing and returning to the same U.S. port, or returning to another port under the jurisdiction of the U.S., to comply with the ISM when any part of the voyage occurs on the high seas.

PRIVACY

The reported bill would have little, if any, impact on the personal privacy of U.S. citizens. Section 307 would align the record protection and release policies applicable to merchant mariners' documents with those of the Privacy Act and Freedom of Information Act (FOIA).

PAPERWORK

The reported bill should not significantly increase paperwork requirements for individuals and businesses.

Section 303 would require entities that charter documented vessels engaged in coastwise commercial trade and fishing to submit reports to the Coast Guard regarding the qualifications of their vessels to engage in such activities.

Section 317 would require owners and operators of non-tank vessels greater than 400 gross tons to prepare and submit to the Coast Guard a plan for responding to a worst-case discharge oil or another hazardous substance. This section also would include the list of Noxious Liquid Substances (NLSs) under the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the protocol of 1978 (MARPOL 73/78), within the group of hazardous substances for which the Coast Guard may require response plans.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This section states that the Act may be cited as the "Coast Guard Authorization Act of 2003".

Sec. 2. Table of Contents

This section states the table of contents for the bill.

Title I—Authorizations

Sec. 101. Authorization of Appropriations

This section of the reported bill would authorize appropriations for FY 2004 and FY 2005 for the Coast Guard. The following chart summarizes the FY 2004 authorization levels:

Funding Category	Thousands of Dollars
Operational Expenses	4,913,000
Acquisitions, Construction and Improvements	1,017,000
Research, Development, Test, & Evaluation	22,000
Retired Pay	1,020,000
Environmental Compliance	17,000
Alteration of Bridges	18,500

This section also would authorize such funds as may be necessary for FY 2005.

Sec. 102. Authorized Levels of Military Strength and Training

This section would authorize a Coast Guard end-of-year strength of 45,500 active duty military personnel for FY 2004. 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 FY 2004 as follows:

Training	Student Years
Recruit and Special	2,250
Flight	125
Professional	300
Officer	1,200

Title II—Coast Guard Personnel, Financial, and Property Management

Sec. 201. Enlisted Member Critical Skill Training Bonus

This section would authorize the Coast Guard to offer an incentive bonus to encourage already enlisted members to enter certain critical skill specialties.

Sec. 202. Amend Limits to the Number and Distribution of Commissioned Officers

This section would increase the maximum authorized number of Coast Guard officers to 7,100 and authorize an increase in the per-

centage of Commanders and Lieutenant Commanders to 15 and 22 percent, respectively, of the number of officers in the Coast Guard.

Sec. 203. Expansion of Coast Guard Housing Authorities

This section is similar to the DOD authority in 10 U.S.C 287 and would authorize the Coast Guard to provide direct loans or loan guarantees for the construction of military housing.

Sec. 204. Property Owned by Auxiliary Units and Dedicated Solely for Auxiliary Use

This section would state that real and personal property owned by a unit of the Coast Guard Auxiliary shall be considered Federal property for liability purposes at all times unless the property is being used outside the scope of the Auxiliary mission. This section also would authorize the reimbursement of operation, maintenance, repair, or replacement of the property from appropriated funds to the same extent as other property being used by the Auxiliary for Coast Guard Service, with approval of the Commandant and subject to the availability of funds.

Sec. 205. Coast Guard Auxiliary Units as Instrumentalities of the United States for Taxation Purposes

This section would clarify the tax-exempt status of the Auxiliary and states the Auxiliary and each of its organizational elements and units is tax-exempt for all purposes. This section further would allow donations to the Auxiliary to be deductible, and would provide a basis for exempting Auxiliary units from having to pay State property taxes on the real and personal property owned, and levy and remit State sales tax for any goods and services that may be sold.

Sec. 206. Maximum Age for Retention in an Active Status

This section would change the mandatory retirement age for Coast Guard reserve officers from 62 to 60 which is consistent with the DOD requirements.

Sec. 207. Term of Enlistments

This section would authorize the Commandant of the Coast Guard to accept original enlistments for other than full years which is consistent with DOD enlistments. The Commandant may presently accept reenlistments only for terms of full years and months up to six full years. This section would authorize enlistments for any term of years and months from two years to six years.

Sec. 208. Requirement for Constructive Credit

This section would reduce the amount of mandatory constructive credit required for Reserve Law Specialists from three years to one year. It would allow the Coast Guard to consider officers' education and experience, potential career opportunities, and service needs to determine appropriate credit.

Sec. 209. Nonappropriated Fund Instrumentalities

This section would permit the Coast Guard and other Federal agencies to purchase goods and services from the Coast Guard Ex-

change System and utilize other Morale, Welfare, and Recreation (MWR) activities, which is consistent with the DOD authority.

Sec. 210. Travel Card Management

This section would authorize the Coast Guard to disburse travel reimbursement directly to the issuer of a contractor-issued travel charge card and would allow the Coast Guard to withhold pay from Coast Guard personnel who have delinquent travel charge cards accounts. This provision is similar to authority granted to the DOD in 1999.

Sec. 211. Use of Military Child Development Centers and Other Programs

This section would allow the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating to agree to provide day care services without requiring reimbursement. It also would provide children of Coast Guard members the same access as children of DOD members to DOD child care facilities.

Title III—Law Enforcement, Marine Safety, and Environmental Protection

Sec. 301. Marking of Underwater Wrecks

This section would grant the Commandant of the Coast Guard discretion to permit a sunken wreck to be marked without using a lighted buoy if the Commandant determines that placing a light would be impractical and granting such a waiver would not create an undue hazard to navigation.

Sec. 302. Prohibition of Operation of Certain Electronic Devices and Ports and Waterways Partnerships/Cooperative Ventures

This section would authorize the Secretary to prohibit the use of certain electronic devices that could interfere with shipboard navigation or communications systems. It also would authorize the Secretary to enter into partnerships and cooperative ventures with non-Federal entities to carry out Ports and Waterways Safety Act vessel operating requirements, including vessel traffic services, and would allow longer-term, 20-year leases between the Coast Guard and such partners.

Sec. 303. Reports From Charterers

This section would authorize the Secretary to require reports from vessel charterers to ensure compliance with laws governing vessels engaged in coastwise trade and in the fisheries.

Sec. 304. Revision of Temporary Suspension Criteria in Suspension and Revocation (S&R) Cases

This section would clarify the Coast Guard's authority to temporarily suspend a merchant mariner's credentials (MMC), where the mariner is convicted of a National Driver Register Act (NDRA) offense. The resulting language clarifies the confusion surrounding the existing statute, which creates a potential loophole in the law. It also would authorize the Secretary to temporarily suspend an

MMC if there is probable cause to believe that the holder is a security risk.

Sec. 305. Revision of Bases for Suspension & Revocation (S&R) Cases

This section would provide the Coast Guard with the authority to suspend or revoke a merchant mariner's credentials in cases where a mariner commit acts of incompetence with respect to the operation of a vessel, whether under Federal or State mariner's credentials. It also adds security risk as a basis for which the Secretary may suspend or revoke an MMC.

Sec. 306. Removal of Mandatory Revocation for Proved Drug Convictions in Suspension & Revocation (S&R) Cases

This section would remove the automatic requirement to suspend a merchant mariner's credentials in every document suspension and revocation case involving a drug conviction, thereby giving the Coast Guard Administrative Law Judge additional discretion in appropriate cases involving minor offenses. Currently, due to the restrictive language of Section 7704(b), the Coast Guard is prohibited from using Settlement Agreements even in minor cases.

Sec. 307. Records of Merchant Mariners' Documents

This section would align the record protection and release policies applicable to merchant mariners' documents with those of the Privacy Act and the FOIA. The current prohibition on "general or public inspection" contained in section 7319 results in excessive withholding of information and inconsistent policies for the treatment of records relating to documented mariners and those relating to licensed mariners.

Sec. 308. Exemption of Unmanned Barges From Certain Citizenship Requirements

This section would amend section 12110(d) of title 46 by exempting unmanned barges on foreign voyages from the requirement to be under the control of a U.S. citizen crewmember.

Sec. 309. Increase Civil Penalties for Violations of Certain Bridge Statutes

This section would increase the maximum allowable civil penalty amounts from $1,100 per day per violation to $25,000 per day per violation for violations of bridge laws and regulations.

Sec. 310. Civil Penalties for Failure To Comply With Recreational Vessel and Associated Equipment Safety Standards

This section would amend 46 U.S.C. 4311(b) to increase the maximum civil penalties applicable to a person manufacturing or selling a recreational boat that contains a defect, for wrongful sale or labeling, or for failing to notify of a recall or comply with applicable Federal recreational boat safety regulations. The penalty would increase from $2,000 to a maximum of $5,000, and the maximum for a related series of violations would increase from $100,000 to $250,000. Section 310 also would add a criminal penalty provision for knowing and willful violations of section 4307(a).

Sec. 311. Correction to Definition of Federal Law Enforcement Agencies in the Enhanced Border Security and Visa Entry Reform Act of 2002

This section would make a technical correction to the Enhanced Border Security and Visa Entry Reform Act of 2002 (PL 107–173) by adding the Coast Guard to the list of defined Federal law enforcement agencies and deleting the term "Coastal Security Service."

Sec. 312. Stopping Vessels; Immunity for Firing at or into Vessel

This section would eliminate the requirement to fire a warning shot when the use of such a shot would not be practical or safe. It also would renew the application of this provision to other military aircraft to which one or more Coast Guard members are assigned.

Sec. 313. Use of Unexpended Funds for Bridge Alterations Under Truman-Hobbs Act

This section would amend the Truman-Hobbs Act to allow funds appropriated or otherwise available for a completed bridge alteration project to be used to pay the Federal government's share of other bridge alteration projects authorized under the Truman-Hobbs Act.

Sec. 314. Inland Navigation Rules Promulgation Authority

This section would repeal the current statutory Inland Navigation Rules in 33 U.S.C chapter 34 and would authorize the Secretary to promulgate the Inland Navigation Rules by regulation.

Sec. 315. Prevention of Departure

This section would give the Secretary authority to prohibit the departure of a foreign passenger vessel carrying U.S. passengers from a U.S. port if the vessel does not comply with SOLAS standards.

Sec. 316. Compliance With International Safety Management Code

This section would require foreign flagged vessels on "voyages to nowhere" to comply with the ISM. It would amend section 3201 of title 46 to require foreign flagged vessels departing and returning to the same U.S. port, or returning to another port under the jurisdiction of the U.S., to comply with the ISM when any part of the voyage occurs on the high seas.

Sec. 317. Amendments to Vessel Response Plan Requirements

This section would amend the OPA 90 to require vessel response plans for non-tank vessels over 400 gross tons. These plans are currently required for tank vessels. This would address the risk of a major oil spill from non-tank vessels such as the motor vessel New Carissa, that grounded and discharged oil off the coast of Oregon in 1999. This section also would include for tank vessels the list of Noxious Liquid Substances under the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the protocol of 1978, within the group of hazardous substances for which the Coast Guard may require response plans.

Sec. 318. Requirements for Tank Level and Pressure Monitoring Devices

This section would amend the OPA 90 to make issuance of regulations concerning tank level and pressure monitoring (TLPM) devices discretionary. There are no feasible devices that could meet the current statutory requirement, and the cost of such devices is thought to be prohibitively expensive. This section also would require the Coast Guard to provide Congress with a study on alternative measures for detecting the loss of oil from oil cargo tanks.

Sec. 319. Report on Implementation of the Oil Pollution Act

This section would require the Coast Guard to provide a report to Congress with respect to a number of recent issues arising from implementation of the OPA 90. The report would include the status of the Oil Spill Liability Trust Fund which is believed to be declining for the first time, an analysis of the impacts of accelerating the phase out of single hull tank vessels from 2015 to 2010, and a review of manning and safety requirements applicable to vessels that tow oil barges as compared to requirements imposed on tankers of a similar capacity.

Sec. 320. Loans for Fishermen Impacted by Oil Spills

This section would address a gap in the current system under the Oil Pollution Act, whereby fishermen and aquaculture producers that are impacted by an oil spill have to wait at least 90 days, and usually more, to recover damages in the interim period until a full assessment and distribution of claims can be made. The section would allow the use of the Oil Spill Liability Trust Fund to provide loans to such impacted entities until such time as an interim payment is made under the Act, or in the event that no interim payments are made.

Sec. 321. Fisheries Enforcement Plans and Reporting

This section would require the Coast Guard and NOAA to improve their consultations with each other and with State and local authorities in setting priorities for and coordinating the enforcement of fisheries laws and regulations.

Sec. 322. Deepwater Report

This section would require the Coast Guard to provide a report on the performance of the prime contractor under the first five-year term of the contract for the Integrated Deepwater Program.

Sec. 323. Small Passenger Vessel Safety

This section would require the Coast Guard to provide a report on compliance with small passenger vessel regulations, including recommendations for improvement.

Sec. 324. Electronic Navigational Charting

This section would require the Coast Guard, in consultation with NOAA, to report on the costs of completing Electronic Navigation Charts for the existing suite of NOAA charts, the costs and benefits of requiring electronic navigation systems on vessels, and a description of international standards in this area.

Title IV—Miscellaneous

Sec. 401. Conveyance of Lighthouses

This section would require the Secretary of the Interior to monitor any already executed or proposed lighthouse conveyance, and take any steps necessary to protect the U.S.'s reversionary interest.

Sec. 402. LORAN–C

This section would authorize the Department of Transportation to transfer $25 million in FY 2004 from the Federal Aviation Administration to the Coast Guard for recapitalization of the LORAN–C radio navigation system.

Sec. 403. Conveyance of Decommissioned Coast Guard Cutters.

This section would authorize the Coast Guard to transfer the following Coast Guard cutters upon their decommissioning: the cutter BRAMBLE to the Port Huron Museum of Arts and History; the cutter PLANETREE to the non-profit group, Jewish Life; and the cutter SUNDEW to the Duluth Entertainment and Convention Center Authority.

Section 404. Koss Cove

This section would name a cove adjacent to and southeast of Point Elrington, Alaska in honor of the late Eric Steiner Koss of the NOAA vessel Rainer who died in the performance of a nautical charting mission off the coast of Alaska near this cove.

Section 405. Declaration of Non-navigability for Portion of the Wateree River

This section would designate a section of the Wateree River in South Carolina, which includes an old railroad swing bridge that has not been operated for approximately 40 or more years, as non-navigable for purposes of the General Bridge Act.

Section 406. Correction of 2002 Coastwise Trade Authorization Provision

This section would make a technical clarification to a provision under the Maritime Transportation Security Act of 2002 that allows the use of foreign launch barges in certain off-shore construction. Specifically, the provision as modified would enhance the ability of U.S. flag vessels to participate in maritime construction related to the launching of off-shore oil platforms.

Section 407. Innovative Construction Alternatives

This section would authorize the Commandant of the Coast Guard to consult with the Office of Naval Research and other Federal agencies with research and development programs that may provide innovative construction alternatives for the Integrated Deepwater System.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted

is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 14, UNITED STATES CODE, COAST GUARD

PART I. REGULAR COAST GUARD

CHAPTER 3. COMPOSITION AND ORGANIZATION

§ 42. Number and distribution of commissioned officers

(a) [The] *Except in time of war or national emergency declared by Congress, or the President, the* total number of commissioned officers, excluding commissioned warrant officers, on active duty in the Coast Guard shall not exceed [6,200.] *7,100. In time of war or national emergency, the Secretary shall establish the total number of commissioned officers, excluding commissioned warrant officers, on active duty in the Coast Guard.*

(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 12.0; lieutenant commander 18.0.] *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 each 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.

(d) The numbers resulting from such computations shall be for all purposes the authorized number in each grade, except that the authorized number for a grade is temporarily increased during the period between one computation and the next by the number of officers originally appointed in that grade during that period and the number of officers of that grade for whom vacancies exist in the next higher grade but whose promotion has been delayed for any reason.

(e) Officers who are not included in 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. 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, recruit-

ing, instructing, or training the reserve components shall be prescribed by the Secretary.

* * * * * * *

CHAPTER 7. COOPERATION WITH OTHER AGENCIES

§ 152. Nonappropriated fund instrumentalities; contracts with other agencies and instrumentalities to provide or obtain goods and services

The Coast Guard Exchange System, or a morale, welfare, and recreation system of the Coast Guard, may enter into a contract or other agreement with any element or instrumentality of the Coast Guard or with another Federal department, agency, or instrumentality thereof to provide or obtain goods and services beneficial to the efficient management and operation of the exchange system or that morale, welfare, and recreation system.

CHAPTER 11. PERSONNEL ENLISTED MEMBERS

§ 351. Enlistments; term, grade

(a) Under regulations prescribed by the Secretary, the Commandant may enlist persons for minority or [terms of full years not exceeding six years.] *a period of at least 2 years but not more than 6 years.*

(b) The Secretary shall prescribe the grades or ratings for persons enlisting in the Regular Coast Guard.

* * * * * * *

§ 374. Critical skill training bonus

(a) The Secretary may provide a bonus, not to exceed $20,000, to enlisted members who complete training in a skill designated as critical, provided at least four years of obligated active service remain on the member's enlistment at the time the training is completed. A bonus under this section may be paid in a single lump sum or in periodic installments.

(b) If an enlisted member voluntarily or because of misconduct does not complete his or her term of obligated active service, the Secretary may require the member to repay the United States, on a pro rata basis, all sums paid under this section. The Secretary shall charge interest on the reimbursed amount at a rate, to be determined quarterly, equal to 150 percent of the average of the yields on the 91-day Treasury bills auctioned during the preceding calendar quarter.

* * * * * * *

CHAPTER 13. PAY, ALLOWANCES, AWARDS, AND OTHER RIGHTS AND BENEFITS

§ 517. Travel card management

(a) IN GENERAL.—The Secretary may require that travel or transportation allowances due a civilian employee or military member of the Coast Guard be disbursed directly to the issuer of a Federal contractor-issued travel charge card, but only in an amount not to exceed the authorized travel expenses charged by that Coast Guard

member to that travel charge card issued to that employee or member.

(b) WITHHOLDING OF NONDISPUTED OBLIGATIONS.—The Secretary may also establish requirements similar to those established by the Secretary of Defense pursuant to section 2784a of title 10 for deduction or withholding of pay or retired pay from a Coast Guard employee, member, or retired member who is delinquent in payment under the terms of the contract under which the card was issued and does not dispute the amount of the delinquency.

CHAPTER 17. ADMINISTRATION

§ 637. Stopping vessels; immunity for firing at or into vessel

[(a) Whenever any vessel liable to seizure or examination does not stop on being ordered to do so or on being pursued by an authorized vessel or authorized aircraft which has displayed the ensign, pennant, or other identifying insignia prescribed for an authorized vessel or authorized aircraft, the person in command or in charge of the authorized vessel or authorized aircraft may, after a gun has been fired by the authorized vessel or authorized aircraft as a warning signal, fire at or into the vessel which does not stop.]

(a) Whenever any vessel liable to seizure or examination does not stop on being ordered to do so or on being pursued by an authorized vessel or authorized aircraft has displayed the ensign, pennant, or other identifying insignia prescribed for an authorized vessel or authorized aircraft, the person in command or in charge of the authorized vessel or authorized aircraft may, after a gun has been fired by the authorized vessel or authorized aircraft as a warning signal, fire at or into the vessel which does not stop; except that the prior use of the warning signal is not required if its use would unreasonably endanger persons or property in the vicinity of the vessel.

(b) The person in command of an authorized vessel or authorized aircraft and all persons acting under that person's direction shall be indemnified from any penalties or actions for damages for firing at or into a vessel pursuant to subsection (a). If any person is killed or wounded by the firing, and the person in command of the authorized vessel or authorized aircraft or any person acting pursuant to their orders is prosecuted or arrested therefor, they shall be forthwith admitted to bail.

(c) A vessel or aircraft is an authorized vessel or authorized aircraft for purposes of this section if—

(1) it is a Coast Guard vessel or aircraft; *or*

[(2) it is a surface naval vessel on which one or more members of the Coast Guard are assigned pursuant to section 379 of title 10; or

[(3) subject to subsection (d), it is a naval aircraft that has one or more members of the Coast Guard on board and is operating from a surface naval vessel described in paragraph (2).]

(2) it is a surface naval vessel or military aircraft on which one or more members of the Coast Guard are assigned pursuant to section 379 of title 10.

[(d)(1) The inclusion of naval aircraft as an authorized aircraft for purposes of this section shall be effective only after the end of the 30-day period beginning on the date the report required by paragraph (2) is submitted through September 30, 2001.

[(2) Not later than August 1, 2000, the Secretary of Defense shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate a report containing—

[(A) an analysis of the benefits and risks associated with using naval aircraft to perform the law enforcement activities authorized by subsection (a);

[(B) an estimate of the extent to which the Secretary expects to implement the authority provided by this section; and

[(C) an analysis of the effectiveness and applicability to the Department of Defense of the Coast Guard program known as the "New Frontiers" program.]

CHAPTER 18. COAST GUARD HOUSING AUTHORITIES

§ 680. Definitions

In this chapter:

(1) The term "construction" means the construction of military housing units and ancillary supporting facilities or the improvement or rehabilitation of existing units or ancillary supporting facilities.

(2) The term "contract" includes any contract, lease, or other agreement entered into under the authority of this chapter.

(3) The term "military unaccompanied housing" means military housing intended to be occupied by members of the armed forces serving a tour of duty unaccompanied by dependents.

(4) The term "United States" includes the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, and the District of Columbia.

(5) The term "eligible entity" means any private person, corporation, firm, partnership, company, State or local government, or housing authority of a State or local government.

[§ 682. Loan guarantees]

§ 682. Direct loans and loan guarantees

(a) DIRECT LOANS.—

(1) Subject to subsection (c), the Secretary may make direct loans to an eligible entity in order to provide funds to the eligible entity for the acquisition or construction of housing units that the Secretary determines are suitable for use as military family housing or as military unaccompanied housing.

(2) The Secretary shall establish such terms and conditions with respect to loans made under this subsection as the Secretary considers appropriate to protect the interests of the United States, including the period and frequency for repayment of such loans and the obligations of the obligors on such loans upon default.

[(a)] *(b)* LOAN GUARANTEES.—

(1) Subject to [subsection (b),] *subsection (c),* the Secretary may guarantee a loan made to any person in the private sector if the proceeds of the loan are to be used by the person to acquire, or construct housing units that the Secretary determines are suitable for use as military family housing or as military unaccompanied housing.

(2) The amount of a guarantee on a loan that may be provided under paragraph (1) may not exceed the amount equal to the lesser of—

(A) 80 percent of the value of the project; or

(B) the outstanding principal of the loan.

(3) The Secretary shall establish such terms and conditions with respect to guarantees of loans under this subsection as the Secretary considers appropriate to protect the interests of the United States, including the rights and obligations of the United States with respect to such guarantees.

(4) The funds for the loan guarantees entered into under this section shall be held in the Coast Guard Housing Fund under section 687 of this title. The Secretary is authorized to purchase mortgage insurance to guarantee loans in lieu of guaranteeing loans directly against funds held in the Coast Guard Housing Fund.

[(b) LIMITATION ON GUARANTEE AUTHORITY.—**]** *(c) DIRECT LOANS AND LOAN GUARANTEES.*—Loan guarantees may be made under this section only to the extent that appropriations of budget authority to cover their cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5))) are made in advance, or authority is otherwise provided in appropriations Acts. If such appropriation or other authority is provided, there may be established a financing account (as defined in section 502(7) of such Act (2 U.S.C. 661a(7))) which shall be available for the disbursement of payment of claims for payment on loan guarantees under this section and for all other cash flows to and from the Government as a result of guarantees made under this section.

CHAPTER 21. COAST GUARD RESERVE

SUBCHAPTER B. COMMISSIONED OFFICERS

§ 727. Constructive credit upon initial appointment

Under regulations prescribed by the Secretary, a person, appointed as a Reserve officer, may be assigned a date of rank and precedence which reflects that person's experience, education, or other qualifications. For the purpose of this subchapter only, a person appointed for the purpose of assignment or designation as a law specialist in the Reserve shall be credited with a minimum of **[**three years**]** *1 year's* service in an active status. A person holding a doctor of philosophy, or a comparable degree, in medicine or in a science allied to medicine as determined by the Secretary, may be credited with a minimum of three years service in an active status if appointed for an assignment comparable to that of an officer in the Navy Medical Department.

§ 727. Constructive credit upon initial appointment

Under regulations prescribed by the Secretary, a person, appointed as a Reserve officer, may be assigned a date of rank and precedence which reflects that person's experience, education, or other qualifications. For the purpose of this subchapter only, a person appointed for the purpose of assignment or designation as a law specialist in the Reserve shall be credited with a minimum of three years service in an active status. A person holding a doctor of philosophy, or a comparable degree, in medicine or in a science

allied to medicine as determined by the Secretary, may be credited with a minimum of three years service in an active status if appointed for an assignment comparable to that of an officer in the Navy Medical Department.

§ 742. Maximum ages for retention in an active status

(a) A Reserve officer, if qualified, shall be transferred to the Retired Reserve on the day the officer becomes [sixty-two] *sixty* years of age.

(b) Notwithstanding subsection (a) of this section, the Secretary may authorize the retention of a Reserve rear admiral or rear admiral (lower half) in an active status not longer than the day on which the officer concerned becomes sixty-four years of age.

(c) Except as provided for in subsections (a) and (b) of this section, a Reserve officer shall be discharged effective upon the day the officer becomes [sixty-two] *sixty* years of age.

CHAPTER 23. COAST GUARD AUXILIARY

§ 821. Administration of the Coast Guard Auxiliary

(a) The Coast Guard Auxiliary is a nonmilitary organization administered by the Commandant under the direction of the Secretary. For command, control, and administrative purposes, the Auxiliary shall include such organizational elements and units as are approved by the Commandant, including but not limited to, a national board and staff (to be known as the "Auxiliary headquarters unit"), districts, regions, divisions, flotillas, and other organizational elements and units. *The Auxiliary and each organizational element and unit shall be deemed to be instrumentalities and political subdivisions of the United States for taxation purposes and for those exemptions as provided under section 107 of title 4.* The Auxiliary organization and its officers shall have such rights, privileges, powers, and duties as may be granted to them by the Commandant, consistent with this title and other applicable provisions of law. The Commandant may delegate to officers of the Auxiliary the authority vested in the Commandant by this section, in the manner and to the extent the Commandant considers necessary or appropriate for the functioning, organization, and internal administration of the Auxiliary.

(b) Each organizational element or unit of the Coast Guard Auxiliary organization (but excluding any corporation formed by an organizational element or unit of the Auxiliary under subsection (c) of this section), shall, except when acting outside the scope of section 822, at all times be deemed to be an instrumentality of the United States, for purposes of the following:

(1) Chapter 26 of title 28 (popularly known as the Federal Tort Claims Act).

(2) Section 2733 of title 10 (popularly known as the Military Claims Act).

(3) The Act of March 3, 1925 (46 App. U.S.C. 781-790; popularly known as the Public Vessels Act).

(4) The Act of March 9, 1920 (46 App. U.S.C. 741-752; popularly known as the Suits in Admiralty Act).

(5) The Act of June 19, 1948 (46 App. U.S.C. 740; popularly known as the Admiralty Extension Act).

(6) Other matters related to noncontractual civil liability.

(c) The national board of the Auxiliary, and any Auxiliary district or region, may form a corporation under State law in accordance with policies established by the Commandant.

(d) Subject to the approval of the Commandant:

(1) The Coast Guard Auxiliary and each organizational element and unit (whether or not incorporated), shall have the power to acquire, own, hold, lease, encumber, mortgage, transfer, and dispose of personal property for the purposes set forth in section 822. Personal property owned by the Auxiliary or an Auxiliary unit, or any element thereof, whether or not incorporated, shall at all times be deemed to be property of the United States for the purposes of the statutes described in paragraphs (1) through (6) of subsection (b) while such property is being used by or made exclusively available to the Auxiliary as provided in section 822.

(2) Personal property owned by the Auxiliary or an Auxiliary unit or any element or unit thereof, shall not be considered property of the United States for any other purpose or under any other provision of law except as provided in sections 821 through 832 and section 641 of this title. The necessary expenses of operation, maintenance and repair or replacement of such property may be reimbursed using appropriated funds.

(3) For purposes of this subsection, personal property includes, but is not limited to, motor boats, yachts, aircraft, radio stations, motorized vehicles, trailers, or other equipment.

NATIONAL HISTORIC LIGHTHOUSE PRESERVATION ACT OF 2000

SEC. 308. HISTORIC LIGHTHOUSE PRESERVATION.

[16 U.S.C. 470W-7]

(a) IN GENERAL.—In order to provide a national historic light station program, the Secretary shall—

(1) collect and disseminate information concerning historic light stations, including historic lighthouses and associated structures;

(2) foster educational programs relating to the history, practice, and contribution to society of historic light stations;

(3) sponsor or conduct research and study into the history of light stations;

(4) maintain a listing of historic light stations; and

(5) assess the effectiveness of the program established by this section regarding the conveyance of historic light stations.

(b) CONVEYANCE OF HISTORIC LIGHT STATIONS.—

(1) PROCESS AND POLICY.—Not later than 1 year after the date of the enactment of this section, the Secretary and the Administrator shall establish a process and policies for identifying, and selecting, an eligible entity to which a historic light station could be conveyed for education, park, recreation, cultural, or historic preservation purposes, and to monitor the use of such light station by the eligible entity.

(2) APPLICATION REVIEW.—The Secretary shall review all applications for the conveyance of a historic light station, when

the agency with administrative jurisdiction over the historic light station has determined the property to be "excess property" as that term is defined in the Federal Property Administrative Services Act of 1949 1. (40 U.S.C. 472(e)), and forward to the Administrator a single approved application for the conveyance of the historic light station. When selecting an eligible entity, the Secretary shall consult with the State Historic Preservation Officer of the State in which the historic light station is located.

(3) CONVEYANCE OF HISTORIC LIGHT STATIONS.—

(A) Except as provided in subparagraph (B), the Administrator shall convey, by quitclaim deed, without consideration, all right, title, and interest of the United States in and to the historic light station, subject to the conditions set forth in subsection (c) after the Secretary's selection of an eligible entity. The conveyance of a historic light station under this section shall not be subject to the provisions of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.) or section 416(d) of the Coast Guard Authorization Act of 1998 (Public Law 105–383).

(B)(i) Historic light stations located within the exterior boundaries of a unit of the National Park System or a refuge within the National Wildlife Refuge System shall be conveyed or sold only with the approval of the Secretary.

(ii) If the Secretary approves the conveyance of a historic light station referenced in this paragraph, such conveyance shall be subject to the conditions set forth in subsection (c) and any other terms or conditions the Secretary considers necessary to protect the resources of the park unit or wildlife refuge.

(iii) If the Secretary approves the sale of a historic light station referenced in this paragraph, such sale shall be subject to the conditions set forth in subparagraphs (A) through (D) and (H) of subsection (c)(1) and subsection (c)(2) and any other terms or conditions the Secretary considers necessary to protect the resources of the park unit or wildlife refuge.

(iv) For those historic light stations referenced in this paragraph, the Secretary is encouraged to enter into cooperative agreements with appropriate eligible entities, as provided in this Act, to the extent such cooperative agreements are consistent with the Secretary's responsibilities to manage and administer the park unit or wildlife refuge, as appropriate.

(c) TERMS OF CONVEYANCE.—

(1) IN GENERAL.—The conveyance of a historic light station shall be made subject to any conditions, including the reservation of easements and other rights on behalf of the United States, the Administrator considers necessary to ensure that—

(A) the Federal aids to navigation located at the historic light station in operation on the date of conveyance remain the personal property of the United States and continue to be operated and maintained by the United States for as long as needed for navigational purposes;

(B) there is reserved to the United States the right to remove, replace, or install any Federal aid to navigation located at the historic light station as may be necessary for navigational purposes;

(C) the eligible entity to which the historic light station is conveyed under this section shall not interfere or allow interference in any manner with any Federal aid to navigation, nor hinder activities required for the operation and maintenance of any Federal aid to navigation, without the express written permission of the head of the agency responsible for maintaining the Federal aid to navigation;

(D) the eligible entity to which the historic light station is conveyed under this section shall, at its own cost and expense, use and maintain the historic light station in accordance with this Act, the Secretary of the Interior's Standards for the Treatment of Historic Properties, 36 CFR part 68, and other applicable laws, and any proposed changes to the historic light station shall be reviewed and approved by the Secretary in consultation with the State Historic Preservation Officer of the State in which the historic light station is located, for consistency with 36 CFR part 800.5(a)(2)(vii), and the Secretary of the Interior's Standards for Rehabilitation, 36 CFR part 67.7;

(E) the eligible entity to which the historic light station is conveyed under this section shall make the historic light station available for education, park, recreation, cultural or historic preservation purposes for the general public at reasonable times and under reasonable conditions;

(F) the eligible entity to which the historic light station is conveyed shall not sell, convey, assign, exchange, or encumber the historic light station, any part thereof, or any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, including but not limited to any lens or lanterns, unless such sale, conveyance, assignment, exchange or encumbrance is approved by the Secretary;

(G) the eligible entity to which the historic light station is conveyed shall not conduct any commercial activities at the historic light station, any part thereof, or in connection with any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, in any manner, unless such commercial activities are approved by the Secretary; and

(H) the United States shall have the right, at any time, to enter the historic light station conveyed under this section without notice, for purposes of operating, maintaining, and inspecting any aid to navigation and for the purpose of ensuring compliance with this subsection, to the extent that it is not possible to provide advance notice.

(2) MAINTENANCE OF AID TO NAVIGATION.—Any eligible entity to which a historic light station is conveyed under this section shall not be required to maintain any Federal aid to navigation associated with a historic light station, except any private aids to navigation permitted under section 83 of title 14, United States Code, to the eligible entity.

(3) REVERSION.—In addition to any term or condition established pursuant to this subsection, the conveyance of a historic light station shall include a condition that the historic light station, or any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, including but not limited to any lens or lanterns, at the option of the Administrator, shall revert to the United States and be placed under the administrative control of the Administrator, if—

(A) the historic light station, any part thereof, or any associated historic artifact ceases to be available for education, park, recreation, cultural, or historic preservation purposes for the general public at reasonable times and under reasonable conditions which shall be set forth in the eligible entity's application;

(B) the historic light station or any part thereof ceases to be maintained in a manner that ensures its present or future use as a site for a Federal aid to navigation;

(C) the historic light station, any part thereof, or any associated historic artifact ceases to be maintained in compliance with this Act, the Secretary of the Interior's Standards for the Treatment of Historic Properties, 36 CFR part 68, and other applicable laws;

(D) the eligible entity to which the historic light station is conveyed, sells, conveys, assigns, exchanges, or encumbers the historic light station, any part thereof, or any associated historic artifact, without approval of the Secretary;

(E) the eligible entity to which the historic light station is conveyed, conducts any commercial activities at the historic light station, any part thereof, or in conjunction with any associated historic artifact, without approval of the Secretary; or

(F) at least 30 days before the reversion, the Administrator provides written notice to the owner that the historic light station or any part thereof is needed for national security purposes.

(4) LIGHTHOUSES ORIGINALLY CONVEYED UNDER OTHER AUTHORITY.—Upon receiving notice of an executed or intended conveyance by sale, gift, or any other manner of a lighthouse conveyed under authority other than this Act, the Secretary shall review the executed or proposed conveyance to ensure that any new owner will comply with any and all conditions of the original conveyance. If the Secretary determines that the new owner has not or is unable to comply with those conditions the Secretary shall immediately invoke any reversionary interest or take such other action as may be necessary to protect the interests of the United States.

(d) DESCRIPTION OF PROPERTY.—

(1) IN GENERAL.—The Administrator shall prepare the legal description of any historic light station conveyed under this section. The Administrator, in consultation with the Commandant, United States Coast Guard, and the Secretary, may retain all right, title, and interest of the United States in and to any historical artifact, including any lens or lantern, that is

associated with the historic light station and located at the light station at the time of conveyance. Wherever possible, such historical artifacts should be used in interpreting that station. In cases where there is no method for preserving lenses and other artifacts and equipment in situ, priority should be given to preservation or museum entities most closely associated with the station, if they meet loan requirements.

(2) ARTIFACTS.—Artifacts associated with, but not located at, the historic light station at the time of conveyance shall remain the personal property of the United States under the administrative control of the Commandant, United States Coast Guard.

(3) COVENANTS.—All conditions placed with the quitclaim deed of title to the historic light station shall be construed as covenants running with the land.

(4) SUBMERGED LANDS.—No submerged lands shall be conveyed under this section.

(e) DEFINITIONS.—For purposes of this section:

(1) ADMINISTRATOR.—The term "Administrator" shall mean the Administrator of General Services.

(2) HISTORIC LIGHT STATION.—The term "historic light station" includes the light tower, lighthouse, keepers dwelling, garages, storage sheds, oil house, fog signal building, boat house, barn, pumphouse, tramhouse support structures, piers, walkways, underlying and appurtenant land and related real property and improvements associated therewith; provided that the "historic light station" shall be included in or eligible for inclusion in the National Register of Historic Places.

(3) ELIGIBLE ENTITY.—The term "eligible entity" shall mean:

(A) any department or agency of the Federal Government; or

(B) any department or agency of the State in which the historic light station is located, the local government of the community in which the historic light station is located, nonprofit corporation, educational agency, or community development organization that—

(i) has agreed to comply with the conditions set forth in subsection (c) and to have such conditions recorded with the deed of title to the historic light station; and

(ii) is financially able to maintain the historic light station in accordance with the conditions set forth in subsection (c).

(4) Federal aid to navigation. The term "Federal aid to navigation" shall mean any device, operated and maintained by the United States, external to a vessel or aircraft, intended to assist a navigator to determine position or safe course, or to warn of dangers or obstructions to navigation, and shall include, but not be limited to, a light, lens, lantern, antenna, sound signal, camera, sensor, electronic navigation equipment, power source, or other associated equipment.

(5) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

ACT OF MARCH 3, 1899

SEC. 15. OBSTRUCTION OF NAVIGABLE WATERS BY VESSELS; FLOATING TIMBER; MARKING AND REMOVAL OF SUNKEN VESSELS.

[33 U.S.C. 409]

It shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft; or to sink, or permit or cause to be sunk, vessels or other craft in navigable channels; or to float loose timber and logs, or to float what is known as sack rafts of timber and logs in streams or channels actually navigated by steamboats in such manner as to obstruct, impede, or endanger navigation. And whenever a vessel, raft, or other craft is wrecked and sunk in a navigable channel, it shall be the duty of the owner, lessee, or operator of such sunken craft to immediately mark it with a buoy or beacon during the [day and a lighted lantern] *day and, unless otherwise granted a waiver by the Commandant of the Coast Guard, a light* at night, and to maintain such marks until the sunken craft is removed or abandoned, and the neglect or failure of the said owner, lessee, or operator so to do shall be unlawful; and it shall be the duty of the owner, lessee, or operator of such sunken craft to commence the immediate removal of the same, and prosecute such removal diligently, and failure to do so shall be considered as an abandonment of such craft, and subject the same to removal by the United States as hereinafter provided for. *The Commandant of the Coast Guard may waive the requirement to mark a wrecked vessel, raft, or other craft with a light at night if the Commandant determines that placing a light would be impractical and granting such a waiver would not create an undue hazard to navigation.*

BRIDGE ACT OF 1906

SEC. 5. VIOLATIONS OF ORDERS RESPECTING BRIDGES AND ACCESSORY WORKS.

[33 U.S.C. 495]

(a) CRIMINAL PENALTIES FOR VIOLATION; MISDEMEANOR; FINE; NEW OFFENSES; JURISDICTION; SUITS FOR RECOVERY OF REMOVAL EXPENSES, ENFORCEMENT OF REMOVAL, AND OBSTRUCTION-TO-NAVIGATION CAUSE OR QUESTIONS.—Any persons who shall willfully fail or refuse to comply with the lawful order of the Secretary of Transportation or the Chief of Engineers, made in accordance with the provisions of this Act, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished in any court of competent jurisdiction by a fine not exceeding $5,000, and every month such persons shall remain in default shall be deemed a new offense and subject such persons to additional penalties therefor; and in addition to the penalties above described the Secretary of Transportation and the Chief of Engineers may, upon refusal of the persons owning or controlling any such bridge and accessory works to comply with any lawful order issued by the Secretary of Transportation or Chief of Engineers in regard thereto, cause the removal of such bridge and accessory works at the expense of the persons owning

or controlling such bridge, and suit for such expense may be brought in the name of the United States against such persons, and recovery had for such expense in any court of competent jurisdiction; and the removal of any structures erected or maintained in violation of the provisions of this Act or the order or direction of the Secretary of Transportation or Chief of Engineers made in pursuance thereof may be enforced by injunction, mandamus, or other summary process, upon application to the district court in the district in which such structure may, in whole or in part, exist, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States at the request of the Secretary of Transportation; and in case of any litigation arising from any obstruction or alleged obstruction to navigation created by the construction of any bridge under this Act, the cause or question arising may be tried before the circuit court of the United States in any district which any portion of said obstruction or bridge touches.

(b) CIVIL PENALTIES FOR VIOLATION; SEPARATE OFFENSES; NOTICE AND HEARING; ASSESSMENT, COLLECTION, AND REMISSION; CIVIL ACTIONS.—Whoever violates any provision of this Act, or any order issued under this Act, shall be liable to a civil penalty of not more than [$1,000.] *$25,000.* Each day a violation continues shall be deemed a separate offense. No penalty may be assessed under this subsection until the person charged is given notice and an opportunity for a hearing on the charge. The Secretary of Transportation may assess and collect any civil penalty incurred under this subsection and, in his discretion, may remit, mitigate, or compromise any penalty until the matter is referred to the Attorney General. If a person against whom a civil penalty is assessed under this subsection fails to pay that penalty, an action may be commenced in the district court of the United States for any district in which the violation occurs for such penalty.

* * * * * * *

ACT OF AUGUST 18, 1894

SEC. . REGULATIONS FOR DRAWBRIDGES.

[33 U.S.C. 499]

(a) CRIMINAL PENALTIES FOR VIOLATIONS; ENFORCEMENT; RULES AND REGULATIONS.—It shall be the duty of all persons owning, operating, and tending the drawbridges now built or which may hereafter be built across the navigable rivers and other waters of the United States, to open, or cause to be opened, the draws of such bridges under such rules and regulations as in the opinion of the Secretary of Transportation the public interests require to govern the opening of drawbridges for the passage of vessels and other water crafts, and such rules and regulations, when so made and published, shall have the force of law. Every such person who shall wilfully fail or refuse to open, or cause to be opened, the draw of any such bridge for the passage of a boat or boats, as provided in such regulations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than $2,000 nor less than $1,000, or by imprisonment (in the case of a natural person) for not exceeding one year, or by both such fine

and imprisonment, in the discretion of the court: Provided, That the proper action to enforce the provisions of this subsection may be commenced before any commissioner, judge, or court of the United States, and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States: Provided further, That whenever, in the opinion of the Secretary of Transportation, the public interests require it, he may make rules and regulations to govern the opening of drawbridges for the passage of vessels and other water crafts, and such rules and regulations, when so made and published, shall have the force of law, and any willful violation thereof shall be punished as hereinbefore provided: Provided further, That any regulations made in pursuance of this section may be enforced as provided in section 413 of this title, the provisions whereof are made applicable to the said regulations. Any rules and regulations made in pursuance of this section shall, to the extent practical and feasible, provide for regularly scheduled openings of drawbridges during seasons of the year, and during times of the day, when scheduled openings would help reduce motor vehicle traffic delays and congestion on roads and highways linked by drawbridges.

(b) NONSTRUCTURAL VESSEL APPURTENANCE; UNREASONABLE DELAY.—No vessel owner or operator shall signal a drawbridge to open for any nonstructural vessel appurtenance which is not essential to navigation or which is easily lowered and no person shall unreasonably delay the opening of a draw after the signal required by rules or regulations under this section has been given. The Secretary of Transportation shall issue rules and regulations to implement this subsection.

(c) CIVIL PENALTIES FOR VIOLATION; NOTICE AND HEARING; ASSESSMENT, COLLECTION, AND REMISSION; CIVIL ACTIONS.—Whoever violates any rule or regulation issued under subsection (a) or (b), shall be liable to a civil penalty of not more than **[**$1,000.**]** *$25,000.* No penalty may be assessed under this subsection until the person charged is given notice and an opportunity for a hearing on the charge. The Secretary of Transportation may assess and collect any civil penalty incurred under this subsection and, in his discretion, may remit, mitigate, or compromise any penalty until the matter is referred to the Attorney General. If a person against whom a civil penalty is assessed under this subsection fails to pay that penalty, an action may be commenced in the district court of the United States for any district in which the violation occurs for such penalty.

ACT OF MARCH 3, 1899

SEC. 18. ALTERATION, REMOVAL, OR REPAIR OF BRIDGE OR ACCESSORY OBSTRUCTIONS TO NAVIGATION.

[33 U.S.C. 502]

(a) CRIMINAL PENALTIES FOR VIOLATION; ALTERATION OR REMOVAL REQUIREMENTS; NOTICE AND HEARING; SPECIFICATION OF CHANGES; TIME FOR COMPLIANCE; NOTICE TO UNITED STATES ATTORNEY; MISDEMEANOR; FINE; NEW OFFENSES.—Whenever the Secretary of Transportation shall have good reason to believe that any railroad or other bridge now constructed, or which may hereafter be constructed, over any of the navigable waterways of the United

States is an unreasonable obstruction to the free navigation of such waters on account of insufficient height, width of span, or otherwise, or where there is difficulty in passing the draw opening or the draw span of such bridge by rafts, steamboats, or other water craft, it shall be the duty of the said Secretary, first giving the parties reasonable opportunity to be heard, to give notice to the persons or corporations owning or controlling such bridge so to alter the same as to render navigation through or under it reasonably free, easy, and unobstructed; and in giving such notice he shall specify the changes that are required to be made, and shall prescribe in each case a reasonable time in which to make them. If at the end of such time the alteration has not been made, the Secretary of Transportation shall forthwith notify the United States district attorney for the district in which such bridge is situated, to the end that the criminal proceedings hereinafter mentioned may be taken. If the persons, corporation, or association owning or controlling any railroad or other bridge shall, after receiving notice to that effect, as hereinbefore required, from the Secretary of Transportation, and within the time prescribed by him willfully fail or refuse to remove the same or to comply with the lawful order of the Secretary of Transportation in the premises, such persons, corporation, or association shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $5,000, and every month such persons, corporation, or association shall remain in default in respect to the removal or alteration of such bridge shall be deemed a new offense, and subject the persons, corporation, or association so offending to the penalties above prescribed.

(b) PROPER REPAIR REQUIREMENT.—No owner or operator of any bridge, drawbridge, or causeway shall endanger, unreasonably obstruct, or make hazardous the free navigation of any navigable water of the United States by reason of the failure to keep the bridge, drawbridge, or causeway and any accessory works in proper repair.

(c) CIVIL PENALTIES FOR VIOLATION; SEPARATE OFFENSES; NOTICE AND HEARING; ASSESSMENT, COLLECTION, AND REMISSION; CIVIL ACTIONS.—Whoever violates any provision of this section, or any order issued under this section, shall be liable to a civil penalty of not more than [$1,000.] *25,000*. Each day a violation continues shall be deemed a separate offense. No penalty may be assessed under this subsection until the person charged is given notice and an opportunity for a hearing on the charge. The Secretary of Transportation may assess and collect any civil penalty incurred under this subsection and, in his discretion, may remit, mitigate, or compromise any penalty until the matter is referred to the Attorney General. If a person against whom a civil penalty is assessed under this subsection fails to pay that penalty, an action may be commenced in the district court of the United States for any district in which the violation occurs for such penalty.

* * * * * * *

ACT OF JUNE 21, 1940

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

[33 U.S.C. 518]

(a) IN GENERAL.—There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

(b) UNEXPENDED FUNDS.—In addition to other uses permitted by law, upon completion of a bridge alteration project, unexpended funds previously appropriated or otherwise available for the completed project may be used to pay the Federal share of the design and construction costs for other bridge alteration projects authorized under this Act.

GENERAL BRIDGE ACT OF 1946

SEC. 510. PENALTIES FOR VIOLATIONS.

[33 U.S.C. 533]

(a) CRIMINAL PENALTIES FOR VIOLATIONS.—Any person who willfully fails or refuses to comply with any lawful order of the Secretary of Transportation or the Chief of Engineers issued under the provisions of this title, or who willfully fails to comply with any specific condition imposed by the Chief of Engineers and the Secretary of Transportation relating to the maintenance and operation of bridges, or who willfully refuses to produce books, papers, or documents in obedience to a subpena or other lawful requirement under this title, or who otherwise willfully violates any provisions of this title, shall, upon conviction thereof, be punished by a fine of not to exceed $5,000 or by imprisonment for not more than one year, or by both such fine and imprisonment.

(b) CIVIL PENALTIES FOR VIOLATIONS; SEPARATE OFFENSES; NOTICE AND HEARING; ASSESSMENT, COLLECTION, AND REMISSION; CIVIL ACTIONS.—Whoever violates any provision of this Act, or any order issued under this Act, shall be liable to a civil penalty of not more than **[**$1,000.**]** *$25,000.* Each day a violation continues shall be deemed a separate offense. No penalty may be assessed under this subsection until the person charged is given notice and an opportunity for a hearing on the charge. The Secretary of Transportation may assess and collect any civil penalty incurred under this subsection and, in his discretion, may remit, mitigate, or compromise any penalty until the matter is referred to the Attorney General. If a person against whom a civil penalty is assessed under this subsection fails to pay that penalty, an action may be commenced in the district court of the United States for any district in which the violation occurs for such penalty.

PORTS AND WATERWAYS SAFETY ACT

SEC. 4. VESSEL OPERATING REQUIREMENTS.

[33 U.S.C. 1223]

(a) IN GENERAL.—Subject to the requirements of section 5, the Secretary—

(1) in any port or place under the jurisdiction of the United States, in the navigable waters of the United States, or in any area covered by an international agreement negotiated pursuant to section 11, may construct, operate, maintain, improve, or expand vessel traffic services, consisting of measures for controlling or supervising vessel traffic or for protecting navigation and the marine environment and may include, but need not be limited to one or more of the following: reporting and operating requirements, surveillance and communications systems, routing systems, and fairways;

(2) shall require appropriate vessels which operate in an area of a vessel traffic service to utilize or comply with that service;

(3) may require vessels to install and use specified navigation equipment, communications equipment, electronic relative motion analyzer equipment, or any electronic or other device necessary to comply with a vessel traffic service or which is necessary in the interests of vessel safety: Provided, That the Secretary shall not require fishing vessels under 300 gross tons as measured under section 14502 of title 46, United States Code, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title or recreational vessels 65 feet or less to possess or use the equipment or devices required by this subsection solely under the authority of this Act;

(4) may control vessel traffic in areas subject to the jurisdiction of the United States which the Secretary determines to be hazardous, or under conditions of reduced visibility, adverse weather, vessel congestion, or other hazardous circumstances by—

(A) specifying times of entry, movement, or departure;

(B) establishing vessel traffic routing schemes;

(C) establishing vessel size, speed, draft limitations and vessel operating conditions; and

(D) restricting operation, in any hazardous area or under hazardous conditions, to vessels which have particular operating characteristics or capabilities which he considers necessary for safe operation under the circumstances; **[**and**]**

(5) may require the receipt of prearrival messages from any vessel, destined for a port or place subject to the jurisdiction of the United States, in sufficient time to permit advance vessel traffic planning prior to port entry, which shall include any information which is not already a matter of record and which the Secretary determines necessary for the control of the vessel and the safety of the port or the marine **[**environment.**]** *environment;*

(6) may prohibit the use of electronic or other devices that interfere with communications and navigation equipment;

(7) may carry out the functions under paragraph (1) of this subsection, at the Secretary's discretion and on such terms and conditions as the Secretary deems appropriate, either solely, or in cooperation with a public or private agency, authority, association, institution, corporation, organization or person, except

that a non-governmental entity may not carry out an inherently governmental function; and

(8) may, for the purpose of carrying out the Secretary's functions under paragraph (1) of this subsection, convey or lease real property under the administrative control of the Coast Guard to public or private agencies, authorities, associations, institutions, corporations, organizations, or persons for such consideration and upon such terms and conditions as the Secretary considers appropriate, except that the term of any such lease shall not exceed 20 years.

(b) SPECIAL POWERS.—The Secretary may order any vessel, in a port or place subject to the jurisdiction of the United States or in the navigable waters of the United States, to operate or anchor in a manner he directs if—

(1) he has reasonable cause to believe such vessel does not comply with any regulation issued under this Act or any other applicable law or treaty;

(2) he determines that such vessel does not satisfy the conditions for port entry set forth in section 9; or

(3) by reason of weather, visibility, sea conditions, port congestion, other hazardous circumstances, or the condition of such vessel, he is satisfied that such directive is justified in the interest of safety.

(c) PORT ACCESS ROUTES.—

(1) In order to provide safe access routes for the movement of vessel traffic proceeding to or from ports or places subject to the jurisdiction of the United States, and subject to the requirements of paragraph (3) hereof, the Secretary shall designate necessary fairways and traffic separation schemes for vessels operating in the territorial sea of the United States and in high seas approaches, outside the territorial sea, to such ports or places. Such a designation shall recognize, within the designated area, the paramount right of navigation over all other uses.

(2) No designation may be made by the Secretary pursuant to this subsection, if such a designation, as implemented, would deprive any person of the effective exercise of a right granted by a lease or permit executed or issued under other applicable provisions of law: Provided, That such right has become vested prior to the time of publication of the notice required by clause (A) of paragraph (3) hereof: Provided further, That the determination as to whether the designation would so deprive any such person shall be made by the Secretary, after consultation with the responsible official under whose authority the lease was executed or the permit issued.

(3) Prior to making a designation pursuant to paragraph (1) hereof, and in accordance with the requirements of section 5, the Secretary shall—

(A) within six months after date of enactment of this Act (and may, from time to time thereafter), undertake a study of the potential traffic density and the need for safe access routes for vessels in any area for which fairways or traffic separation schemes are proposed or which may otherwise be considered and shall publish notice of such undertaking in the Federal Register;

(B) in consultation with the Secretary of State, the Secretary of the Interior, the Secretary of Commerce, the Secretary of the Army, and the Governors of affected States, as their responsibilities may require, take into account all other uses of the area under consideration (including, as appropriate, the exploration for, or exploitation of, oil, gas, or other mineral resources, the construction or operation of deepwater ports or other structures on or above the seabed or subsoil of the submerged lands or the Outer Continental Shelf of the United States, the establishment or operation of marine or estuarine sanctuaries, and activities involving recreational or commercial fishing); and

(C) to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved.

(4) In carrying out his responsibilities under paragraph (3), the Secretary shall proceed expeditiously to complete any study undertaken. Thereafter, he shall promptly issue a notice of proposed rulemaking for the designation contemplated or shall have published in the Federal Register a notice that no designation is contemplated as a result of the study and the reason for such determination.

(5) In connection with a designation made pursuant to this subsection, the Secretary—

(A) shall issue reasonable rules and regulations governing the use of such designated areas, including the applicability of rules 9 and 10 of the International Regulations for Preventing Collisions at Sea, 1972, relating to narrow channels and traffic separation schemes, respectively, in waters where such regulations apply;

(B) to the extent that he finds reasonable and necessary to effectuate the purposes of the designation, make the use of designated fairways and traffic separation schemes mandatory for specific types and sizes of vessels, foreign and domestic, operating in the territorial sea of the United States and for specific types and sizes of vessels of the United States operating on the high seas beyond the territorial sea of the United States;

(C) may, from time to time, as necessary, adjust the location or limits of designated fairways or traffic separation schemes, in order to accommodate the needs of other uses which cannot be reasonably accommodated otherwise: Provided, That such an adjustment will not, in the judgment of the Secretary, unacceptably adversely affect the purpose for which the existing designation was made and the need for which continues; and

(D) shall, through appropriate channels, (i) notify cognizant international organizations of any designation, or adjustment thereof, and (ii) take action to seek the cooperation of foreign States in making it mandatory for vessels under their control to use any fairway or traffic separation scheme designated pursuant to this subsection in any area of the high seas, to the same extent as required by the Secretary for vessels of the United States.

(d) EXCEPTION.—Except pursuant to international treaty, convention, or agreement, to which the United States is a party, this Act shall not apply to any foreign vessel that is not destined for, or departing from, a port or place subject to the jurisdiction of the United States and that is in—

(1) innocent passage through the territorial sea of the United States, or

(2) transit through the navigable waters of the United States which form a part of an international strait.

(e) SPECIAL PROVISIONS RELATING TO SUBSECTION (a)(7) AND (8).—

(1) DEFINITION OF INHERENTLY GOVERNMENTAL FUNCTION.—For purposes of subsection (a)(7), the term "inherently governmental function" means any activity that is so intimately related to the public interest as to mandate performance by an officer or employee of the Federal Government, including an activity that requires either the exercise of discretion in applying the authority of the Government or the use of judgment in making a decision for the Government.

(2) DISPOSITION OF PROCEEDS FROM CONVEYANCES AND LEASES.—Amounts collected under subsection (a)(7) shall be credited to a special fund in the Treasury and ascribed to the Coast Guard. The amounts collected shall be available to the Coast Guard's "Operating Expenses" account without further appropriation and without fiscal year limitation, and the amounts appropriated from the general fund for that account shall be reduced by the amounts so collected.

(3) NONAPPLICATION OF CERTAIN ACTS.—A conveyance or lease of real property under subsection (a)(8) is not subject to subtitle I of title 40, United States Code, or the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.).

FEDERAL WATER POLLUTION CONTROL ACT

SEC. 311. OIL AND HAZARDOUS SUBSTANCES LIABILITY.

[33 U.S.C. 1321]

(a) DEFINITIONS.—For the purpose of this section, the term—

(1) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, **[**and**]** (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems**[**;**]**, *and (D) discharges incidental to mechanical removal authorized by the President under subsection (c) of this section;*

(3) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

(4) "public vessel" means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(6) "owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(7) "person" includes an individual, firm, corporation, association, and a partnership;

(8) "remove" or "removal" refers to containment and removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines and beaches;

(9) "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

(10) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(11) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(12) "act of God" means an act occasioned by an unanticipated grave natural disaster;

(13) "barrel" means 42 United States gallons at 60 degrees Fahrenheit;

(14) "hazardous substance" means any substance designated pursuant to subsection (b)(2) of this section;

(15) "inland oil barge" means a non-self-propelled vessel carrying oil in bulk as cargo and certificated to operate only in the inland waters of the United States, while operating in such waters;

(16) "inland waters of the United States" means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside such baseline which are a part of the Gulf Intracoastal Waterway;

(17) "otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel

documentation or numbering, or as provided for by international agreement to which the United States is a party;

(18) "Area Committee" means an Area Committee established under subsection (j);

(19) "Area Contingency Plan" means an Area Contingency Plan prepared under subsection (j);

(20) "Coast Guard District Response Group" means a Coast Guard District Response Group established under subsection (j);

(21) "Federal On-Scene Coordinator" means a Federal On-Scene Coordinator designated in the National Contingency Plan;

(22) "National Contingency Plan" means the National Contingency Plan prepared and published under subsection (d);

(23) "National Response Unit" means the National Response Unit established under subsection (j);

(24) "worst case discharge" means—

(A) in the case of a vessel, a discharge in adverse weather conditions of its entire cargo; and

(B) in the case of an offshore facility or onshore facility, the largest foreseeable discharge in adverse weather conditions; **[**and**]**

(25) "removal costs" means—

(A) the costs of removal of oil or a hazardous substance that are incurred after it is discharged; and

(B) in any case in which there is a substantial threat of a discharge of oil or a hazardous substance, the costs to prevent, minimize, or mitigate that **[**threat.**]** *threat; and*

(26) "non-tank vessel" means a self-propelled vessel of 400 gross tons or greater, other than a tank vessel, which carries oil of any kind as fuel for main propulsion and that—

(A) is a vessel of the United States; or

(B) operates on the navigable waters of the United States.

(b) CONGRESSIONAL DECLARATION OF POLICY AGAINST DISCHARGES OF OIL OR HAZARDOUS SUBSTANCES; DESIGNATION OF HAZARDOUS SUBSTANCES; STUDY OF HIGHER STANDARD OF CARE INCENTIVES AND REPORT TO CONGRESS; LIABILITY; PENALTIES; CIVIL ACTIONS: PENALTY LIMITATIONS, SEPARATE OFFENSES, JURISDICTION, MITIGATION OF DAMAGES AND COSTS, RECOVERY OF REMOVAL COSTS, ALTERNATIVE REMEDIES, AND WITHHOLDING CLEARANCE OF VESSELS.

(1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act of 1976).

(2)(A) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than oil as defined in this section,

such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act of 1976), present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.

(B) The Administrator shall within 18 months after the date of enactment of this paragraph, conduct a study and report to the Congress on methods, mechanisms, and procedures to create incentives to achieve a higher standard of care in all aspects of the management and movement of hazardous substances on the part of owners, operators, or persons in charge of onshore facilities, offshore facilities, or vessels. The Administrator shall include in such study (1) limits of liability, (2) liability for third party damages, (3) penalties and fees, (4) spill prevention plans, (5) current practices in the insurance and banking industries, and (6) whether the penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500 should be enacted.

(3) The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or (ii) in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act of 1976), in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges into the waters of the contiguous zone or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act of 1976), where permitted under the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(4) The President shall by regulation determine for the purposes of this section those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or the environment of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. The Federal agency shall immediately notify the appropriate State agency of any State which is, or may reasonably be expected to be, affected by the discharge of oil or a hazardous substance. Any such person (A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both. Notification received pursuant to this paragraph shall not be used against any such natural person in any criminal case, except a prosecution for perjury or for giving a false statement.

(6) ADMINISTRATIVE PENALTIES.—

(A) VIOLATIONS.—Any owner, operator, or person in charge of any vessel, onshore facility, or offshore facility—

(i) from which oil or a hazardous substance is discharged in violation of paragraph (3), or

(ii) who fails or refuses to comply with any regulation issued under subsection (j) to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by the Secretary of the department in which the Coast Guard is operating or the Administrator.

(B) CLASSES OF PENALTIES.—

(i) CLASS I.—The amount of a class I civil penalty under subparagraph (A) may not exceed $10,000 per violation, except that the maximum amount of any class I civil penalty under this subparagraph shall not exceed $25,000. Before assessing a civil penalty under this clause, the Administrator or Secretary, as the case may be, shall give to the person to be assessed such penalty written notice of the Administrator's or Secretary's proposal to assess the penalty and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed penalty. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

(ii) CLASS II.—The amount of a class II civil penalty under subparagraph (A) may not exceed $10,000 per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed $125,000. Except as otherwise provided in this sub-

section, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code. The Administrator and Secretary may issue rules for discovery procedures for hearings under this paragraph.

(C) RIGHTS OF INTERESTED PERSONS.—

(i) PUBLIC NOTICE.—Before issuing an order assessing a class II civil penalty under this paragraph the Administrator or Secretary, as the case may be, shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order.

(ii) PRESENTATION OF EVIDENCE.—Any person who comments on a proposed assessment of a class II civil penalty under this paragraph shall be given notice of any hearing held under this paragraph and of the order assessing such penalty. In any hearing held under this paragraph, such person shall have a reasonable opportunity to be heard and to present evidence.

(iii) RIGHTS OF INTERESTED PERSONS TO A HEARING.—If no hearing is held under subparagraph (B) before issuance of an order assessing a class II civil penalty under this paragraph, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such order, the Administrator or Secretary, as the case may be, to set aside such order and to provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator or Secretary shall immediately set aside such order and provide a hearing in accordance with subparagraph (B)(ii). If the Administrator or Secretary denies a hearing under this clause, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of and the reasons for such denial.

(D) FINALITY OF ORDER.—An order assessing a class II civil penalty under this paragraph shall become final 30 days after its issuance unless a petition for judicial review is filed under subparagraph (G) or a hearing is requested under subparagraph (C)(iii). If such a hearing is denied, such order shall become final 30 days after such denial.

(E) EFFECT OF ORDER.—Action taken by the Administrator or Secretary, as the case may be, under this paragraph shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this Act; except that any violation—

(i) with respect to which the Administrator or Secretary has commenced and is diligently prosecuting an action to assess a class II civil penalty under this paragraph, or

(ii) for which the Administrator or Secretary has issued a final order assessing a class II civil penalty not subject to further judicial review and the violator has paid a penalty assessed under this paragraph, shall not be the subject of a civil penalty action under section 309(d), 309(g), or 505 of this Act or under paragraph (7).

(F) EFFECT OF ACTION ON COMPLIANCE.—No action by the Administrator or Secretary under this paragraph shall affect any person's obligation to comply with any section of this Act.

(G) JUDICIAL REVIEW.—Any person against whom a civil penalty is assessed under this paragraph or who commented on the proposed assessment of such penalty in accordance with subparagraph (C) may obtain review of such assessment—

(i) in the case of assessment of a class I civil penalty, in the United States District Court for the District of Columbia or in the district in which the violation is alleged to have occurred, or

(ii) in the case of assessment of a class II civil penalty, in United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business, by filing a notice of appeal in such court within the 30-day period beginning on the date the civil penalty order is issued and by simultaneously sending a copy of such notice by certified mail to the Administrator or Secretary, as the case may be, and the Attorney General. The Administrator or Secretary shall promptly file in such court a certified copy of the record on which the order was issued. Such court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion.

(H) COLLECTION.—If any person fails to pay an assessment of a civil penalty—

(i) after the assessment has become final, or

(ii) after a court in an action brought under subparagraph (G) has entered a final judgment in favor of the Administrator or Secretary, as the case may be, the Administrator or Secretary shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of

a civil penalty as described in the first sentence of this subparagraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

(I) SUBPOENAS.—The Administrator or Secretary, as the case may be, may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this paragraph. In case of contumacy or refusal to obey a subpoena issued pursuant to this subparagraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(7) CIVIL PENALTY ACTION.—

(A) DISCHARGE, GENERALLY.—Any person who is the owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3), shall be subject to a civil penalty in an amount up to $25,000 per day of violation or an amount up to $1,000 per barrel of oil or unit of reportable quantity of hazardous substances discharged.

(B) FAILURE TO REMOVE OR COMPLY.—Any person described in subparagraph (A) who, without sufficient cause—

(i) fails to properly carry out removal of the discharge under an order of the President pursuant to subsection (c); or

(ii) fails to comply with an order pursuant to subsection (e)(1)(B); shall be subject to a civil penalty in an amount up to $25,000 per day of violation or an amount up to 3 times the costs incurred by the Oil Spill Liability Trust Fund as a result of such failure.

(C) FAILURE TO COMPLY WITH REGULATION.—Any person who fails or refuses to comply with any regulation issued under subsection (j) shall be subject to a civil penalty in an amount up to $25,000 per day of violation.

(D) GROSS NEGLIGENCE.—In any case in which a violation of paragraph (3) was the result of gross negligence or willful misconduct of a person described in subparagraph (A), the person shall be subject to a civil penalty of not less than $100,000, and not more than $3,000 per barrel of oil

or unit of reportable quantity of hazardous substance discharged.

(E) JURISDICTION.—An action to impose a civil penalty under this paragraph may be brought in the district court of the United States for the district in which the defendant is located, resides, or is doing business, and such court shall have jurisdiction to assess such penalty.

(F) LIMITATION.—A person is not liable for a civil penalty under this paragraph for a discharge if the person has been assessed a civil penalty under paragraph (6) for the discharge.

(8) DETERMINATION OF AMOUNT.—In determining the amount of a civil penalty under paragraphs (6) and (7), the Administrator, Secretary, or the court, as the case may be, shall consider the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

(9) MITIGATION OF DAMAGE.—In addition to establishing a penalty for the discharge of oil or a hazardous substance, the Administrator or the Secretary of the department in which the Coast Guard is operating may act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost incurred under subsection (c) of this section for the removal of such substance by the United States Government.

(10) RECOVERY OF REMOVAL COSTS.—Any costs of removal incurred in connection with a discharge excluded by subsection (a)(2)(C) of this section shall be recoverable from the owner or operator of the source of the discharge in an action brought under section 309(b) of this Act.

(11) LIMITATION.—Civil penalties shall not be assessed under both this section and section 309 for the same discharge.

(12) WITHHOLDING CLEARANCE.—If any owner, operator, or person in charge of a vessel is liable for a civil penalty under this subsection, or if reasonable cause exists to believe that the owner, operator, or person in charge may be subject to a civil penalty under this subsection, the Secretary of the Treasury, upon the request of the Secretary of the department in which the Coast Guard is operating or the Administrator, shall with respect to such vessel refuse or revoke—

(A) the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91);

(B) a permit to proceed under as applicable. Clearance or a permit refused or revoked under this paragraph may be granted upon the filing of a bond or other surety satisfactory to the Secretary of the department in which the Coast Guard is operating or the Administrator.

(c) FEDERAL REMOVAL AUTHORITY.—

(1) GENERAL REMOVAL REQUIREMENT.—

(A) The President shall, in accordance with the National Contingency Plan and any appropriate Area Contingency Plan, ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge, of oil or a hazardous substance—

(i) into or on the navigable waters;

(ii) on the adjoining shorelines to the navigable waters;

(iii) into or on the waters of the exclusive economic zone; or

(iv) that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

(B) In carrying out this paragraph, the President may—

(i) remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;

(ii) direct or monitor all Federal, State, and private actions to remove a discharge; and

(iii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(2) DISCHARGE POSING SUBSTANTIAL THREAT TO PUBLIC HEALTH OR WELFARE.—

(A) If a discharge, or a substantial threat of a discharge, of oil or a hazardous substance from a vessel, offshore facility, or onshore facility is of such a size or character as to be a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the President shall direct all Federal, State, and private actions to remove the discharge or to mitigate or prevent the threat of the discharge.

(B) In carrying out this paragraph, the President may, without regard to any other provision of law governing contracting procedures or employment of personnel by the Federal Government—

(i) remove or arrange for the removal of the discharge, or mitigate or prevent the substantial threat of the discharge; and

(ii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(3) ACTIONS IN ACCORDANCE WITH NATIONAL CONTINGENCY PLAN.—

(A) Each Federal agency, State, owner or operator, or other person participating in efforts under this subsection shall act in accordance with the National Contingency Plan or as directed by the President.

(B) An owner or operator participating in efforts under this subsection shall act in accordance with the National Contingency Plan and the applicable response plan required under subsection (j), or as directed by the President, except that the owner or operator may deviate from

the applicable response plan if the President or the Federal On-Scene Coordinator determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.

(4) EXEMPTION FROM LIABILITY.—

(A) A person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the President relating to a discharge or a substantial threat of a discharge of oil or a hazardous substance.

(B) Subparagraph (A) does not apply—

(i) to a responsible party;

(ii) to a response under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(iii) with respect to personal injury or wrongful death; or

(iv) if the person is grossly negligent or engages in willful misconduct.

(C) A responsible party is liable for any removal costs and damages that another person is relieved of under subparagraph (A).

(5) OBLIGATION AND LIABILITY OF OWNER OR OPERATOR NOT AFFECTED.—Nothing in this subsection affects—

(A) the obligation of an owner or operator to respond immediately to a discharge, or the threat of a discharge, of oil; or

(B) the liability of a responsible party under the Oil Pollution Act of 1990.

(6) RESPONSIBLE PARTY DEFINED.—For purposes of this subsection, the term "responsible party" has the meaning given that term under section 1001 of the Oil Pollution Act of 1990.

(d) NATIONAL CONTINGENCY PLAN.—

(1) PREPARATION BY PRESIDENT.—The President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances pursuant to this section.

(2) CONTENTS.—The National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to, the following:

(A) Assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies and port authorities including, but not limited to, water pollution control and conservation and trusteeship of natural resources (including conservation of fish and wildlife).

(B) Identification, procurement, maintenance, and storage of equipment and supplies.

(C) Establishment or designation of Coast Guard strike teams, consisting of—

(i) personnel who shall be trained, prepared, and available to provide necessary services to carry out the National Contingency Plan;

(ii) adequate oil and hazardous substance pollution control equipment and material; and

(iii) a detailed oil and hazardous substance pollution and prevention plan, including measures to protect fisheries and wildlife.

(D) A system of surveillance and notice designed to safeguard against as well as ensure earliest possible notice of discharges of oil and hazardous substances and imminent threats of such discharges to the appropriate State and Federal agencies.

(E) Establishment of a national center to provide coordination and direction for operations in carrying out the Plan.

(F) Procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances.

(G) A schedule, prepared in cooperation with the States, identifying—

(i) dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the Plan,

(ii) the waters in which such dispersants, other chemicals, and other spill mitigating devices and substances may be used, and

(iii) the quantities of such dispersant, other chemicals, or other spill mitigating device or substance which can be used safely in such waters, which schedule shall provide in the case of any dispersant, chemical, spill mitigating device or substance, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants, other chemicals, and other spill mitigating devices and substances which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters.

(H) A system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed in accordance with the Oil Pollution Act of 1990, in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred for that removal, from the Oil Spill Liability Trust Fund.

(I) Establishment of criteria and procedures to ensure immediate and effective Federal identification of, and response to, a discharge, or the threat of a discharge, that results in a substantial threat to the public health or welfare of the United States, as required under subsection (c)(2).

(J) Establishment of procedures and standards for removing a worst case discharge of oil, and for mitigating or preventing a substantial threat of such a discharge.

(K) Designation of the Federal official who shall be the Federal On-Scene Coordinator for each area for which an Area Contingency Plan is required to be prepared under subsection (j).

(L) Establishment of procedures for the coordination of activities of—

(i) Coast Guard strike teams established under subparagraph (C);

(ii) Federal On-Scene Coordinators designated under subparagraph (K);

(iii) District Response Groups established under subsection (j); and

(iv) Area Committees established under subsection (j).

(M) A fish and wildlife response plan, developed in consultation with the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and other interested parties (including State fish and wildlife conservation officials), for the immediate and effective protection, rescue, and rehabilitation of, and the minimization of risk of damage to, fish and wildlife resources and their habitat that are harmed or that may be jeopardized by a discharge.

(3) REVISIONS AND AMENDMENTS.—The President may, from time to time, as the President deems advisable, revise or otherwise amend the National Contingency Plan.

(4) ACTIONS IN ACCORDANCE WITH NATIONAL CONTINGENCY PLAN.—After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

(e) CIVIL ENFORCEMENT.—

(1) ORDERS PROTECTING PUBLIC HEALTH.—In addition to any action taken by a State or local government, when the President determines that there may be an imminent and substantial threat to the public health or welfare of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitat, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil or a hazardous substance from a vessel or facility in violation of subsection (b), the President may—

(A) require the Attorney General to secure any relief from any person, including the owner or operator of the vessel or facility, as may be necessary to abate such endangerment; or

(B) after notice to the affected State, take any other action under this section, including issuing administrative orders, that may be necessary to protect the public health and welfare.

(2) JURISDICTION OF DISTRICT COURTS.—The district courts of the United States shall have jurisdiction to grant any relief under this subsection that the public interest and the equities of the case may require.

(f) LIABILITY FOR ACTUAL COSTS OF REMOVAL.—

(1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, not withstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed $50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Administrator is authorized, by regulation, after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, and apply with respect to such classifications dif-

fering limits of liability which may be less than the amount contained in this paragraph.

(3) Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed $50,000,000 except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

(4) The costs of removal of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

(5) The President, or the authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resources. Sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government, or the State government.

(g) THIRD PARTY LIABILITY.—Where the owner or operator of a vessel (other than an inland oil barge) carrying oil or hazardous substances as cargo or an onshore or offshore facility which handles or stores oil or hazardous substances in bulk, from which oil or a hazardous substance is discharged in violation of subsection (b) of this section, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall pay to the United States Government the actual costs incurred under subsection (c) for removal of such oil or substance and shall be entitled by subrogation to all rights of the United States Government to recover such costs from such third party under this subsection. In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section, proves that such discharge of oil or hazardous substance was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the

United States Government, such third party shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for removal of such oil or substance by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, the liability of such third party under this subsection shall not exceed, in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred if such owner or operator were liable. If the United States can show that the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party in any court of competent jurisdiction to recover such removal costs.

(h) RIGHTS AGAINST THIRD PARTIES WHO CAUSED OR CONTRIBUTED TO DISCHARGE.—The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) The United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil or hazardous substance.

(i) RECOVERY OF REMOVAL COSTS.—In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Claims Court, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing causes.

(j) NATIONAL RESPONSE SYSTEM.—

(1) IN GENERAL.—Consistent with the National Contingency Plan required by subsection (c)(2) of this section, as soon as

practicable after the effective date of this section, and from time to time thereafter, the President shall issue regulations consistent with maritime safety and with marine and navigation laws (A) establishing methods and procedures for removal of discharged oil and hazardous substances, (B) establishing criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, (C) establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges, and (D) governing the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes in order to reduce the likelihood of discharges of oil from vessels in violation of this section.

(2) NATIONAL RESPONSE UNIT.—The Secretary of the department in which the Coast Guard is operating shall establish a National Response Unit at Elizabeth City, North Carolina. The Secretary, acting through the National Response Unit—

(A) shall compile and maintain a comprehensive computer list of spill removal resources, personnel, and equipment that is available worldwide and within the areas designated by the President pursuant to paragraph (4), and of information regarding previous spills, including data from universities, research institutions, State governments, and other nations, as appropriate, which shall be disseminated as appropriate to response groups and area committees, and which shall be available to Federal and State agencies and the public;

(B) shall provide technical assistance, equipment, and other resources requested by a Federal On- Scene Coordinator;

(C) shall coordinate use of private and public personnel and equipment to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near an area designated by the President pursuant to paragraph (4);

(D) may provide technical assistance in the preparation of Area Contingency Plans required under paragraph (4);

(E) shall administer Coast Guard strike teams established under the National Contingency Plan;

(F) shall maintain on file all Area Contingency Plans approved by the President under this subsection; and

(G) shall review each of those plans that affects its responsibilities under this subsection.

(3) COAST GUARD DISTRICT RESPONSE GROUPS.—

(A) The Secretary of the department in which the Coast Guard is operating shall establish in each Coast Guard district a Coast Guard District Response Group.

(B) Each Coast Guard District Response Group shall consist of—

(i) the Coast Guard personnel and equipment, including firefighting equipment, of each port within the district;

(ii) additional prepositioned equipment; and

(iii) a district response advisory staff.

(C) Coast Guard district response groups—

(i) shall provide technical assistance, equipment, and other resources when required by a Federal On-Scene Coordinator;

(ii) shall maintain all Coast Guard response equipment within its district;

(iii) may provide technical assistance in the preparation of Area Contingency Plans required under paragraph (4); and

(iv) shall review each of those plans that affect its area of geographic responsibility.

(4) AREA COMMITTEES AND AREA CONTINGENCY PLANS.—

(A) There is established for each area designated by the President an Area Committee comprised of members appointed by the President from qualified personnel of Federal, State, and local agencies.

(B) Each Area Committee, under the direction of the Federal On-Scene Coordinator for its area, shall—

(i) prepare for its area the Area Contingency Plan required under subparagraph (C);

(ii) work with State and local officials to enhance the contingency planning of those officials and to assure preplanning of joint response efforts, including appropriate procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife; and

(iii) work with State and local officials to expedite decisions for the use of dispersants and other mitigating substances and devices.

(C) Each Area Committee shall prepare and submit to the President for approval an Area Contingency Plan for its area. The Area Contingency Plan shall—

(i) when implemented in conjunction with the National Contingency Plan, be adequate to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area;

(ii) describe the area covered by the plan, including the areas of special economic or environmental importance that might be damaged by a discharge;

(iii) describe in detail the responsibilities of an owner or operator and of Federal, State, and local agencies in removing a discharge, and in mitigating or preventing a substantial threat of a discharge;

(iv) list the equipment (including firefighting equipment), dispersants or other mitigating substances and devices, and personnel available to an owner or operator and Federal, State, and local agencies, to ensure an effective and immediate removal of a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge;

(v) compile a list of local scientists, both inside and outside Federal Government service, with expertise in the environmental effects of spills of the types of oil typically transported in the area, who may be contacted to provide information or, where appropriate, participate in meetings of the scientific support team convened in response to a spill, and describe the procedures to be followed for obtaining an expedited decision regarding the use of dispersants;

(vi) describe in detail how the plan is integrated into other Area Contingency Plans and vessel, offshore facility, and onshore facility response plans approved under this subsection, and into operating procedures of the National Response Unit;

(vii) include any other information the President requires; and

(viii) be updated periodically by the Area Committee.

(D) The President shall—

(i) review and approve Area Contingency Plans under this paragraph; and

(ii) periodically review Area Contingency Plans so approved.

[(5) TANK VESSEL AND FACILITY RESPONSE PLANS.—]

(5) TANK VESSEL, NON-TANK VESSEL, AND FACILITY RESPONSE PLANS.—

(A) The President shall issue regulations which require an owner or operator of a tank [vessel or] *vessel, a non-tank vessel, or a* facility described in [subparagraph (B)] *subparagraph (C)* to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.

(B) The Secretary of the Department in which the Coast Guard is operating may issue regulations which require an owner or operator of a tank vessel, a non-tank vessel, or a facility described in subparagraph (C) to prepare and submit to the Secretary a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of a noxious liquid substance. For purposes of this paragraph, the term "noxious liquid substance" has the same meaning when that term is used in the MARPOL Protocol described in section 2(a)(3) of the Act to Prevent Pollution from Ships (33 U.S.C. 1901(a)(3)).

[(B)] *(C)* The tank [vessels and] *vessels, non-tank vessels, and* facilities referred to in [subparagraph (A)] *subparagraphs (A) and (B)* are the following:

(i) A tank vessel, as defined under section 2101 of title 46, United States Code.

(ii) A non-tank vessel.

[(ii)] *(iii)* An offshore facility.

[(iii)] *(iv)* An onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on

the navigable waters, adjoining shorelines, or the exclusive economic zone.

[(C)] *(D)* A response plan required under this paragraph shall—

(i) be consistent with the requirements of the National Contingency Plan and Area Contingency Plans;

(ii) identify the qualified individual having full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment pursuant to clause (iii);

(iii) identify, and ensure by contract or other means approved by the President the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;

(iv) describe the training, equipment testing, periodic unannounced drills, and response actions of persons on the vessel or at the facility, to be carried out under the plan to ensure the safety of the vessel or facility and to mitigate or prevent the discharge, or the substantial threat of a discharge;

(v) be updated periodically; and

(vi) be resubmitted for approval of each significant change.

[(D)] *(E)* With respect to any response plan submitted under this paragraph for an onshore facility that, because of its location, could reasonably be expected to cause significant and substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines or the exclusive economic zone, and with respect to each response plan submitted under this paragraph for a tank [vessel or] *vessel, a non-tank vessel, or an* offshore facility, the President shall—

(i) promptly review such response plan;

(ii) require amendments to any plan that does not meet the requirements of this paragraph;

(iii) approve any plan that meets the requirements of this paragraph; and

(iv) review each plan periodically thereafter.

[(E)] *(F)* A tank vessel, *non-tank vessel,* offshore facility, or onshore facility required to prepare a response plan under this subsection may not handle, store, or transport oil unless—

(i) in the case of a tank vessel, *non-tank vessel,* offshore facility, or onshore facility for which a response plan is reviewed by the President under [subparagraph (D),] *subparagraph (E),* the plan has been approved by the President; and

(ii) the vessel or facility is operating in compliance with the plan.

[(F) Notwithstanding subparagraph (E), the President may authorize a tank vessel, *non-tank vessel,* offshore facility, or onshore facility to operate without a response plan approved under this paragraph, until not later than 2 years after the date of the submission to the President of a plan for the tank [vessel or] *vessel, non-tank vessel, or* facility, if the owner or operator certifies that the owner or operator has ensured by contract or other means approved by the President the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge.]

(G) Notwithstanding subparagraph (F), the President may authorize a tank vessel, non-tank vessel, offshore facility, or onshore facility that handles, stores, or transports oil to operate without a response plan approved under this paragraph, until not later than 2 years after the date of the submission to the President of a plan for the tank vessel, non-tank vessel, or facility, if the owner or operator certifies that the owner or operator has ensured by contract or other means approved by the President the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge.

[(G)] *(H)* The owner or operator of a tank vessel, *non-tank vessel,* offshore facility, or onshore facility may not claim as a defense to liability under title I of the Oil Pollution Act of 1990 that the owner or operator was acting in accordance with an approved response plan.

[(H)] *(I)* The Secretary shall maintain, in the Vessel Identification System established under chapter 125 of title 46, United States Code, the dates of approval and review of a response plan under this paragraph for each tank vessel *and non-tank vessel* that is a vessel of the United States.

(6) EQUIPMENT REQUIREMENTS AND INSPECTION.—[Not later than 2 years after the date of enactment of this section, the President shall require—]*The President may require—*

(A) periodic inspection of containment booms, skimmers, vessels, and other major equipment used to remove discharges; and

(B) vessels operating on navigable waters and carrying oil or a hazardous substance in bulk as [cargo] *cargo, and non-tank vessels carrying oil of any kind as fuel for main propulsion,* to carry appropriate removal equipment that employs the best technology economically feasible and that is compatible with the safe operation of the vessel.

(7) AREA DRILLS.—The President shall periodically conduct drills of removal capability, without prior notice, in areas for which Area Contingency Plans are required under this subsection and under relevant tank [vessel and] *vessel, non-tank vessel, and* facility response plans. The drills may include participation by Federal, State, and local agencies, the owners and operators of vessels and facilities in the area, and private industry. The President may publish annual reports on these

drills, including assessments of the effectiveness of the plans and a list of amendments made to improve plans.

(8) UNITED STATES GOVERNMENT NOT LIABLE.—The United States Government is not liable for any damages arising from its actions or omissions relating to any response plan required by this section.

(k) [Repealed]

(l) ADMINISTRATION.—The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

(m) ADMINISTRATIVE PROVISIONS.—

(1) FOR VESSELS.—Anyone authorized by the President to enforce the provisions of this section with respect to any vessel may, except as to public vessels—

(A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone,

(B) with or without a warrant, arrest any person who in the presence or view of the authorized person violates the provisions of this section or any regulation issued thereunder, and

(C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

(2) FOR FACILITIES.—

(A) RECORDKEEPING.—Whenever required to carry out the purposes of this section, the Administrator or the Secretary of the Department in which the Coast Guard is operating shall require the owner or operator of a facility to which this section applies to establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment and methods, and provide such other information as the Administrator or Secretary, as the case may be, may require to carry out the objectives of this section.

(B) ENTRY AND INSPECTION.—Whenever required to carry out the purposes of this section, the Administrator or the Secretary of the Department in which the Coast Guard is operating or an authorized representative of the Administrator or Secretary, upon presentation of appropriate credentials, may—

(i) enter and inspect any facility to which this section applies, including any facility at which any records are required to be maintained under subparagraph (A); and

(ii) at reasonable times, have access to and copy any records, take samples, and inspect any monitoring equipment or methods required under subparagraph (A).

(C) ARRESTS AND EXECUTION OF WARRANTS.—Anyone authorized by the Administrator or the Secretary of the department in which the Coast Guard is operating to enforce

the provisions of this section with respect to any facility may—

(i) with or without a warrant, arrest any person who violates the provisions of this section or any regulation issued thereunder in the presence or view of the person so authorized; and

(ii) execute any warrant or process issued by an officer or court of competent jurisdiction.

(D) PUBLIC ACCESS.—Any records, reports, or information obtained under this paragraph shall be subject to the same public access and disclosure requirements which are applicable to records, reports, and information obtained pursuant to section 308.

(n) JURISDICTION.—The several district courts of the United States are invested with jurisdiction for any actions, other than actions pursuant to subsection (i)(l), arising under this section. In the case of Guam and the Trust Territory of the Pacific Islands, such actions may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the United States District Court for the District of the Canal Zone.

(o) OBLIGATION FOR DAMAGES UNAFFECTED; LOCAL AUTHORITY NOT PREEMPTED; EXISTING FEDERAL AUTHORITY NOT MODIFIED OR AFFECTED.—

(1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly owned or privately owned property resulting from a discharge of any oil or hazardous substance or from the removal of any such oil or hazardous substance.

(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil or hazardous substance into any waters within such State, or with respect to any removal activities related to such discharge.

(3) Nothing in this section shall be construed as affecting or modifying any other existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this Act or any other provision of law, or to affect any State or local law not in conflict with this section.

(p) * * *

* * * * * * *

(q) ESTABLISHMENT OF MAXIMUM LIMIT OF LIABILITY WITH RESPECT TO ONSHORE OR OFFSHORE FACILITIES.—The President is authorized to establish, with respect to any class or category of onshore or offshore facilities, a maximum limit of liability under subsections (f)(2) and (3) of this section of less than $50,000,000, but not less than $8,000,000.

(r) LIABILITY LIMITATIONS NOT TO LIMIT LIABILITY UNDER OTHER LEGISLATION.—Nothing in this section shall be construed to impose, or authorize the imposition of, any limitation on liability under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974.

(s) OIL SPILL LIABILITY TRUST FUND.—The Oil Spill Liability Trust Fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509) shall be available to carry out subsections (b), (c), (d), (j), and (l) as those subsections apply to discharges, and substantial threats of discharges, of oil. Any amounts received by the United States under this section shall be deposited in the Oil Spill Liability Trust Fund.

INLAND NAVIGATION RULES ACT OF 1980

[SEC. 2. APPLICATION (RULE 1).

[33 U.S.C. 2001]

[(a) UNITED STATES INLAND WATERS AND CANADIAN WATERS OF THE GREAT LAKES.—These Rules apply to all vessels upon the inland waters of the United States, and to vessels of the United States on the Canadian waters of the Great Lakes to the extent that there is no conflict with Canadian law.

[(b) INTERNATIONAL REGULATIONS.—

[(i) These Rules constitute special rules made by an appropriate authority within the meaning of Rule 1(b) of the International Regulations

[(ii) All vessels complying with the construction and equipment requirements of the International Regulations are considered to be in compliance with these Rules.

[(c) SPECIAL RULES.—Nothing in these Rules shall interfere with the operation of any special rules made by the Secretary of the Navy with respect to additional station or signal lights and shapes or whistle signals for ships of war and vessels proceeding under convoy, or by the Secretary with respect to additional station or signal lights and shapes for fishing vessels engaged in fishing as a fleet. These additional station or signal lights and shapes or whistle signals shall, so far as possible, be such that they cannot be mistaken for any light, shape, or signal authorized elsewhere under these Rules. Notice of such special rules shall be published in the Federal Register and, after the effective date specified in such notice, they shall have effect as if they were a part of these Rules.

[(d) ESTABLISHMENT OF TRAFFIC SEPARATION SCHEMES.—Traffic separation schemes may be established for the purpose of these Rules. Vessel traffic service regulations may be in effect in certain areas.

[(e) ALTERNATIVE COMPLIANCE.—Whenever the Secretary determines that a vessel or class of vessels of special construction or purpose cannot comply fully with the provisions of any of these Rules with respect to the number, position, range, or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signaling appliances, the vessel shall comply with such other provisions in regard to the number, position, range, or arc of visibility of lights or shapes, as well as to the disposition and

characteristics of sound- signaling appliances, as the Secretary shall have determined to be the closest possible compliance with these Rules. The Secretary may issue a certificate of alternative compliance for a vessel or class of vessels specifying the closest possible compliance with these Rules. The Secretary of the Navy shall make these determinations and issue certificates of alternative compliance for vessels of the Navy.

[(f) ACCEPTANCE OF CERTIFICATES OF ALTERNATIVE COMPLIANCE FROM CONTRACTING PARTIES TO INTERNATIONAL REGULATIONS.—The Secretary may accept a certificate of alternative compliance issued by a contracting party to the International Regulations if he determines that the alternative compliance standards of the contracting party are substantially the same as those of the United States.

[SEC. 3. RESPONSIBILITY (RULE 2).

[33 U.S.C. 2002]

[(a) EXONERATION.—Nothing in these Rules shall exonerate any vessel, or the owner, master, or crew thereof, from the consequences of any neglect to comply with these Rules or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

[(b) DEPARTURE FROM RULES WHEN NECESSARY TO AVOID IMMEDIATE DANGER.—In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from these Rules necessary to avoid immediate danger.]

SEC. 3. INLAND NAVIGATION RULES.

The Secretary may issue inland navigation regulations applicable to all vessels upon the inland waters of the United States and technical annexes that are as consistent as possible with the respective annexes to the International Regulations.

OIL POLLUTION ACT OF 1990

* * * * * * *

SEC. 1012. USES OF THE FUND.

[33 U.S.C. 2712]

(a) USES GENERALLY.—The Fund shall be available to the President for—

(1) the payment of removal costs, including the costs of monitoring removal actions, determined by the President to be consistent with the National Contingency Plan—

(A) by Federal authorities; or

(B) by a Governor or designated State official under subsection (d);

(2) the payment of costs incurred by Federal, State, or Indian tribe trustees in carrying out their functions under section 1006 for assessing natural resource damages and for developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of damaged

resources determined by the President to be consistent with the National Contingency Plan;

(3) the payment of removal costs determined by the President to be consistent with the National Contingency Plan as a result of, and damages resulting from, a discharge, or a substantial threat of a discharge, of oil from a foreign offshore unit;

(4) the payment of claims in accordance with section 1013 for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages;

(5) the payment of Federal administrative, operational, and personnel costs and expenses reasonably necessary for and incidental to the implementation, administration, and enforcement of this Act (including, but not limited to, sections 1004(d)(2), 1006(e), 4107, 4110, 4111, 4112, 4117, 5006, 8103, and title VII) and subsections (b), (c), (d), (j), and (l) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), as amended by this Act, with respect to prevention, removal, and enforcement related to oil discharges, provided that—

(A) not more than $25,000,000 in each fiscal year shall be available to the Secretary for operating expenses incurred by the Coast Guard;

(B) not more than $30,000,000 each year through the end of fiscal year 1992 shall be available to establish the National Response System under section 311(j) of the Federal Water Pollution Control Act, as amended by this Act, including the purchase and prepositioning of oil spill removal equipment; and

(C) not more than $27,250,000 in each fiscal year shall be available to carry out title VII of this [Act.] *Act; and*

(6) the making of loans to assist any injured party in paying financial obligations during the claims procedure described in section 1013.

(b) DEFENSE TO LIABILITY FOR FUND.—The Fund shall not be available to pay any claim for removal costs or damages to a particular claimant, to the extent that the incident, removal costs, or damages are caused by the gross negligence or willful misconduct of that claimant.

(c) OBLIGATION OF FUND BY FEDERAL OFFICIALS.—The President may promulgate regulations designating one or more Federal officials who may obligate money in accordance with subsection (a).

(d) ACCESS TO FUND BY STATE OFFICIALS.—

(1) IMMEDIATE REMOVAL.—In accordance with regulations promulgated under this section, the President, upon the request of the Governor of a State or pursuant to an agreement with a State under paragraph (2), may obligate the Fund for payment in an amount not to exceed $250,000 for removal costs consistent with the National Contingency Plan required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge, of oil.

(2) AGREEMENTS.—

(A) IN GENERAL.—The President shall enter into an agreement with the Governor of any interested State to es-

tablish procedures under which the Governor or a designated State official may receive payments from the Fund for removal costs pursuant to paragraph (1).

(B) TERMS.—Agreements under this paragraph—

(i) may include such terms and conditions as may be agreed upon by the President and the Governor of a State;

(ii) shall provide for political subdivisions of the State to receive payments for reasonable removal costs; and

(iii) may authorize advance payments from the Fund to facilitate removal efforts.

(e) REGULATIONS.—The President shall—

(1) not later than 6 months after the date of the enactment of this Act, publish proposed regulations detailing the manner in which the authority to obligate the Fund and to enter into agreements under this subsection shall be exercised; and

(2) not later than 3 months after the close of the comment period for such proposed regulations, promulgate final regulations for that purpose.

(f) RIGHTS OF SUBROGATION.—Payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

(g) AUDITS.—The Comptroller General shall audit all payments, obligations, reimbursements, and other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The Comptroller General shall submit to the Congress an interim report one year after the date of the enactment of this Act. The Comptroller General shall thereafter audit the Fund as is appropriate. Each Federal agency shall cooperate with the Comptroller General in carrying out this subsection.

(h) PERIOD OF LIMITATIONS FOR CLAIMS.—

(1) REMOVAL COSTS.—No claim may be presented under this title for recovery of removal costs for an incident unless the claim is presented within 6 years after the date of completion of all removal actions for that incident.

(2) DAMAGES.—No claim may be presented under this section for recovery of damages unless the claim is presented within 3 years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care, or in the case of natural resource damages under section 1002(b)(2)(A), if later, the date of completion of the natural resources damage assessment under section 1006(e).

(3) MINORS AND INCOMPETENTS.—The time limitations contained in this subsection shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for the minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for the incompetent.

(i) LIMITATION ON PAYMENT FOR SAME COSTS.—In any case in which the President has paid an amount from the Fund for any removal costs or damages specified under subsection (a), no other claim may be paid from the Fund for the same removal costs or damages.

(j) OBLIGATION IN ACCORDANCE WITH PLAN.—

(1) IN GENERAL.—Except as provided in paragraph (2), amounts may be obligated from the Fund for the restoration, rehabilitation, replacement, or acquisition of natural resources only in accordance with a plan adopted under section 1006(c).

(2) EXCEPTION.—Paragraph (1) shall not apply in a situation requiring action to avoid irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action.

(k) PREFERENCE FOR PRIVATE PERSONS IN AREA AFFECTED BY DISCHARGE.—

(1) IN GENERAL.—In the expenditure of Federal funds for removal of oil, including for distribution of supplies, construction, and other reasonable and appropriate activities, under a contract or agreement with a private person, preference shall be given, to the extent feasible and practicable, to private persons residing or doing business primarily in the area affected by the discharge of oil.

(2) LIMITATION.—This subsection shall not be considered to restrict the use of Department of Defense resources.

SEC. 1013. CLAIMS PROCEDURE.

[33 U.S.C. 2713]

(a) PRESENTATION.—Except as provided in subsection (b), all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source designated under section 1014(a).

(b) PRESENTATION TO FUND.—

(1) IN GENERAL.—Claims for removal costs or damages may be presented first to the Fund—

(A) if the President has advertised or otherwise notified claimants in accordance with section 1014(c);

(B) by a responsible party who may assert a claim under section 1008;

(C) by the Governor of a State for removal costs incurred by that State; or

(D) by a United States claimant in a case where a foreign offshore unit has discharged oil causing damage for which the Fund is liable under section 1012(a).

(2) LIMITATION ON PRESENTING CLAIM.—No claim of a person against the Fund may be approved or certified during the pendency of an action by the person in court to recover costs which are the subject of the claim.

(c) ELECTION.—If a claim is presented in accordance with subsection (a) and—

(1) each person to whom the claim is presented denies all liability for the claim, or

(2) the claim is not settled by any person by payment within 90 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to section 1014(b),

whichever is later, the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

(d) UNCOMPENSATED DAMAGES.—If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.

(e) PROCEDURE FOR CLAIMS AGAINST FUND.—The President shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims under this Act against the Fund.

(f) LOAN PROGRAM.—

(1) IN GENERAL.—The President shall establish a loan program under the Fund to assist injured parties in meeting financial obligations during the claims procedure.

(2) ELIGIBILITY FOR LOAN.—A fisherman or aquaculture producer is eligible for a loan under paragraph (1)—

(A) during the period beginning 90 days after the date on which the fisherman or aquaculture producer presents a claim under subsection (a) and ending on the date on which the claim is settled; unless

(B) the responsible party provides an interim payment within that 90-day period.

(3) TERMS AND CONDITIONS OF LOANS.—A loan awarded under paragraph (1)—

(A) shall have flexible terms, as determined by the President;

(B) shall be for a period ending on the later of—

(i) the date that is 5 years after the date on which the loan is made; or

(ii) the date on which the injured party receives a settlement as a result of the claims procedure described in section 1013; and

(C) shall be at a low interest rate, as determined by the President.

* * * * * * *

SEC. 4110. OVERFILL AND TANK LEVEL OR PRESSURE MONITORING DEVICES.

(a) STANDARDS.—Not later than 1 year after the date of the enactment of this Act, the Secretary [shall] *may* establish, by regulation, minimum standards for devices for warning persons of overfills and tank levels of oil in cargo tanks and devices for monitoring the pressure of oil cargo tanks.

(b) USE.—Not later than 1 year after the date of the enactment of this Act, the Secretary [shall] *may* issue regulations establishing, consistent with generally recognized principles of international law, requirements concerning the use of—

(1) overfill devices, and

(2) tank level or pressure monitoring devices,

which are referred to in subsection (a) and which meet the standards established by the Secretary under subsection (a), on vessels constructed or adapted to carry, or that carry, oil in bulk as cargo

or cargo residue on the navigable waters and the waters of the exclusive economic zone.

(c) STUDY.—

(1) The Secretary of the Department in which the Coast Guard is operating shall conduct a study analyzing the costs and benefits of methods other than those described in subsections (a) and (b) for effectively detecting the loss of oil from oil cargo tanks. The study may include technologies, monitoring procedures, and other methods.

(2) In conducting the study, the Secretary may seek input from Federal agencies, industry, and other entities.

(3) The Secretary shall provide the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure not later than 180 days after the date of enactment of this Act.

TITLE 46, UNITED STATES CODE, SHIPPING

SUBTITLE II. VESSELS AND SEAMEN

PART B. INSPECTION AND REGULATION OF VESSELS

CHAPTER 32. MANAGEMENT OF VESSELS

§ 3202. Application

[(a) MANDATORY APPLICATION.—This chapter applies to the following vessels engaged on a foreign voyage:

[(1) Beginning July 1, 1998—

[(A) a vessel transporting more than 12 passengers described in section 2101(21)(A) of this title; and

[(B) a tanker, bulk freight vessel, or high-speed freight vessel, of at least 500 gross tons.

[(2) Beginning July 1, 2002, a freight vessel and a self-propelled mobile offshore drilling unit of at least 500 gross tons.]

(a) MANDATORY APPLICATION.—This chapter applies to a vessel that—

(1)(A) is transporting more than 12 passengers described in section 2101(21)(A) of this title; or

(B) is of at least 500 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, that is a tanker, freight vessel, bulk freight vessel, high speed freight vessel, or self-propelled mobile offshore drilling unit; and

(2)(A) is engaged on a foreign voyage; or

(B) is a foreign vessel departing from a place under the jurisdiction of the United States on a voyage, any part of which is on the high seas.

(b) VOLUNTARY APPLICATION.—This chapter applies to a vessel not described in subsection (a) of this section if the owner of the vessel requests the Secretary to apply this chapter to the vessel.

(c) EXCEPTION.—Except as provided in subsection (b) of this section, this chapter does not apply to—

(1) a barge;

(2) a recreational vessel not engaged in commercial service;

(3) a fishing vessel;

(4) a vessel operating on the Great Lakes or its tributary and connecting waters; or

(5) a public vessel.

§ 3203. Safety management system

(a) IN GENERAL.—The Secretary shall prescribe regulations which establish a safety management system for responsible persons and vessels to which this chapter applies, including—

(1) a safety and environmental protection policy;

(2) instructions and procedures to ensure safe operation of those vessels and protection of the environment in compliance with international and United States law;

(3) defined levels of authority and lines of communications between, and among, personnel on shore and on the vessel;

(4) procedures for reporting accidents and nonconformities with this chapter;

(5) procedures for preparing for and responding to emergency situations; and

(6) procedures for internal audits and management reviews of the system.

(b) COMPLIANCE WITH CODE.—Regulations prescribed under this section shall be consistent with the International Safety Management Code with respect to **[**vessels engaged on a foreign voyage.**]** *vessels to which this chapter applies.*

CHAPTER 33. INSPECTION GENERALLY

§ 3305. Scope and standards of inspection

(a) The inspection process shall ensure that a vessel subject to inspection—

(1) is of a structure suitable for the service in which it is to be employed;

(2) is equipped with proper appliances for lifesaving, fire prevention, and firefighting;

(3) has suitable accommodations for the crew, sailing school instructors, and sailing school students, and for passengers on the vessel if authorized to carry passengers;

(4) is in a condition to be operated with safety to life and property; and

(5) complies with applicable marine safety laws and regulations.

(b) If an inspection, or examination under section 3308 of this title, reveals that a life preserver, lifesaving device, or firehose is defective and incapable of being repaired, the owner or master shall destroy the life preserver, lifesaving device, or firehose in the presence of the official conducting the inspection or examination.

(c) A nautical school vessel operated by a civilian nautical school or by an educational institution under section 558 of title 40 shall be inspected like a small passenger vessel or a passenger vessel, depending on its tonnage.

CHAPTER 35. CARRIAGE OF PASSENGERS

[§ 3505. Prevention of departure

[Notwithstanding section 3303(a) of this title, a foreign vessel may not depart from a United States port with passengers who are embarked at that port, if the Secretary finds that the vessel does not comply with the standards stated in the International Convention for the Safety of Life at Sea to which the United States Government is currently a party.**]**

§ 3505. Prevention of departure

Notwithstanding section 3303(a) of this title, a foreign vessel carrying a citizen of the United States as a passenger or embarking passengers from a United States port may not depart from a United States port if the Secretary finds that the vessel does not comply with the standards stated in the International Convention for the Safety of Life at Sea to which the United States Government is currently a party.

CHAPTER 43. RECREATIONAL VESSELS

§ 4311. Penalties and injunctions

(a) A person willfully operating a recreational vessel in violation of this chapter or a regulation prescribed under this chapter shall be fined not more than $5,000, imprisoned for not more than one year, or both.

(b) **[**A person violating section 4307(a)(1) of this title is liable to the United States Government for a civil penalty of not more than $2,000, except that the maximum civil penalty may be not more than $100,000 for a related series of violations.**]** *(1) A person violating section 4307(a) of this title is liable to the United States Government for a civil penalty of not more than $5,000, except that the maximum civil penalty may be not more than $250,000 for a related series of violations.* When a corporation violates section **[**4307(a)(1),**]** *4307(a),* any director, officer, or executive employee of the corporation who knowingly and willfully ordered, or knowingly and willfully authorized, a violation is individually liable to the Government for the penalty, in addition to the corporation. However, the director, officer, or executive employee is not liable individually under this subsection if the director, officer, or executive employee can demonstrate by a preponderance of the evidence that—

[(1)**]** *(A)* the order or authorization was issued on the basis of a decision, in exercising reasonable and prudent judgment, that the defect or the nonconformity with standards and regulations constituting the violation would not cause or constitute a substantial risk of personal injury to the public; and

[(2)**]** *(B)* at the time of the order or authorization, the director, officer, or executive employee advised the Secretary in writing of acting under this clause and clause (1) of this subsection.

(2) Any person, including, a director, officer, or executive employee of a corporation, who knowingly and willfully violates section 4307(a) of this title, shall be fined not more than $10,000, imprisoned for not more than one year, or both.

(c) A person violating any other provision of this chapter or other regulation prescribed under this chapter is liable to the Government for a civil penalty of not more than [$1,000.] *$5,000.* If the violation involves the operation of a vessel, the vessel also is liable in rem for the penalty.

(d) When a civil penalty of not more than $200 has been assessed under this chapter, the Secretary may refer the matter of collection of the penalty directly to the United States magistrate of the jurisdiction in which the person liable may be found for collection procedures under supervision of the district court and under an order issued by the court delegating this authority under section 636(b) of title 28.

(e) The district courts of the United States have jurisdiction to restrain a violation of this chapter, or to restrain the sale, offer for sale, introduction or delivery for introduction into interstate commerce, or importation into the United States, of a recreational vessel or associated equipment that the court decides does not conform to safety standards of the Government. A civil action under this subsection shall be brought by filing a petition by the Attorney General for the Government. When practicable, the Secretary shall give notice to a person against whom an action for injunctive relief is contemplated and provide the person with an opportunity to present views and, except for a knowing and willful violation, shall provide the person with a reasonable opportunity to achieve compliance. The failure to give notice and provide the opportunity does not preclude the granting of appropriate relief by the district court.

(f) A person is not subject to a penalty under this chapter if the person—

(1) establishes that the person did not have reason to know, in exercising reasonable care, that a recreational vessel or associated equipment does not conform with the applicable safety standards of the Government or that the person, was not advised by the Secretary or the manufacturer of that vessel, equipment or component that the vessel, equipment or component contains a defect which creates a substantial risk of personal injury to the public; or

(2) holds a certificate issued by the manufacturer of that recreational vessel or associated equipment to the effect that the recreational vessel or associated equipment conforms to all applicable recreational vessel safety standards of the Government, unless the person knows or reasonably should have known that the recreational vessel or associated equipment does not so conform.

(g) Compliance with this chapter or standards, regulations, or orders prescribed under this chapter does not relieve a person from liability at common law or under State law.

PART E. MERCHANT SEAMEN LICENSES, CERTIFICATES, AND DOCUMENTS

CHAPTER 73. MERCHANT MARINERS' DOCUMENTS

§ 7319. Records of merchant mariners' documents

The Secretary shall maintain records on each merchant mariner's document issued, including the name and address of the sea-

man to whom issued and the next of kin of the seaman. [The records are not open to general or public inspection.]

CHAPTER 77. SUSPENSION AND REVOCATION

§ 7702. Administrative procedure

(a) Sections 551–559 of title 5 apply to each hearing under this chapter about suspending or revoking a license, certificate of registry, or merchant mariner's document.

(b) The individual whose license, certificate of registry, or merchant mariner's document has been suspended or revoked under this chapter may appeal, within 30 days, the suspension or revocation to the Secretary.

(c)(1) The Secretary shall request a holder of a license, certificate of registry, or merchant mariner's document to make available to the Secretary, under section 206(b)(4) of the National Driver Register Act of 1982 (23 U.S.C. 401 note), all information contained in the National Driver Register related to an offense described in section 205(a)(3)(A) or (B) of that Act committed by the individual.

(2) The Secretary shall require the testing of the holder of a license, certificate of registry, or merchant mariner's document for use of alcohol and dangerous drugs in violation of law or Federal regulation. The testing may include preemployment (with respect to dangerous drugs only), periodic, random, and reasonable cause testing, and shall include post-accident testing.

(d)(1) The Secretary may temporarily, for not more than 45 days, suspend and take possession of the license, certificate of registry, or merchant mariner's document held by an individual [if, when acting under the authority of that license, certificate, or document—] *if*—

(A) that individual performs a safety sensitive function on a vessel, as determined by the Secretary; and

(B) there is probable cause to believe that the individual—

(i) [has] *has, while acting under the authority of that license, certificate, or document,* performed the safety sensitive function in violation of law or Federal regulation regarding use of alcohol or a dangerous drug;

(ii) has been convicted of an offense that would prevent the issuance or renewal of the license, certificate, or document; [or]

(iii) within the 3-year period preceding the initiation of a suspension proceeding, has been convicted of an offense described in section 205(a)(3)(A) or (B) of the National Driver Register Act of [1982.] *1982; or*

(iv) is a security risk that poses a threat to the safety or security of a vessel or a public or commercial structure located within or adjacent to the marine environment.

(2) If a license, certificate, or document is temporarily suspended under this section, an expedited hearing under subsection (a) of this section shall be held within 30 days after the temporary suspension.

CHAPTER 77. SUSPENSION AND REVOCATION

§ 7703. Bases for suspension or revocation

A license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if the holder—

(1) when acting under the authority of that license, certificate, or document—

(A) has violated or fails to comply with this subtitle, a regulation prescribed under this subtitle, or any other law or regulation intended to promote marine safety or to protect navigable waters; or

(B) has committed an act of [incompetence, misconduct, or negligence;] *misconduct or negligence;*

(2) is convicted of an offense that would prevent the issuance or renewal of a license, certificate of registry, or merchant mariner's document; [or]

(3) within the 3-year period preceding the initiation of the suspension or revocation proceeding is convicted of an offense described in section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982 (23 U.S.C. 401 [note).] *note);*

(4) has committed an act of incompetence relating to the operation of a vessel, whether or not acting under the authority of that license, certificate, or document; or

(5) is a security risk that poses a threat to the safety or security of a vessel or a public or commercial structure located within or adjacent to the marine environment.

§ 7704. Dangerous drugs as grounds for revocation

(a) [Repealed]

(b) If it is shown at a hearing under this chapter that a holder of a license, certificate of registry, or merchant mariner's document issued under this part, within 10 years before the beginning of the proceedings, has been convicted of violating a dangerous drug law of the United States or of a State, the license, certificate, or document shall be *suspended or* revoked.

(c) If it is shown that a holder has been a user of, or addicted to, a dangerous drug, the license, certificate of registry, or merchant mariner's document shall be revoked unless the holder provides satisfactory proof that the holder is cured.

PART H. IDENTIFICATION OF VESSELS

CHAPTER 121. DOCUMENTATION OF VESSELS

§ 12110. Limitations on operations authorized by certificates

(a) A vessel may not be employed in a trade except a trade covered by the endorsement issued for that vessel.

(b) A barge qualified to be employed in the coastwise trade may be employed, without being documented, in that trade on rivers, harbors, lakes (except the Great Lakes), canals, and inland waters.

(c) A vessel with only a recreational endorsement may not be operated other than for pleasure.

(d) A documented vessel, other than a vessel with only a recreational endorsement, *or an unmanned barge operating outside of*

the territorial waters of the United States, may be placed under the command only of a citizen of the United States.

§ 12120. Reports

To ensure compliance with this chapter and laws governing the qualifications of vessels to engage in the coastwise trade and the fisheries, the Secretary of Transportation may require [owners and masters] *owners, masters, and charterers* of documented vessels to submit reports in any reasonable form and manner the Secretary may prescribe.

§ 12122. Penalties

(a) A person that violates this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $10,000. Each day of continuing violation is a separate violation.

(b) A vessel and its equipment are liable to seizure by and forfeiture to the United States Government—

(1) when the owner of a vessel or the representative or agent of the owner knowingly falsifies or conceals a material fact, or knowingly makes a false statement or representation about the documentation or when applying for documentation of the vessel;

(2) when a certificate of documentation is knowingly and fraudulently used for a vessel;

(3) when a vessel is operated after its endorsement has been denied or revoked under section 12123 of this title;

(4) when a vessel is employed in a trade without an appropriate trade endorsement;

(5) when a documented vessel with only a recreational endorsement is operated other than for pleasure; or

(6) when a documented vessel, other than a vessel with only a recreational endorsement, *or an unmanned barge operating outside of the territorial waters of the United States,* is placed under the command of a person not a citizen of the United States.

(c) In addition to penalties under subsections (a) and (b), the owner of a documented vessel for which a fishery endorsement has been issued is liable to the United States Government for a civil penalty of up to $100,000 for each day in which such vessel has engaged in fishing (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) within the exclusive economic zone of the United States, if the owner or the representative or agent of the owner knowingly falsified or concealed a material fact, or knowingly made a false statement or representation, with respect to the eligibility of the vessel under section 12102(c) of this title in applying for or applying to renew such fishery endorsement.

MARITIME POLICY IMPROVEMENT ACT OF 2002

[PUBLIC LAW 107–295; 116 STAT. 2099]

SEC. 213. COASTWISE TRADE AUTHORIZATION

(a) IN GENERAL.—Notwithstanding section 207 of the Merchant Marine Act, 1920 (46 App. U.S.c. 883), or any other provision of

law restricting the operation of a foreign-built vessel in the coastwise trade of the United States, the following vessels may, subject to subsection (b), engage in the coastwise trade of the United States to transport platform jackets from ports in the Gulf of Mexico to sites on the Outer Continental Shelf for completion of certain offshore projects as follows:

(1) The H–114, H–627, and H–851 for the projects known as Atlantis, Thunderhorse, Holstein, and Mad Dog.

(2) The I–600 for the projects known as Murphy Medusa, Dominion Devil's Tower, and Murphy Front Runner.

(b) PRIORITY FOR U.S.-BUILT VESSELS.—Subsection (a) shall not apply in instances where a United States-built, United States-documented vessel with the capacity to ⟦transport and launch⟧ *transport or launch* the platform jacket involved or its components is available to transport that jacket or its components. In this section, the term "platform jacket" has the meaning given that term under the thirteenth proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as amended by subsection (c) of this section.

(c) DEFINITION.—The thirteen proviso (pertaining to transportation by launch barge) of section 27 of the Merchant marine Act, 1920 (46 App. U.S.C. 883), is amended by striking the period at the end and inserting the following: "; and for the purposes of this proviso, the term 'platform jacket' includes any type of offshore drilling or production structure or components, including platform jackets, tension leg or SPAR platform superstructures (including the deck, drilling rig and support utilities, and supporting structure) hull (including vertical legs and connecting pontoons or vertical cylinder), tower and base sections of a platform jacket, jacket structures, and deck modules (known as 'topsides') of a hydrocarbon development and production platform.".

ENHANCED BORDER SECURITY AND VISA ENTRY REFORM ACT OF 2002

SEC. 2. DEFINITIONS.

[8 U.S.C. 1701 NOTE]

In this Act:

(1) ALIEN.—The term "alien" has the meaning given the term in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)).

(2) APPROPRIATE COMMITTEES OF CONGRESS.—The term "appropriate committees of Congress" means the following:

(A) The Committee on the Judiciary, the Select Committee on Intelligence, and the Committee on Foreign Relations of the Senate.

(B) The Committee on the Judiciary, the Permanent Select Committee on Intelligence, and the Committee on International Relations of the House of Representatives.

(3) CHIMERA SYSTEM.—The term "Chimera system" means the interoperable electronic data system required to be developed and implemented by section 202(a)(2).

(4) FEDERAL LAW ENFORCEMENT AGENCIES.—The term "Federal law enforcement agencies" means the following:

(A) The United States Secret Service.
(B) The Drug Enforcement Administration.
(C) The Federal Bureau of Investigation.
(D) The Immigration and Naturalization Service.
(E) The United States Marshall Service.
(F) The Naval Criminal Investigative Service.
[(G) The Coastal Security Service.]
(G) The United States Coast Guard.
(H) The Diplomatic Security Service.
(I) The United States Postal Inspection Service.
(J) The Bureau of Alcohol, Tobacco, and Firearms.
(K) The United States Customs Service.
(L) The National Park Service.

(5) INTELLIGENCE COMMUNITY.—The term "intelligence community" has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(6) PRESIDENT.—The term "President" means the President of the United States, acting through the Assistant to the President for Homeland Security, in coordination with the Secretary of State, the Commissioner of Immigration and Naturalization, the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Secretary of Transportation, the Commissioner of Customs, and the Secretary of the Treasury.

(7) USA PATRIOT ACT.—The term "USA PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56).

○