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110TH CONGRESS }
2d Session }

SENATE

{ REPORT
110-261

COAST GUARD AUTHORIZATION ACT OF
2007

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1892



FEBRUARY 5, 2008.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

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SECOND SESSION

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COAST GUARD AUTHORIZATION ACT OF 2007

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

REPORT

[To accompany S. 1892]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1892) to reauthorize the Coast Guard for fiscal year 2008, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 1892, the Coast Guard Authorization Act for Fiscal Year 2008, as amended, is to authorize appropriations for fiscal year (FY) 2008 for the United States Coast Guard (Coast Guard) covering six accounts: (1) operation and maintenance expenses; (2) acquisition, construction, and improvement of facilities and equipment (AC&I); (3) retired pay; (4) environmental compliance and restoration; (5) research, development, testing and evaluation (RDT&E); and (6) reserve program. The bill also authorizes end-of-year military strength, training loads, and construction of the Chelsea Street Bridge in Chelsea, Massachusetts, and includes other provisions 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 (Public Law 107-296), the Coast Guard was transferred to the new Department of Homeland Security on March 1, 2003. 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 also 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 so 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, and one Port Security Team. It continues to operate six 110-foot Island Class patrol boats in the Persian Gulf. 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 United States; 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 Coast Guard activities include 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. Since September 11, 2001, the Coast Guard's security responsibilities have increased significantly, with new authorities provided under the Maritime Transportation Security Act of 2002 (MTSA, Public Law 107-295).

The Coast Guard is composed of approximately 41,500 active duty military personnel, 8,100 reservists, 7,400 civilian employees, and 28,300 Coast Guard Auxiliary volunteers. In 2006, the Coast Guard responded to more than 28,300 calls for assistance, boarded 70,300 vessels, saved 4,400 lives, seized 319,908 pounds of illegal narcotics and stopped 7,886 illegal migrants from reaching our shores. The Coast Guard conducted waterborne, aerial, and shore side security patrols, including approximately 193,000 to critical infrastructure and key assets. Additionally, the Coast Guard conducted more than 32,000 security zone patrols near critical infrastructure. The Coast Guard escorted more than 7,800 naval vessels, vessels engaged in military outloads, vessels carrying certain dangerous cargoes in bulk, and high capacity passenger vessels, including cruise ships and ferry vessels. Coast Guard assets also patrolled to protect our fisheries stocks and responded to approximately 12,459 pollution incidents (7,374 from vessels and 5,085 from facilities).

Further improvements in the Coast Guard's authority will better enable it to achieve its missions.

Further improvements in the Coast Guard's authority will better enable it to achieve its missions.

Each year, maritime smugglers transport thousands of aliens to the United States with virtual impunity because the existing law does not sufficiently punish or deter such conduct. According to Coast Guard data, more than 6,000 migrants were interdicted in 2006 and 40 percent of those interdictions were suspected smuggling events. However, the prosecution rate for smugglers since 2005 is only 10 percent. Additional authority would better enable the Coast Guard to combat this problem.

Oil pollution from vessels continues to be a major risk our Nation faces. In 2006, the United States had net imports of 12.2 million barrels of oil per day, more than twice as much as Japan and more than three times as much as China, the world's next largest importers. The transport of oil into the United States occurs primarily by sea with ports throughout the United States receiving over 40,000 shipments of oil in 2005. In addition, vessels not transporting oil, such as cargo and freight vessels, fishing vessels, and passenger ships, often carry tens of thousands of gallons of fuel oil to power their engines. According to Coast Guard data, while the number of oil spills from vessels has decreased notably since passage of the Oil Pollution Act of 1990 (OPA 90), the volume of oil spilled nationwide is still significant. The government Accountability Office (GAO), in its September 2007 report entitled "Major Oil Spills Occur Infrequently, but Risks to the Federal Oil Spill Fund Remain" (GAO-07-1085), found that 51 spills with costs above \$1 million have occurred since 1990, costing a total of between \$860 million and \$1.1 billion.

A comparison of data from 1992 and 2004 is telling. In 1992, there were 5,310 reported vessel spills in U.S. waters, amounting to 665,432 gallons of oil; in 2004, the total was higher, at 722,768 gallons, and a considerable number of spills are still occurring. In 2004, there were 3,897 reported vessel spills in U.S. waters, including 35 spills from tank ships, 143 spills from barges, and 1,527 spills from other vessels, including cargo ships. Another 1,055 were from unknown sources. Furthermore, even though the number of spills from tankers declined from 193 spills in 1992 to 35 spills in 2004, a single incident from a vessel like the Exxon Valdez can be devastating, both environmentally and economically.

The transportation of hazardous cargo in the maritime domain, particularly the transportation of highly combustible liquid energy products, poses a unique threat to the safety and security of our nation's ports and the urban populations surrounding them.

SUMMARY OF PROVISIONS

S. 1892, as reported, would authorize appropriations for the Coast Guard accounts covered in the bill totaling approximately \$8.2 billion for FY 2008.

Operating Expenses.—The Coast Guard uses 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 2008,

S. 1892 would authorize \$5.894 billion for operating expenses, an increase of approximately \$326 million from the FY 2007 appropriated level. From that amount, \$24.5 million would be transferred from the Oil Spill Liability Trust Fund to the operating expenses account.

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 arming helicopters; recapitalizing the National Distress and Response System; implementing the vessel Automatic Identification System (AIS); aircraft sensor, avionics, and engine upgrades; the Integrated Deepwater System project; and various shore facility upgrades to those units in need. For FY 2008, S. 1892 would authorize \$998 million; of that amount \$836 million would fund the Integrated Deepwater System and \$81 million would fund Rescue 21. The AC&I authorization directs that \$20 million would be transferred from the Oil Spill Liability Trust Fund to the AC&I account.

Retired Pay.—Funds from this account are used for retired pay, annuities, and medical care for retired military personnel and former Lighthouse Service members, their dependents, and their survivors under chapter 55 of title 10, United States Code. S. 1892 would authorize \$1.184 billion for this account for FY 2008.

Environmental Compliance and Restoration.—This account provides resources to bring current and former Coast Guard facilities into compliance with national environmental standards. S. 1892 would authorize \$12 million for this account for FY 2008.

RDT&E.—Funds from this account are used for applied scientific research that aids in the development of hardware, procedures, and systems that directly contribute to increasing the productivity of Coast Guard operating and regulatory programs. S. 1892 would authorize \$17.583 million for this account.

Reserve Programs.—The Coast Guard Reserve Forces provide trained and qualified personnel available for active duty in time of war or national emergency and at such other times as the national security requires. Reserve personnel maintain their readiness through realistic coordinated mobilization exercises, formal military training and duty alongside regular Coast Guard members during routine and emergency operations. S. 1892 would authorize \$126 million to provide resources to fully train, support, and sustain a reserve force of approximately 8,100 members. S. 1892, as reported, authorizes \$126.8 million for FY 2008.

Title II of S. 1892, as reported, would improve the organizational flexibility of the Coast Guard as well as increase the authorities of the Coast Guard with respect to maritime authorities and activities with foreign governments.

Title III of S. 1892, as reported, would authorize several significant changes in the way the Coast Guard utilizes its Reserve personnel, conducts officer promotions, and retains personnel leave in emergency situations.

Title IV of S. 1892, as reported, would authorize the Coast Guard to enter into beneficial public-private partnerships as well as address administrative needs of the Coast Guard.

Title V of S. 1892, as reported, would include several provisions that would aid in improving navigation of vessels and the authority of the Coast Guard to regulate shipping.

Title VI of S. 1892, as reported, would give the Coast Guard the authority necessary to prosecute those who help those who seek to enter the United States by unlawful entry.

This bill would give the Coast Guard the authority it needs to prosecute mariners who intentionally smuggle aliens on board their vessels with reckless disregard of Federal laws. It also provides protection for legitimate mariners who encounter stowaways or individuals who may need medical attention.

Title VII of S. 1892, as reported, would include multiple provisions from S. 1620, the Oil Pollution Prevention and Response Act of 2007, that provide the Coast Guard and the National Oceanic and Atmospheric Administration (NOAA) with additional authorities under OPA 90. This bill has multiple provisions that would help address oil pollution from vessels and would also increase the principal amount of funds that support the Oil Spill Recovery Institute (OSRI) by \$12.851 million.

Title VIII of S. 1892, as reported, would include provisions from S. 1594 to improve port safety and security for EHC, and for other purposes. Provisions are contained in this bill to develop international safety and security standards for the loading, unloading, crewing, handling and transportation of especially hazardous cargo (EHC) to minimize the risk and threats posed by a terrorist attack on these vessels while protecting public health, the environment and the economy.

Title IX of S. 1892, as reported, includes numerous miscellaneous provisions that relate to the Coast Guard.

LEGISLATIVE HISTORY

S. 1892 was introduced in the Senate on July 26, 2007, by Senator Cantwell and co-sponsored by Senator Snowe, Senator Inouye, Senator Stevens, Senator Lautenberg, and Senator Lott. The bill was referred to the Senate Committee on Commerce, Science, and Transportation. On August 2, 2007, the bill was considered by the Committee in an open Executive Session. The Committee adopted a package of amendments proposed by Senator Cantwell and an amendment proposed by Senator Nelson relating to crewman's paychecks. The Committee, by voice vote, ordered the bill to be reported with amendments.

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:

S. 1892—Coast Guard Authorization Act for Fiscal Year 2008

Summary: S. 1892 would specifically authorize appropriations of \$7.1 billion through fiscal year 2012, primarily for activities of the U.S. Coast Guard (USCG) for 2008. The bill also would authorize the appropriation of whatever amounts are necessary for the Coast

Guard to acquire two icebreakers. CBO estimates that implementing the bill would result in discretionary spending of \$1.7 billion in fiscal year 2008 and nearly \$3.6 billion over the 2008–2012 period, assuming appropriation of the authorized and necessary amounts.

CBO estimates that enacting S. 1892 also would result in new direct spending of \$147 million over the 2008–2012 period and \$207 million over the 2008–2017 period, most of which would stem from permanently authorizing a USCG housing program.

We estimate that enacting this legislation would increase revenues from civil penalties by \$8 million in 2008, by \$31 million over the 2008–2012 period, and by \$56 million over the 2008–2017 period.

S. 1892 contains intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would impose new requirements on owners and operators of certain vessels and ports. In addition, the bill would require public and private entities to respond to subpoenas. The aggregate costs to public and private entities of complying with those mandates are uncertain and would depend, in part, on future regulations. CBO estimates that the costs of those mandates would not exceed the annual threshold established in UMRA for intergovernmental mandates (\$66 million in 2007, adjusted annually for inflation) due to the small number of public entities involved. The cost of many of the mandates on private entities would be small relative to the annual threshold established by UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation). However, because the cost of some of the mandates would depend on future regulations, CBO cannot determine whether the aggregate cost of private-sector mandates in the bill would exceed the annual threshold.

Estimated cost to the Federal Government: The estimated budgetary effects of S. 1892 are summarized in Table 1. The costs of this legislation fall within budget functions 300 (natural resources and environment) and 400 (transportation).

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF S. 1892

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Specified Authorizations for USCG and NOAA:					
Authorization Level	7,120	93	37	28	27
Estimated Outlays	4,978	1,275	513	305	109
USCG Icebreakers:					
Estimated Authorization Level	1,450	0	25	25	25
Estimated Outlays	165	425	420	274	235
Total Changes:					
Estimated Authorization Level	8,570	93	62	53	52
Estimated Outlays	5,143	1,700	933	579	344
DIRECT SPENDING ¹					
Estimated Budget Authority	100	30	21	21	21
Estimated Outlays	5	35	46	36	26
REVENUES ²					
Penalties for Smuggling Aliens	8	7	6	5	5

Note.—USCG = U.S. Coast Guard; NOAA = National Oceanic and Atmospheric Administration.
¹ See Table 3 for estimates of direct spending over the 2008–2017 period.

²See Table 4 for the estimated revenue impact over the 2008–2017 period.

Basis of estimate: For this estimate, CBO assumes that S. 1892 will be enacted early in fiscal year 2008 and that the amounts authorized by the bill and estimated to be necessary for Coast Guard icebreakers will be appropriated for each year.

Spending subject to appropriation

The proposed authorization levels shown in Table 2 are those specified by the bill for the Coast Guard and for the National Oceanic and Atmospheric Administration (NOAA) and the amounts estimated to be necessary for USCG icebreakers as authorized by title IX. The table excludes \$24 million to be derived from the Oil Spill Liability Trust Fund (OSLTF) for USCG operating expenses because that amount is already authorized under existing law. Estimated outlays are based on historical spending patterns for the Coast Guard and NOAA.

USCG Authorizations for Fiscal Year 2008. Title I would reauthorize funding for ongoing USCG activities for 2008. Specifically, title I would authorize the appropriation of about \$6 billion for USCG operations, including \$127 million for reserve training and \$12 million for environmental compliance activities. Title I also would authorize the appropriation of about \$1 billion for capital acquisitions and other multiyear projects, including \$18 million for research activities and \$3 million for bridge alterations. Of the amounts authorized by title 1, \$44 million would be derived from the OSLTF.

CBO estimates that appropriating the amounts specified in title I for ongoing USCG activities would increase discretionary spending by \$4.9 billion in 2008 and \$6.9 billion over the 2008–2012 period.

Title I also would authorize the appropriation of about \$1.2 billion for Coast Guard retirement benefits in 2008, but that amount is excluded from this estimate because such benefits are considered an entitlement under current law and are not subject to appropriation. Thus, the authorization of those amounts has no additional budgetary impact.

USCG Icebreakers. For fiscal year 2008, section 917 would authorize the appropriation of whatever amounts are necessary to acquire two new icebreakers and to achieve and maintain full operational capability of the rest of the agency's icebreaker fleet (currently three ships). CBO estimates that implementing section 917 would increase discretionary spending by \$165 million in 2008 and nearly \$1.5 billion over 2008–2012 period, assuming appropriation of the necessary amounts.

TABLE 2.—SPENDING SUBJECT TO APPROPRIATIONS UNDER S. 1892

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ¹					
Reauthorization of USCG Spending:					
Estimated Authorization Level	7,028	0	0	0	0
Estimated Outlays	4,914	1,192	463	269	80
USCG Icebreakers:					
Estimated Authorization Level	1,450	0	25	25	25
Estimated Outlays	165	425	420	274	235

TABLE 2.—SPENDING SUBJECT TO APPROPRIATIONS UNDER S. 1892—Continued

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
Other USCG Programs:					
Authorization Level	31	33	5	3	2
Estimated Outlays	25	31	10	5	2
NOAA Authorizations:					
Authorization Level	61	60	32	25	25
Estimated Outlays	39	52	40	31	27
Total Changes:					
Estimated Authorization Level	8,570	93	62	53	52
Estimated Outlays	5,143	1,700	933	579	344

¹The USCG has not yet received a full-year appropriation for fiscal year 2008. Appropriations to the agency for 2007 totaled to nearly \$7.2 billion.

Assuming appropriation of the necessary amounts, CBO estimates that the USCG would spend about \$1.4 billion over the next five years to purchase two icebreakers. (Costs to operate and maintain the two new vessels would total about \$50 million a year beginning in 2013.) We estimate that an additional \$50 million would be spent over the 2008–2010 period to recondition an existing USCG icebreaker, which is currently out of operation. Operating and maintaining that vessel would cost about \$10 million in 2010 and about \$25 million annually thereafter. This estimate is based on information provided by the Coast Guard regarding the cost of constructing, operating, and maintaining such vessels to agency specifications.

Other USCG Authorizations. The bill also would authorize appropriations for other USCG activities. CBO estimates that the appropriation of those amounts would increase discretionary outlays by \$25 million in 2008 and by \$73 million over the 2008–2012 period. Those authorizations include:

- \$25 million for each of fiscal years 2008 and 2009 to support LORAN–C navigation,
- \$2 million for each of fiscal years 2008 through 2010 for grants to develop sensors that detect oil discharges,
- \$1.8 million for each of fiscal years 2008 and 2009 to prepare assessments of vessel traffic in Alaska,
- \$1 million for each of fiscal years 2008 and 2009 to operate a Web-based risk-management system to help reduce accidents and fatalities,
- \$1 million annually through 2012 for the Delaware River and Bay Oil Spill Advisory Committee,
- \$0.5 million annually through 2012 to help tribal governments participate in oil spill recovery activities, and
- An estimated \$200,000 in 2008 for a study of the Olympic Coast’s need for a tugboat to respond to emergencies.

Section 916 would establish a Support of Seafarers Fund to pay the expenses of seamen who are abandoned by their ships or who must remain in the United States as witnesses in certain legal proceedings. The proposed fund would be available to pay seamen’s wages and subsistence, medical care, repatriation, and other expenses. The fund would receive amounts appropriated to it (at an authorized level of \$1.5 million for each of fiscal years 2009 through 2011), transferred from other federal accounts, or reimbursed by shipowners.

Assuming appropriation of the amounts authorized to be paid into the new fund, CBO estimates that implementing this provision would increase discretionary spending by \$4.5 million over the 2009–2012 period. We estimate that direct spending of amounts transferred to the fund from other accounts or amounts reimbursed by ship owners (which would be treated as offsetting receipts, a credit against direct spending) would be minimal.

NOAA Authorizations. S. 1892 would authorize appropriations for several programs carried out by NOAA. CBO estimates that appropriating those amounts would increase discretionary outlays by \$39 million in 2008 and by \$189 million over the 2008–2012 period.

The authorizations for NOAA include:

- \$28 million for each of fiscal years 2008 and 2009 for financial assistance to certain Alaskan communities under the Fur Seal Act,
- \$15 million a year from the OSLTF for oil-spill response and damage assessments,
- \$10 million a year through 2012 for a program to prevent oil spills from small vessels,
- \$7 million for each of fiscal years 2008 through 2010 to purchase environmental data obtained from unmanned aerial vehicles, and
- \$0.7 million in 2008 to conduct an emergency drill in the Olympic Coast National Marine Sanctuary.

Changes in direct spending

Several provisions of the bill would increase direct spending or reduce offsetting receipts (a credit against direct spending). CBO estimates that those provisions would increase net direct spending by \$5 million in fiscal year 2008, by \$147 million over the 2008–2012 period, and by \$207 million over the 2008–2017 period (see Table 3).

TABLE 3.—ESTIMATED CHANGES IN DIRECT SPENDING UNDER S. 1892

	By fiscal year, in millions of dollars—											
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2008–2012	2008–2017
CHANGES IN DIRECT SPENDING												
USCG Housing Authority:												
Estimated Budget												
Authority	100	30	20	20	20	10	0	0	0	0	190	200
Estimated Outlays ..	5	35	45	35	25	20	15	10	10	0	145	200
Payments to the Oil Spill Recovery Institute:												
Estimated Budget												
Authority	*	*	*	1	1	1	1	1	1	1	2	7
Estimated Outlays ..	*	*	*	1	1	1	1	1	1	1	2	7
Total Changes:												
Estimated Budget												
Authority	100	30	21	21	21	11	1	1	1	1	193	208
Estimated Outlays ..	5	35	46	36	26	21	16	11	11	1	147	207

Note.—* = less than \$500,000.

USCG Housing Authority. Section 910 would repeal the expiration date on the Coast Guard's authority to finance housing construction for its military employees through private developers. CBO expects that this provision would enable the Coast Guard to

execute new contracts with developers to build several military housing projects over the next 10 years, thereby increasing direct spending by \$5 million in 2008, by \$145 million over the 2008–2012 period, and by about \$200 million over the 2008–2017 period.

The Coast Guard was authorized to use direct loans and loan guarantees, lease-purchases, limited partnerships, and similar means to finance projects for employees' housing, but that authority expired at the end of fiscal year 2007. Based on the agency's current plans, we expect that, if the authority is made permanent, the Coast Guard would execute agreements with private developers to provide employees with over 1,100 housing units. We expect that such housing would be acquired by leasing federal land to developers, who would then construct apartment buildings, townhouses, or other dwellings that would be rented primarily to Coast Guard military personnel. The developers would thus recoup their investments through the Coast Guard's annual appropriations over the life of the buildings.

CBO estimates that such USCG housing projects would encompass nearly 750 units in Cape May, New Jersey, and various locations in Alaska, for a total obligation of about \$130 million over fiscal years 2008 and 2009. We estimate that the agency would finalize several smaller projects in each of fiscal years 2010 through 2013 for an additional obligation of \$70 million.

Because entering into such leases would effectively obligate the federal government to pay the costs of employees' housing in advance of annual appropriations, the full cost of those projects—an estimated \$200 million—should be recorded in the budget as new budget authority at the time of the lease agreements. Based on spending patterns for similar construction, we estimate that outlays for the projects would total about \$80 million through 2012 and \$180 million through 2017. For this estimate, CBO assumes that the leases would be similar to arrangements made by other federal agencies with developers, under which the federal government assumes substantial risk, and that spending would be recorded over each project's construction period.

The Coast Guard could execute additional agreements for housing after 2013, but CBO has no basis for estimating the costs of such potential obligations. Current USCG plans have focused on housing needs in New Jersey and Alaska, and the agency's plans for other locations have not advanced sufficiently to enable CBO to estimate future obligations.

Oil Spill Recovery Institute (OSRI). Section 717 would increase direct spending from the Oil Spill Liability Trust Fund by about \$500,000 a year beginning in 2009 by requiring the Secretary of the Treasury to pay more of that fund's annual interest earnings to OSRI, an Alaska-based research institute.

Under current law, OSRI receives payments from the OSLTF equal to the interest earned in the previous year on \$22.5 million of that fund's balances. Such payments—recently less than \$1 million a year—are not subject to appropriation action and are used by the institute to carry out research on oil spills. Section 717 would increase the portion of the OSLTF's principal whose interest earnings would be allocated to OSRI by nearly \$13 million, resulting in an increase in annual payments to the institute beginning in 2009. Based on CBO's current projections of interest rates, we

estimate that this provision would increase direct spending by about \$500,000 in fiscal year 2008, by \$3 million over the 2008–2012 period, and by \$7 million over the 2008–2017 period.

Other Direct Spending Provisions. Several provisions of S. 1892 would direct the USCG to donate real and personal property to various parties such as local governments or nonprofit organizations. Because some of the affected vessels, real estate, or personal property could have been sold as surplus property under existing law, donating such assets could result in forgone offsetting receipts. Based on information provided by the Coast Guard, CBO estimates that such losses would be less than \$500,000 a year.

Revenues

S. 1892 would establish new penalties, mostly for the smuggling of aliens, resulting in estimated new revenue collections of \$31 million over the 2008–2012 period and \$56 million over the 2008–2017 period (see Table 4).

Title VI would impose new civil penalties for smuggling people into the United States on vessels, with the penalties varying based on the physical condition of the individuals being smuggled. The Coast Guard expects that it would collect new penalties under the bill from fewer than 100 smugglers a year, at a rate of about \$100,000 per violation. Based on other information obtained from the Coast Guard regarding the number of individuals who are injured or die while being smuggled and on CBO assumptions regarding the effectiveness of federal penalties on smuggling activities, we estimate that enacting title VI would increase revenues by \$8 million in 2008. We expect that the number of violations would fall after 2008.

Additionally, section 1004 would impose a civil penalty for violating conditions for conveying vessels. Currently, U.S. vessels may be transferred to eligible entities for certain uses. The bill would apply certain conditions to such transfers; if those conditions are violated, penalties could be imposed. Because of the small number of cases likely to be involved, CBO estimates that this provision would have no significant effect on revenues.

TABLE 4.—ESTIMATED REVENUE IMPACT OF S. 1892

	By fiscal year, in millions of dollars—											
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2008–2012	2008–2017
CHANGES IN REVENUES												
Penalties for Smuggling												
Aliens	8	7	6	5	5	5	5	5	5	5	31	56

Intergovernmental and Private-sector Impact: S. 1892 would impose intergovernmental and private-sector mandates, as defined in UMRA, on owners and operators of certain vessels and ports. Those mandates include a requirement on ports to allow crew members to leave and reboard ships without paying escort fees and a requirement to respond to subpoenas issued by the Secretary of Transportation. CBO estimates that the costs of those mandates would not exceed the annual threshold established by UMRA for intergovernmental mandates (\$66 million in 2007, adjusted annu-

ally for inflation) due to the small number of public entities involved.

In addition, the bill would impose new safety and security requirements on private entities. The aggregate cost to private entities of complying with some of the mandates in the bill is uncertain and would depend, in part, on future regulations. Because the costs of some of the mandates would depend on future regulations, CBO cannot determine whether the aggregate cost of the mandates would exceed the annual threshold established by UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation).

Mandates that apply to both public and private entities

Seamen's Shoreside Access. The bill would require ports to include in their security plans provisions that allow crew members to leave and reboard ships without paying escort fees. According to industry sources, fewer than 20 publicly or privately operated terminals are currently charging such fees. Moreover, few vessels dock at ports that charge such fees. CBO estimates, therefore, that the costs to those ports would be minimal.

Subpoena Authority. The bill also would give the Secretary of Transportation authority to subpoena public and private entities in the course of an investigation related to a vessel conveyance. State, local, and tribal governments as well as private-sector entities if subpoenaed by the Secretary, would be required to provide testimony, documents, or other evidence. CBO expects that the Secretary would likely exercise this authority sparingly and that the costs to comply with a subpoena would not be significant for those entities.

Mandates that apply to private entities only

The bill would impose new safety and security requirements on owners and operators of certain vessels and facilities. Those requirements include but are not limited to safety standards and security requirements for transporting oil and hazardous cargo; a requirement to provide evidence of financial responsibility for oil spills; and a requirement to fund a tug to be available for emergency assistance.

Standards for Facilities and Vessels that Transfer Oil. The bill would require certain facilities and vessels to meet new safety standards when transferring oil. The bill would direct the Secretary of Homeland Security to issue regulations to reduce the risk of oil spills in such operations. In implementing the standards, the Secretary would have to consider updating equipment requirements and operational procedures in high-risk areas. Because the cost of the requirements would depend upon the future actions of the Secretary, about which information is not available, CBO cannot estimate the cost of this mandate.

Security for Certain Facilities. The bill would authorize the Secretary of Homeland Security to require certain facilities to share in the Coast Guard's costs of providing security for the transportation of especially hazardous cargo to those facilities. In the event that the Secretary implements such a program, designated facilities would be required to pay a share of the Coast Guard's costs, based on a formula developed by the Secretary. Because the costs of com-

pliance, if any, would depend upon the future actions of the Secretary, about which information is not available, CBO cannot estimate the costs of this mandate.

Extension of Financial Responsibility. The bill would require owners and operators of tank vessels weighing between 100 gross tons and 300 gross tons to establish evidence of financial responsibility for any future oil spill. According to the Coast Guard, such evidence is usually established through an insurance guarantee. In effect, this provision would require owners and operators to show proof of insurance that they are required to carry under current law. According to industry sources, few entities own or operate tank vessels weighing less than 300 gross tons. Consequently, CBO estimates that the cost to comply with this requirement would be small relative to the annual threshold established by UMRA.

Year-Round Response Tug. The bill would require a tugboat that is capable of providing rapid assistance and towing capability to disabled vessels to be stationed in the entry to the Strait of Juan de Fuca at Neah Bay year-round. A rescue tug is currently available (and funded) only during the winter months. Tank vessels that are required to have an emergency response plan could be required to share the costs of funding the response tug year-round. Based on information from the Coast Guard, CBO expects that the costs of complying with the mandate would be small relative to the annual threshold.

Other impacts

The bill also would benefit state and local governments as well as public universities by conveying certain boathouses, ships, aircraft, and land rights to those governments and entities, and by authorizing grant programs.

Previous CBO estimates: On August 29, 2007, CBO transmitted a cost estimate for H.R. 2830, the Coast Guard Authorization Act of 2007, as ordered reported by the House Committee on Transportation and Infrastructure on June 28, 2007. On September 29, 2007, we transmitted a cost estimate for H.R. 2830 as ordered reported by the House Committee on Homeland Security. Both versions of H.R. 2830 and S. 1892 would authorize appropriations for ongoing USCG activities for 2008, but the three bills authorize different amounts (and somewhat different activities), as reflected in the CBO cost estimates.

Two differences in the bills involve significant amounts. First, S. 1892 would extend the Coast Guard's authority to acquire employee housing through third-party financing arrangements, resulting in new direct spending of \$200 million over the 2008–2017 period. In addition, the Senate bill would authorize the appropriation of whatever amounts are necessary (an estimated \$1.45 billion) for the acquisition, operation, and maintenance of polar icebreakers. Neither version of H.R. 2830 contains either of those provisions.

Estimate prepared by: Federal Spending: Deborah Reis; Federal Revenues: Barbara Edwards; Impact on State, Local, and Tribal Governments: Elizabeth Cove; Impact on the Private Sector: Jacob Kuipers.

Estimate approved by: Theresa Gallo, Deputy Assistant Director for Budget Analysis; G. Thomas Woodward, Assistant Director for Tax 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. 1892 as reported by the Committee would authorize appropriations to continue existing Coast Guard programs and make a number of changes to current law. The bill would 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 section are discussed in the paragraphs below.

ECONOMIC IMPACT

S. 1892 would enhance existing Coast Guard authorities and authorize funding for Coast Guard activities that have a positive impact on the U.S. economy by ensuring the safety and security of maritime commerce and enforcing our fisheries laws. For example, the provisions of title VII would improve oil spill prevention and response capabilities that could assist in avoiding future incidents that have a negative economic impact at the local, State, and Federal level.

The bill also would benefit State and local governments and public universities through the conveyance of specific boathouses, ships, aircraft, and land rights to those governments and universities.

PRIVACY

The reported bill would have little, if any, impact on the personal privacy of U.S. citizens.

PAPERWORK

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

CONGRESSIONALLY DIRECTED SPENDING

In accordance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides the following identification of congressionally directed spending items contained in the bill, as reported:

Section	Provision	Member
Authorization	Construction of Chelsea Street Bridge in Chelsea, MA.	Sen. Kerry
Section 705	Olympic Coast National Marine Sanctuary	Sen. Cantwell
Section 716	Vessel traffic risk assessments	Sen. Stevens
Section 717	Oil spill liability trust fund investment amount data.	Sen. Stevens
Section 905	Extension	Sen. Lautenberg
Section 918	Fur Seal Act authorization	Sen. Stevens

SECTION-BY-SECTION ANALYSIS

S. 1892 authorizes appropriations and levels of military strength and training for the Coast Guard for FY 2008, and includes other provisions to address issues related to the Coast Guard.

TITLE I—AUTHORIZATION

Section 101. Authorization of appropriations.

Section 101 would authorize \$5.894 billion for operating expenses; \$998 million for AC&I; \$1.184 billion for retired pay; \$12 million for environmental compliance and restoration functions; \$17.583 million for RDT&E programs related to maritime technology; \$126 million for the reserve program; and \$3 million for the construction of a new Chelsea Street Bridge in Chelsea, Massachusetts.

Section 102. Authorized levels of military strength and training.

Section 102 would provide the Coast Guard’s active duty military personnel end-of-year strength as well as its average military training student loads for FY 2008. S. 1892, as reported, would authorize the Coast Guard’s levels of military strength and training for FY 2008 to the following levels:

Military Strength and Training	Level
Active Duty Personnel	45,500
Recruit and Special Training	2,500
Flight Training	165
Professional Training	350
Other Aquisition	200

This authorized strength would 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.

Section 103. Web-based risk management data system.

Section 103 would provide an authorization of \$1,000,000 for FY 2008 and FY 2009 for the Coast Guard to continue their use of a web-based risk management system that links occupational health and safety databases to reduce accidents and fatalities of Coast Guard personnel. This section also would require a status report of this system, first established under the Coast Guard and Marine Transportation Act of 2005 (Public Law 109–241), within 90 days after enactment.

TITLE II—ORGANIZATION

Section 201. Vice commandant; vice admirals.

Section 201 would increase the organizational flexibility of the current Coast Guard command structure, as well as align the Coast Guard’s rank structure with other armed forces. This section would change the Vice Commandant position from a 3-star position to a

4-star position and would authorize the President to appoint no more than four vice admirals. This would provide the flexibility to increase the number of vice admirals if circumstances warrant, but does not compel such an increase.

Section 202. Merchant Mariner Medical Advisory Committee.

Section 202 would establish an advisory committee of medical subject matter specialists familiar with the unique maritime occupational environment. These subject matter specialists would advise the Secretary of the Department in which the Coast Guard is operating (Secretary), currently the Department of Homeland Security, on medical matters relating to the issuance of Merchant Mariner Credentials. The advisory group also would be responsible for establishing the medical standards and guidelines for the physical qualifications of operators of vessels for use by those medical professionals who examine and qualify mariners as “fit” for occupational duty. This provision is based on a National Transportation Safety Board recommendation.

Section 203. Authority to distribute funds through grants, cooperative agreements, and contracts to maritime authorities and organizations.

Section 203 would give the Coast Guard limited authority to provide financial support for international maritime authorities and organizations which collect and maintain certain databases. The Coast Guard expects this support would total approximately \$100,000 per year. The databases would collect information on foreign vessels and ports that could be used to maintain and enhance U.S. maritime safety and security. The provision would require the Commandant to consult with the Secretary of State when providing such support.

In order to access global safety and security information on foreign vessels, the United States entered into an agreement with six foreign maritime authorities to form EQUASIS, a global clearinghouse for Port State Control information from all countries. However, current statutory authority does not permit the Coast Guard to use appropriated funds to support, maintain, and expand these international Port State Control efforts of EQUASIS and other similar systems.

Section 204. Assistance to foreign governments and maritime authorities.

Section 204 would clarify the Coast Guard’s authority to expend funds to assist foreign governments and maritime authorities for activities that might be considered outside the scope of traditional “technical assistance,” including detailing personnel, convening conferences and seminars, and distributing publications designed to develop the maritime capabilities of key partner Nations.

TITLE III—PERSONNEL

Section 301. Emergency leave retention authority.

Section 301 would give the Secretary, and all other service secretaries, the authority to allow service members to retain leave they would otherwise forfeit due to support of major disasters or other

emergencies declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288, 42 U.S.C. 5121 et seq.). As a result of several major events such as the September 11, 2001, attacks and Hurricanes Katrina, Rita, and Wilma, many Coast Guard members have been unable to take leave, which they had already accrued, before the end of a fiscal year. Since only 60 days of leave may be carried over from one fiscal year to the next, this has resulted in Coast Guard members losing leave they have already earned.

Section 302. Legal assistance for Coast Guard reservists.

Section 302 would amend section 1044(a)(4) of title 10, United States Code, to establish parity among all similarly situated reservists by making Coast Guard reservists, who have served on active duty for more than 30 days under mobilization authority, eligible for legal assistance upon release from active duty.

Section 303. Reimbursement for certain medical-related travel expenses.

Section 303 would amend section 1074i of title 10, United States Code, to allow for the reimbursement of reasonable travel-related expenses when a service member is stationed on an island inside the continental United States, and his or her family member is referred to a specialty care provider off-island that is less than 100 miles from the primary care provider.

Section 304. Number and distribution of commissioned officers on the active duty promotion list.

Section 304 would amend section 42 of title 14, United States Code, to permit the Secretary (1) to extend the 6,700 Coast Guard commissioned officer cap; (2) to make that number applicable only to the commissioned officers on the Coast Guard Active Duty Promotion List; and (3) to provide guidance for the management of these commissioned officers. This section also would provide for a temporary two percent increase to accommodate a recurrent and temporary annual spike in the number of commissioned officers the Coast Guard Academy graduates annually, thereby ensuring when the statutory cap of 6,700 is not exceeded.

Section 305. Reserve commissioned warrant officer to lieutenant program.

Section 305 would expand the President's existing authority to appoint temporary commissioned officers to allow the appointment of temporary commissioned officers in the Reserves (in a grade not above lieutenant) from among Reserve Chief Warrant Officers (CWOs). The qualifications and requirements that apply to appointments from among the CWOs in the Regular Coast Guard would apply to those appointments from the Reserve CWOs.

Section 306. Enhanced status quo officer promotion system.

Section 306 would afford the Commandant the flexibility, when needed, to furnish selection boards with specific direction to consider the specialty needs of the officer corps during the selection programs while preserving the "best qualified" promotion system.

Such specialty needs selections would be limited, as are “below promotion zone” selections.

Section 307. Appointment of civilian Coast Guard judges.

Section 307 would provide a limited authority to enable the Secretary to appoint civilian judges to the Coast Guard Court as vacancies occur.

Section 308. Coast Guard Participation in the Armed Forces Retirement Home System.

Section 308 would provide the Coast Guard parity with veterans of the other military services and allow Coast Guard enlisted and warrant officer personnel to be eligible for admission into the Armed Forces Retirement Home system.

TITLE IV—ADMINISTRATION

Section 401. Cooperative agreements for industrial activities.

Section 401 would simplify accounting requirements by authorizing appropriations to remain available for payment beyond the year in which they are appropriated for industrial work performed by the Coast Guard for the Department of Defense (DOD) or Department of Homeland Security.

Section 402. Defining Coast Guard vessels and aircraft.

Section 402 would amend title 14, United States Code, by adding a new section 638a. The new section would define “Coast Guard vessels and aircraft” for the purposes of sections 637 and 638. The definition would include non-traditional vessels and aircraft from which Coast Guard personnel may conduct Coast Guard missions and exercise Coast Guard authority.

Section 403. Specialized industrial facilities.

Section 403 would authorize the Coast Guard Yard (Yard) and other industrial facilities to enter into public-private partnerships. This section would require that the Coast Guard be reimbursed for its proportional share of the costs of such partnerships. The Committee notes that there is similar DOD authority found at in section 2474 of title 10, United States Code.

Section 404. Authority to construct Coast Guard recreational facilities.

Section 404 would amend section 681 of title 14, United States Code, to include “recreational housing” in the same regard as “military unaccompanied housing.” This would give the Coast Guard the authority to enter into public-private partnerships to construct recreational housing. The authority would not impact the Coast Guard’s operational funding, personnel, or mission. The Committee is aware that Hurricane Katrina destroyed the Coast Guard’s recreational facilities in Daulphin Island, Alabama, and due to the current statutory restrictions on the definition of “military unaccompanied housing,” the Coast Guard cannot rebuild these recreational facilities through public-private partnerships. The Committee intends that this language would remedy situations such as Daulphin Island.

TITLE V—SHIPPING AND NAVIGATION

Section 501. Technical amendments to chapter 13 of title 46, United States Code.

Section 501 would make two technical corrections to chapter 313 of title 46, United States Code. The first provision would update the chapter by replacing references to the Secretary of Transportation with the Secretary of the Department of Homeland Security as appropriate. The second change would correct the chapter's penalty provision, section 31330, and its incorrect application of punishment for a mortgagor.

Section 502. Clarification of rulemaking authority.

Section 502 would clarify that the Secretary may issue regulations to implement, as necessary, chapter 701 of title 46, United States Code, at any time. This section would eliminate any ambiguity that could allow section 102(d) of MYSA to be read as limiting the Secretary's ability to implement chapter 701 beyond one year, rather than to give the Secretary an Administrative Procedures Act waiver. Chapter 701 was enacted by section 102(a) of MTSA. Section 102(d) provided the Secretary expedited rulemaking authority to implement chapter 701.

Section 503. Coast Guard to maintain LORAN-C navigation system.

Section 503 would require the Secretary of the Department of Transportation to maintain the LORAN-C navigation system until the Secretary of the Department in which the Coast Guard is operating is authorized by statute to cease operations of LORAN-C. This section would authorize appropriations to the Secretary of the Department of Transportation in the amount of \$25 million for each of FY 2008 and FY 2009 for capital expenses related to the LORAN-C infrastructure, in addition to funds authorized to the Coast Guard for operation of the LORAN-C system.

The President's budget request for FY 2008 requested \$7.2 million to begin shutting down LORAN-C because the Coast Guard believes LORAN-C is no longer necessary. The Coast Guard has proposed terminating the LORAN-C program and operations in the past and in June of 2006, the Senate Appropriations Committee denied this request, as stated in Conference Report 109-699 that accompanied the FY 2007 Department of Homeland Security Appropriations bill. Additionally, that conference report directed the Secretary of Homeland Security, in consultation with the Secretary of Transportation, to submit a report regarding the future of the LORAN-C system. Public comments were requested in association with the development of this report, and an overwhelming majority of diverse stakeholders supported retention of the LORAN-C system.

Section 504. Nantucket Sound ship channel weather buoy.

Section 504 would instruct the National Weather Service to deploy a weather buoy adjacent to the main ship channel of Nantucket Sound.

Section 505. Limitation on maritime liens on fishing permits.

Section 505 would amend subchapter I of chapter 313 of title 46, United States Code, by adding section 31310. This provision would expressly forbid maritime liens from attaching fishing permits issued under State or Federal law and block civil actions asserting liens on fishing permits.

Section 506. Vessel rebuild determinations.

Section 506 would instruct the Secretary to provide a report on Coast Guard rebuild determinations under section 67.177 of title 46 of the Code of Federal Regulations. This report would make recommendations to improve transparency in the Coast Guard's foreign rebuild determination process, among other things.

TITLE VI—MARITIME LAW ENFORCEMENT

Section 601. Maritime law enforcement.

Section 601 would amend subtitle VII of title 46, United States Code, by adding chapter 707. This new chapter would clarify and strengthen the ability of the Coast Guard to improve the security of ports-of-entry and coasts of the United States against unlawful entry by those who seek to enter the United States without official permission or lawful authority.

This section would make it a felony for any person on board a vessel less than 300 gross tons that is subject to the jurisdiction of the United States to transport or facilitate the transportation of, harboring, or concealment of an alien on board knowingly or having reason to know that the alien is attempting to unlawfully enter the United States from another country. The provision would allow for a mandatory three-year minimum sentence coupled with a fine of up to \$100,000 for each violation, with increased fines for violations which result in serious bodily injury or death. This section also would provide protection for legitimate merchant mariners who encounter stowaways, as well as legitimate Good Samaritans, but would establish reasonable measures to preclude smugglers from successfully asserting a false rescue defense.

TITLE VII—OIL POLLUTION PREVENTION

Section 701. Rulemakings.

Section 701 would require the Coast Guard to provide a report to Congress on the status of all rulemakings required but not yet finalized under OPA 90, for automatic identification systems on vessels, and for inspection requirements applicable to towing vessels. It also would require the remaining rules for OPA 90 to be completed within 18 months.

Section 702. Oil spill response capability.

Section 702 would require the Coast Guard, as part of a rule-making under chapter 33 of title 46, United States Code, addressing towing vessel inspections, to give priority to completing such regulations for towing vessel operations involving tank vessels. The Coast Guard would be required to consider the possible application of standards that now apply to self-propelled tank vessels. Finally, the section would direct the Coast Guard to promulgate a final rule

for Buzzards Bay, Massachusetts, to adopt measures to reduce the risk of oil spills.

Section 703. Oil transfers from vessels.

Section 703 would require the Coast Guard to promulgate regulations to reduce the incidence of oil spills involving transfers to or from tank vessels.

Section 704. Improvements to reduce human error and near-miss incidents.

Section 704 would require the Coast Guard to provide a report to Congress on the most frequent sources of human error that have led to oil spills from vessels, as well as on the most significant types of “near miss” incidents. It also would require the Coast Guard to make recommendations for reducing such incidents and to take appropriate action to reduce the risk of oil spills from human error.

Section 705. Olympic Coast National Marine Sanctuary.

Section 705 would expand the application of the voluntary Area to be Avoided (ATBA) encompassing the Olympic Coast National Marine Sanctuary to apply to all non-tank vessels greater than 400 gross tons, other than fishing vessels engaged in fishing within the ATBA. This section also would authorize \$700,000 for the Coast Guard and the NOAA to conduct a “Safe Seas” oil spill drill in the Olympic Coast National Marine Sanctuary in 2008. This drill would be coordinated with other Federal, State, and local agencies, and tribal governments.

Section 706. Prevention of small oil spills.

Section 706 would require the Under Secretary of Commerce for Oceans and Atmosphere to establish an assessment, outreach, training, and voluntary compliance program to prevent oil spills from smaller boats, such as fishing boats, pleasure craft, or small commercial vessels. The NOAA would be authorized to provide grants to Sea Grant Colleges, State and tribal governments, and other appropriate entities to carry out this program. The bill would authorize \$10,000,000 annually for FY 2008 through FY 2012 to carry out this section.

Section 707. Improved coordination with tribal governments.

Section 707 would require the Coast Guard to improve its consultation and coordination process with Federally-recognized tribes with respect to oil spill prevention, preparedness, and response. It also would require the Coast Guard to include tribes whose natural and cultural resources are likely to be impacted by a spill as part of the incident response team for such spill, thus ensuring that the tribe would have an integral role in decision-making related to the response effort and be appropriately recognized as a major stakeholder alongside local, State, and Federal entities. It would authorize the Coast Guard to enter into cooperative agreements with tribes for oil spill prevention, preparedness, and response. This section would authorize \$500,000 for the establishment and implementation of such agreements for each of FYs 2008 through 2012.

Section 708. Report on the availability of technology to detect the loss of oil.

Section 708 would require the Secretary to submit a report to Congress on the availability, feasibility, and potential cost of technology that can detect loss of oil carried as cargo or fuel on tank and non-tank vessels greater than 400 gross tons.

Section 709. Use of oil spill liability trust fund.

Section 709 would authorize the NOAA to directly access up to \$15 million annually from the Oil Spill Liability Trust Fund to carry out its functions for natural damage assessment and restoration under OPA 90 rather than seeking reimbursement from the Fund after incurring costs.

Section 710. International efforts on enforcement.

Section 710 would instruct the Coast Guard to pursue stronger enforcement in the International Maritime Organization (IMO) of agreements related to oil discharges, including joint enforcement operations, training, and stronger compliance mechanisms.

Section 711. Grant project for development of cost-effective detection technologies.

Section 711 would require the Commandant to establish a grant program for the development of cost-effective technologies for detecting discharges of oil from vessels, including infrared, pressure sensors, and remote sensing, as well as methods and technologies for improving detection and recovery of submerged and sinking oils. This section would authorize \$2 million annually for FY 2008 through FY 2010. Grants under this section would require a match of at least 50 percent.

Section 712. Higher volume port area regulatory definition change.

Section 712 would change the definition of "higher volume port area" for Puget Sound to make the westerly boundary begin at Cape Flattery, WA, the entry to the Strait of Juan de Fuca, given the volume of vessel traffic and the risk of oil spills throughout the entire length of the Strait of Juan de Fuca. It also would require the Coast Guard to complete its review of any changes to emergency response plans resulting from the definition change, within five years after the date of enactment.

Section 713. Response tugs.

Section 713 would require entities that are required to have an emergency response plan, which includes arrangements for positioning of oil spill response equipment, to jointly fund the stationing of a year-round response tug strategically located in the entry to the Strait of Juan de Fuca at Neah Bay. The rescue tug is currently funded only during winter months and, since 1999, has assisted or stood by 34 ships that were disabled or had reduced maneuvering or propulsion capability while transporting oil and other cargo.

The section also would require the Coast Guard to enter into a contract with the National Academy of Sciences to research and define the capabilities, equipment, and facilities necessary to achieve a level of oil spill prevention and protection that is at least com-

parable to that afforded other locations such as the entrance of Prince William Sound. Subsection (b) would authorize such sums as are necessary to carry out section 311(j)(5)(3)(v) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)(5)(3)(v)).

Section 714. Tug escorts for laden oil tankers.

Section 714 would require the Secretary of State, in consultation with the Commandant, to enter into negotiations with the Government of Canada to ensure that tug escorts are required for tank ships greater than 40,000 dead weight tons transiting the Strait of Juan de Fuca, Strait of Georgia, and Haro Strait. Vancouver, British Columbia, is Canada's largest port, with more than 2,600 vessel calls annually, and the traffic separation scheme in this region places much of this in-bound traffic in U.S. waters. The Commandant would be required to consult with the State of Washington and the affected tribal governments during negotiations with Canada.

Section 715. Extension of financial responsibility.

Section 715 would extend current requirements of financial responsibility in section 1016(a) of OPA 90 (33 U.S.C. 2716(a)) to all tank vessels over 100 gross tons, except non-selfpropelled vessels not carrying oil as cargo. This extension will ensure that responsible parties for vessels of this size range would be able to pay for claims related to spills.

Section 716. Vessel traffic risk assessments.

Section 716 would require the Commandant of the Coast Guard to prepare two vessel traffic risk assessments; one for Cook Inlet, Alaska, within one year after the date of enactment of this Act, and the second for the Aleutian Islands, within two years after the date of enactment of this Act. The assessments would describe the level of shipping traffic and the current and projected use of routing measures, long-range vessel tracking systems, and the Automatic Identification System, among other things, and provide recommendations for enhancing safety and security of marine shipping. This provision would authorize \$1,800,000 for each of FY 2008 and FY 2009 to conduct the assessments.

Section 717. Oil spill liability trust fund investment amount.

Section 717 would increase the principal amount of funds that support the OSRI by \$12.851 million to account for reduced funding due to low interest rates and inflation. The OSRI conducts research and develops technologies to prevent and mitigate the effects of oil spills. The OSRI has a unique capability to conduct research in Arctic and sub-Arctic regions. As resources are developed in these regions new research is needed to mitigate potential spills in extreme cold water and ice conditions. Many of the tank vessels importing hazardous cargo into the United States are operating under a foreign flag and are therefore subject to limited oversight authority by the United States until the vessel reaches waters under the jurisdiction of the United States.

Section 718. Liability for use of unsafe single-hull vessels.

Section 718 would include in the definition of “responsible party” under section 1001(32) of OPA 90 (33 U.S.C. 2701(32)) the owner of oil products being transported by a single-hull tank vessel after 2010 who knew or should have known that the vessel had a poor safety or operational record, based on publicly-available information.

TITLE VIII—MARITIME HAZARDOUS CARGO SECURITY

Section 801. International committee for the safe and secure transportation of especially hazardous cargo.

Section 801 would authorize the Secretary to work with foreign governments that transport EHC to the United States, through the IMO, to develop minimum standards for the safe and secure receiving, handling, loading, unloading, crewing, and transportation of EHC.

Section 802. Validation of compliance with International Ship and Port Facility Security Code standards.

Section 802 would require the Secretary to work with the IMO and the ISO to develop voluntary third party validations of foreign ports to determine if they meet or exceed International Ship and Port Facility Security Code standards. The Secretary would be given the authority to audit the inspection validations of third party entities, to revoke an entity certification, and to conduct validations for failure to maintain appropriate standards of conduct. Further, appropriate guidelines would be required to be established to ensure that all security and propriety information from validations are managed and maintained in a secure format.

Section 803. Safety and security assistance for foreign ports.

Section 803 would modify section 70110 of title 46, United States Code, to clarify that the Secretary is required to identify domestic and international assistance programs that can be used to improve the security of foreign ports and facilities. Further, the Secretary would be required to develop and execute a strategic plan to utilize the programs identified to assist foreign ports that do not maintain effective antiterrorism measures.

Section 804. Coast Guard port assistance program.

Section 804 would further modify section 70110 to authorize the Coast Guard to lend, lease, or loan equipment and provide technical training and support to meet or exceed International Ship and Port Facility Security Code standards based on risk to the security of the United States and based on the need of an owner or operator. However, a facility or foreign port requesting assistance under the program would first be required to consent to a comprehensive port security assessment by the Coast Guard or third party entity.

Section 805. EHC facility risk-based cost sharing.

Section 805 would require the Coast Guard to identify facilities that load, unload, or handle EHC above a risk threshold to be determined by the Secretary and authorizes the Secretary to develop

a cost share plan for the secure transportation of EHC to such facilities.

Section 806. Transportation security incident mitigation plan.

Section 806 would require the Coast Guard to modify Area Maritime Transportation Security Plans to incorporate regional response and recovery plans for the resumption of trade, consistent with the protocols under section 202 of the SAFE Ports Act of 2006 (6 U.S.C. 942) and section 70103(a) of title 46, United States Code.

Section 807. Incident command system training.

Section 807 would require personnel tasked with security of a vessel loading or unloading EHC at a port or facility to have successfully completed training on the incident command system.

Section 808. Pre-positioning interoperable communications equipment at inter-agency operational centers.

Section 808 would require the Coast Guard to preposition interoperable communications technology at Interagency Operations Command Centers and to conduct periodic testing of such equipment as part of the Area Maritime Security Exercises.

Section 809. Definitions.

Section 809 would define key terms used in this title.

TITLE IX—MISCELLANEOUS PROVISIONS

Section 901. Marine mammals and sea turtles report.

Section 901 would require the Secretary to submit an annual report to Congress on Coast Guard activities with respect to the protection of marine mammals and sea turtles under U.S. statutes and international agreements. The protection of living marine mammals is one of the Coast Guard's eleven missions and has consistently seen a decrease in budget allocation after the events of September 11, 2001. This report would assist the Congress in discerning the amount of Coast Guard personnel hours allocated to upholding domestic and international laws pertaining to marine mammals and sea turtles and aid in the ability of Congress to determine where more resources can be utilized.

Section 902. Umpqua lighthouse land conveyance.

Section 902 would authorize the Commandant to convey to Douglas County, Oregon, all right, title, and interest of the United States in and to the Umpqua Lighthouse property for the purpose of permitting the County to use the property as a park, recognizing that any facilities built on this property will be at the expense of the county, not the Federal Government and that the County will convey replacement facilities to the Coast Guard.

Section 903. Lands to be held in trust.

Section 903 would allow the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians to have Gregory Point and Chiefs Island on the Oregon Coast restored to the Confederated Tribes so that the Tribes may protect and preserve archaeological, historical, cultural, and spiritual resources of great importance to the Tribes.

The Confederated Tribes would be required to allow the Coast Guard access to operate and maintain aids to navigation while complying with all applicable Federal, State, and county laws and ordinances.

Section 904. Data.

Section 904 would authorize appropriations to the Administrator of NOAA in the amount of \$7 million annually for FY 2008 through FY 2010 to acquire data through the use of unmanned aerial vehicles to improve the management of natural disasters, the safety of marine and aviation transportation, and fisheries enforcement.

Section 905. Extension.

Section 905 would amend section 607 of the Coast Guard and Maritime Transportation Act of 2006 by extending the sunset on the Delaware River and Bay Oil Spill Advisory Committee from 2007 to 2012. It also requires an updated report from the Committee and a report annually thereafter until its termination.

Section 906. Forward operating facility.

Section 906 would authorize the Secretary to construct or lease hangar, berthing, and messing facilities in the Aleutian Islands/Bering Sea operating area to support aircraft maintenance and shelter.

Section 907. Enclosed hangar at Air Station Barbers Point, Hawaii.

Section 907 would authorize the Secretary to construct an enclosed hangar for all current aircraft and those expected in the next 20 years at Air Station Barbers Point, Hawaii. The hangar that is currently being used at Air Station Barbers Point, Hawaii, is an open hangar, which has resulted in corrosion of the assets held there due to the mixture of salt and warm weather. The extent of the corrosion and its effect on the assets at Air Station Barbers Point is the reason that this station has the highest rate of maintenance of Coast Guard Air Stations. In fact, according to Coast Guard data, the depot maintenance costs of the HC-130s during 2003–2006 were 11 percent higher than the fleet average. An enclosed hangar is needed to protect the Coast Guard's current assets at Air Station Barbers Point, Hawaii, and those that are expected to be held there in the coming years.

The Coast Guard submitted a report to Congress on February 9, 2007, which included site plans and cost estimates for hangaring both 100 percent of assigned and projected rotary and fixed wing assets. Additionally, the report included site plans and cost estimates for hangaring 100 percent of assigned and projected rotary, and 50 percent of assigned and projected fixed wing aircraft. The Coast Guard Civil Engineering manual requires 50 percent of all assets to be housed in an enclosed hangar. Not only would this provision fulfill the requirements set forth by the Commandant in this manual, the enclosed hangar would save money in the long term due to a decrease in the level of maintenance that would be required on the assets held at Air Station Barbers Point.

Section 908. Conveyance of decommissioned Coast Guard Cutter STORIS.

Section 908 would allow the conveyance of the Coast Guard Cutter STORIS after it is decommissioned to the USCG Cutter STORIS Museum and Maritime Education Center, LLC. It is the Committee's understanding that the intent of the STORIS Museum is to make the cutter available to the public as a museum and to work cooperatively with other museums to provide education and memorialize the maritime heritage and activities of the STORIS, the Coast Guard, and the Pacific Northwest.

Section 909. Conveyance of the Presque Isle Light Station Fresnel Lens to Presque Isle Township, Michigan.

Section 909 would authorize the Commandant to convey ownership of the historic Presque Isle Light Station Lighthouse, Michigan, fresnel lens to the Township of Presque Isle, Michigan, for operation as an aid to navigation.

Section 910. Repeals.

Section 910 would repeal section 689 of title 14, United States Code, under which the authority to enter into a transaction under the Coast Guard housing authority expires on October 1, 2007. This section also would repeal section 216 of that title which provides that the initial appointment of the Director of Boating Safety Office shall be in the grade of a captain.

Section 911. Report on ship traffic.

Section 911 would require the Secretary to submit a report to Congress regarding the number of foreign flag ships entering waters subject to the jurisdiction of the United States no later than one year after the date of the enactment of this act. Specifically, the report would be required to include a breakdown of the number or percentage of ships that enter a U.S. port or place, pass through the territorial sea of the United States without coming to a U.S. port or place, or pass through the exclusive economic zone of the United States without coming to a U.S. port or place. The report could be classified, if needed.

Section 912. Small vessel exception from definition of fish processing vessel.

Section 912 would amend section 2101 (11b) of title 46, United States Code, to exclude certain fishing vessels operating in Alaskan waters that fillet only salmon taken by that vessel and fillet less than five metric tons of such salmon during any seven day period.

Section 913. Right of first refusal for Coast Guard property on Jupiter Island, Florida.

Section 913 would grant the town of Jupiter Island, Florida, the right of first refusal for the transfer of parcel number 35-38-42-004-000-2590-6 and parcel number 35-38-42-004-000-2610-2 if not used by the Coast Guard. The property would be transferred as a conservation or preservation tract. Transfer of the property under this section would ensure that the local government land use preferences are carried out. If the property is not used for conserva-

tion purposes, it would revert back to the United States Government.

Section 914. Ship disposal working group.

Section 914 would instruct the Secretary of Transportation to convene a working group within 30 days after the date of enactment of this Act, comprised of representatives of the Maritime Administration, the Coast Guard, the Environmental Protection Agency, NOAA, and the Navy, to review and make recommendations on environmental practices for the disposal of obsolete vessels owned or operated by the Federal government. The working group also would submit a plan to harmonize and improve the storage and disposal of such vessels. Federal agencies would take such action to implement the plan as is necessary as soon as practicable.

Section 915. Full multi-mission response station in Valdez, Alaska.

Section 915 would authorize the Secretary to construct a full multi-mission Coast Guard Response Station in Valdez, Alaska, not later than 180 days after the date of enactment of this Act. Section 915 would authorize the Secretary to construct or lease operational support facilities in the Aleutian Islands and Valdez, Alaska, to improve Coast Guard safety and security missions. The Coast Guard routinely deploys rescue resources to the Aleutian chain during critical fishery openings and during long range search and rescue cases. Forward deployments reduce response times and have directly resulted in saving dozens of lives. This bill would give the Secretary authority to construct or lease the hangar, berthing, and messing facilities needed to properly support Coast Guard deployments. Continuing evolution of the Coast Guard's homeland safety and security missions highlight the need for a full multi-mission response station in Valdez. As the terminus of the Trans-Alaskan oil pipeline, the Valdez Marine Terminal holds more than 9.0 million barrels of oil and has an average daily throughput of nearly 760,000 barrels, giving the port strategic importance. To ensure operational effectiveness over the next 20 years, the Committee expects that the Station would be outfitted with an integrated operations and communications center, office space for assigned personnel, berthing for response crews, as well as year-round mooring and maintenance facilities for the Station's response vessels.

Section 916. Protection and fair treatment of seafarers.

Section 916 would provide a statutory and funding remedy for two intractable, often inter-related problems: humanitarian relief for seafarers abandoned in the United States and support of seafarers who are witnesses to maritime-related crimes. In both instances, the Secretary would be authorized to draw from a special fund to pay necessary support of abandoned seafarers, including seafarers who are witnesses in Coast Guard investigations and subsequent proceedings. As well, the Secretary would be authorized to draw on the special fund to reimburse the responsible shipowner for some or all of his costs whenever necessary to avoid a serious injustice. This provision would anticipate the unique circumstance involving a shipowner who is ultimately determined by the Secretary to be completely free of any wrongdoing, yet has willingly incurred the cost of providing the necessary support of the seafarer

or witness. To mitigate the unfairness of this circumstance, the Secretary would have authority to compensate the shipowner for their expenses.

Section 917. Icebreakers.

Section 917 would require the Secretary to acquire or construct two new polar icebreakers for operation by the Coast Guard. It also would instruct the Coast Guard to maintain their existing polar icebreakers and return them to operational status, if not operational already. This section would authorize such sums as are necessary to carry out this section. Currently, the Coast Guard's icebreaker fleet is funded by the National Science Foundation. However, the funding for these vessels has been inconsistent, allowing the Polar Star to fall behind on the maintenance necessary to keep the vessel in operating condition. With some climate models predicting an ice-free Arctic summer in the future, more international expeditions will be headed to the region to examine newly revealed oil and gas reserves and other natural resources. Canada, Russia, and other countries will begin to compete with the United States over jurisdiction and, without a strong polar icebreaker fleet, our Nation will suffer a severe disadvantage. A recent 2007 report by the National Academy of Sciences found that the United States needs to maintain polar icebreaking capacity and construct at least two new polar icebreakers. This provision follows those recommendations.

Section 918. Fur Seal Act authorization.

Section 918 would amend the Fur Seal Act of 1966 to extend the authorization of appropriations for FY 2007, FY 2008, and FY 2009. This section would extend authorization established by the Pribilof Island Transition Act (Pub. L. 106-562) for economic development funding, distributed by grant among the six Island entities, to the Pribilof Islands. The authorization of funding is aimed at economic development to create alternatives to the commercial fur seal harvests banned under Federal Law. The extension would also permit the Federal Government to fulfill its promise to create a sustainable economy on the Pribilof Islands not dependent on fur seal harvest.

Section 919. Study of relocation of Coast Guard Sector Buffalo facilities.

Section 919 would authorize a study to evaluate the feasibility and creation of a preliminary plan for consolidating and relocating Coast Guard facilities at Coast Guard Sector Buffalo.

Section 920. Conveyance of Point No Point historic lighthouse to Kitsap County, Washington.

Section 920 would authorize the Coast Guard to transfer the Point No Point Lighthouse located in Kitsap County, Washington to the state of Washington for the purpose of allowing the State to use the property as a park and educational facility. The aids-to-navigation located at the Point No Point Lighthouse would remain the property of the United States. This provision also would preserve the cultural and historical features of the land.

Section 921. Facility security plans.

Section 921 would require port facilities to provide procedures for facilitating shore leave for ship personnel or personnel changes for crew members, including representatives of seafarers' welfare and labor organizations.

Section 922. Class action suits for crew wages on passenger vessels; deposit of sea-man's wages.

Section 922 would create a time limit for class action suits to be filed by seamen on a passenger vessel greater than 500 passengers. This provision also would allow crewmen's paychecks to be directly deposited into the crewman's account of choice.

Section 923. Inspector General report on Coast Guard dive program.

Section 923 is intended to address concerns raised at the Committee's oversight hearing entitled *The Future of the Coast Guard Dive Program*, which took place on March 28, 2007. This hearing involved two representatives from the United States Coast Guard and one from the Navy dive program and drew significant attention to the mismanagement of and apparent disregard for the standard operating procedures of the Coast Guard dive program. This section would require the Inspector General of the Department of Homeland Security to submit a report to Congress on the events and circumstances that led to the tragic deaths of two Coast Guard divers which occurred as they were serving aboard the Coast Guard icebreaker HEALY in August 2006. Specifically, the investigation and report would include: (1) a description of programmatic changes made by the Coast Guard in response to the accident; (2) an evaluation of whether those changes are effective; and (3) recommendations for further improvements in the safety of the dive program.

TITLE X—VESSEL CONVEYANCE

Section 1001. Short title.

Section 1001. Section 1001 would provide that this title could be cited as the "Vessel Conveyance Act".

Section 1002. Conveyance of United States vessels for public purposes.

Section 1002 would establish rules for future legislative vessel conveyances, including a requirement that the conveyance recipient not sell the vessel without first offering it back to the Federal government.

Section 1003. Working group on conveyance of United States vessels.

Section 1003 would require the Secretary of Transportation to convene a working group, comprised of members from the Maritime Administration, the Coast Guard, and the United States Navy, to review and recommend a common set of conditions for the conveyance of vessels of the United States to eligible entities.

Section 1004. Civil enforcement of conveyance conditions.

Section 1004 would establish civil penalties for violation of the terms of a vessel conveyance. In May 2007, the New York Times

which reported that two Coast Guard buoy tenders were sold for uses other than those for which they were conveyed without the knowledge of the government.

Section 1005. Definitions.

Section 1005 would provide definitions for this title.

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):

COAST GUARD AND MARITIME TRANSPORTATION ACT OF
2006

TITLE VI—DELAWARE RIVER PROTECTION AND MISCELLANEOUS OIL
PROVISIONS

SEC. 607. DELAWARE RIVER AND BAY OIL SPILL ADVISORY COMMITTEE.

(a) **ESTABLISHMENT.**—There is established the Delaware River and Bay Oil Spill Advisory Committee (in this section referred to as the “Committee”).

(b) **MEMBERSHIP.**—

(1) **IN GENERAL.**—The Committee shall consist of 27 members who are appointed by the Commandant of the Coast Guard and who have particular expertise, knowledge, and experience regarding the transportation, equipment, and techniques that are used to ship cargo and to navigate vessels in the Delaware River and Delaware Bay, as follows:

(A) Three members who are employed by port authorities that oversee operations on the Delaware River or have been selected to represent these port authorities, of whom—

(i) one member shall be an employee or representative of the Port of Wilmington;

(ii) one member shall be an employee or representative of the South Jersey Port Corporation; and

(iii) one member shall be an employee or representative of the Philadelphia Regional Port Authority.

(B) Two members who represent organizations that operate tugs or barges that utilize the port facilities on the Delaware River and Delaware Bay.

(C) Two members who represent shipping companies that transport cargo by vessel from ports on the Delaware River and Delaware Bay, of whom at least one may not be a representative of a shipping company that transports oil or petroleum products.

(D) Two members who represent operators of oil refineries adjacent to the Delaware River and Delaware Bay.

(E) Two members who represent State-licensed pilots who work on the Delaware River and Delaware Bay.

(F) One member who represents labor organizations whose members load and unload cargo at ports on the Delaware River and Delaware Bay.

(G) One member who represents local commercial fishing interests or an aquaculture organization the members of which organization depend on fisheries and resources in the waters of Delaware River or Delaware Bay.

(H) Three members who represent environmental organizations active with respect to the Delaware River and Delaware Bay, including a watershed advocacy group and a wildlife conservation advocacy group.

(I) One member who represents an organization affiliated with recreational fishing interests in the vicinity of Delaware River and Delaware Bay.

(J) Two members who are scientists or researchers associated with an academic institution and who have professional credentials in fields of research relevant to oil spill safety, oil spill response, or wildlife and ecological recovery.

(K) Two members who are municipal or county officials from Delaware.

(L) Two members who are municipal or county officials from New Jersey.

(M) Two members who are municipal or county officials from Pennsylvania.

(N) One member who represents an oil spill response organization located on the lower Delaware River and Delaware Bay.

(O) One member who represents the general public.

(2) EX OFFICIO MEMBERS.—The Committee may also consist of an appropriate number (as determined by the Commandant of the Coast Guard) of nonvoting members who represent Federal agencies and agencies of the States of New Jersey, Pennsylvania, and Delaware with an interest in oil spill prevention in the Delaware River and Delaware Bay.

(c) RESPONSIBILITIES.—

(1) IN GENERAL.—The Committee shall provide advice and recommendations on measures to improve the prevention of and response to future oil spills in the Delaware River and Delaware Bay to the Commandant, the Governors of the States of New Jersey, Pennsylvania, and Delaware, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives.

(2) REPORT.—Not later than 18 months after the date that the Commandant completes appointment of the members of the Committee, the Committee shall provide a report to the entities referred to in paragraph (1) with the recommendations of the Committee, including a ranking of priorities, for measures to improve prevention and response to oil spills described in paragraph (1).

(3) UPDATE.—*One year after the date of the report required by paragraph (2), and annually thereafter until its termination, the Committee shall update its report to adjust priorities as necessary and include progress made on measures prioritized in*

the most recent report and submit the report to the entities referred to in paragraph (1).

(d) MEETINGS.—The Committee—

(1) shall hold its first meeting not later than 60 days after the date on which the Commandant completes the appointment of members of the Committee; and

(2) shall meet thereafter at the call of the **Chairman.** *Chairman, but not less than once every 90 days.*

(e) APPOINTMENT OF MEMBERS.—The Commandant shall appoint the members of the Committee after soliciting nominations by notice published in the Federal Register.

(f) CHAIRMAN AND VICE CHAIRMAN.—The Committee shall elect, by majority vote at its first meeting, one of the members of the Committee as the Chairman and one of the members as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence of or incapacity of the Chairman or in the event of vacancy in the office of the Chairman.

(g) PAY AND EXPENSES.—

(1) PROHIBITION ON PAY.—Members of the Committee who are not officers or employees of the United States shall serve without pay. Members of the Committee who are officers or employees of the United States shall receive no additional pay on account of their service on the Committee.

(2) EXPENSES.—While away from their homes or regular places of business, members of the Committee may be allowed travel expenses, including per diem, in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

(h) FUNDING.—There is authorized to be appropriated \$1,000,000 for each of fiscal years 2006 through **2007** 2012 to carry out this section.

(i) TERMINATION.—The Committee shall terminate **18 months** after the date on which the Commandant completes the appointment of members of the Committee. *terminate on September 30, 2012.*

HOMELAND SECURITY ACT OF 2002

TITLE 6—DOMESTIC SECURITY

CHAPTER 1. HOMELAND SECURITY ORGANIZATION

SEC. 875. MISCELLANEOUS AUTHORITIES.

[6 U.S.C. 455]

(a) SEAL.—The Department shall have a seal, whose design is subject to the approval of the President.

(b) PARTICIPATION OF MEMBERS OF THE ARMED FORCES.—With respect to the Department, the Secretary shall have the same authorities that the Secretary of Transportation has with respect to the Department of Transportation under section 324 of title 49, United States Code.

(c) APPOINTMENT OF JUDGES.—*The Secretary may appoint civilian employees of the Department of Homeland Security as appellate military judges, available for assignment to the Coast Guard Court of Criminal Appeals as provided for in section 866(a) of title 10, United States Code.*

[(c)] (d) REDELEGATION OF FUNCTIONS.—Unless otherwise provided in the delegation or by law, any function delegated under this Act may be redelegated to any subordinate.

TITLE 10. ARMED FORCES

SUBTITLE A. GENERAL MILITARY LAW

PART II. PERSONNEL

CHAPTER 40. LEAVE

§ 701. Entitlement and accumulation

(a) A member of an armed force is entitled to leave at the rate of 2½ calendar days for each month of active service, excluding periods of—

- (1) absence from duty without leave;
- (2) absence over leave;
- (3) confinement as the result of a sentence of a court-martial;

and

- (4) leave required to be taken under section 876a of this title.

Full-time training, or other full-time duty for a period of more than 29 days, performed under section 316, 502, 503, 504, or 505 of title 32 by a member of the Army National Guard of the United States or the Air National Guard of the United States in his status as a member of the National Guard, and for which he is entitled to pay, is active service for the purposes of this section.

(b) Except as provided in subsection (f) and subsection (g), a member may not accumulate more than 60 days' leave. However, leave taken during a fiscal year may be charged to leave accumulated during that fiscal year without regard to this limitation.

(c) A member who retired after August 9, 1946, who is continued on, or is recalled to, active duty, may have his leave which accumulated during his service before retirement carried over to his period of service after retirement.

(d) [Repealed]

(e) Leave taken before discharge is considered to be active service.

(f)(1)(A) The Secretary concerned, under uniform regulations to be prescribed by the Secretary of Defense, may authorize a member described in subparagraph (B) who, except for this paragraph, would lose any accumulated leave in excess of 60 days at the end of the fiscal year, to retain an accumulated total of 120 days leave.

(B) This subsection applies to a member who—

(i) serves on active duty for a continuous period of at least 120 days in an area in which the member is entitled to special pay under section 310(a) of title 37;

(ii) is assigned to a deployable ship or mobile unit or to other duty designated for the purpose of this section; or

(iii) on or after August 29, 2005, performs duty designated by the Secretary of Defense as qualifying duty for purposes of this subsection.

(C) Except as provided in paragraph (2), leave in excess of 60 days accumulated under this paragraph is lost unless it is used by the member before the end of the third fiscal year after the fiscal

year in which the continuous period of service referred to in subparagraph (B) terminated.

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

(A) would lose any accumulated leave in excess of 60 days at the end of that fiscal year, shall be permitted to retain such leave (not to exceed 90 days) until the end of the succeeding fiscal year; or

(B) would lose any accumulated leave in excess of 60 days at the end of the succeeding fiscal year (other than by reason of subparagraph (A)), shall be permitted to retain such leave (not to exceed 90 days) until the end of the next succeeding fiscal year.

(g) A member who is in a missing status, as defined in section 551(2) of title 37, accumulates leave without regard to the 60-day limitation in subsection (b) and the 90-day limitation in subsection (f). Notwithstanding the death of a member while in a missing status, he continues to earn leave through the date—

(1) the Secretary concerned receives evidence that the member is dead; or

(2) that his death is prescribed or determined under section 555 of title 37.

Leave accumulated while in missing status shall be accounted for separately. It may not be taken, but shall be paid for under section 501(h) of title 37. However, a member whose death is prescribed or determined under section 555 or 556 of title 37 may, in addition to leave accrued before entering a missing status, accrue not more than 150 days' leave during the period he is in a missing status, unless his actual death occurs on a date when, had he lived, he would have accrued leave in excess of 150 days, in which event settlement will be made for the number of days accrued to the actual date of death. Leave so accrued in a missing status shall be accounted for separately and paid for under the provisions of section 501 of title 37.

(h) A member who has taken leave in excess of that authorized by this section and who is being discharged or released from active duty for the purpose of accepting an appointment or a warrant in an armed force, or of entering into an enlistment or an extension of an enlistment in an armed force, may elect to have excess leave of up to 30 days or the maximum number of days of leave that could be earned in the new term of service, whichever is less, carried over to that new term of service to count against leave that will accrue on the new term of service. A member shall be required, at the time of his discharge or release from active duty, to pay for excess leave not carried over under this subsection.

(i)(1) Under regulations prescribed by the Secretary of Defense, a member of the armed forces adopting a child in a qualifying child adoption is allowed up to 21 days of leave in a calendar year to be used in connection with the adoption.

(2) For the purpose of this subsection, an adoption of a child by a member is a qualifying child adoption if the member is eligible for reimbursement of qualified adoption expenses for such adoption under section 1052 of this title.

(3) In the event that two members of the armed forces who are married to each other adopt a child in a qualifying child adoption, only one such member shall be allowed leave under this subsection.

(4) Leave under paragraph (1) is in addition to other leave provided under other provisions of this section.

CHAPTER 53. MISCELLANEOUS RIGHTS AND BENEFITS

§ 1044. Legal assistance

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

(1) Members of the armed forces who are on active duty.

(2) Members and former members entitled to retired or re-tainer pay or equivalent pay.

(3) Officers of the commissioned corps of the Public Health Service who are on active duty or entitled to retired or equivalent pay.

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

(5) Dependents of members and former members described in paragraphs (1), (2), (3), and (4).

(b) Under such regulations as may be prescribed by the Secretary concerned, the Judge Advocate General (as defined in section 801(1) of this title) under the jurisdiction of the Secretary is responsible for the establishment and supervision of legal assistance programs under this section.

(c) This section does not authorize legal counsel to be provided to represent a member or former member of the uniformed services described in subsection (a), or the dependent of such a member or former member, in a legal proceeding if the member or former member can afford legal fees for such representation without undue hardship.

(d)(1) Notwithstanding any law regarding the licensure of attorneys, a judge advocate or civilian attorney who is authorized to provide military legal assistance is authorized to provide that assistance in any jurisdiction, subject to such regulations as may be prescribed by the Secretary concerned.

(2) Military legal assistance may be provided only by a judge advocate or a civilian attorney who is a member of the bar of a Federal court or of the highest court of a State.

(3) In this subsection, the term “military legal assistance” includes—

(A) legal assistance provided under this section; and

(B) legal assistance contemplated by sections 1044a, 1044b, 1044c, and 1044d of this title.

(e) The Secretary concerned shall define “dependent” for the purposes of this section.

CHAPTER 55. MEDICAL AND DENTAL CARE

§ 1074i. Reimbursement for certain travel expenses

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

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

(b) **DEFINITIONS.—**In this section:

(1) The term “specialty care provider” includes a dental specialist.

(2) The term “dental specialist” means an oral surgeon, orthodontist, prosthodontist, periodontist, endodontist, or pediatric dentist, and includes such other providers of dental care and services as determined appropriate by the Secretary of Defense.

PART IV. SERVICE, SUPPLY, AND PROCUREMENT

CHAPTER 165. ACCOUNTABILITY AND RESPONSIBILITY

§ 2772. Share of fines and forfeitures to benefit Armed Forces retirement homes

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

(1) The amount of forfeitures and fines adjudged against an enlisted member, warrant officer, or limited duty officer of the armed forces by sentence of a court martial or under authority of section 815 of this title (article 15) over and above any amount that may be due from the member, warrant officer, or

limited duty officer for the reimbursement of the United States or any individual.

(2) The amount of forfeitures on account of the desertion of an enlisted member, warrant officer, or limited duty officer of the armed forces.

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

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

TITLE 14. COAST GUARD

PART I. REGULAR COAST GUARD

CHAPTER 3. COMPOSITION AND ORGANIZATION

§ 42. Number and distribution of commissioned officers

[(a) The total number of commissioned officers, excluding commissioned warrant officers, on active duty in the Coast Guard shall not exceed 6,700 in each fiscal year 2004, 2005, and 2006.

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

[(c) The Secretary shall, at least once 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.]

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

(a) *The total number of Coast Guard commissioned officers on the active duty promotion list, excluding warrant officers, shall not exceed 6,700. This total number may be temporarily increased up to 2 percent for no more than the 60 days that follow the commissioning of a Coast Guard Academy class.*

(b) *The total number of commissioned officers authorized by this section shall be distributed in grade not to exceed the following percentages:*

(1) *0.375 percent for rear admiral.*

- (2) 0.375 percent for rear admiral (lower half).
- (3) 6.0 percent for captain.
- (4) 15.0 percent for commander.
- (5) 22.0 percent for lieutenant commander.

The Secretary shall prescribe the percentages applicable to the grades of lieutenant, lieutenant (junior grade), and ensign. The Secretary may, as the needs of the Coast Guard require, reduce any of the percentages set forth in paragraphs (1) through (5) and apply that total percentage reduction to any other lower grade or combination of lower grades.

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

(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, recruiting, instructing, or training the reserve components shall be prescribed by the Secretary.]

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

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CHAPTER 3. COMPOSITION AND ORGANIZATION

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【§ 47. Vice Commandant; assignment】**“§ 47. Vice commandant; appointment”.**

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

* * * * *

【§ 50. Area commanders】

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

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

§ 50. Vice admirals

(a)(1) The President may designate no more than 4 positions of importance and responsibility that shall be held by officers who—

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

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

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

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

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

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

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

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

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

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

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

【§ 50a. Chief of Staff

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

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

§ 51. Retirement

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

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

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

(a) An officer, other than the Commandant, who, while serving in the grade of admiral or vice admiral, is retired for physical dis-

ability shall be placed on the retired list with the highest grade in which that officer served.

(b) An officer, other than the Commandant, who is retired while serving in the grade of admiral or vice admiral, or who, after serving at least 2½ years in the grade of admiral or vice admiral, is retired while serving in a lower grade, may in the discretion of the President, be retired with the highest grade in which that officer served.

(c) An officer, other than the Commandant, who, after serving less than 2½ years in the grade of admiral or vice admiral, is retired while serving in a lower grade, shall be retired in his permanent grade.

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

(1) while being processed for physical disability retirement, beginning on the day of the processing and ending on the day that officer is retired, but not for more than 180 days; and

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

* * * * *

§55. Merchant Mariner Medical Advisory Committee

(a) ESTABLISHMENT; MEMBERSHIP; STATUS.—

(1) *There is established a Merchant Mariner Medical Advisory Committee.*

(2) *The Committee shall consist of 12 members, none of whom shall be a Federal employee—*

(A) 10 of whom shall be health-care professionals with particular expertise, knowledge, or experience regarding the medical examinations of merchant mariners or occupational medicine; and

(B) 2 of whom shall be professional mariners with knowledge and experience in mariner occupational requirements.

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

(b) APPOINTMENTS; TERMS; VACANCIES; ORGANIZATION.—

(1) *The Secretary shall appoint the members of the Committee, and each member shall serve at the pleasure of the Secretary.*

(2) *The members shall be appointed for a term of 3 years, except that, of the members first appointed, 3 members shall be appointed for a term of 2 years and 3 members shall be appointed for a term of 1 year.*

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

(4) *The Secretary shall designate 1 member as the Chairman and 1 member as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of, or in the event of a vacancy in the office of, the Chairman.*

(5) *No later than 6 months after the date of enactment of the Coast Guard Authorization Act for Fiscal Year 2008, the Committee shall hold its first meeting.*

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

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

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

(3) *medical examiner education; and*

(4) *medical research.*

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

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

CHAPTER 5. FUNCTIONS AND POWERS

§ 89a. Protection and fair treatment of seafarers

(a) *AUTHORITY OF THE SECRETARY.—*

(1) *IN GENERAL.—The Secretary is authorized—*

(A) *to require a bond or surety satisfactory as an alternative to withholding or revoking clearance required under section 60105 of title 46 if, in the opinion of the Secretary, such bond or surety satisfactory is necessary to facilitate an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard, provided that corporate sureties underwriting any such bonds be certified by the Department of the Treasury to write Federal bonds under sections 9304 and 9305 of title 31;*

(B) *at the discretion of the Secretary, to pay, in whole or in part, without further appropriation and without fiscal year limitation, from amounts in the Fund, necessary support of—*

(i) *any seafarer who enters, remains, or has been paroled into the United States and is involved in an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard; and*

(ii) *any seafarer whom the Secretary finds to have been abandoned in the United States; and*

(C) *at the sole discretion of the Secretary, to reimburse, in whole or in part, without further appropriation and without fiscal year limitation, from amounts in the Fund, a shipowner, who has filed a bond or surety satisfactory pursuant to subparagraph (A) of this paragraph and provided necessary support of a seafarer who has been paroled into the United States to facilitate an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard, for costs of necessary support, when the Secretary deems reimbursement necessary to avoid serious injustice.*

(2) *APPLICATION.—The authority to require a bond or a surety satisfactory or to request the withholding or revocation of the clearance required under section 60105 of title 46 is applicable to any investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard.*

(3) *LIMITATIONS.—Nothing in this section shall be construed—*

(A) *to create a right, benefit, or entitlement to necessary support; or*

(B) *to compel the Secretary to pay, or reimburse the cost of, necessary support.*

(b) *FUND.—*

(1) *IN GENERAL.—There is established in the Treasury a special fund known as the “Support of Seafarers Fund”.*

(2) *AVAILABILITY.—The amounts covered into the Fund shall be available to the Secretary, without further appropriation and without fiscal year limitation—*

(A) *to pay necessary support, pursuant to subsection (a)(1)(B) of this section; and*

(B) *to reimburse a shipowner for necessary support, pursuant to subsection (a)(1)(C) of this section.*

(3) *RECEIPTS.—Notwithstanding any other provision of law, the Fund shall be authorized to receive—*

(A) *amounts reimbursed or recovered pursuant to subsection (c) of this section;*

(B) *amounts appropriated to the Fund pursuant to subsection (f) of this section; and*

(C) *appropriations available to the Secretary for transfer.*

(4) *LIMITATION ON CERTAIN CREDITS.—The Fund may receive credits pursuant to paragraph (3)(A) of this subsection only when the unobligated balance of the Fund is less than \$5,000,000.*

(5) *REPORT REQUIRED.—*

(A) *Except as provided in subparagraph (B) of this paragraph, the Secretary shall not obligate any amount in the Fund in a given fiscal year unless the Secretary has submitted to Congress, concurrent with the President’s budget submission for that fiscal year, a report that describes—*

(i) *the amounts credited to the Fund, pursuant to paragraph (3) of this section, for the preceding fiscal year;*

(ii) a detailed description of the activities for which amounts were charged; and

(iii) the projected level of expenditures from the Fund for the coming fiscal year, based on—

(I) on-going activities; and

(II) new cases, derived from historic data.

(B) The limitation in subparagraph (A) of this paragraph shall not apply to obligations during the first fiscal year during which amounts are credited to the Fund.

(6) FUND MANAGER.—The Secretary shall designate a Fund manager, who shall—

(A) ensure the visibility and accountability of transactions utilizing the Fund;

(B) prepare the report required pursuant to paragraph (5) of this subsection; and

(C) monitor the unobligated balance of the Fund and provide notice to the Secretary and the Attorney General whenever the unobligated balance of the Fund is less than \$5,000,000.

(c) REIMBURSEMENTS—

(1) RECOVERY.—Any shipowner—

(A)(i) who, during the course of an investigation, reporting, documentation, or adjudication of any matter that the Coast Guard referred to a United States Attorney or the Attorney General, fails to provide necessary support of a seafarer who has been paroled into the United States to facilitate the investigation, reporting, documentation, or adjudication, and

(ii) against whom a criminal penalty is subsequently imposed, or

(B) who, under any circumstance, abandons a seafarer in the United States, as determined by the Secretary, shall reimburse the Fund an amount equal to the total amount paid from the Fund for necessary support of the seafarer, plus a surcharge of 25 per cent of such total amount.

(2) ENFORCEMENT.—If a shipowner fails to reimburse the Fund as required under paragraph (1) of this subsection, the Secretary may—

(A) proceed in rem against any vessel of the shipowner in the Federal district court for the district in which such vessel is found; and

(B) withhold or revoke the clearance, required by section 60105 of title 46, of any vessel of the shipowner wherever such vessel is found.

(3) CLEARANCE.—Whenever clearance is withheld or revoked pursuant to paragraph (2)(B) of this subsection, clearance may be granted if the shipowner reimburses the Fund the amount required under paragraph (1) of this subsection.

(d) DEFINITIONS.—In this section:

(1) ABANDONS; ABANDONED.—The term “abandons” or “abandoned” means a shipowner’s unilateral severance of ties with a seafarer or the shipowner’s failure to provide necessary support of a seafarer;

(2) BOND OR SURETY SATISFACTORY.—The term “bond or surety satisfactory” means a negotiated instrument, the terms of

which may, at the discretion of the Secretary, include provisions that require the shipowner to—

(A) provide necessary support of a seafarer who has or may have information pertinent to an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard;

(B) facilitate an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard;

(C) stipulate to certain incontrovertible facts, including, but not limited to, the ownership or operation of the vessel, or the authenticity of documents and things from the vessel;

(D) facilitate service of correspondence and legal papers;

(E) enter an appearance in Federal district court;

(F) comply with directions regarding payment of funds;

(G) name an agent in the United States for service of process;

(H) make stipulations as to the authenticity of certain documents in Federal district court;

(I) provide assurances that no discriminatory or retaliatory measures will be taken against a seafarer involved in an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard;

(J) provide financial security in the form of cash, bond, or other means acceptable to the Secretary; and

(K) provide for any other appropriate measures as the Secretary deems necessary to ensure the Government is not prejudiced by granting the clearance required by section 60105 of title 46.

(3) **FUND.**—The term “Fund” means the Support of Seafarers Fund, established by subsection (b);

(4) **NECESSARY SUPPORT.**—The term “necessary support” means normal wages, lodging, subsistence, clothing, medical care (including hospitalization), repatriation, and any other expense the Secretary deems appropriate;

(5) **SEAFARER.**—The term “seafarer” means an alien crewman who is employed or engaged in any capacity on board a vessel subject to the jurisdiction of the United States;

(6) **SHIPOWNER.**—The term “shipowner” means the individual or entity that owns, has an ownership interest in, or operates a vessel subject to the jurisdiction of the United States;

(7) **VESSEL SUBJECT TO THE JURISDICTION OF THE UNITED STATES.**—The term “vessel subject to the jurisdiction of the United States” has the same meaning it has in section 70502(c) of title 46, except that it excludes a vessel owned or bareboat chartered and operated by the United States, by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

(e) **REGULATIONS.**—The Secretary is authorized to promulgate regulations to implement this subsection.

(f) *AUTHORIZATION OF APPROPRIATIONS.*—*There are authorized to be appropriated to the Fund \$1,500,000 for each of fiscal years 2009, 2010, and 2011.*

CHAPTER 7. COOPERATION WITH OTHER AGENCIES

§ 149. Assistance to foreign governments and maritime authorities

(a) *DETAIL OF MEMBERS TO ASSIST FOREIGN GOVERNMENTS.*—The President may upon application from the foreign governments concerned, and whenever in his discretion the public interests render such a course advisable, detail members of the Coast Guard to assist foreign governments in matters concerning which the Coast Guard may be of assistance. Members so detailed may accept, from the government to which detailed, offices and such compensation and emoluments thereunder appertaining as may be first approved by the Secretary. While so detailed such members shall receive, in addition to the compensation and emoluments allowed by such governments, the pay and allowances to which they are entitled in the Coast Guard and shall be allowed the same credit for longevity, retirement, and for all other purposes that they would receive if they were serving with the Coast Guard.

(b) *TECHNICAL ASSISTANCE TO FOREIGN MARITIME AUTHORITIES.*—The Commandant, in coordination with the Secretary of State, may provide, in conjunction with regular Coast Guard operations, technical assistance (including law enforcement and maritime safety and security training) to foreign navies, coast guards, and other maritime authorities.

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

(d) *AUTHORIZED ACTIVITIES.*—

(1) *The Commandant may transfer or expend funds from any appropriation available to the Coast Guard for—*

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

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

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

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

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

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

* * * * *

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

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

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

CHAPTER 11. PERSONNEL OFFICERS

§ 214. Appointment of temporary officers

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

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

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

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

(b) Temporary appointments under this section do not change the permanent, probationary, or acting status of persons so appointed, prejudice them in regard to promotion or appointment, or abridge their rights or benefits. A person who is appointed under this section may not suffer any reduction in the rate of pay and allowances to which he would have been entitled had he remained in his former grade and continued to receive the increases in pay and allowances authorized for that grade.

(c) An appointment under this section, or a subsequent promotion appointment of a temporary officer, may be vacated by the appointing officer at any time. Each officer whose appointment is so vacated shall revert to his permanent status.

(d) Appointees under this section shall take precedence in the grade to which appointed in accordance with the dates of their appointments as officers in such grade. Appointees whose dates of appointment are the same shall take precedence with each other as the Secretary shall determine.

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§ 216. Director of Boating Safety Office

【The initial appointment of the Director of the Boating Safety Office shall be in the grade of Captain.】

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

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

(b) Each officer eligible for consideration by a selection board convened under section 251 of this title may send a communication through official channels to the board, to arrive not later than the date the board convenes, inviting attention to any matter of record in the armed forces concerning himself. A communication sent under this section may not criticize any officer or reflect upon the character, conduct, or motive of any officer.

* * * * *

§ 258. Selection boards; information to be furnished boards

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

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

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

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

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

§ 259. Officers to be recommended for promotion

(a) A selection board convened to recommend officers for promotion shall recommend those eligible officers whom the [board] board, *giving due consideration to the needs of the service for officers with particular skills so noted in the specific direction fur-*

nished pursuant to section 258 of this title, considers best qualified of the officers under consideration for promotion. No officer may be recommended for promotion unless he receives the recommendation of at least a majority of the members of a board composed of five members, or at least two-thirds of the members of a board composed of more than five members.

(b) The number of officers that a board convened under section 251 of this title may recommend for promotion to a grade below rear admiral (lower half) from among eligible officers junior in rank to the junior officer in the appropriate promotion zone may not exceed—

(1) 5 percent of the total number of officers that the board is authorized to recommend for promotion to the grade of lieutenant or lieutenant commander;

(2) 7½ percent of the total number of officers that the board is authorized to recommend for promotion to the grade of commander; and

(3) 10 percent of the total number of officers that the board is authorized to recommend for promotion to the grade of captain;

unless such percentage is a number less than one, in which case the board may recommend one such officer for promotion.

(c)(1) After selecting the officers to be recommended for promotion, a selection board may recommend officers of particular merit, from among those officers chosen for promotion, to be placed at the top of the list of selectees promulgated by the Secretary under section 271(a) of this title. The number of officers that a board may recommend to be placed at the top of the list of selectees may not exceed the percentages set forth in subsection (b) unless such a percentage is a number less than one, in which case the board may recommend one officer for such placement. No officer may be recommended to be placed at the top of the list of selectees unless he or she receives the recommendation of at least a majority of the members of a board composed of five members, or at least two-thirds of the members of a board composed of more than five members.

(2) The Secretary shall conduct a survey of the Coast Guard officer corps to determine if implementation of this subsection will improve Coast Guard officer retention. A selection board may not make any recommendation under this subsection before the date on which the Secretary publishes a finding, based upon the results of the survey, that implementation of this subsection will improve Coast Guard officer retention.

(3) The Secretary shall submit any finding made by the Secretary pursuant to paragraph (2) to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

§ 260. Selection boards; reports

(a) Each board convened under section 251 of this title shall submit a report in writing, signed by all the members thereof, containing the names of the officers recommended for promotion and the names of those officers recommended to be advanced to the top of the list of selectees established by the Secretary under section 271(a) of this title.

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

CHAPTER 17. ADMINISTRATION

§ 638a. Coast Guard vessels and aircraft defined

For the purposes of sections 637 and 638 of this title, the term Coast Guard vessels and aircraft means—

- (1) any vessel or aircraft owned, leased, transferred to, or operated by the Coast Guard and under the command of a Coast Guard member; or*
- (2) any other vessel or aircraft under the tactical control of the Coast Guard on which one or more members of the Coast Guard are assigned and conducting Coast Guard missions.*

[§ 648. Accounting for industrial work]

§ 648. Specialized industrial facilities”;

(a) IN GENERAL.—The Secretary may prescribe regulations governing accounting for industrial work, including charges for overhead for civilian labor and for maintenance of industrial plant and equipment, performed at the Coast Guard Yard or such similar Coast Guard industrial establishments as he may designate. Any orders placed for such industrial work shall be covered by a transfer or advance of funds to cover the estimated cost thereof, and shall be credited to such accounts as may be necessary and established by the Secretary to carry out the provisions of this section. Accounts so established shall be available for materials, supplies, or equipment, and civilian labor, including overhead and maintenance, required in performing the work ordered. Upon completion of an order an adjustment will be made to make the amount transferred or advanced equal to the actual cost as computed in accordance with the accounting regulations prescribed by the Secretary.

“(b) PUBLIC-PRIVATE PARTNERSHIPS OR OTHER COOPERATIVE ARRANGEMENTS.—

(1) IN GENERAL.—*For purposes of entering into joint public-private partnerships or other cooperative arrangements for the performance of work to provide supplies or services for government use, the Coast Guard Yard, the Aviation Repair and Supply Center, or other similar Coast Guard industrial establishments may—*

- (A) enter into agreements or other arrangements with public or private entities, foreign or domestic;*
- (B) pursuant to contracts or other arrangements, receive and retain funds from, or pay funds to, such public or private entities; or*
- (C) accept contributions of funds, materials, services, or the use of facilities from such public or private entities, subject to regulations promulgated by the Coast Guard.*

(2) *ACCOUNTING FOR FUNDS RECEIVED.*—Amounts received under this subsection may be credited to the Coast Guard Yard Revolving Fund or other appropriate Coast Guard account.

(3) *REIMBURSEMENT.*—Any partnership, agreement, contract, or arrangement entered into under this section shall require the private entity to reimburse the Coast Guard for such entity's proportional share of the operating and capital costs of maintaining and operating such facility, as determined by the Commandant of the Coast Guard.

(4) *NONINTERFERENCE.*—No partnership, agreement, contract, or arrangement entered into under this section may interfere with the performance of any operational or support function of the Coast Guard industrial establishment.

CHAPTER 18. COAST GUARD HOUSING AUTHORITIES

§ 680. Definitions

In this chapter:

(1) *The term “Coast Guard recreational facilities” means recreation lodging buildings, recreation housing units, and ancillary supporting facilities constructed, maintained, and used by the Coast Guard to provide rest and recreation amenities for military personnel.*

[(1)] (2) The term “construction” means the construction of military [housing units and ancillary supporting facilities or the improvement or rehabilitation of existing units] *housing units or Coast Guard recreational facilities and ancillary supporting facilities or the improvement or rehabilitation of existing units or facilities or ancillary supporting facilities.*

[(2)] (3) The term “contract” includes any contract, lease, or other agreement entered into under the authority of this chapter.

[(3)] (4) The term “eligible entity” means any private person, corporation, firm, partnership, or company and any State or local government or housing authority of a State or local government.

[(4)] (5) 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.

[(5)] (6) The term “United States” includes the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, and the District of Columbia.

§ 681. General authority

(a) *AUTHORITY.*—In addition to any other authority providing for the acquisition or construction of military family [housing or military unaccompanied housing,] *housing, military unaccompanied housing, or Coast Guard recreational facilities,* the Secretary may exercise any authority or any combination of authorities provided under this chapter in order to provide for the acquisition or construction by private persons, including a small business concern qualified under section 8(a) of the Small Business Act (15 U.S.C. 637(a)), of the following:

(1) Family housing units on or near Coast Guard installations within the United States and its territories and possessions.

(2) Unaccompanied housing units on or near such Coast Guard installations.

(3) *Coast Guard recreational facilities.*

(b) LIMITATION ON APPROPRIATIONS.—No appropriation shall be made to acquire or construct military family [housing or military unaccompanied housing] *housing, military unaccompanied housing, or Coast Guard recreational facilities* under this chapter if that acquisition or construction has not been approved by resolutions adopted by the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

§ 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.] *housing or facilities that the Secretary determines are suitable for use as Coast Guard recreational facilities.*

(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.

(b) LOAN GUARANTEES.—

(1) Subject to 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.] *housing or facilities that the Secretary determines are suitable for use as Coast Guard recreational facilities.*

(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.

(c) **LIMITATION ON AUTHORITY.**—Direct loans and 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.

§ 683. Leasing of housing to be constructed

(a) **BUILD AND LEASE AUTHORIZED.**—The Secretary may enter into contracts for the lease of military family housing [units or military unaccompanied housing units] *units, military unaccompanied housing units, or Coast Guard recreational facilities* to be constructed under this chapter.

(b) **LEASE TERMS.**—A contract under this section may be for any period that the Secretary determines appropriate and may provide for the owner of the leased property to operate and maintain the property.

§ 684. Limited partnerships with eligible entities

(a) **LIMITED PARTNERSHIPS AUTHORIZED.**—The Secretary may enter into limited partnerships with eligible entities carrying out projects for the acquisition or construction of housing units suitable for use as military family housing or as military unaccompanied [housing.] *housing or facilities that the Secretary determines are suitable for use as Coast Guard recreational facilities*

(b) **LIMITATION ON VALUE OF INVESTMENT IN LIMITED PARTNERSHIP.**—

(1) The cash amount of an investment under this section in an eligible entity may not exceed an amount equal to 33 $\frac{1}{3}$ percent of the capital cost (as determined by the Secretary) of the project or projects that the entity proposes to carry out under this section with the investment.

(2) If the Secretary conveys land or facilities to an eligible entity as all or part of an investment in the entity under this section, the total value of the investment by the Secretary under this section may not exceed an amount equal to 45 percent of the capital cost (as determined by the Secretary) of the project or projects that the entity proposes to carry out under this section with the investment.

(3) In this subsection, the term “capital cost”, with respect to a project for the acquisition or [construction of housing, means the total amount of the costs included in the basis of the housing] *construction of housing or facilities, means the total amount of the costs included in the basis of the housing or facilities* for Federal income tax purposes.

(c) **COLLATERAL INCENTIVE AGREEMENTS.**—The Secretary shall enter into collateral incentive agreements with eligible entities in which the Secretary makes an investment under this section to ensure that a suitable preference will be afforded members of the armed forces and their dependents in the lease or purchase, as the

case may be, of a reasonable number of the housing units *or facilities* covered by the investment.

* * * * *

§ 687. Coast Guard Housing Fund

(a) ESTABLISHMENT.—There is hereby established on the books of the Treasury an account to be known as the Coast Guard Housing Fund (in this section referred to as the “Fund”).

(b) CREDITS TO FUND.—There shall be credited to the Fund the following:

(1) Amounts authorized for and appropriated to that Fund.

(2) Subject to subsection (e), any amounts that the Secretary transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department of Homeland Security or Coast Guard for the acquisition or construction of military family **housing or unaccompanied housing.** *housing, military unaccompanied housing, or Coast Guard recreational facilities.*

(3) Proceeds from the conveyance or lease of property or facilities under section 685 of this title for the purpose of carrying out activities under this chapter with respect to military family **and military unaccompanied housing.** *housing, military unaccompanied housing, and Coast Guard recreational facilities.*

(4) Income from any activities under this chapter, including interest on loan guarantees made under section 682 of this title, income and gains realized from investments under section 684 of this title, and any return of capital invested as part of such investments.

(c) USE OF AMOUNTS IN FUND.—

(1) In such amounts as provided in appropriation Acts and except as provided in subsection (d), the Secretary may use amounts in the Coast Guard Housing Fund to carry out activities under this chapter with respect to military **family and military unaccompanied housing units,** *family, military unaccompanied housing units, and Coast Guard recreational facilities,* including activities required in connection with the planning, execution, and administration of contracts entered into under the authority of this chapter.

(2) Amounts made available under this subsection shall remain available until expended.

(d) LIMITATION ON OBLIGATIONS.—The Secretary may not incur an obligation under a contract or other agreements entered into under this chapter in excess of the unobligated balance, at the time the contract is entered into, of the Fund required to be used to satisfy the obligation.

(e) NOTIFICATION REQUIRED FOR TRANSFERS.—A transfer of appropriated amounts to the Fund under subsection (b)(2) or (b)(3) of this section may be made only after the end of a 30-day period beginning on the date the Secretary submits written notice of, and justification for, the transfer to the appropriate committees of Congress.

(f) LIMITATION ON AMOUNT OF BUDGET AUTHORITY.—The total value in budget authority of all contracts and investments under-

taken using the authorities provided in this chapter shall not exceed \$40,000,000.

(g) DEMONSTRATION PROJECTS AUTHORIZED.—To promote efficiencies through the use of alternative procedures for expediting new housing projects, the Secretary—

(1) may develop and implement demonstration projects for acquisition or construction of military family housing and military unaccompanied housing on or near the Coast Guard installation at Kodiak, Alaska, or any other Coast Guard installation in Alaska;

(2) in implementing such a demonstration project, shall utilize, to the maximum extent possible, the contracting authority of the Small Business Administration's section 8(a) program;

(3) shall, to the maximum extent possible, acquire or construct such housing through contracts with small business concerns qualified under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) that have their principal place of business in the State of Alaska; and

(4) shall report to Congress by September 1 of each year on the progress of activities under such demonstration projects.

§ 688. Reports

The Secretary shall include each year in the materials the Secretary submits to the Congress in support of the budget submitted by the President pursuant to section 1105 of title 31, the following:

(1) A report on each contract or agreement for a project for the acquisition or construction of military family or military unaccompanied housing units *or Coast Guard recreational facilities* that the Secretary proposes to solicit under this chapter, describing the project and the method of participation of the United States in the project and providing justification of such method of participation.

(2) A report describing each conveyance or lease proposed under section 685 of this title.

(3) A methodology for evaluating the extent and effectiveness of the use of the authorities under this chapter during such preceding fiscal year.

(4) A description of the objectives of the Department of Homeland Security for providing military family **housing and military unaccompanied housing** *housing, military unaccompanied housing, and Coast Guard recreational facilities for members of the Coast Guard.*

§ 689. Expiration of authority

【The authority to enter into a transaction under this chapter shall expire October 1, 2007.】

FUR SEAL ACT OF 1996

TITLE 16—CONSERVATION

SEC. 206. FINANCIAL ASSISTANCE.

[6 U.S.C. 1166]

(a) GRANT AUTHORITY.—

(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall provide financial assistance to any

city government, village corporation, or tribal council of St. George, Alaska, or St. Paul, Alaska.

(2) USE FOR MATCHING.—Notwithstanding any other provision of law relating to matching funds, funds provided by the Secretary as assistance under this subsection may be used by the entity as non-Federal matching funds under any Federal program that requires such matching funds.

(3) RESTRICTION ON USE.—The Secretary may not use financial assistance authorized by this Act—

(A) to settle any debt owed to the United States;

(B) for administrative or overhead expenses; or

(C) for contributions sought or required from any person for costs or fees to clean up any matter that was caused or contributed to by such person on or after March 15, 2000.

(4) FUNDING INSTRUMENTS AND PROCEDURES.—In providing assistance under this subsection the Secretary shall transfer any funds appropriated to carry out this section to the Secretary of the Interior, who shall obligate such funds through instruments and procedures that are equivalent to the instruments and procedures required to be used by the Bureau of Indian Affairs pursuant to title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(5) PRO RATA DISTRIBUTION OF ASSISTANCE.—In any fiscal year for which less than all of the funds authorized under subsection (c)(1) are appropriated, such funds shall be distributed under this subsection on a pro rata basis among the entities referred to in subsection (c)(1) in the same proportions in which amounts are authorized by that subsection for grants to those entities.

(b) SOLID WASTE ASSISTANCE.—

(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall provide assistance to the State of Alaska for designing, locating, constructing, redeveloping, permitting, or certifying solid waste management facilities on the Pribilof Islands to be operated under permits issued to the City of St. George and the City of St. Paul, Alaska, by the State of Alaska under section 46.03.100 of the Alaska Statutes.

(2) TRANSFER.—The Secretary shall transfer any appropriations received under paragraph (1) to the State of Alaska for the benefit of rural and Native villages in Alaska for obligation under section 303 of Public Law 104–182, except that subsection (b) of that section shall not apply to those funds.

(3) LIMITATION.—In order to be eligible to receive financial assistance under this subsection, not later than 180 days after the date of the enactment of this paragraph, each of the Cities of St. Paul and St. George shall enter into a written agreement with the State of Alaska under which such City shall identify by its legal boundaries the tract or tracts of land that such City has selected as the site for its solid waste management facility and any supporting infrastructure.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary—

(1) for assistance under subsection (a), for fiscal years 2001, 2002, 2003, 2004, 2005, 2006, ~~and 2007~~ 2007, 2008, and 2009 a total not to exceed—

(A) \$9,000,000, for grants to the City of St. Paul;

(B) \$6,300,000, for grants to the Tanadgusix Corporation;

(C) \$1,500,000, for grants to the St. Paul Tribal Council;

(D) \$6,000,000, for grants to the City of St. George;

(E) \$4,200,000, for grants to the St. George Tanaq Corporation; and

(F) \$1,000,000, for grants to the St. George Tribal Council; and

(2) for assistance under subsection (b), for fiscal years 2001, 2002, 2003, 2004, and 2005 a total not to exceed—

(A) \$6,500,000 for the City of St. Paul; and

(B) \$3,500,000 for the City of St. George.

(d) **LIMITATION ON USE OF ASSISTANCE FOR LOBBYING ACTIVITIES.**—None of the funds authorized by this section may be available for any activity a purpose of which is to influence legislation pending before the Congress, except that this subsection shall not prevent officers or employees of the United States or of its departments, agencies, or commissions from communicating to Members of Congress, through proper channels, requests for legislation or appropriations that they consider necessary for the efficient conduct of public business.

(e) **IMMUNITY FROM LIABILITY.**—Neither the United States nor any of its agencies, officers, or employees shall have any liability under this Act or any other law associated with or resulting from the designing, locating, contracting for, redeveloping, permitting, certifying, operating, or maintaining any solid waste management facility on the Pribilof Islands as a consequence of—

(1) having provided assistance to the State of Alaska under subsection (b); or

(2) providing funds for, or planning, constructing, or operating, any interim solid waste management facilities that may be required by the State of Alaska before permanent solid waste management facilities constructed with assistance provided under subsection (b) are complete and operational.

(f) **REPORT ON EXPENDITURES.**—Each entity which receives assistance authorized under subsection (c) shall submit an audited statement listing the expenditure of that assistance to the Committee on Appropriations and the Committee on Resources of the House of Representatives and the Committee on Appropriations and the Committee on Commerce, Science, and Transportation of the Senate, on the last day of fiscal years 2002, 2004, and 2006.

(g) **CONGRESSIONAL INTENT.**—Amounts authorized under subsection (c) are intended by Congress to be provided in addition to the base funding appropriated to the National Oceanic and Atmospheric Administration in fiscal year 2000.

ARMED FORCES RETIREMENT HOME ACT OF 1991

TITLE 24—HOSPITALS AND ASYLUMS

SEC. 401. DEFINITIONS.

[24 U.S.C. 401]

For purposes of this title:

(1) The term “Retirement Home” includes the institutions established under section 1511, as follows:

- (A) The Armed Forces Retirement Home—Washington.
- (B) The Armed Forces Retirement Home—Gulfport.

(2) The term “Local Board” means a Local Board of Trustees established under section 1516.

(3) The terms “Armed Forces Retirement Home Trust Fund” and “Fund” mean the Armed Forces Retirement Home Trust Fund established under section 1519(a).

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

(5) The term “chief personnel officers” means—

- (A) the Deputy Chief of Staff for Personnel of the Army;
- (B) the Chief of Naval Personnel;
- (C) the Deputy Chief of Staff for Personnel of the Air Force; [and]

(D) the Deputy Commandant of the Marine Corps for Manpower and Reserve [Affairs.] *Affairs; and*

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

(6) The term “senior noncommissioned officers” means the following:

- (A) The Sergeant Major of the Army.
- (B) The Master Chief Petty Officer of the Navy.
- (C) The Chief Master Sergeant of the Air Force.
- (D) The Sergeant Major of the Marine Corps.
- (E) *The Master Chief Petty Officer of the Coast Guard.*

FEDERAL WATER POLLUTION CONTROL ACT

TITLE 26—WATER POLLUTION PREVENTION AND CONTROL STANDARDS ENFORCEMENT

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,[,] (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit applica-

tion 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;

(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; and

(26) “nontank vessel” means a self-propelled vessel that—

(A) is at least 400 gross tons as measured under section 14302 of title 46, United States Code, or, for vessels not measured under that section, as measured under section 14502 of that title;

(B) is not a tank vessel;

(C) carries oil of any kind as fuel for main propulsion; and

(D) operates on the navigable waters of the United States, as defined in section 2101(17a) of that title.

(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 subsection, 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 section 4367 of the Revised Statutes of the United States (46 U.S.C. App. 313); and

(C) a permit to depart required under section 443 of the Tariff Act of 1930 (19 U.S.C. 1443); 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 dam-

age 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 non-living 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 [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 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 differing 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 [United States Court of Federal Claims], 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, NONTANK VESSEL, AND FACILITY RESPONSE PLANS.—

(A) (i) The President shall issue regulations which require an owner or operator of a tank vessel or facility described in 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.

(ii) The President shall also issue regulations which require an owner or operator of a nontank vessel 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.

(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 nontank vessel, or a facility described in subparagraph (C) that transfers noxious liquid substances in bulk to or from a vessel to pre-

pare 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 that is not designated as a hazardous substance or regulated as oil in any other law or regulation. 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)).

(C) The tank vessels, nontank vessels, and facilities referred to in subparagraphs (A) and (B) are the following:

- (i) A tank vessel, as defined under section 2101 of title 46, United States Code.
- (ii) A nontank vessel.
- (iii) An offshore facility.
- (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.

(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.

(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, nontank vessel, or 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;
- (iv) review each plan periodically thereafter; and
- (v) in the case of a plan for a nontank vessel, consider any applicable State-mandated response plan in effect on the date of the enactment of the Coast Guard and Maritime Transportation Act of 2004 and ensure consistency to the extent practicable.

(F) A tank vessel, nontank 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, nontank vessel, offshore facility, or onshore facility for which a response plan is reviewed by the President under subparagraph (E), the plan has been approved by the President; and
- (ii) the vessel or facility is operating in compliance with the plan.

(G) Notwithstanding subparagraph (E), the President may authorize a tank vessel, nontank 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, nontank 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.

(H) The owner or operator of a tank vessel, nontank 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.

(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 nontank vessel that is a vessel of the United States.

(J) *RESPONSE TUG.*—

(i) *IN GENERAL.*—*The Secretary shall require the stationing of a year round response tug of a minimum of 70-tons bollard pull in the entry to the Strait of Juan de Fuca at Neah Bay capable of providing rapid assistance and towing capability to disabled vessels during severe weather conditions.*

(ii) *SHARED RESOURCES.*—*The Secretary may authorize compliance with the response tug stationing requirement of clause (i) through joint or shared re-*

sources between or among entities to which this subsection applies.

(iii) *EXISTING STATE AUTHORITY NOT AFFECTED.*—Nothing in this subparagraph supersedes or interferes with any existing authority of a State with respect to the stationing of rescue tugs in any area under State law or regulations.

(iv) *ADMINISTRATION.*—In carrying out this subparagraph, the Secretary—

(I) shall require the vessel response plan holders to negotiate and adopt a cost-sharing formula and a schedule for carrying out this subparagraph by no later than June 1, 2008;

(II) shall establish a cost-sharing formula and a schedule for carrying out this subparagraph by no later than July 1, 2008 (without regard to the requirements of chapter 5 of title 5, United States Code) if the vessel response plan holders fail to adopt the cost-sharing formula and schedule required by subclause (I) of this clause by June 1, 2008; and

(III) shall implement clauses (i) and (ii) of this subparagraph by June 1, 2008, without a rule-making and without regard to the requirements of chapter 5 of title 5, United States Code.

(v) *LONG TERM TUG CAPABILITIES.*—Within 6 months after implementing clauses (i) and (ii), and section 707 of the Coast Guard Authorization Act for Fiscal Year 2008, the Secretary shall execute a contract with the National Academy of Sciences to conduct a study of regional response tug and salvage needs for Washington's Olympic coast. In developing the scope of the study, the National Academy of Sciences shall consult with Federal, State, and Tribal trustees as well as relevant stakeholders. The study—

(I) shall define the needed capabilities, equipment, and facilities for a response tug in the entry to the Strait of Juan de Fuca at Neah Bay in order to optimize oil spill protection on Washington's Olympic coast, provide rescue towing services, oil spill response, and salvage and fire-fighting capabilities;

(II) shall analyze the tug's multi-mission capabilities as well as its ability to utilize cached salvage, oil spill response, and oil storage equipment while responding to a spill or a vessel in distress and make recommendations as to the placement of this equipment;

(III) shall address scenarios that consider all vessel types and weather conditions and compare current Neah Bay tug capabilities, costs, and benefits with other United States industry funded response tugs, including those currently operating in the entrance of Alaska's Prince William Sound;

(IV) shall determine whether the current level of protection afforded by the Neah Bay response tug and associated response equipment is comparable to protection in other locations where response tugs operate, including the entrance of Prince William Sound, and if it is not comparable, shall make recommendations as to how capabilities, equipment, and facilities should be modified to achieve such comparable protection.

(6) EQUIPMENT REQUIREMENTS AND INSPECTION.—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, and nontank 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, nontank 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)(1), 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) [Repealed]

(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.

OIL POLLUTION ACT OF 1990

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

SEC. 1001. DEFINITIONS.

[33 U.S.C. 2701]

For the purposes of this Act, the term—

(1) “act of God” means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(2) “barrel” means 42 United States gallons at 60 degrees fahrenheit;

(3) “claim” means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from an incident;

(4) “claimant” means any person or government who presents a claim for compensation under this title;

(5) “damages” means damages specified in section 1002(b) of this Act, and includes the cost of assessing these damages;

(6) “deepwater port” is a facility licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524);

(7) “discharge” means any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(8) “exclusive economic zone” means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983, including the ocean waters of the areas referred to as “eastern special areas” in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990;

(9) “facility” means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes;

(10) “foreign offshore unit” means a facility which is located, in whole or in part, in the territorial sea or on the continental shelf of a foreign country and which is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the seabed beneath the foreign country’s territorial sea or from the foreign country’s continental shelf;

(11) “Fund” means the Oil Spill Liability Trust Fund, established by section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509);

(12) “gross ton” has the meaning given that term by the Secretary under part J of title 46, United States Code;

(13) “guarantor” means any person, other than the responsible party, who provides evidence of financial responsibility for a responsible party under this Act;

(14) “incident” means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil;

(15) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and has governmental authority over lands belonging to or controlled by the tribe;

(16) “lessee” means a person holding a leasehold interest in an oil or gas lease on lands beneath navigable waters (as that

term is defined in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301(a)) or on submerged lands of the Outer Continental Shelf, granted or maintained under applicable State law or the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.);

(17) “liable” or “liability” shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321);

(18) “mobile offshore drilling unit” means a vessel (other than a self-elevating lift vessel) capable of use as an offshore facility;

(19) “National Contingency Plan” means the National Contingency Plan prepared and published under section 311(d) of the Federal Water Pollution Control Act, as amended by this Act, or revised under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9605);

(20) “natural resources” includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone), any State or local government or Indian tribe, or any foreign government;

(21) “navigable waters” means the waters of the United States, including the territorial sea;

(22) “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;

(23) “oil” means oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include any substance which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act;

(24) “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;

(25) the term “Outer Continental Shelf facility” means an offshore facility which is located, in whole or in part, on the Outer Continental Shelf and is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the Outer Continental Shelf;

(26) “owner or operator”—

(A) means—

(i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel;

(ii) in the case of an onshore or offshore facility, any person owning or operating such facility;

(iii) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(iv) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand;

(v) notwithstanding subparagraph (B)(i), and in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including for purposes of liability under section 1002, any State or local government that has caused or contributed to a discharge or substantial threat of a discharge of oil from a vessel or facility ownership or control of which was acquired involuntarily through—

(I) seizure or otherwise in connection with law enforcement activity;

(II) bankruptcy;

(III) tax delinquency;

(IV) abandonment; or

(V) other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign;

(vi) notwithstanding subparagraph (B)(ii), a person that is a lender and that holds indicia of ownership primarily to protect a security interest in a vessel or facility if, while the borrower is still in possession of the vessel or facility encumbered by the security interest, the person—

(I) exercises decision making control over the environmental compliance related to the vessel or facility, such that the person has undertaken responsibility for oil handling or disposal practices related to the vessel or facility; or

(II) exercises control at a level comparable to that of a manager of the vessel or facility, such that the person has assumed or manifested responsibility—

(aa) for the overall management of the vessel or facility encompassing day-to-day decision making with respect to environmental compliance; or

(bb) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the vessel or facility other than the function of environmental compliance; and

(B) does not include—

(i) A unit of state or local government that acquired ownership or control of a vessel or facility involuntarily through—

(I) seizure or otherwise in connection with law enforcement activity;

(II) bankruptcy;

(III) tax delinquency;

(IV) abandonment; or

(V) other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign;

(ii) a person that is a lender that does not participate in management of a vessel or facility, but holds indicia of ownership primarily to protect the security interest of the person in the vessel or facility; or

(iii) a person that is a lender that did not participate in management of a vessel or facility prior to foreclosure, notwithstanding that the person—

(I) forecloses on the vessel or facility; and

(II) after foreclosure, sells, re-releases (in the case of a lease finance transaction), or liquidates the vessel or facility, maintains business activities, winds up operations, undertakes a removal action under section 311(c) of the Federal Water Pollution Control Act (33 U.S.C. 1321(c)) or under the direction of an on-scene coordinator appointed under the National Contingency Plan, with respect to the vessel or facility, or takes any other measure to preserve, protect, or prepare the vessel or facility prior to sale or disposition,

if the person seeks to sell, re-lease (in the case of a lease finance transaction), or otherwise divest the person of the vessel or facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements;

(27) “person” means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body;

(28) “permittee” means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340) or applicable State law;

(29) “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 the vessel is engaged in commerce;

(30) “remove” or “removal” means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to 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;

(31) “removal costs” means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident;

(32) “responsible party” means the following:

[(A) VESSELS.—In the case of a vessel, any person owning, operating, or demise chartering the vessel.]

(A) VESSELS.—*In the case of a vessel (other than a vessel described in section 3703a(b) of title 46, United States Code)—*

(i) any person owning, operating, or demise chartering the vessel; and

(ii) the owner of oil being transported in a tank vessel with a single hull after December 31, 2010, if the owner of the oil knew, or should have known, from publicly available information that the vessel had a poor safety or operational record.

(B) ONSHORE FACILITIES.—In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(C) OFFSHORE FACILITIES.—In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301-1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(D) DEEPWATER PORTS.—In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524), the licensee.

(E) PIPELINES.—In the case of a pipeline, any person owning or operating the pipeline.

(F) ABANDONMENT.—In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

(33) “Secretary” means the Secretary of the department in which the Coast Guard is operating;

(34) “tank vessel” means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(A) is a vessel of the United States;

(B) operates on the navigable waters; or

(C) transfers oil or hazardous material in a place subject to the jurisdiction of the United States;

(35) “territorial seas” means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line

marking the seaward limit of inland waters, and extending seaward a distance of 3 miles;

(36) “United States” and “State” mean the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the United States;

(37) “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;

(38) “participate in management”—

(A) (i) means actually participating in the management or operational affairs of a vessel or facility; and

(ii) does not include merely having the capacity to influence, or the unexercised right to control, vessel or facility operations; and

(B) does not include—

(i) performing an act or failing to act prior to the time at which a security interest is created in a vessel or facility;

(ii) holding a security interest or abandoning or releasing a security interest;

(iii) including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, warranty, or other term or condition that relates to environmental compliance;

(iv) monitoring or enforcing the terms and conditions of the extension of credit or security interest;

(v) monitoring or undertaking one or more inspections of the vessel or facility;

(vi) requiring a removal action or other lawful means of addressing a discharge or substantial threat of a discharge of oil in connection with the vessel or facility prior to, during, or on the expiration of the term of the extension of credit;

(vii) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the vessel or facility;

(viii) restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance;

(ix) exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement; or

(x) conducting a removal action under 311(c) of the Federal Water Pollution Control Act (33 U.S.C. 1321(c)) or under the direction of an on-scene coordinator appointed under the National Contingency Plan, if such actions do not rise to the level of participating in management under subparagraph (A) of this paragraph and paragraph (26)(A)(vi);

(39) “extension of credit” has the meaning provided in section 101(20)(G)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(i));

(40) “financial or administrative function” has the meaning provided in section 101(20)(G)(ii) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(ii));

(41) “foreclosure” and “foreclose” each has the meaning provided in section 101(20)(G)(iii) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(iii));

(42) “lender” has the meaning provided in section 101(20)(G)(iv) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(iv));

(43) “operational function” has the meaning provided in section 101(20)(G)(v) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(v)); and

(44) “security interest” has the meaning provided in section 101(20)(G)(vi) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(vi)).

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 \$15,000,000 in each fiscal year shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred by, and activities related to, response and damage assessment capabilities of the National Oceanic and Atmospheric Administration;*

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

(6) the making of loans pursuant to the program established under section 1013(f).

(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 establish 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. 1016. FINANCIAL RESPONSIBILITY.

[33 U.S.C. 2716]

(a) REQUIREMENT.—The responsible party for—

(1) any vessel over 300 gross tons (except a non-self-propelled vessel that does not carry oil as cargo or fuel) using any place subject to the jurisdiction of the United States; **[or]**

(2) any vessel using the waters of the exclusive economic zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States; *or*

(3) *any tank vessel over 100 gross tons (except a non-self-propelled vessel that does not carry oil as cargo) using any place subject to the jurisdiction of the United States;*

shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility sufficient to meet the maximum amount of liability to which the responsible party could be subjected under section 1004(a) or (d) of this Act, in a case where the responsible party would be entitled to limit liability under that section. If the responsible party owns or operates more than one vessel, evidence of financial responsibility need be established only to meet the amount of the maximum liability applicable to the vessel having the greatest maximum liability.

(b) SANCTIONS.—

(1) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this section that does not have the evidence of financial responsibility required for the vessel under this section.

(2) DENYING ENTRY TO OR DETAINING VESSELS.—The Secretary may—

(A) deny entry to any vessel to any place in the United States, or to the navigable waters, or

(B) detain at the place, any vessel that, upon request, does not produce the evidence of financial responsibility required for the vessel under this section.

(3) SEIZURE OF VESSEL.—Any vessel subject to the requirements of this section which is found in the navigable waters without the necessary evidence of financial responsibility for the vessel shall be subject to seizure by and forfeiture to the United States.

(c) OFFSHORE FACILITIES.—

(1) IN GENERAL.—

(A) EVIDENCE OF FINANCIAL RESPONSIBILITY REQUIRED.—Except as provided in paragraph (2), a responsible party with respect to an offshore facility that—

(i)(I) is located seaward of the line of ordinary low water along that portion of the coast that is in direct contact with the open sea and the line marking the seaward limit of inland waters; or

(II) is located in coastal inland waters, such as bays or estuaries, seaward of the line of ordinary low water along that portion of the coast that is not in direct contact with the open sea;

(ii) is used for exploring for, drilling for, producing, or transporting oil from facilities engaged in oil exploration, drilling, or production; and

(iii) has a worst-case oil spill discharge potential of more than 1,000 barrels of oil (or a lesser amount if the President determines that the risks posed by such facility justify it), shall establish and maintain evidence of financial responsibility in the amount required under subparagraph (B) or (C), as applicable.

(B) AMOUNT REQUIRED GENERALLY.—Except as provided in subparagraph (C), the amount of financial responsibility for offshore facilities that meet the criteria of subparagraph (A) is—

(i) \$35,000,000 for an offshore facility located seaward of the seaward boundary of a State; or

(ii) \$10,000,000 for an offshore facility located landward of the seaward boundary of a State.

(C) GREATER AMOUNT.—If the President determines that an amount of financial responsibility for a responsible party greater than the amount required by subparagraph (B) is justified based on the relative operational, environmental, human health, and other risks posed by the quantity or quality of oil that is explored for, drilled for, produced, or transported by the responsible party, the evidence of financial responsibility required shall be for an amount determined by the President not exceeding \$150,000,000.

(D) MULTIPLE FACILITIES.—In a case in which a person is a responsible party for more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the amount applicable to the facility having the greatest financial responsibility requirement under this subsection.

(E) DEFINITION.—For the purpose of this paragraph, the seaward boundary of a State shall be determined in accordance with section 2(b) of the Submerged Lands Act (43 U.S.C. 1301(b)).

(2) DEEPWATER PORTS.—Each responsible party with respect to a deepwater port shall establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability to which the responsible party could be subjected under section 1004(a) of this Act in a case where the re-

sponsible party would be entitled to limit liability under that section. If the Secretary exercises the authority under section 1004(d)(2) to lower the limit of liability for deepwater ports, the responsible party shall establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability so established. In a case in which a person is the responsible party for more than one deepwater port, evidence of financial responsibility need be established only to meet the maximum liability applicable to the deepwater port having the greatest maximum liability.

(d) [Not enacted].

(e) METHODS OF FINANCIAL RESPONSIBILITY.—Financial responsibility under this section may be established by any one, or by any combination, of the following methods which the Secretary (in the case of a vessel) or the President (in the case of a facility) determines to be acceptable: evidence of insurance, surety bond, guarantee, letter of credit, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In promulgating requirements under this section, the Secretary or the President, as appropriate, may specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing evidence of financial responsibility to effectuate the purposes of this Act.

(f) CLAIMS AGAINST GUARANTOR.—

(1) IN GENERAL.—Subject to paragraph (2), a claim for which liability may be established under section 1002 may be asserted directly against any guarantor providing evidence of financial responsibility for a responsible party liable under that section for removal costs and damages to which the claim pertains. In defending against such a claim, the guarantor may invoke—

(A) all rights and defenses which would be available to the responsible party under this Act;

(B) any defense authorized under subsection (e); and

(C) the defense that the incident was caused by the willful misconduct of the responsible party. The guarantor may not invoke any other defense that might be available in proceedings brought by the responsible party against the guarantor.

(2) FURTHER REQUIREMENT.—A claim may be asserted pursuant to paragraph (1) directly against a guarantor providing evidence of financial responsibility under subsection (c)(1) with respect to an offshore facility only if—

(A) the responsible party for whom evidence of financial responsibility has been provided has denied or failed to pay a claim under this Act on the basis of being insolvent, as defined under section 101(32) of title 11, United States Code, and applying generally accepted accounting principles;

(B) the responsible party for whom evidence of financial responsibility has been provided has filed a petition for bankruptcy under title 11, United States Code; or

(C) the claim is asserted by the United States for removal costs and damages or for compensation paid by the

Fund under this Act, including costs incurred by the Fund for processing compensation claims.

(3) RULEMAKING AUTHORITY.—Not later than 1 year after the date of enactment of this paragraph, the President shall promulgate regulations to establish a process for implementing paragraph (2) in a manner that will allow for the orderly and expeditious presentation and resolution of claims and effectuate the purposes of this Act.

(g) LIMITATION ON GUARANTOR'S LIABILITY.—Nothing in this Act shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceed, in the aggregate, the amount of financial responsibility which that guarantor has provided for a responsible party pursuant to this section. The total liability of the guarantor on direct action for claims brought under this Act with respect to an incident shall be limited to that amount.

(h) CONTINUATION OF REGULATIONS.—Any regulation relating to financial responsibility, which has been issued pursuant to any provision of law repealed or superseded by this Act, and which is in effect on the date immediately preceding the effective date of this Act, is deemed and shall be construed to be a regulation issued pursuant to this section. Such a regulation shall remain in full force and effect unless and until superseded by a new regulation issued under this section.

(i) UNIFIED CERTIFICATE.—The Secretary may issue a single unified certificate of financial responsibility for purposes of this Act and any other law.

TITLE 37. PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

CHAPTER 19. ADMINISTRATION

§ 1007. Deductions from pay

(a) The pay of an officer of an armed force may be withheld, under section 5512 of title 5, only for an indebtedness to the United States admitted by the officer or shown by the judgment of a court, or upon a special order issued in the discretion of the Secretary of Defense (or the Secretary of Homeland Security, in the case of an officer of the Coast Guard when the Coast Guard is not operating as a service in the Navy), or upon the denial of relief of an officer pursuant to section 3527 of title 31.

(b) An amount due the United States from an enlisted member of the Army or the Air Force for articles sold to him on credit under section 4621(a)(1) or 9621(a)(1) of title 10, as the case may be, shall be deducted from the next pay due him after the sale is reported.

(c)(1) Under regulations prescribed by the Secretary concerned, an amount that a member of the uniformed services is administratively determined to owe the United States or any of its instrumentalities may be deducted from the member's pay in monthly installments.

(2) After the deduction of pay forfeited by the sentence of a court-martial, if any, or otherwise authorized by law to be withheld, the deductions authorized by this section may not reduce the pay actually received by a member of the uniformed services for any month to less than one-third of the member's pay for that month.

(3) If the indebtedness of a member of the uniformed services to the United States is due to the overpayment of pay or allowances to the member through no fault of the member, the amount of the overpayment shall be recovered in monthly installments. The amount deducted from the pay of the member for a month to recover the overpayment amount may not exceed 20 percent of the member's pay for that month unless the member requests or consents to collection of the overpayment at an accelerated rate.

(4) If a member of the uniformed services is injured or wounded under the circumstances described in section 310(a)(2)(C) of this title or, while in the line of duty, incurs a wound, injury, or illness in a combat operation or combat zone designated by the Secretary of Defense, any overpayment of pay or allowances made to the member while the member recovers from the wound, injury, or illness may not be deducted from the member's pay until—

(A) the end of the 90-day period beginning on the date on which the member is notified of the overpayment; or

(B) such earlier date as may be requested or agreed to by the member.

(d) Subject to subsection (c), an amount due the United States from an enlisted member of the Army or the Air Force may be deducted from his pay on final statement, or from his savings on his clothing allowance.

(e) The amount of any damage, or cost of repairs, to arms or equipment caused by the abuse or negligence of a member of the Army, Navy, Air Force, or Marine Corps, as the case may be, who had the care of, or was using, the property when it was damaged, shall be deducted from his pay.

(f) If, upon final settlement of the accounts of an officer of the Army or the Air Force charged with the issue of an article of military supply, there is a deficiency of that article, or if an article of military supply with whose issue an officer is charged is damaged, the value of the lost article or the amount of the damage shall be charged against the officer and deducted from his monthly pay, unless he shows to the satisfaction of the Secretary of the Army or the Secretary of the Air Force, as the case may be, by one or more affidavits setting forth the circumstances, that he was not at fault.

(g) An amount due the United States from an officer of the Army or the Air Force for rations bought on credit, and for articles bought on credit under section 4621(a)(1) or 9621(a)(1) of title 10, shall be deducted from the next pay due that officer after the sale is reported.

(h)(1) Upon request by a service relief society and subject to paragraph (2), an amount owed by a member of the uniformed services to the relief society may be deducted from the pay on final statement of such member and paid to that relief society.

(2) An amount may not be deducted under paragraph (1) from the pay of a member unless the Secretary concerned makes a determination of the amount owed in accordance with the regulations prescribed under subsection (c). Any amount determined to be owed to a service relief society under this paragraph shall be considered an amount that the member is administratively determined to owe the United States under subsection (c) and shall be collectible in accordance with such subsection.

(3) The Secretaries concerned shall prescribe regulations to carry out this subsection.

(4) In this subsection, the term “service relief society” means the Army Emergency Relief, the Air Force Aid Society, the Navy Relief Society, or the Coast Guard Mutual Assistance.

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

(2) Amounts deducted under paragraph (1) shall be deposited in the Armed Forces Retirement Home Trust Fund.

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

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

(5) This subsection does not apply to an enlisted member, warrant officer, or limited duty officer of a reserve component.

TITLE 46. SHIPPING

SUBTITLE II. VESSELS AND SEAMEN

PART A. GENERAL PROVISIONS

CHAPTER 21. GENERAL

§ 2101. General definitions

In this subtitle—

(1) “associated equipment”—

(A) means—

(i) a system, accessory, component, or appurtenance of a recreational vessel; or

(ii) a marine safety article intended for use on board a recreational vessel; but

(B) does not include radio equipment.

(2)–(3a) [Repealed].

(4) “Coast Guard” means the organization established and continued under section 1 of title 14.

(5) “commercial service” includes any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel.

(5a) “consideration” means an economic benefit, inducement, right, or profit including pecuniary payment accruing to an individual, person, or entity, but not including a voluntary sharing of the actual expenses of the voyage, by monetary contribution or donation of fuel, food, beverage, or other supplies.

(6) [Repealed].

(7) “crude oil” means a liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suit-

able for transportation, and includes crude oil from which certain distillate fractions may have been removed, and crude oil to which certain distillate fractions may have been added.

(8) “crude oil tanker” means a tanker engaged in the trade of carrying crude oil.

(8a) “dangerous drug” means a narcotic drug, a controlled substance, or a controlled substance analog (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)).

(9) “discharge”, when referring to a substance discharged from a vessel, includes spilling, leaking, pumping, pouring, emitting, emptying, or dumping, however caused.

(10), (10a) [Repealed].

(10b) “ferry” means a vessel that is used on a regular schedule—

(A) to provide transportation only between places that are not more than 300 miles apart; and

(B) to transport only—

(i) passengers; or

(ii) vehicles, or railroad cars, that are being used, or have been used, in transporting passengers or goods.

(11) “fish” means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life, except marine mammals and birds.

(11a) “fishing vessel” means a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

(11b) “fish processing vessel” means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine [chilling.] *chilling, but does not include a fishing vessel operating in Alaskan waters under a permit or license issued by Alaska that—*

(A) *fillets only salmon taken by that vessel;*

(B) *fillets less than 5 metric tons of such salmon during any 7-day period.*

(11c) “fish tender vessel” means a vessel that commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or a fish processing facility.

(12) [Repealed].

(13) “freight vessel” means a motor vessel of more than 15 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 carries freight for hire, except an oceanographic research vessel or an offshore supply vessel.

(13a) “Great Lakes barge” means a non-self-propelled vessel of at least 3,500 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 operating on the Great Lakes.

(14) “hazardous material” means a liquid material or substance that is—

(A) flammable or combustible;

(B) designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321); or

(C) designated a hazardous material under section 5103(a) of title 49;

(14a) “major conversion” means a conversion of a vessel that—

(A) substantially changes the dimensions or carrying capacity of the vessel;

(B) changes the type of the vessel;

(C) substantially prolongs the life of the vessel; or

(D) otherwise so changes the vessel that it is essentially a new vessel, as decided by the Secretary.

(15) “marine environment” means—

(A) the navigable waters of the United States and the land and resources in and under those waters;

(B) the waters and fishery resources of an area over which the United States asserts exclusive fishery management authority;

(C) the seabed and subsoil of the outer Continental Shelf of the United States, the resources of the Shelf, and the waters superjacent to the Shelf; and

(D) the recreational, economic, and scenic values of the waters and resources referred to in subclauses (A)-(C) of this clause.

(15a) “mobile offshore drilling unit” means a vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources.

(16) “motor vessel” means a vessel propelled by machinery other than steam.

(17) “nautical school vessel” means a vessel operated by or in connection with a nautical school or an educational institution under section 558 of title 40.

(17a) “navigable waters of the United States” includes all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988.

(17b) [Repealed].

(18) “oceanographic research vessel” means a vessel that the Secretary finds is being employed only in instruction in oceanography or limnology, or both, or only in oceanographic or limnological research, including studies about the sea such as seismic, gravity meter, and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research.

(19) “offshore supply vessel” means a motor vessel of more than 15 gross tons but less than 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 regularly carries goods, supplies, individuals in addition to the crew, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

(20) “oil” includes oil of any type or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes except dredged spoil.

(20a) “oil spill response vessel” means a vessel that is designated in its certificate of inspection as such a vessel, or that is adapted to respond to a discharge of oil or a hazardous material.

(20b) “overall in length” means—

(A) for a foreign vessel or a vessel engaged on a foreign voyage, the greater of—

(i) 96 percent of the length on a waterline at 85 percent of the least molded depth measured from the top of the keel (or on a vessel designed with a rake of keel, on a waterline parallel to the designed waterline); or

(ii) the length from the fore side of the stem to the axis of the rudder stock on that waterline; and

(B) for any other vessel, the horizontal distance of the hull between the foremost part of the stem and the aftermost part of the stern, excluding fittings and attachments.

(21) “passenger”—

(A) means an individual carried on the vessel except—

(i) the owner or an individual representative of the owner or, in the case of a vessel under charter, an individual charterer or individual representative of the charterer;

(ii) the master; or

(iii) a member of the crew engaged in the business of the vessel who has not contributed consideration for carriage and who is paid for on board services;

(B) on an offshore supply vessel, means an individual carried on the vessel except—

(i) an individual included in clause (i), (ii), or (iii) of subparagraph (A) of this paragraph;

(ii) an employee of the owner, or of a subcontractor to the owner, engaged in the business of the owner;

(iii) an employee of the charterer, or of a subcontractor to the charterer, engaged in the business of the charterer; or

(iv) an individual employed in a phase of exploration, exploitation, or production of offshore mineral or energy resources served by the vessel;

(C) on a fishing vessel, fish processing vessel, or fish tender vessel, means an individual carried on the vessel except—

(i) an individual included in clause (i), (ii), or (iii) of subparagraph (A) of this paragraph;

(ii) a managing operator;

(iii) an employee of the owner, or of a subcontractor to the owner, engaged in the business of the owner;

(iv) an employee of the charterer, or of a subcontractor to the charterer, engaged in the business of the charterer; or

(v) an observer or sea sampler on board the vessel pursuant to a requirement of State or Federal law; or

- (D) on a sailing school vessel, means an individual carried on the vessel except—
- (i) an individual included in clause (i), (ii), or (iii) of subparagraph (A) of this paragraph;
 - (ii) an employee of the owner of the vessel engaged in the business of the owner, except when the vessel is operating under a demise charter;
 - (iii) an employee of the demise charterer of the vessel engaged in the business of the demise charterer; or
 - (iv) a sailing school instructor or sailing school student.
- (21a) “passenger for hire” means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.
- (22) “passenger vessel” means a vessel of at least 100 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—
- (A) carrying more than 12 passengers, including at least one passenger for hire;
 - (B) that is chartered and carrying more than 12 passengers;
 - (C) that is a submersible vessel carrying at least one passenger for hire; or
 - (D) that is a ferry carrying a passenger.
- (23) “product carrier” means a tanker engaged in the trade of carrying oil except crude oil.
- (24) “public vessel” means a vessel that—
- (A) is owned, or demise chartered, and operated by the United States Government or a government of a foreign country; and
 - (B) is not engaged in commercial service.
- (25) “recreational vessel” means a vessel—
- (A) being manufactured or operated primarily for pleasure; or
 - (B) leased, rented, or chartered to another for the latter’s pleasure.
- (26) “recreational vessel manufacturer” means a person engaged in the manufacturing, construction, assembly, or importation of recreational vessels, components, or associated equipment.
- (26a) “riding gang member” means an individual who—
- (A) has not been issued a merchant mariner document under chapter 73; (B) does not perform—
 - (i) watchstanding, automated engine room duty watch, or personnel safety functions; or
 - (ii) cargo handling functions, including any activity relating to the loading or unloading of cargo, the operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go; (C) does not serve as part of the crew complement re-

quired under section 8101; (D) is not a member of the steward's department; and

(E) is not a citizen or temporary or permanent resident of a country designated by the United States as a sponsor of terrorism or any other country that the Secretary, in consultation with the Secretary of State and the heads of other appropriate United States agencies, determines to be a security threat to the United States.

(27) "sailing instruction" means teaching, research, and practical experience in operating vessels propelled primarily by sail and may include—

(A) any subject related to that operation and to the sea, including seamanship, navigation, oceanography, other nautical and marine sciences, and maritime history and literature; and

(B) only when in conjunction with a subject referred to in subclause (A) of this clause, instruction in mathematics and language arts skills to sailing school students having learning disabilities.

(28) "sailing school instructor" means an individual who is on board a sailing school vessel to provide sailing instruction, but does not include an operator or crewmember who is among those required to be on board the vessel to meet a requirement established under part F of this subtitle (29) "sailing school student" means an individual who is on board a sailing school vessel to receive sailing instruction.

(30) "sailing school vessel" means a vessel—

(A) that is less than 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;

(B) carrying more than 6 individuals who are sailing school instructors or sailing school students;

(C) principally equipped for propulsion by sail, even if the vessel has an auxiliary means of propulsion; and

(D) owned or demise chartered, and operated by an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) and exempt from tax under section 501(a) of that Code, or by a State or political subdivision of a State, during times that the vessel is operated by the organization, State, or political subdivision only for sailing instruction.

(31) "scientific personnel" means individuals on board an oceanographic research vessel only to engage in scientific research, or to instruct or receive instruction in oceanography or limnology.

(32) "seagoing barge" means a non-self-propelled vessel of at least 100 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 making voyages beyond the Boundary Line.

(33) "seagoing motor vessel" means a motor vessel of at least 300 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 making voyages beyond the Boundary Line.

(34) "Secretary" means the Secretary of the department in which the Coast Guard is operating.

(35) "small passenger vessel" means a wing-in-ground craft, regardless of tonnage, carrying at least one passenger for hire, and a vessel of less than 100 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—

(A) carrying more than 6 passengers, including at least one passenger for hire;

(B) that is chartered with the crew provided or specified by the owner or the owner's representative and carrying more than 6 passengers;

(C) that is chartered with no crew provided or specified by the owner or the owner's representative and carrying more than 12 passengers;

(D) that is a submersible vessel carrying at least one passenger for hire; or

(E) that is a ferry carrying more than 6 passengers.

(36) (37) "steam vessel" means a vessel propelled in whole or in part by steam, except a recreational vessel of not more than 40 feet in length.

(37a) "submersible vessel" means a vessel that is capable of operating below the surface of the water.

(38) "tanker" means a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk in the cargo spaces.

(39) "tank vessel" means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(A) is a vessel of the United States;

(B) operates on the navigable waters of the United States; or

(C) transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States.

(40) "towing vessel" means a commercial vessel engaged in or intending to engage in the service of pulling, pushing, or hauling along side, or any combination of pulling, pushing, or hauling along side.

(41) [Repealed].

(42) "uninspected passenger vessel" means an uninspected vessel—

(A) of at least 100 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—

(i) carrying not more than 12 passengers, including at least one passenger for hire; or

(ii) that is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than 12 passengers; and

(B) of less than 100 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—
- (i) carrying not more than 6 passengers, including at least one passenger for hire; or
 - (ii) that is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than 6 passengers.
- (43) "uninspected vessel" means a vessel not subject to inspection under section 3301 of this title that is not a recreational vessel.
- (44)—(46) [Repealed].
- (47) "vessel of war" means a vessel—
- (A) belonging to the armed forces of a country;
 - (B) bearing the external marks distinguishing vessels of war of that country;
 - (C) under the command of an officer commissioned by the government of that country and whose name appears in the appropriate service list or its equivalent; and
 - (D) staffed by a crew under regular armed forces discipline.
- (48) "wing-in-ground craft" means a vessel that is capable of operating completely above the surface of the water on a dynamic air cushion created by aerodynamic lift due to the ground effect between the vessel and the water's surface.

SUBTITLE II. VESSELS AND SEAMEN

PART G. MERCHANT SEAMEN PROTECTION AND RELIEF

CHAPTER 103. FOREIGN AND INTERCOASTAL VOYAGES

* * * * *

§ 10313. Wages

(a) A seaman's entitlement to wages and provisions begins when the seaman begins work or when specified in the agreement required by section 10302 of this title for the seaman to begin work or be present on board, whichever is earlier.

(b) Wages are not dependent on the earning of freight by the vessel. When the loss or wreck of the vessel ends the service of a seaman before the end of the period contemplated in the agreement, the seaman is entitled to wages for the period of time actually served. The seaman shall be deemed a destitute seaman under section 11104 of this title. This subsection applies to a fishing or whaling vessel but not a yacht.

(c) When a seaman who has signed an agreement is discharged improperly before the beginning of the voyage or before one month's wages are earned, without the seaman's consent and without the seaman's fault justifying discharge, the seaman is entitled to receive from the master or owner, in addition to wages earned, one month's wages as compensation.

(d) A seaman is not entitled to wages for a period during which the seaman—

- (1) unlawfully failed to work when required, after the time fixed by the agreement for the seaman to begin work; or
- (2) lawfully was imprisoned for an offense, unless a court hearing the case otherwise directs.

(e) After the beginning of the voyage, a seaman is entitled to receive from the master, on demand, one-half of the balance of wages earned and unpaid at each port at which the vessel loads or delivers cargo during the voyage. A demand may not be made before the expiration of 5 days from the beginning of the voyage, not more than once in 5 days, and not more than once in the same port on the same entry. If a master does not comply with this subsection, the seaman is released from the agreement and is entitled to payment of all wages earned. Notwithstanding a release signed by a seaman under section 10312 of this title, a court having jurisdiction may set aside, for good cause shown, the release and take action that justice requires. This subsection does not apply to a fishing or whaling vessel or a yacht.

(f) At the end of a voyage, the master shall pay each seaman the balance of wages due the seaman within 24 hours after the cargo has been discharged or within 4 days after the seaman is discharged, whichever is earlier. When a seaman is discharged and final payment of wages is delayed for the period permitted by this subsection, the seaman is entitled at the time of discharge to one-third of the wages due the seaman.

(g) When payment is not made as provided under subsection (f) of this section without sufficient cause, the master or owner shall pay to the seaman 2 days' wages for each day payment is delayed.

(h) Subsections (f) and (g) of this section do not apply to a fishing or whaling vessel or a yacht.

(i) This section applies to a seaman on a foreign vessel when in a harbor of the United States. The courts are available to the seaman for the enforcement of this section.

(j) *CLASS ACTION SUIT FOR WAGES.*—A class action suit by seamen employed on a passenger vessel capable of carrying more than 500 passengers for wages under this section may not be commenced more than 3 years after the date of the end of the last voyage for which wages are claimed.

* * * * *

§ 10315. Allotments

(a) Under prescribed regulations, a seaman may stipulate as follows in the agreement required by section 10302 of this title for an allotment of any part of the wages the seaman may earn:

(1) to the seaman's grandparents, parents, spouse, sister, brother, or children;

(2) to an agency designated by the Secretary of the Treasury to handle applications for United States savings bonds, to purchase bonds for the seaman; and

(3) for deposits to be made in an account for savings or investment opened by the seaman and maintained in the seaman's name at a savings bank or a savings institution in which the accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) An allotment is valid only if made in writing and signed by and approved by a shipping commissioner. The shipping commissioner shall examine allotments and the parties to them to enforce compliance with the law. Stipulations for allotments made at the beginning of a voyage shall be included in the agreement and shall

state the amounts and times of payment and the person to whom payments are to be made.

(c) Only an allotment complying with this section is lawful. A person falsely claiming qualification as an allottee under this section is liable to the United States Government for a civil penalty of not more than \$500.

(d) The owner, charterer, managing operator, agent, or master of a vessel seeking clearance from a port of the United States shall present the agreement at the office of clearance. Clearance may be granted to a vessel only if this section has been complied with.

(e) This section applies to a foreign vessel when in waters of the United States. An owner, charterer, managing operator, agent, or master of a foreign vessel violating this section is liable to the Government for the same penalty as an owner, charterer, managing operator, agent, or master of a vessel of the United States for the same violation.

(f) *DEPOSITS IN SEAMAN ACCOUNT.*—A seaman employed on a passenger vessel capable of carrying more than 500 passengers may authorize, by written request signed by the seaman, the master, owner, or operator of the vessel, or the employer of the seaman, to make deposits of wages of the seaman into a checking, savings, investment, or retirement account, or other account to secure a payroll or debit card for the seaman if—

(1) the wages designated by the seaman for such deposit are deposited in a United States or international financial institution designated by the seaman;

(2) such deposits in the financial institution are fully guaranteed under commonly accepted international standards by the government of the country in which the financial institution is licensed;

(3) a written wage statement or pay stub, including an accounting of any direct deposit, is delivered to the seaman no less often than monthly; and

(4) while on board the vessel on which the seaman is employed, the seaman is able to arrange for withdrawal of all funds on deposit in the account in which the wages are deposited.

SUBTITLE III. MARITIME LIABILITY

CHAPTER 313. COMMERCIAL INSTRUMENTS AND MARITIME LIENS

SUBCHAPTER I. GENERAL

§ 31301. Definitions

In this chapter—

(1) “acknowledge” means making—

(A) an acknowledgment or notarization before a notary public or other official authorized by a law of the United States or a State to take acknowledgments of deeds; or

(B) a certificate issued under the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 1961;

(2) “district court” means—

(A) a district court of the United States (as defined in section 451 of title 28);

- (B) the District Court of Guam;
 - (C) the District Court of the Virgin Islands;
 - (D) the District Court for the Northern Mariana Islands;
 - (E) the High Court of American Samoa; and
 - (F) any other court of original jurisdiction of a territory or possession of the United States;
- (3) “mortgagee” means—
- (A) a person to whom property is mortgaged; or
 - (B) when a mortgage on a vessel involves a trust, the trustee that is designated in the trust agreement;
- (4) “necessaries” includes repairs, supplies, towage, and the use of a dry dock or marine railway;
- (5) “preferred maritime lien” means a maritime lien on a vessel—
- (A) arising before a preferred mortgage was filed under section 31321 of this title;
 - (B) for damage arising out of maritime tort;
 - (C) for wages of a stevedore when employed directly by a person listed in section 31341 of this title;
 - (D) for wages of the crew of the vessel;
 - (E) for general average; or
 - (F) for salvage, including contract salvage; [and]
- (6) “preferred mortgage”—
- (A) means a mortgage that is a preferred mortgage under section 31322 of this title; and
 - (B) also means in sections 31325 and 31326 of this title, a mortgage, hypothecation, or similar charge that is established as a security on a foreign vessel if the mortgage, hypothecation, or similar charge was executed under the laws of the foreign country under whose laws the ownership of the vessel is documented and has been registered under those laws in a public register at the port of registry of the vessel or at a central [office.] office; and
- (7) “Secretary” means the Secretary of the Department of Homeland Security, unless otherwise noted.

§ 31302. Availability of instruments, copies, and information
The Secretary [of Transportation] shall—

- (1) make any instrument filed or recorded with the Secretary under this chapter available for public inspection;
- (2) on request, provide a copy, including a certified copy, of any instrument made available for public inspection under this chapter; and
- (3) on request, provide a certificate containing information included in an instrument filed or recorded under this chapter.

§ 31306. Declaration of citizenship

(a) Except as provided by the Secretary [of Transportation], when an instrument transferring an interest in a vessel is presented to the Secretary [of Transportation] for filing or recording, the transferee shall file with the instrument a declaration, in the form the Secretary may prescribe by regulation, stating information about citizenship and other information the Secretary may require to show the transaction involved does not violate section 56102 or 56103 of this title.

(b) A declaration under this section filed by a corporation must be signed by its president, secretary, treasurer, or other official authorized by the corporation to execute the declaration.

(c) Except as provided by the Secretary, an instrument transferring an interest in a vessel is not valid against any person until the declaration required by this section has been filed.

(d) A person knowingly making a false statement of a material fact in a declaration filed under this section shall be fined under title 18, imprisoned for not more than 5 years, or both.

§ 31308. Secretary of Commerce or Transportation as mortgagee

When the Secretary of Commerce or Transportation is a mortgagee under this chapter, the Secretary] *The Secretary of Commerce or Transportation, as a mortgagee under this chapter,* may foreclose on a lien arising from a right established under a mortgage under chapter 537 of this title, subject to section 362(b) of title 11.

* * * * *

§ 31310. Limitation on maritime liens on fishing permits

(a) *IN GENERAL.*—A maritime lien shall not attach to a permit that—

- (1) authorizes use of a vessel to engage in fishing; and
- (2) is issued under State or Federal law.

(b) *LIMITATION ON ENFORCEMENT.*—No civil action may be brought to enforce a maritime lien on a permit described in subsection (a).

(c) *LIMITATION ON STATUTORY CONSTRUCTION.*—Nothing in subsections (a) and (b) shall be construed as imposing any limitation upon the authority of the Secretary of Commerce to modify, suspend, revoke, or sanction any Federal fishery permit issued by the Secretary of Commerce or to bring a civil action to enforce such modification, suspension, revocation, or sanction.

SUBCHAPTER II. COMMERCIAL INSTRUMENTS

§ 31321. Filing, recording, and discharge

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

- (A) the grantor, mortgagor, or assignor;
 - (B) the heir or devisee of the grantor, mortgagor, or assignor;
- and

(C) a person having actual notice of the sale, conveyance, mortgage, assignment, or related instrument.

(2) Each bill of sale, conveyance, mortgage, assignment, or related instrument that is filed in substantial compliance with this section is valid against any person from the time it is filed with the Secretary.

(3) The parties to an instrument or an application for documentation shall use diligence to ensure that the parts of the instrument

or application for which they are responsible are in substantial compliance with the filing and documentation requirements.

(4) A bill of sale, conveyance, mortgage, assignment, or related instrument may be filed electronically under regulations prescribed by the Secretary.

(b) To be filed, a bill of sale, conveyance, mortgage, assignment, or related instrument must—

(1) identify the vessel;

(2) state the name and address of each party to the instrument;

(3) state, if a mortgage, the amount of the direct or contingent obligations (in one or more units of account as agreed to by the parties) that is or may become secured by the mortgage, excluding interest, expenses, and fees;

(4) state the interest of the grantor, mortgagor, or assignor in the vessel;

(5) state the interest sold, conveyed, mortgaged, or assigned; and

(6) be signed and acknowledged.

(c) If a bill of sale, conveyance, mortgage, assignment, or related document is filed that involves a vessel for which an application for documentation is filed, and the Secretary decides that the vessel cannot be documented by an applicant—

(1) the Secretary shall send notice of the Secretary's decision, including reasons for the decision, to each interested party to the instrument filed for recording; and

(2) 90 days after sending the notice as provided under clause

(1) of this subsection, the Secretary—

(A) may terminate the filing; and

(B) may return the instrument filed without recording it under subsection (e) of this section.

(d) A person may withdraw an application for documentation of a vessel for which a mortgage has been filed under this section only if the mortgagee consents.

(e) The Secretary shall—

(1) record the bills of sale, conveyances, mortgages, assignments, and related instruments of a documented vessel complying with subsection (b) of this section in the order they are filed; and

(2) maintain appropriate indexes, for use by the public, of instruments filed or recorded, or both.

(f) On full and final discharge of the indebtedness under a mortgage recorded under subsection (e)(1) of this section, a mortgagee, on request of the Secretary or mortgagor, shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary. The Secretary shall record the certificate.

(g) The mortgage or related instrument of a vessel covered by a preferred mortgage under section 31322(d) of this title, that is later filed under this section at the time an application for documentation is filed, is valid under this section from the time the mortgage or instrument representing financing became a preferred mortgage under section 31322(d).

(h) On full and final discharge of the indebtedness under a mortgage deemed to be a preferred mortgage under section 31322(d) of

this title, a mortgagee, on request of the Secretary, a State, or mortgagor, shall provide the Secretary or the State, as appropriate, with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary or the State, as applicable. If filed with the Secretary, the Secretary shall enter that information in the vessel identification system under chapter 125 of this title.

§ 31329. Court sales of documented vessels

(a) A documented vessel may be sold by order of a district court only to—

- (1) a person eligible to own a documented vessel under section 12103 of this title; or
- (2) a mortgagee of that vessel.

(b) When a vessel is sold to a mortgagee not eligible to own a documented vessel—

- (1) the vessel must be held by the mortgagee for resale;
- (2) the vessel held by the mortgagee is subject to chapter 563 of this title; and
- (3) the sale of the vessel to the mortgagee is not a sale to a person not a citizen of the United States under section 12132 of this title.

(c) Unless waived by the Secretary **[of Transportation]**, a person purchasing a vessel by court order under subsection (a)(1) of this section or from a mortgagee under subsection (a)(2) of this section must document the vessel under chapter 121 of this title.

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

(e) A sale of a vessel contrary to this section is void.

(f) This section does not apply to a documented vessel that has been operated only for pleasure.

§ 31330. Penalties

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

- (A) with intent to defraud, does not disclose an obligation on a vessel as required by section 31323(a) of this title;
- (B) with intent to defraud, incurs a contractual obligation in violation of section 31323(b) of this title; *or*
- (C) with intent to hinder or defraud an existing or future creditor of the mortgagor or a lienor of the vessel, files a mortgage with the Secretary **[of Transportation; or]** *Transportation.*

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

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

- (A) does not disclose an obligation on a vessel as required by section 31323(a) of this title;
- (B) incurs a contractual obligation in violation of section 31323(b) of this title; *or*
- (C) files with the Secretary a mortgage made not in good **[faith; or]** *faith.*

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

(b)(1) A person that knowingly violates section 31329 of this title shall be fined under title 18, imprisoned for not more than 3 years, or both.

(2) A person violating section 31329 of this title is liable to the Government for a civil penalty of not more than \$25,000.

(3) A vessel involved in a violation under section 31329 of this title and its equipment may be seized by, and forfeited to, the Government.

(c) If a person not an individual violates this section, the president or chief executive of the person also is subject to any penalty provided under this section.

SUBCHAPTER III. MARITIME LIENS

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

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

- (1) state the nature of the lien;
- (2) state the date the lien was established;
- (3) state the amount of the lien;
- (4) state the name and address of the person; and
- (5) be signed and acknowledged.

(b)(1) The Secretary shall record a notice complying with subsection (a) of this section if, when the notice is presented to the Secretary for recording, the person having the claim files with the notice a declaration stating the following:

(A) The information in the notice is true and correct to the best of the knowledge, information, and belief of the individual who signed it.

(B) A copy of the notice, as presented for recordation, has been sent to each of the following:

- (i) The owner of the vessel.
- (ii) Each person that recorded under subsection (a) of this section an unexpired notice of a claim of an undischarged lien on the vessel.
- (iii) The mortgagee of each mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel.

(2) A declaration under this subsection filed by a person that is not an individual must be signed by the president, member, partner, trustee, or other individual authorized to execute the declaration on behalf of the person.

(c)(1) On full and final discharge of the indebtedness that is the basis for a notice of claim of lien recorded under subsection (b) of this section, the person having the claim shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness. The Secretary shall record the certificate.

(2) The district courts of the United States shall have jurisdiction over a civil action in Admiralty to declare that a vessel is not subject to a lien claimed under subsection (b) of this section, or that the vessel is not subject to the notice of claim of lien, or both, re-

ardless of the amount in controversy or the citizenship of the parties. Venue in such an action shall be in the district where the vessel is found or where the claimant resides or where the notice of claim of lien is recorded. The court may award costs and attorneys fees to the prevailing party, unless the court finds that the position of the other party was substantially justified or other circumstances make an award of costs and attorneys fees unjust. The Secretary shall record any such declaratory order.

(d) A person claiming a lien on a vessel covered by a preferred mortgage under section 31322(d) of this title must record and discharge the lien as provided by the law of the State in which the vessel is titled.

(e) A notice of claim of lien recorded under subsection (b) of this section shall expire 3 years after the date the lien was established, as such date is stated in the notice under subsection (a) of this section.

(f) This section does not alter in any respect the law pertaining to the establishment of a maritime lien, the remedy provided by such a lien, or the defenses thereto, including any defense under the doctrine of laches.

SUBTITLE VII. SECURITY AND DRUG ENFORCEMENT

CHAPTER 701. PORT SECURITY

* * * * *

§ 70103. Maritime transportation security plans

(a) NATIONAL MARITIME TRANSPORTATION SECURITY PLAN.—(1) Not later than April 1, 2005, the Secretary shall prepare a National Maritime Transportation Security Plan for deterring and responding to a transportation security incident.

(2) The National Maritime Transportation Security Plan shall provide for efficient, coordinated, and effective action to deter and minimize damage from a transportation security incident, and shall include the following:

(A) Assignment of duties and responsibilities among Federal departments and agencies and coordination with State and local governmental agencies.

(B) Identification of security resources.

(C) Procedures and techniques to be employed in deterring a national transportation security incident.

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

(i) Coast Guard maritime security teams established under this chapter; and

(ii) Federal Maritime Security Coordinators required under this chapter.

(E) A system of surveillance and notice designed to safeguard against as well as ensure earliest possible notice of a transportation security incident and imminent threats of such a security incident to the appropriate State and Federal agencies.

(F) Establishment of criteria and procedures to ensure immediate and effective Federal identification of a transportation security incident, or the substantial threat of such a security incident.

(G) Designation of—

(i) areas for which Area Maritime Transportation Security Plans are required to be prepared under subsection (b); and

(ii) a Coast Guard official who shall be the Federal Maritime Security Coordinator for each such area.

(H) A risk-based system for evaluating the potential for violations of security zones designated by the Secretary on the waters subject to the jurisdiction of the United States.

(I) A recognition of certified systems of intermodal transportation.

(J) A plan for ensuring that the flow of cargo through United States ports is reestablished as efficiently and quickly as possible after a transportation security incident.

(3) The Secretary shall, as the Secretary considers advisable, revise or otherwise amend the National Maritime Transportation Security Plan.

(4) Actions by Federal agencies to deter and minimize damage from a transportation security incident shall, to the greatest extent possible, be in accordance with the National Maritime Transportation Security Plan.

(5) The Secretary shall inform vessel and facility owners or operators of the provisions in the National Transportation Security Plan that the Secretary considers necessary for security purposes.

(b) AREA MARITIME TRANSPORTATION SECURITY PLANS.—(1) The Federal Maritime Security Coordinator designated under subsection (a)(2)(G) for an area shall—

(A) submit to the Secretary an Area Maritime Transportation Security Plan for the area; and

(B) solicit advice from the Area Security Advisory Committee required under this chapter, for the area to assure preplanning of joint deterrence efforts, including appropriate procedures for deterrence of a transportation security incident.

(2) The Area Maritime Transportation Security Plan for an area shall—

(A) when implemented in conjunction with the National Maritime Transportation Security Plan, be adequate to deter a transportation security incident in or near the area to the maximum extent practicable;

(B) describe the area and infrastructure covered by the plan, including the areas of population or special economic, environmental, or national security importance that might be damaged by a transportation security incident;

(C) describe in detail how the plan is integrated with other Area Maritime Transportation Security Plans, and with facility security plans and vessel security plans under this section;

(D) include consultation and coordination with the Department of Defense on matters relating to Department of Defense facilities and vessels;

(E) *establish regional response and recovery protocols to prepare for, respond to, mitigate against, and recover from a transportation security incident consistent with section 202 of the Security and Accountability for Every Port Act of 2006 (6 U.S.C. 942) and section 70103(a) of title 46, United States Code;*

[(E)] (F) include any other information the Secretary requires;

[(F)] (G) include a salvage response plan—

(i) to identify salvage equipment capable of restoring operational trade capacity; and

(ii) to ensure that the waterways are cleared and the flow of commerce through United States ports is reestablished as efficiently and quickly as possible after a maritime transportation security incident; and

[(G)] (H) be updated at least every 5 years by the Federal Maritime Security Coordinator.

(3) The Secretary shall—

(A) review and approve Area Maritime Transportation Security Plans under this subsection; and

(B) periodically review previously approved Area Maritime Transportation Security Plans.

(4) In security zones designated by the Secretary in each Area Maritime Transportation Security Plan, the Secretary shall consider—

(A) the use of public/private partnerships to enforce security within the security zones, shoreside protection alternatives, and the environmental, public safety, and relative effectiveness of such alternatives; and

(B) technological means of enhancing the security zones of port, territorial waters, and waterways of the United States.

(c) VESSEL AND FACILITY SECURITY PLANS.—(1) Within 6 months after the prescription of interim final regulations on vessel and facility security plans, an owner or operator of a vessel or facility described in paragraph (2) shall prepare and submit to the Secretary a security plan for the vessel or facility, for deterring a transportation security incident to the maximum extent practicable.

(2) The vessels and facilities referred to in paragraph (1)—

(A) except as provided in subparagraph (B), are vessels and facilities that the Secretary believes may be involved in a transportation security incident; and

(B) do not include any vessel or facility owned or operated by the Department of Defense.

(3) A security plan required under this subsection shall—

(A) be consistent with the requirements of the National Maritime Transportation Security Plan and Area Maritime Transportation Security Plans;

(B) identify the qualified individual having full authority to implement security actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment pursuant to subparagraph (C);

(C) include provisions for—

(i) establishing and maintaining physical security, passenger and cargo security, and personnel security;

(ii) establishing and controlling access to secure areas of the vessel or facility, including access by persons engaged in the surface transportation of intermodal containers in or out of a port facility;

(iii) procedural security policies;

(iv) communications systems; and

- (v) other security systems;
 - (D) identify, and ensure by contract or other means approved by the Secretary, the availability of security measures necessary to deter to the maximum extent practicable a transportation security incident or a substantial threat of such a security incident;
 - (E) describe the training, periodic unannounced drills, and security actions of persons on the vessel or at the facility, to be carried out under the plan to deter to the maximum extent practicable a transportation security incident, or a substantial threat of such a security incident;
 - (F) provide a strategy and timeline for conducting training and periodic unannounced drills;
 - (G) be updated at least every 5 years;
 - (H) be resubmitted for approval of each change to the vessel or facility that may substantially affect the security of the vessel or facility; and
 - (I) in the case of a security plan for a facility, be resubmitted for approval of each change in the ownership or operator of the facility that may substantially affect the security of the facility.
- (4) The Secretary shall—
- (A) promptly review each such plan;
 - (B) require amendments to any plan that does not meet the requirements of this subsection;
 - (C) approve any plan that meets the requirements of this subsection; and
 - (D) subject to the availability of appropriations, verify the effectiveness of each such facility security plan periodically, but not less than twice annually, at least 1 of which shall be an inspection of the facility that is conducted without notice to the facility.
- (5) A vessel or facility for which a plan is required to be submitted under this subsection may not operate after the end of the 12-month period beginning on the date of the prescription of interim final regulations on vessel and facility security plans, unless—
- (A) the plan has been approved by the Secretary; and
 - (B) the vessel or facility is operating in compliance with the plan.
- (6) Notwithstanding paragraph (5), the Secretary may authorize a vessel or facility to operate without a security plan approved under this subsection, until not later than 1 year after the date of the submission to the Secretary of a plan for the vessel or facility, if the owner or operator of the vessel or facility certifies that the owner or operator has ensured by contract or other means approved by the Secretary to deter to the maximum extent practicable a transportation security incident or a substantial threat of such a security incident.
- (7) The Secretary shall require each owner or operator of a vessel or facility located within or adjacent to waters subject to the jurisdiction of the United States to implement any necessary interim security measures, including cargo security programs, to deter to the maximum extent practicable a transportation security incident until the security plan for that vessel or facility operator is approved.

(8)(A) The Secretary shall require that the qualified individual having full authority to implement security actions for a facility described in paragraph (2) shall be a citizen of the United States.

(B) The Secretary may waive the requirement of subparagraph (A) with respect to an individual if the Secretary determines that it is appropriate to do so based on a complete background check of the individual and a review of all terrorist watch lists to ensure that the individual is not identified on any such terrorist watch list.

(d) NONDISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, information developed under this chapter is not required to be disclosed to the public, including—

(1) facility security plans, vessel security plans, and port vulnerability assessments; and

(2) other information related to security plans, procedures, or programs for vessels or facilities authorized under this chapter.

§ 70107A. Interagency operational centers for port security

(a) IN GENERAL.—The Secretary shall establish interagency operational centers for port security at all high-priority ports not later than 3 years after the date of the enactment of the SAFE Port Act.

(b) CHARACTERISTICS.—The interagency operational centers established under this section shall—

(1) utilize, as appropriate, the compositional and operational characteristics of centers, including—

(A) the pilot project interagency operational centers for port security in Miami, Florida; Norfolk/Hampton Roads, Virginia; Charleston, South Carolina; and San Diego, California; and

(B) the virtual operation center of the Port of New York and New Jersey;

(2) be organized to fit the security needs, requirements, and resources of the individual port area at which each is operating;

(3) in addition to the Coast Guard, provide, as the Secretary determines appropriate, for participation by representatives of the United States Customs and Border Protection, the United States Immigration and Customs Enforcement, the Transportation Security Administration, the Department of Justice, the Department of Defense, and other Federal agencies, State and local law enforcement or port security personnel, members of the Area Maritime Security Committee, and other public and private sector stakeholders adversely affected by a transportation security incident or transportation disruption; and

(4) be incorporated in the implementation and administration of—

(A) maritime transportation security plans developed under section 70103;

(B) maritime intelligence activities under section 70113 and information sharing activities consistent with section 1016 of the National Security Intelligence Reform Act of 2004 (6 U.S.C. 485) and the Homeland Security Information Sharing Act (6 U.S.C. 481 et seq.);

(C) short- and long-range vessel tracking under sections 70114 and 70115;

- (D) protocols under section 201(b)(10) of the SAFE Port Act;
- (E) the transportation security incident response plans required by section 70104; and
- (F) other activities, as determined by the Secretary.

(c) SECURITY CLEARANCES.—The Secretary shall sponsor and expedite individuals participating in interagency operational centers in gaining or maintaining their security clearances. Through the Captain of the Port, the Secretary may identify key individuals who should participate. The port or other entities may appeal to the Captain of the Port for sponsorship.

(d) SECURITY INCIDENTS.—during a transportation security incident on or adjacent to waters subject to the jurisdiction of the United States, the Coast Guard Captain of the Port designated by the Commandant of the Coast Guard in a maritime security command center described in subsection (a) shall act as the incident commander, unless otherwise directed by the President.

(e) DEPLOYMENT OF INTEROPERABLE COMMUNICATIONS EQUIPMENT AT INTERAGENCY OPERATIONAL CENTERS.—

(1) IN GENERAL.—*The Secretary shall ensure that interoperable communications technology is deployed at all interagency operational centers established under subsection (a).*

(2) CONSIDERATIONS.—*In carrying out paragraph (1), the Secretary shall consider the continuing technological evolution of communications technologies and devices, with its implicit risk of obsolescence, and shall ensure, to the maximum extent feasible, that a substantial part of the technology deployed involves prenegotiated contracts and other arrangements for rapid deployment of equipment, supplies, and systems rather than the warehousing or storage of equipment and supplies currently available at the time the technology is deployed.*

(3) REQUIREMENTS AND CHARACTERISTICS.—*The interoperable communications technology deployed under paragraph (1) shall—*

(A) be capable of re-establishing communications when existing infrastructure is damaged or destroyed in an emergency or a major disaster;

(B) include appropriate current, widely-used equipment, such as Land Mobile Radio Systems, cellular telephones and satellite equipment, Cells-On-Wheels, Cells-On-Light-Trucks, or other self-contained mobile cell sites that can be towed, backup batteries, generators, fuel, and computers;

(C) include contracts (including prenegotiated contracts) for rapid delivery of the most current technology available from commercial sources;

(D) include arrangements for training to ensure that personnel are familiar with the operation of the equipment and devices to be delivered pursuant to such contracts; and

(E) be utilized as appropriate during live area exercises conducted by the United States Coast Guard.

(4) ADDITIONAL CHARACTERISTICS.—*Portions of the communications technology deployed under paragraph (1) may be virtual and may include items donated on an in-kind contribution basis.*

(5) *RULE OF CONSTRUCTION.*—Nothing in this subsection shall be construed or interpreted to preclude the use of funds under this section by the Secretary for interim or long-term Internet Protocol-based interoperable solutions, notwithstanding compliance with the Project 25 standard.

[(e)] (f) *RULE OF CONSTRUCTION.*—Nothing in this section shall be construed to affect the normal command and control procedures for operational entities in the Department, unless so directed by the Secretary.

[(f)] (g) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated \$60,000,000 for each of the fiscal years 2007 through 2012 to carry out this section.

§ 70109A. International committee for the safe and secure transportation of especially hazardous cargo

(a) *IN GENERAL.*—The Secretary, in consultation with the Secretary of State and other appropriate entities, shall, in a manner consistent with international treaties, conventions, and agreements to which the United States is a party, establish a committee within the International Maritime Organization that includes representatives of United States trading partners that supply tank, bulk, or break-bulk vessel shipments of especially hazardous cargo to the United States.

(b) *SAFE AND SECURE LOADING, UNLOADING, AND TRANSPORTATION OF ESPECIALLY HAZARDOUS CARGOES.*—In carrying out this section, the Secretary, in cooperation with the International Maritime Organization and in consultation with the International Standards Organization and shipping industry stakeholders, shall develop protocols, procedures, standards, and requirements for receiving, handling, loading, unloading, vessel crewing, and transportation of especially hazardous cargo to promote the safe and secure operation of ports, facilities, and vessels that transport especially hazardous cargo to the United States.

(c) *DEADLINES.*—The Secretary shall—

(1) initiate the development of the committee within 180 days after the date of enactment of the Maritime Hazardous Cargo Security Act; and

(2) endeavor to have the protocols, procedures, standards, and requirements developed by the committee take effect within 3 years after the date of enactment of that Act.

(d) *REPORTS.*—The Secretary shall report annually to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Homeland Security on the development, implementation, and administration of the protocols, procedures, standards, and requirements developed by the committee established under subsection (a).

* * * * *

§ 70110. Actions and assistance for foreign ports or facilities and United States territories

(a) *IN GENERAL.*—If the Secretary finds that a foreign port or facility does not maintain effective antiterrorism measures, the Secretary—

(1) may prescribe conditions of entry into the United States for any vessel arriving from that port *or facility*, or any vessel carrying cargo or passengers originating from or transshipped through that port *or facility*;

(2) may deny entry into the United States to any vessel that does not meet such conditions; and

(3) shall provide public notice for passengers of the ineffective antiterrorism measures.

(b) EFFECTIVE DATE FOR SANCTIONS.—Any action taken by the Secretary under subsection (a) for a particular port *or facility* shall take effect—

(1) 90 days after the government of the foreign country with jurisdiction over or control of that port *or facility* is notified under section 70109 unless the Secretary finds that the government has brought the antiterrorism measures at the port *or facility* up to the security level the Secretary used in making an assessment under section 70108 before the end of that 90-day period; or

(2) immediately upon the finding of the Secretary under subsection (a) if the Secretary finds, after consulting with the Secretary of State, that a condition exists that threatens the safety or security of passengers, vessels, or crew traveling to or from the port *or facility*.

(c) STATE DEPARTMENT TO BE NOTIFIED.—The Secretary immediately shall notify the Secretary of State of a finding that a port *or facility* does not maintain effective antiterrorism measures.

(d) ACTION CANCELED.—An action required under this section is no longer required if the Secretary decides that effective antiterrorism measures are maintained at the port *or facility*.

(e) ASSISTANCE FOR FOREIGN **[PORTS]** *or facility* AND UNITED STATES TERRITORIES.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Transportation, the Secretary of State, and the Secretary of Energy, shall identify assistance programs that could facilitate implementation of port *or facility* security antiterrorism measures in foreign countries and territories of the United States. **[The Secretary shall establish a program to utilize the programs that are capable of implementing port security antiterrorism measures at ports in foreign countries and territories of the United States that the Secretary finds to lack effective antiterrorism measures.]** *The Secretary shall establish a strategic plan to utilize those assistance programs to assist ports and facilities that are found by the Secretary under subsection (a) not to maintain effective antiterrorism measures in the implementation of port or facility security antiterrorism measures.*

(2) CARIBBEAN BASIN.—The Secretary, in coordination with the Secretary of State and in consultation with the Organization of American States and the Commandant of the Coast Guard, shall place particular emphasis on utilizing programs to facilitate the implementation of port *or facility* security antiterrorism measures at the ports located in the Caribbean Basin, as such ports pose unique security and safety threats to the United States due to—

- (A) the strategic location of such ports between South America and the United States;
 - (B) the relative openness of such ports; and
 - (C) the significant number of shipments of narcotics to the United States that are moved through such ports.
- (f) *COAST GUARD ASSISTANCE PROGRAM.*—
- (1) *IN GENERAL.*—*The Secretary may lend, lease, donate, or otherwise provide equipment, and provide technical training and support, to the owner or operator of a foreign port or facility—*
 - (A) *to assist in bringing the port or facility into compliance with applicable International Ship and Port Facility Code standards;*
 - (B) *to assist the port or facility in meeting standards established under section 70109A of this chapter; and*
 - (C) *to assist the port or facility in exceeding the standards described in subparagraph (A) and (B).*
 - (2) *CONDITIONS.*—*The Secretary—*
 - (A) *shall provide such assistance based upon an assessment of the risks to the security of the United States and the inability of the owner or operator of the port or facility otherwise to bring the port or facility into compliance with those standards and to maintain compliance with them;*
 - (B) *may not provide such assistance unless the facility or port has been subjected to a comprehensive port security assessment by the Coast Guard or a third party entity certified by the Secretary under section 70110A(b) to validate foreign port or facility compliance with International Ship and Port Facility Code standards; and*
 - (C) *may only lend, lease, or otherwise provide equipment that the Secretary has first determined is not required by the Coast Guard for the performance of its missions.*

§ 70110A. Port safety and security validations

(a) *IN GENERAL.*—*The Secretary, in consultation with the Secretary of State, shall, in a manner consistent with international treaties, conventions, and agreements to which the United States is a party, develop and implement a voluntary program under which foreign ports and facilities can certify their compliance with applicable International Ship and Port Facility Code standards.*

(b) *THIRD-PARTY VALIDATION.*—

(1) *IN GENERAL.*—*In carrying out this section, the Secretary, in cooperation with the International Maritime Organization and the International Standards Organization, shall develop and implement a program under which independent, third-party entities are certified to validate a foreign port's or facility's compliance under the program developed under subsection (a).*

(2) *PROGRAM COMPONENTS.*—*The international program shall include—*

- (A) *international inspection protocols and procedures;*
- (B) *minimum validation standards to ensure a port or facility meets the applicable International Ship and Port Facility Code standards;*

(C) recognition for foreign ports or facilities that exceed the minimum standards;

(D) uniform performance metrics by which inspection validations are to be conducted;

(E) a process for notifying a port or facility, and its host nation, of areas of concern about the port's or facility's failure to comply with International Ship and Port Facility Code standards;

(F) provisional or probationary validations;

(G) conditions under which routine monitoring is to occur if a port or facility receives a provisional or probationary validation;

(H) a process by which failed validations can be appealed; and

(I) an appropriate cycle for re-inspection and validation.

(c) **CERTIFICATION OF THIRD PARTY ENTITIES.**—The Secretary may not certify a third party entity to validate ports or facilities under subsection (b) unless—

(1) the entity demonstrates to the satisfaction of the Secretary the ability to perform validations in accordance with the standards, protocols, procedures, and requirements established by the program implemented under subsection (a); and

(2) the entity has no beneficial interest in or any direct control over the port and facilities being inspected and validated.

(d) **MONITORING.**—The Secretary shall regularly monitor and audit the operations of each third party entity conducting validations under this section to ensure that it is meeting the minimum standards, operating protocols, procedures, and requirements established by international agreement.

(e) **REVOCATION.**—The Secretary shall revoke the certification of any entity determined by the Secretary not to meet the minimum standards, operating protocol, procedures, and requirements established by international agreement for third party entity validations.

(f) **PROTECTION OF SECURITY AND PROPRIETARY INFORMATION.**—In carrying out this section, the Secretary shall take appropriate actions to protect from disclosure information that—

(1) is security sensitive, proprietary, or business sensitive; or

(2) is otherwise not appropriately in the public domain.

(g) **DEADLINES.**—The Secretary shall—

(1) initiate procedures to carry out this section within 180 days after the date of enactment of the Maritime Hazardous Cargo Security Act; and

(2) develop standards under subsection (b) for third party validation within 2 years after the date of enactment of that Act.

(h) **REPORTS.**—The Secretary shall report annually to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Homeland Security on activities conducted pursuant to this section.

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§ 70122. Regulations

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

CHAPTER 707—MARITIME LAW ENFORCEMENT

Sec.

70701. *Offense.*

70702. *Attempt or conspiracy.*

70703. *Affirmative defenses.*

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70710. *Definitions.*

§ 70701. Offense

It shall be unlawful for any person on board a covered vessel to transport or facilitate the transportation, harboring, or concealment of an alien on board such vessel knowing or having reason to believe that the alien is attempting to unlawfully enter the United States.

§ 70702. Attempt or conspiracy

Any person on board a covered vessel who attempts or conspires to commit a violation of section 70701 shall be subject to the same penalties as those prescribed for the violation, the commission of which was the object of the attempt or conspiracy.

§ 70703. Affirmative defenses

It is an affirmative defense to a prosecution under this section, which the defendant must prove by a preponderance of the evidence, that—

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

(B) the entry into the United States was a necessary response to an imminent threat of death or serious bodily injury to the alien;

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

(3) the defendant complied with all orders given by law enforcement officials of the United States.

§ 70704. Penalties

(a) IN GENERAL.—Any person who commits a violation of this chapter shall be fined or imprisoned, or both, in accordance with subsection (b) and (c) of this section. For purposes of subsection (b), each individual on board a vessel with respect to whom the violation occurs shall be treated as a separate violation.

(b) FINES.—Any person who commits a violation of this chapter shall be fined not more than \$100,000, except that—

(1) in any case in which the violation causes serious bodily injury to any person, regardless of where the injury occurs, the person shall be fined not more than \$500,000; and

(2) in any case where the violation causes or results in the death of any person regardless of where the death occurs, the person shall be fined not more than \$1,000,000, or both.

(c) *IMPRISONMENT.*—Any person who commits a violation of this chapter shall be imprisoned for not less than 3 nor more than 20 years, except that—

(1) *in any case in which the violation causes serious bodily injury to any person, regardless of where the injury occurs, the person shall be imprisoned for not less than 7 nor more than 30 years; and*

(2) *in any case where the violation causes or results in the death of any person regardless of where the death occurs, the person shall be imprisoned for not less than 10 years nor more than life.*

§ 70705. Criminal forfeiture

The court, at the time of sentencing a person convicted of an offense under this chapter, shall order forfeited to the United States any vessel used in the offense in the same manner and to the same extent as if it were a vessel used in an offense under section 274 of the Immigration and Nationality Act (8 U.S.C. 1324).

§ 70706. Civil forfeiture

A vessel that has been used in the commission of a violation of this chapter shall be seized and subject to forfeiture in the same manner and to the same extent as if it were used in the commission of a violation of section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)).

§ 70707. Extraterritorial jurisdiction

There is extraterritorial jurisdiction of an offense under this chapter.

§ 70708. Claim of failure to comply with international law; jurisdiction of court

A claim of failure to comply with international law in the enforcement of this chapter may be invoked as a basis for a defense solely by a foreign nation. A failure to comply with international law shall not divest a court of jurisdiction or otherwise constitute a defense to any proceeding under this chapter.

§ 70709. Federal activities

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

§ 70710. Definitions

In this chapter:

(1) *ALIEN.*—The term “alien” has the meaning given that term in section 70105(f).

(2) *COVERED VESSEL.*—The term “covered vessel” means a vessel of the United States, or a vessel subject to the jurisdiction of the United States, that is less than 300 gross tons (or an alternate tonnage prescribed by the Secretary under section 14104 of this title) as measured under section 14502 of this title.

(3) *SERIOUS BODILY INJURY.*—The term “serious bodily injury” has the meaning given that term in section 1365 of title 18, United States Code.

(4) *UNITED STATES.*—*The term “United States” has the meaning given that term in section 114.*

(5) *VESSEL OF THE UNITED STATES.*—*The term “vessel of the United States” has the meaning given that term in section 70502.*

(6) *VESSEL SUBJECT TO THE JURISDICTION OF THE UNITED STATES.*—*The term “vessel subject to the jurisdiction of the United States” has the meaning given that term in section 70502.*

