

MARITIME TECHNICAL CORRECTIONS ACT OF 2018

NOVEMBER 13, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 5326]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 5326) to amend titles 14 and 46, United States Code, to make technical corrections with respect to Coast Guard and shipping authorities, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Maritime Technical Corrections Act of 2018”.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—COAST GUARD

Sec. 101. Commandant defined.
Sec. 102. Training course on workings of Congress.
Sec. 103. Miscellaneous.
Sec. 104. Department of Defense consultation.
Sec. 105. Repeal.
Sec. 106. Mission need statement.
Sec. 107. Continuation on active duty.
Sec. 108. System acquisition authorization.
Sec. 109. Inventory of real property.

TITLE II—MARITIME TRANSPORTATION

Sec. 201. Definitions.
Sec. 202. Authority to exempt vessels.
Sec. 203. Passenger vessels.
Sec. 204. Tank vessels.
Sec. 205. Grounds for denial or revocation.
Sec. 206. Miscellaneous corrections to title 46, U.S.C.
Sec. 207. Miscellaneous corrections to Oil Pollution Act of 1990.
Sec. 208. Miscellaneous corrections.

TITLE I—COAST GUARD**SEC. 101. COMMANDANT DEFINED.**

(a) IN GENERAL.—Chapter 1 of title 14, United States Code, is amended by adding at the end the following:

“§ 5. Commandant defined

“In this title, the term ‘Commandant’ means the Commandant of the Coast Guard.”

(b) CLERICAL AMENDMENT.—The analysis for chapter 1 of title 14, United States Code, is amended by adding at the end the following:

“5. Commandant defined.”

(c) CONFORMING AMENDMENTS.—Title 14, United States Code, is amended—

- (1) in section 58(a) by striking “Commandant of the Coast Guard” and inserting “Commandant”;
- (2) in section 101 by striking “Commandant of the Coast Guard” and inserting “Commandant”;
- (3) in section 693 by striking “Commandant of the Coast Guard” and inserting “Commandant”;
- (4) in section 672a(a) by striking “Commandant of the Coast Guard” and inserting “Commandant”;
- (5) in section 678(a) by striking “Commandant of the Coast Guard” and inserting “Commandant”;
- (6) in section 561(a) by striking “Commandant of the Coast Guard” and inserting “Commandant”;
- (7) in section 577(a) by striking “Commandant of the Coast Guard” and inserting “Commandant”;
- (8) in section 581—
 - (A) by striking paragraph (4); and
 - (B) by redesignating paragraphs (5) through (12) as paragraphs (4) through (11), respectively;
- (9) in section 200(a) by striking “Commandant of the Coast Guard” and inserting “Commandant”;
- (10) in section 196(b)(1) by striking “Commandant of the Coast Guard” and inserting “Commandant”;
- (11) in section 199 by striking “Commandant of the Coast Guard” and inserting “Commandant”;
- (12) in section 429(a)(1) by striking “Commandant of the Coast Guard” and inserting “Commandant”;
- (13) in section 423(a)(2) by striking “Commandant of the Coast Guard” and inserting “Commandant”;
- (14) in section 2702(5) by striking “Commandant of the Coast Guard” and inserting “Commandant”;

(15) in section 2902(a) by striking “Commandant of the Coast Guard” and inserting “Commandant”; and

(16) in section 2903(f)(1) by striking “Commandant of the Coast Guard” and inserting “Commandant”.

SEC. 102. TRAINING COURSE ON WORKINGS OF CONGRESS.

Section 60(d) of title 14, United States Code, is amended to read as follows:

“(d) COMPLETION OF REQUIRED TRAINING.—A Coast Guard flag officer who is newly appointed or assigned to a billet in the National Capital Region, and a Coast Guard Senior Executive Service employee who is newly employed in the National Capital Region, shall complete a training course that meets the requirements of this section not later than 60 days after reporting for duty.”.

SEC. 103. MISCELLANEOUS.

(a) SECRETARY; GENERAL POWERS.—Section 92 of title 14, United States Code, is amended by redesignating subsections (f) through (i) as subsections (e) through (h), respectively.

(b) COMMANDANT; GENERAL POWERS.—Section 93(a)(21) of title 14, United States Code, is amended by striking “section 30305(a)” and inserting “section 30305(b)(7)”.

(c) ENLISTED MEMBERS.—

(1) DEPARTMENT OF THE ARMY AND DEPARTMENT OF THE AIR FORCE.—Section 144(b) of title 14, United States Code, is amended by striking “enlisted men” each place it appears and inserting “enlisted members”.

(2) NAVY DEPARTMENT.—Section 145(b) of title 14, United States Code, is amended by striking “enlisted men” each place it appears and inserting “enlisted members”.

(3) PURCHASE OF COMMISSARY AND QUARTERMASTER SUPPLIES.—Section 4 of the Act of May 22, 1926 (44 Stat. 626, chapter 371; 33 U.S.C. 754a), is amended by striking “enlisted men” and inserting “enlisted members”.

(d) ARCTIC MARITIME TRANSPORTATION.—Section 90(f) of title 14, United States Code, is amended by striking the question mark.

(e) LONG-TERM LEASE AUTHORITY FOR LIGHTHOUSE PROPERTY.—Section 672a(a) of title 14, United States Code, as amended by this Act, is further amended by striking “Section 321 of chapter 314 of the Act of June 30, 1932 (40 U.S.C. 303b)” and inserting “Section 1302 of title 40”.

(f) REQUIRED CONTRACT TERMS.—Section 565 of title 14, United States Code, is amended—

(1) in subsection (a) by striking “awarded or issued by the Coast Guard after the date of enactment of the Coast Guard Authorization Act of 2010”; and

(2) in subsection (b)(1) by striking “after the date of enactment of the Coast Guard Authorization Act of 2010”.

(g) ACQUISITION PROGRAM BASELINE BREACH.—Section 575(c) of title 14, United States Code, is amended by striking “certification, with a supporting explanation, that” and inserting “determination, with a supporting explanation, of whether”.

(h) ENLISTMENTS; TERM, GRADE.—Section 351(a) of title 14, United States Code, is amended by inserting “the duration of their” before “minority”.

(i) MEMBERS OF THE AUXILIARY; STATUS.—Section 823a(b)(9) of title 14, United States Code, is amended by striking “On or after January 1, 2001, section” and inserting “Section”.

(j) USE OF MEMBER’S FACILITIES.—Section 826(b) of title 14, United States Code, is amended by striking “section 154 of title 23, United States Code” and inserting “section 30102 of title 49”.

(k) AVAILABILITY OF APPROPRIATIONS.—Section 830(b) of title 14, United States Code, is amended by striking “1954” and inserting “1986”.

SEC. 104. DEPARTMENT OF DEFENSE CONSULTATION.

Section 566 of title 14, United States Code, is amended—

(1) in subsection (b) by striking “enter into” and inserting “maintain”; and

(2) by striking subsection (d).

SEC. 105. REPEAL.

Section 568 of title 14, United States Code, and the item relating to that section in the analysis for chapter 15 of that title, are repealed.

SEC. 106. MISSION NEED STATEMENT.

Section 569 of title 14, United States Code, is—

(1) amended in subsection (a)—

(A) by striking “for fiscal year 2016” and inserting “for fiscal year 2019”; and

and

(B) by striking “, on the date on which the President submits to Congress a budget for fiscal year 2019 under such section,”.

SEC. 107. CONTINUATION ON ACTIVE DUTY.

Section 290(a) of title 14, United States Code, is amended by striking “Officers, other than the Commandant, serving” and inserting “Officers serving”.

SEC. 108. SYSTEM ACQUISITION AUTHORIZATION.

(a) REQUIREMENT FOR PRIOR AUTHORIZATION OF APPROPRIATIONS.—Section 2701(2) of title 14, United States Code, is amended by striking “and aircraft” and inserting “aircraft, and systems”.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 2702(2) of title 14, United States Code, is amended by striking “and aircraft” and inserting “aircraft, and systems”.

SEC. 109. INVENTORY OF REAL PROPERTY.

Section 679 of title 14, United States Code, is amended—

(1) in subsection (a) by striking “Not later than September 30, 2015, the Commandant shall establish” and inserting “The Commandant shall maintain”; and

(2) by striking subsection (b) and inserting the following:

“(b) UPDATES.—The Commandant shall update information on each unit of real property included in the inventory required under subsection (a) not later than 30 days after any change relating to the control of such property.”.

TITLE II—MARITIME TRANSPORTATION

SEC. 201. DEFINITIONS.

(a) IN GENERAL.—

(1) Section 2101 of title 46, United States Code, is amended—

(A) by inserting after paragraph (4) the following:

“() ‘Commandant’ means the Commandant of the Coast Guard.”;

(B) by striking the semicolon at the end of paragraph (14) and inserting a period; and

(C) by redesignating the paragraphs of such section in order as paragraphs (1) through (54), respectively.

(2) Section 3701 of title 46, United States Code, is amended by redesignating paragraphs (3) and (4) as paragraphs (2) and (3) respectively.

(b) CONFORMING AMENDMENTS.—

(1) Section 114(o)(3) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1383a(o)(3)) is amended—

(A) by striking “section 2101(11a)” and inserting “section 2101(12)”; and

(B) by striking “section 2101(11b)” and inserting “section 2101(13)”.

(2) Section 3(3) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(3)), is amended by striking “section 2101(21a)” and inserting “section 2101(30)”.

(3) Section 1992(d)(7) of title 18, United States Code, is amended by striking “section 2101(22)” and inserting “section 2101(31)”.

(4) Section 12(c) of the Fishermen’s Protective Act of 1967 (22 U.S.C. 1980b(c)) is amended by striking “section 2101(11a)” and inserting “section 2101(12)”.

(5) Section 311(a)(26)(D) of the Federal Water Pollution Control Act (33 U.S.C. 1321(a)(26)(D)) is amended by striking “section 2101(17a)” and inserting “section 2101(23)”.

(6) Section 2113(3) of title 46, United States Code, is amended by striking “section 2101(42)(A)” and inserting “section 2101(51)(A)”.

(7) Section 2116(d)(1) of title 46, United States Code, is amended by striking “Coast Guard Commandant” and inserting “Commandant”.

(8) Section 3202(a)(1)(A) of title 46, United States Code, is amended by striking “section 2101(21)(A)” and inserting “section 2101(29)(A)”.

(9) Section 3507 of title 46, United States Code, is amended—

(A) in subsection (k)(1), by striking “section 2101(22)” and inserting “section 2101(31)”; and

(B) by striking subsection (l) and inserting the following:

“(l) DEFINITION.—In this section and section 3508, the term ‘owner’ means the owner, charterer, managing operator, master, or other individual in charge of a vessel.”.

(10) Section 4105 of title 46, United States Code, is amended—

(A) in subsection (b)(1), by striking “section 2101(42)” and inserting “section 2101(51)”; and

(B) in subsection (c), by striking “section 2101(42)(A)” and inserting “section 2101(51)(A)”.

(11) Section 6101(i)(4) of title 46, United States Code, is amended by striking “of the Coast Guard”.

(12) Section 7510(c)(1) of title 46, United States Code, is amended by striking “Commandant of the Coast Guard” and inserting “Commandant”.

(13) Section 7706(a) of title 46, United States Code, is amended by striking “of the Coast Guard”.

(14) Section 8108(a)(1) of title 46, United States Code, is amended by striking “of the Coast Guard”.

(15) Section 12119(a)(3) of title 46, United States Code, is amended by striking “section 2101(20)” and inserting “section 2101(26)”.

(16) Section 80302(d) of title 46, United States Code, is amended by striking “of the Coast Guard” the first place it appears.

(17) Section 1101 of title 49, United States Code, is amended by striking “Section 2101(17a)” and inserting “Section 2101(23)”.

SEC. 202. AUTHORITY TO EXEMPT VESSELS.

(a) IN GENERAL.—Section 2113 of title 46, United States Code, is amended—

(1) by adding “and” after the semicolon at the end of paragraph (3); and

(2) by striking paragraphs (4) and (5) and inserting the following:

“(4) maintain different structural fire protection, manning, operating, and equipment requirements for vessels that satisfied requirements set forth in the Passenger Vessel Safety Act of 1993 (Public Law 103–206) before June 21, 1994.”.

(b) CONFORMING AMENDMENTS.—Section 3306(i) of title 46, United States Code, is amended by striking “section 2113(5)” and inserting “section 2113(4)”.

SEC. 203. PASSENGER VESSELS.

(a) Section 3507 of title 46, United States Code, is amended—

(1) by striking subsection (a)(3);

(2) in subsection (e)(2), by striking “services confidential” and inserting “services as confidential”; and

(3) in subsection (i), by striking “Within 6 months after the date of enactment of the Cruise Vessel Security and Safety Act of 2010, the Secretary shall issue” and insert “The Secretary shall maintain”.

(b) Section 3508 of title 46, United States Code, is amended—

(1) in subsection (a), by striking “Within 1 year after the date of enactment of the Cruise Vessel Security and Safety Act of 2010, the” and inserting “The”, and by striking “develop” and inserting “maintain”;

(2) in subsection (c), by striking “Beginning 2 years after the standards are established under subsection (b), no” and inserting “No”;

(3) by striking subsection (d) and redesignating subsections (e) and (f) as subsections (d) and (e), respectively; and

(4) in subsection (e), as redesignated by paragraph (3), by striking “subsection (e)” each place it appears and inserting “subsection (d)”.

SEC. 204. TANK VESSELS.

(a) Section 3703a of title 46, United States Code, is amended—

(1) in subsection (b), by striking paragraph (3) and redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively;

(2) in subsection (c)(2)—

(A) by striking “that is delivered” and inserting “that was delivered”;

(B) by striking “that qualifies” and inserting “that qualified”; and

(C) by striking “after January 1, 2015,”;

(3) in subsection (c)(3)—

(A) by striking “that is delivered” and inserting “that was delivered”; and

(B) by striking “that qualifies” and inserting “that qualified”;

(4) by striking subsection (c)(3)(A) and inserting the following:

“(A) in the case of a vessel of at least 5,000 gross tons but less than 15,000 gross tons as measured under section 14502, or an alternate tonnage measured under section 14302 as prescribed by the Secretary under section 14104, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides;”;

(5) by striking subsection (c)(3)(B) and inserting the following:

“(B) in the case of a vessel of at least 15,000 gross tons but less than 30,000 gross tons as measured under section 14502, or an alternate tonnage measured under section 14302 as prescribed by the Secretary under section 14104, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides; and”;

(6) by striking subsection (c)(3)(C) and inserting the following:

“(C) in the case of a vessel of at least 30,000 gross tons as measured under section 14502, or an alternate tonnage measured under section 14302 as prescribed by the Secretary under section 14104, if the vessel is 23 years old or

older and has a single hull, or is 28 years old or older and has a double bottom or double sides.”; and

(7) in subsection (e)—

(A) in paragraph (1), by striking “and except as otherwise provided in paragraphs (2) and (3) of this subsection”; and

(B) by striking paragraph (2) and redesignating paragraph (3) as paragraph (2).

(b) Section 3705 of title 46, United States Code, is amended—

(1) in subsection (b)—

(A) by striking paragraph (2);

(B) by striking “(1)”; and

(C) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(2) in subsection (c), by striking “before January 2, 1986, or the date on which the tanker reaches 15 years of age, whichever is later”.

(c) Section 3706(d) of title 46, United States Code, is amended by striking “before January 2, 1986, or the date on which it reaches 15 years of age, whichever is later”.

(d) Section 1001(32)(A) of the Oil Pollution Act of 1990 (33 U.S.C. 2701(32)(A)) is amended by striking “(other than a vessel described in section 3703a(b)(3) of title 46, United States Code)”.

SEC. 205. GROUNDS FOR DENIAL OR REVOCATION.

(a) Section 7503 of title 46, United States Code, is amended to read as follows:

“§ 7503. Dangerous drugs as grounds for denial

“A license, certificate of registry, or merchant mariner’s document authorized to be issued under this part may be denied to an individual who—

“(1) within 10 years before applying for the license, certificate, or document, has been convicted of violating a dangerous drug law of the United States or of a State; or

“(2) when applying, has ever been a user of, or addicted to, a dangerous drug unless the individual provides satisfactory proof that the individual is cured.”.

(b) Section 7704 of title 46, United States Code, is amended by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

SEC. 206. MISCELLANEOUS CORRECTIONS TO TITLE 46, U.S.C.

(a) Section 2110 of title 46, United States Code, is amended by striking subsection (k).

(b) Section 2116(c) of title 46, United States Code, is amended by striking “Beginning with fiscal year 2011 and each fiscal year thereafter, the” and inserting “The”.

(c) Section 3302(g)(2) of title 46, United States Code, is amended by striking “After December 31, 1988, this” and inserting “This”.

(d) Section 6101(j) of title 46, United States Code, is amended by striking “, as soon as possible, and no later than January 1, 2005,”.

(e) Section 7505 of title 46, United States Code, is amended by striking “section 206(b)(7) of the National Driver Register Act of 1982 (23 U.S.C. 401 note)” and inserting “section 30305(b)(7) of title 49”.

(f) Section 7702(c)(1) of title 46, United States Code, is amended by striking “section 206(b)(4) of the National Driver Register Act of 1982 (23 U.S.C. 401 note)” and inserting “section 30305(b)(7) of title 49”.

(g) Section 8106(f) of title 46, United States Code, is amended by striking paragraph (3) and inserting the following:

“(3) CONTINUING VIOLATIONS.—The maximum amount of a civil penalty for a violation under this subsection shall be \$100,000.”.

(h) Section 8703 of title 46, United States Code, is amended by redesignating subsection (c) as subsection (b).

(i) Section 11113 of title 46, United States Code, is amended—

(1) in subsection (a)(4)(A) by striking “paragraph (2)” and inserting “paragraph (3)”; and

(2) in subsection (c)(2)(B)—

(A) by striking “section 2(9)(a)” and inserting “section 2(a)(9)(A)”; and

(B) by striking “33 U.S.C. 1901(9)(a)” and inserting “33 U.S.C. 1901(a)(9)(A)”.

(j) Section 12113(d)(2)(C)(iii) of title 46, United States Code, is amended by striking “118 Stat. 2887” and inserting “118 Stat. 2887)”.

(k) Section 13107(c)(2) of title 46, United States Code, is amended by striking “On and after October 1, 2016, no” and inserting “No”.

(l) Section 31322(a)(4)(B) of title 46, United States Code, is amended by striking “state” and inserting “State”.

(m) Section 52101(d) of title 46, United States Code, is amended by striking “(50 App. U.S.C. 459(a))” and inserting “(50 U.S.C. 3808(a))”.

(n) The analysis for chapter 531 of title 46, United States Code, is amended by striking the item relating to section 53109:

(o) Section 53106(a)(1) of title 46, United States Code, is amended by striking subparagraphs (A), (B), (C), and (D), and by redesignating subparagraphs (E), (F), and (G) as subparagraphs (A), (B), and (C), respectively.

(p) Section 53111 of title 46, United States Code, is amended by striking paragraphs (1) through (4), and by redesignating paragraphs (5), (6), and (7) as paragraphs (1), (2), and (3), respectively.

(q) Section 53501 of title 46, United States Code, is amended—

(1) in paragraph (5)(A)(iii), by striking “transportation trade trade or” and inserting “transportation trade or”;

(2) by redesignating paragraph (8) as paragraph (9);

(3) by striking the second paragraph (7) (relating to the definition of “United States foreign trade”); and

(4) by inserting after the first paragraph (7) the following:

“(8) UNITED STATES FOREIGN TRADE.—The term ‘United States foreign trade’ includes those areas in domestic trade in which a vessel built with a construction-differential subsidy is allowed to operate under the first sentence of section 506 of the Merchant Marine Act, 1936.”

(r) Section 54101(f) of title 46, United States Code, is amended by striking paragraph (2) and inserting the following:

“(2) MINIMUM STANDARDS FOR PAYMENT OR REIMBURSEMENT.—Each application submitted under paragraph (1) shall include a comprehensive description of—

“(A) the need for the project;

“(B) the methodology for implementing the project; and

“(C) any existing programs or arrangements that can be used to supplement or leverage assistance under the program.”

(s) Section 55305(d)(2)(D) of title 46, United States Code, is amended by striking “421(c)(1)” and inserting “1303(a)(1)”.

(t) The analysis for chapter 575 of title 46, United States Code, is amended in the item relating to section 57533 by adding a period at the end.

(u) Section 57532(d) of title 46, United States Code, is amended by striking “(50 App. U.S.C. 1291(a), (c), 1293(c), 1294)” and inserting “(50 U.S.C. 4701(a), (c), 4703(c), and 4704)”.

(v) Section 60303(c) of title 46, United States Code, is amended in by striking “Subsection (a) section does” and inserting “Subsection (a) does”.

SEC. 207. MISCELLANEOUS CORRECTIONS TO OIL POLLUTION ACT OF 1990.

(a) Section 2 of the Oil Pollution Act of 1990 (33 U.S.C. 2701 note) is amended by—

(1) inserting after the item relating to section 5007 the following:

“Sec. 5008. North Pacific Marine Research Institute.”

(2) striking the item relating to section 6003.

(b) Section 1003(d)(5) of the Oil Pollution Act of 1990 (33 U.S.C. 2703(d)(5)) is amended by inserting “section” before “1002(a)”.

(c) Section 1004(d)(2)(C) of the Oil Pollution Act of 1990 (33 U.S.C. 2704(d)(2)(C)) is amended by striking “under this subparagraph (A)” and inserting “under subparagraph (A)”.

(d) Section 4303 of the Oil Pollution Act of 1990 (33 U.S.C. 2716a) is amended—

(1) in subsection (a), by striking “subsection (c)(2)” and inserting “subsection (b)(2)”; and

(2) in subsection (b), by striking “this section 1016” and inserting “section 1016”.

(e) Section 5002(l)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2732(l)(2)) is amended by striking “General Accounting Office” and inserting “Government Accountability Office”.

SEC. 208. MISCELLANEOUS CORRECTIONS.

(a) Section 1 of the Act of June 15, 1917 (chapter 30; 50 U.S.C. 191), is amended by striking “the Secretary of the Treasury” and inserting “the Secretary of the department in which the Coast Guard is operating”.

(b) Section 5(b) of the Act entitled “An Act to regulate the construction of bridges over navigable waters”, approved March 23, 1906, popularly known as the Bridge Act of 1906 (chapter 1130; 33 U.S.C. 495(b)), is amended by striking “\$5,000 for a violation occurring in 2004; \$10,000 for a violation occurring in 2005; \$15,000 for a violation occurring in 2006; \$20,000 for a violation occurring in 2007; and”.

(c) Section 5(f) of the Act to Prevent Pollution from Ships (33 U.S.C. 1904(f)) is amended to read as follows:

“(f) SHIP CLEARANCE; REFUSAL OR REVOCATION.—If a ship is under a detention order under this section, the Secretary may refuse or revoke the clearance required by section 60105 of title 46, United States Code.”.

PURPOSE OF LEGISLATION

H.R. 5326 makes technical corrections to the U.S. Coast Guard and shipping authorities found under, respectively, titles 14 and 46 of the United States Code (U.S.C.).

BACKGROUND AND NEED FOR LEGISLATION

Title 14 U.S.C. was codified in 1949. In March, 2017, the Committee passed the Coast Guard Improvement and Reform Act of 2017 (H.R. 1726) to reorganize title 14 by transferring and renumbering existing provisions and co-locating similar authorities. H.R. 5326 makes additional technical corrections which will help make title 14 easier to understand. Title 46 was codified during the 108th Congress. H.R. 5326 strikes outdated text, re-designates sections, and modifies cross-references.

HEARINGS

The bill was not subject to a hearing by the Subcommittee on Coast Guard and Maritime Transportation principally because the legislation does not make any substantive policy changes to the underlying law.

LEGISLATIVE HISTORY AND CONSIDERATION

On March 19, 2018, H.R. 5326 was introduced by Congressman John Garamendi (D–CA) and cosponsored by Congressman Duncan Hunter (R–CA). The bill was referred solely to the Committee on Transportation and Infrastructure.

On April 12, 2018, the Committee on Transportation and Infrastructure met in open session to consider H.R. 5326. Congressman Garamendi offered an amendment to make a technical fix to section 207 of the bill. The Committee adopted the amendment by voice vote and ordered the bill, as amended, reported favorably to the House by voice vote with a quorum present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. No recorded votes were requested during consideration of H.R. 5326. The amendment offered by Congressman Garamendi was adopted by voice vote and the motion to order H.R. 5326, as amended, reported favorably to the House was agreed to by voice vote with a quorum present.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 5326 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 7, 2018.

Hon. BILL SHUSTER,
*Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5326, the Maritime Technical Corrections Act of 2018.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 5326—Maritime Technical Corrections Act of 2018

H.R. 5326 would make technical changes to, but not substantively alter, provisions of title 14 and title 46 of the United States Code, which govern the authority of the Coast Guard and other agencies involved in maritime transportation.

Using information from the Coast Guard, CBO estimates that enacting H.R. 5326 would have no significant effect on the federal budget. The bill would not impose any new requirements or duties on agencies involved with maritime transportation or shipping. As a result, CBO expects that any change in federal costs—which would be subject to appropriation—would be negligible.

Enacting H.R. 5326 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 5326 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 5326 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Megan Carroll. The estimate was reviewed by H.μSamuel Papenfuss, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to strike outdated text in the United States Code and make technical corrections. No provision in this legislation makes any substantive changes to the United States Code; all requirements and limitation in place before passage of this legislation will remain in effect after its enactment.

ADVISORY OF EARMARKS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives. No provision in the bill includes an earmark, limited tax benefit, or limited tariff benefit under clause 9(e), 9(f), or 9(g) of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 5326 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(i) of H. Res. 5, 115th Cong. (2017), the Committee finds that enacting H.R. 5326 does not direct the completion of a specific rule making within the meaning of section 551 of title 5, U.S.C.

FEDERAL MANDATE STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 5326 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No new advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY OF LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

TITLE I—COAST GUARD

Sec. 101. Commandant defined

Amends chapter 1 of title 14, U.S.C., to add a section with the definition of the Commandant as the “Commandant of the Coast Guard”. Throughout title 14, “Commandant of the Coast Guard” is replaced with “Commandant”.

Sec. 102. Training course on workings of congress

Amends section 60(d) of title 14, U.S.C., by striking an outdated training requirement and stating that a Coast Guard flag officer or Coast Guard Senior Executive Service employee working in the National Capital Region shall complete a training course on the workings of Congress no later than 60 days after reporting for duty.

Sec. 103. Miscellaneous

Amends section 92 of title 14, U.S.C., by re-designating subsections therein. Amends section 93(a)(21) of title 14, U.S.C., to correct a cross-reference to title 49, U.S.C. Amends sections 144(b) and 145(b) of title 14, U.S.C., and section 4 of the Act of May 22, 1926 (44 Stat. 626, chapter 371; 33 U.S.C. 754a), by replacing “enlisted men” with “enlisted members”. Amends section 90(f) of title 14, U.S.C., to strike a question mark in the middle of a sentence. Amends section 672a(a) of title 14, U.S.C., to update a cross-reference to title 40, U.S.C. Amends section 565 by striking outdated language. Amends section 575(c) of title 14, U.S.C., by clarifying a requirement for “determination” rather than “certification”. Amends section 351(a) by adding “the duration of” before “minority”. Amends section 823a(b)(9) of title 14, U.S.C., to remove outdated language. Amends section 826(b) of title 14, U.S.C., to update cross-references to title 49, U.S.C. Amends section 830(b) of title 14, U.S.C., by updating a reference to the Internal Revenue Code of 1986.

Sec. 104. Department of defense consultation

Amends section 566 of title 14, U.S.C., to change “enter into” to “maintain” the memorandum of understanding with the Navy for technical assistance. Amends Section 566 of title 14, U.S.C., to remove language for an already delivered one-time report on Coast Guard acquisitions.

Sec. 105. Repeal

Strikes section 568 of title 14, U.S.C., to remove guidance on excessive pass-through charges related to the long-defunct Deepwater acquisition program.

Sec. 106. Mission need statement

Amends section 569 of title 14, U.S.C., to appear after section 2904 and renumber this section as 2905. Amends subsection (a) in section 2904 of title 14, U.S.C., as so redesignated, to strike “,on the date on which the President submits to Congress a budget for fiscal year 2019 under such section,” and replaces “for fiscal year 2016” with “for fiscal year 2019”

Sec. 107. Continuation on active duty

Amends section 290(a) of title 14, U.S.C., to change “Officers, other than the Commandant, serving” to “Officers serving” in or above the grade of vice admiral are not subject to consideration for continuation under this subsection.

Sec. 108. System acquisition authorization

Amends section 2701(2) of title 14, U.S.C., to change “and aircraft” to “aircraft, and systems” for the requirement for prior authorization of appropriations. Amends section 2702(2) of title 14, U.S.C., to change “and aircraft” to “aircraft, and systems” for the appropriations.

Sec. 109. Inventory of real property.

Amends section 679(a) of title 14, U.S.C., to change “Not later than September 30, 2015, the Commandant shall establish” to “The Commandant shall maintain” the inventory of real property. Amends section 679(b) of title 14, U.S.C., to state that the Commandant shall update inventory of real property no later than 30 days after any change to control of such property.

TITLE II—MARITIME TRANSPORTATION

Sec. 201. Definitions

Amends section 2101 of title 46, U.S.C., to add the definition of the Commandant as the “Commandant of the Coast Guard”, re-designate existing definitions, and update all cross-references to the definitions in title 46 U.S.C. 2101 throughout the code.

Sec. 202. Authority to exempt vessels

Amends section 2113 of title 46, U.S.C., to strike subsections (4) and (5) and replace with a new subsection (4) to state that the Secretary may maintain different structural fire protection, manning, operating, and equipment requirements for vessels.

Sec. 203. Passenger vessels

Amends section 3507 of title 46, U.S.C., to strike subsection (a)(3) pertaining to an expired effective date, clarify subsection (e)(2) by changing “services confidential” to “services as confidential”, and, in subsection (i), replace “Within 6 months after the date of enactment of the Cruise Vessel Security and Safety Act of 2010, the Secretary shall issue” with “The Secretary shall maintain” for procedures related to passenger vessel security and safety requirements.

Amends section 3508 of title 46, U.S.C., to strike subsection (d) and removes outdated requirements in subsections (a), (c), and (e), as redesignated by the section.

Sec. 204. Tank vessels

Amends section 3703a, 3705 and 3706 of title 46, U.S.C., to remove outdated requirements. Amends section 1001(32)(A) of the Oil Pollution Act of 1990 (33 U.S.C. 2701(32)(a)) to remove an outdated cross-reference.

Sec. 205. Grounds for denial or revocation

Amend sections 7503a and 7704 of title 46, U.S.C., to renumber the subsections after striking previously repealed subsection (a) in each section.

Sec. 206. Miscellaneous corrections to Title 46, U.S.C.

Amends sections 2110, 2116(c), 3302(g)(2), 6101(j), 7505, 7702, 8106(f), 8703, 11113, 12113, 13107(c)(2), 31322, 52101(d), 53106(a)(1), 53111, 53501, 54101(f), 55305(d)(2)(D), chapter 575, 57532(d), and 60303(c) of title 46, U.S.C., to remove outdated requirements, re-designate subsections, and update cross-references.

Sec. 207. Miscellaneous corrections to Oil Pollution Act of 1990

Amends the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et. seq.*) to remove outdated requirements, re-designate subsections, and update cross-references.

Sec. 208. Miscellaneous corrections

Amends section 1 of the Act of June 15, 1917 (chapter 30; 50 U.S.C. 191) to replace the “Secretary of Transportation” with the “Secretary of the department in which the Coast Guard is operating.” Amends 5(b) of the Act entitled “An Act to regulate the construction of bridges over navigable waters”, approved March 23, 1906 (chapter 1130; 33 U.S.C. 495(b)) to remove outdated requirements. Amends section 5(f) of the Act to Prevent Pollution from Ships (33 U.S.C. 1904(f)) to remove outdated cross-references.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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 matter is printed in italic, existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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 matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 14, UNITED STATES CODE

* * * * *

PART I—REGULAR COAST GUARD

* * * * *

CHAPTER 1—ESTABLISHMENT AND DUTIES

Sec.

1. Establishment of Coast Guard.

* * * * *

5. *Commandant defined.*

* * * * *

§ 5. *Commandant defined*

In this title, the term “Commandant” means the Commandant of the Coast Guard.

* * * * *

CHAPTER 3—COMPOSITION AND ORGANIZATION

* * * * *

§ 58. Centers of expertise for Coast Guard prevention and response

(a) **ESTABLISHMENT.**—The [Commandant of the Coast Guard] *Commandant* may establish and operate one or more centers of expertise for prevention and response missions of the Coast Guard (in this section referred to as a “center”).

(b) **MISSIONS.**—Any center established under subsection (a) shall—

- (1) promote, facilitate, and conduct—
 - (A) education;
 - (B) training; and
 - (C) activities authorized under section 93(a)(4);
- (2) be a repository of information on operations, practices, and resources related to the mission for which the center was established; and
- (3) perform and support the mission for which the center was established.

(c) **JOINT OPERATION WITH EDUCATIONAL INSTITUTION AUTHORIZED.**—The Commandant may enter into an agreement with an appropriate official of an institution of higher education to—

- (1) provide for joint operation of a center; and
- (2) provide necessary administrative services for a center, including administration and allocation of funds.

(d) **ACCEPTANCE OF DONATIONS.**—

- (1) Except as provided in paragraph (2), the Commandant may accept, on behalf of a center, donations to be used to defray the costs of the center or to enhance the operation of the center. Those donations may be accepted from any State or local government, any foreign government, any foundation or other charitable organization (including any that is organized or operates under the laws of a foreign country), or any individual.

(2) The Commandant may not accept a donation under paragraph (1) if the acceptance of the donation would compromise or appear to compromise—

(A) the ability of the Coast Guard or the department in which the Coast Guard is operating, any employee of the Coast Guard or the department, or any member of the Armed Forces to carry out any responsibility or duty in a fair and objective manner; or

(B) the integrity of any program of the Coast Guard, the department in which the Coast Guard is operating, or of any person involved in such a program.

(3) The Commandant shall prescribe written guidance setting forth the criteria to be used in determining whether or not the acceptance of a donation from a foreign source would have a result described in paragraph (2).

* * * * *

§ 60. Training course on workings of Congress

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of the Coast Guard Authorization Act of 2016, the Commandant, in consultation with the Superintendent of the Coast Guard Academy and such other individuals and organizations as the Commandant considers appropriate, shall develop a training course on the workings of the Congress and offer that training course at least once each year.

(b) COURSE SUBJECT MATTER.—The training course required by this section shall provide an overview and introduction to the Congress and the Federal legislative process, including—

(1) the history and structure of the Congress and the committee systems of the House of Representatives and the Senate, including the functions and responsibilities of the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate;

(2) the documents produced by the Congress, including bills, resolutions, committee reports, and conference reports, and the purposes and functions of those documents;

(3) the legislative processes and rules of the House of Representatives and the Senate, including similarities and differences between the two processes and rules, including—

(A) the congressional budget process;

(B) the congressional authorization and appropriation processes;

(C) the Senate advice and consent process for Presidential nominees;

(D) the Senate advice and consent process for treaty ratification;

(4) the roles of Members of Congress and congressional staff in the legislative process; and

(5) the concept and underlying purposes of congressional oversight within our governance framework of separation of powers.

(c) LECTURERS AND PANELISTS.—

(1) OUTSIDE EXPERTS.—The Commandant shall ensure that not less than 60 percent of the lecturers, panelists, and other

individuals providing education and instruction as part of the training course required by this section are experts on the Congress and the Federal legislative process who are not employed by the executive branch of the Federal Government.

(2) **AUTHORITY TO ACCEPT PRO BONO SERVICES.**—In satisfying the requirement under paragraph (1), the Commandant shall seek, and may accept, educational and instructional services of lecturers, panelists, and other individuals and organizations provided to the Coast Guard on a pro bono basis.

[(d) **COMPLETION OF REQUIRED TRAINING.**—

[(1) **CURRENT FLAG OFFICERS AND EMPLOYEES.**—A Coast Guard flag officer appointed or assigned to a billet in the National Capital Region on the date of the enactment of this section, and a Coast Guard Senior Executive Service employee employed in the National Capital Region on the date of the enactment of this section, shall complete a training course that meets the requirements of this section within 60 days after the date on which the Commandant completes the development of the training course.

[(2) **NEW FLAG OFFICERS AND EMPLOYEES.**—A Coast Guard flag officer who is newly appointed or assigned to a billet in the National Capital Region, and a Coast Guard Senior Executive Service employee who is newly employed in the National Capital Region, shall complete a training course that meets the requirements of this section not later than 60 days after reporting for duty.]

(d) COMPLETION OF REQUIRED TRAINING.—A Coast Guard flag officer who is newly appointed or assigned to a billet in the National Capital Region, and a Coast Guard Senior Executive Service employee who is newly employed in the National Capital Region, shall complete a training course that meets the requirements of this section not later than 60 days after reporting for duty.

* * * * *

CHAPTER 5—FUNCTIONS AND POWERS

* * * * *

§ 90. Arctic maritime transportation

(a) **PURPOSE.**—The purpose of this section is to ensure safe and secure maritime shipping in the Arctic including the availability of aids to navigation, vessel escorts, spill response capability, and maritime search and rescue in the Arctic.

(b) **INTERNATIONAL MARITIME ORGANIZATION AGREEMENTS.**—To carry out the purpose of this section, the Secretary is encouraged to enter into negotiations through the International Maritime Organization to conclude and execute agreements to promote coordinated action among the United States, Russia, Canada, Iceland, Norway, and Denmark and other seafaring and Arctic nations to ensure, in the Arctic—

- (1) placement and maintenance of aids to navigation;
- (2) appropriate marine safety, tug, and salvage capabilities;
- (3) oil spill prevention and response capability;
- (4) maritime domain awareness, including long-range vessel tracking; and

(5) search and rescue.

(c) COORDINATION BY COMMITTEE ON THE MARITIME TRANSPORTATION SYSTEM.—The Committee on the Maritime Transportation System established under section 55501 of title 46, United States Code, shall coordinate the establishment of domestic transportation policies in the Arctic necessary to carry out the purpose of this section.

(d) AGREEMENTS AND CONTRACTS.—The Secretary may, subject to the availability of appropriations, enter into cooperative agreements, contracts, or other agreements with, or make grants to, individuals and governments to carry out the purpose of this section or any agreements established under subsection (b).

(e) ICEBREAKING.—The Secretary shall promote safe maritime navigation by means of icebreaking where necessary, feasible, and effective to carry out the purposes of this section.

(f) ARCTIC DEFINITION.—In this section, the term “Arctic” [?] has the meaning given such term in section 112 of the Arctic Research and Policy Act of 1984 (15 U.S.C. 4111).

* * * * *

§ 92. Secretary; general powers

For the purpose of executing the duties and functions of the Coast Guard the Secretary may within the limits of appropriations made therefor:

(a) establish, change the limits of, consolidate, discontinue, and re-establish Coast Guard districts;

(b) arrange with the Secretaries of the Army, Navy and Air Force to assign members of the Coast Guard to any school maintained by the Army, Navy, and Air Force, for instruction and training, including aviation schools;

(c) construct, or cause to be constructed, Coast Guard shore establishments;

(d) design or cause to be designed, cause to be constructed, accept as gift, or otherwise acquire vessels, and subject to applicable regulations under subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 dispose of them;

[(f)] (e) acquire land or interests in land, including acceptance of gifts thereof, where required for the purpose of carrying out any project or purpose for which an appropriation has been made;

[(g)] (f) exchange land or interests in land in part or in full payment for such other land or interests in land as may be necessary or desirable, the balance of such part payment to be defrayable in accordance with other provisions of this section;

[(h)] (g) exercise any of the powers vested by this title in the Commandant in any case in which the Secretary deems it appropriate; and

[(i)] (h) do any and all things necessary to carry out the purposes of this title.

§ 93. Commandant; general powers

(a) For the purpose of executing the duties and functions of the Coast Guard the Commandant may:

(1) maintain water, land, and air patrols, and ice-breaking facilities;

(2) establish and prescribe the purpose of, change the location of, consolidate, discontinue, re-establish, maintain, operate, and repair Coast Guard shore establishments;

(3) assign vessels, aircraft, vehicles, aids to navigation, equipment, appliances, and supplies to Coast Guard districts and shore establishments, and transfer any of the foregoing from one district or shore establishment to another;

(4) conduct experiments and investigate, or cause to be investigated, plans, devices, and inventions relating to the performance of any Coast Guard function, including research, development, test, or evaluation related to intelligence systems and capabilities;

(5) conduct any investigations or studies that may be of assistance to the Coast Guard in the performance of any of its powers, duties, or functions;

(6) collect, publish, and distribute information concerning Coast Guard operations;

(7) conduct or make available to personnel of the Coast Guard, and to eligible spouses as defined under section 542, such specialized training and courses of instruction, including correspondence courses and the textbooks, manuals, and other materials required as part of such training or course of instruction, as may be necessary or desirable for the good of the service;

(8) design or cause to be designed, cause to be constructed, accept as gift, or otherwise acquire patrol boats and other small craft, equip, operate, maintain, supply, and repair such patrol boats, other small craft, aircraft, and vehicles, and subject to applicable regulations under subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 dispose of them;

(9) acquire, accept as gift, maintain, repair, and discontinue aids to navigation, appliances, equipment, and supplies;

(10) equip, operate, maintain, supply, and repair Coast Guard districts and shore establishments;

(11) establish, equip, operate, and maintain shops, depots, and yards for the manufacture and construction of aids to navigation, equipment, apparatus, vessels, vehicles, and aircraft not normally or economically obtainable from private contractors, and for the maintenance and repair of any property used by the Coast Guard;

(12) accept and utilize, in times of emergency in order to save life or protect property, such voluntary services as may be offered to the Coast Guard;

(13) rent or lease, under such terms and conditions as are deemed advisable, for a period not exceeding five years, such real property under the control of the Coast Guard as may not be required for immediate use by the Coast Guard, the monies received from any such rental or lease, less amount of expenses incurred (exclusive of governmental personal services), to be deposited in the fund established under section 687;

(14) grant, under such terms and conditions as are deemed advisable, permits, licenses, easements, and rights-of-way over,

across, in, and upon lands under the control of the Coast Guard when in the public interest and without substantially injuring the interests of the United States in the property thereby affected;

(15) establish, install, abandon, re-establish, reroute, operate, maintain, repair, purchase, or lease such telephone and telegraph lines and cables, together with all facilities, apparatus, equipment, structures, appurtenances, accessories, and supplies used or useful in connection with the installation, operation, maintenance, or repair of such lines and cables, including telephones in residences leased or owned by the Government of the United States when appropriate to assure efficient response to extraordinary operational contingencies of a limited duration, and acquire such real property rights of way, easements, or attachment privileges as may be required for the installation, operation, and maintenance of such lines, cables, and equipment;

(16) establish, install, abandon, reestablish, change the location of, operate, maintain, and repair radio transmitting and receiving stations;

(17) provide medical and dental care for personnel entitled thereto by law or regulation, including care in private facilities;

(18) accept, under terms and conditions the Commandant establishes, the service of an individual ordered to perform community service under the order of a Federal, State, or municipal court;

(19) notwithstanding any other law, enter into cooperative agreements with States, local governments, non-governmental organizations, and individuals, to accept and utilize voluntary services for the maintenance and improvement of natural and historic resources on, or to benefit natural and historic research on, Coast Guard facilities, subject to the requirement that—

(A) the cooperative agreements shall each provide for the parties to contribute funds or services on a matching basis to defray the costs of such programs, projects, and activities under the agreement; and

(B) a person providing voluntary services under this subsection shall not be considered a Federal employee except for purposes of chapter 81 of title 5, United States Code, with respect to compensation for work-related injuries, and chapter 171 of title 28, United States Code, with respect to tort claims;

(20) enter into cooperative agreements with other Government agencies and the National Academy of Sciences;

(21) require that any member of the Coast Guard or Coast Guard Reserve (including a cadet or an applicant for appointment or enlistment to any of the foregoing and any member of a uniformed service who is assigned to the Coast Guard) request that all information contained in the National Driver Register pertaining to the individual, as described in section 30304(a) of title 49, be made available to the Commandant under [section 30305(a)] *section 30305(b)(7)* of title 49, may receive that information, and upon receipt, shall make the information available to the individual;

(22) provide for the honorary recognition of individuals and organizations that significantly contribute to Coast Guard programs, missions, or operations, including State and local governments and commercial and nonprofit organizations, and pay for, using any appropriations or funds available to the Coast Guard, plaques, medals, trophies, badges, and similar items to acknowledge such contribution (including reasonable expenses of ceremony and presentation);

(23) rent or lease, under such terms and conditions as are considered by the Secretary to be advisable, commercial vehicles to transport the next of kin of eligible retired Coast Guard military personnel to attend funeral services of the service member at a national cemetery;

(24) after informing the Secretary, make such recommendations to the Congress relating to the Coast Guard as the Commandant considers appropriate; and

(25) enter into cooperative agreements, contracts, and other agreements with Federal entities and other public or private entities, including academic entities, to develop a positioning, navigation, and timing system to provide redundant capability in the event Global Positioning System signals are disrupted, which may consist of an enhanced LORAN system.

(b)(1) Notwithstanding subsection (a)(13), a lease described in paragraph (2) of this subsection may be for a term of up to 20 years.

(2) A lease referred to in paragraph (1) is a lease—

(A) to the United States Coast Guard Academy Alumni Association for the construction of an Alumni Center on the grounds of the United States Coast Guard Academy; or

(B) to an entity with which the Commandant has a cooperative agreement under section 4(e) of the Ports and Waterways Safety Act, and for which a term longer than 5 years is necessary to carry out the agreement.

(c) MARINE SAFETY RESPONSIBILITIES.—In exercising the Commandant's duties and responsibilities with regard to marine safety, the individual with the highest rank who meets the experience qualifications set forth in section 50(a)(3) shall serve as the principal advisor to the Commandant regarding—

(1) the operation, regulation, inspection, identification, manning, and measurement of vessels, including plan approval and the application of load lines;

(2) approval of materials, equipment, appliances, and associated equipment;

(3) the reporting and investigation of marine casualties and accidents;

(4) the licensing, certification, documentation, protection and relief of merchant seamen;

(5) suspension and revocation of licenses and certificates;

(6) enforcement of manning requirements, citizenship requirements, control of log books;

(7) documentation and numbering of vessels;

(8) State boating safety programs;

(9) commercial instruments and maritime liens;

(10) the administration of bridge safety;

(11) administration of the navigation rules;

- (12) the prevention of pollution from vessels;
- (13) ports and waterways safety;
- (14) waterways management; including regulation for regattas and marine parades;
- (15) aids to navigation; and
- (16) other duties and powers of the Secretary related to marine safety and stewardship.

(d) OTHER AUTHORITY NOT AFFECTED.—Nothing in subsection (c) affects—

(1) the authority of Coast Guard officers and members to enforce marine safety regulations using authority under section 89 of this title; or

(2) the exercise of authority under section 91 of this title and the provisions of law codified at sections 191 through 195 of title 50 on the date of enactment of this paragraph.

(e) OPERATION AND MAINTENANCE OF COAST GUARD ASSETS AND FACILITIES.—All authority, including programmatic budget authority, for the operation and maintenance of Coast Guard vessels, aircraft, systems, aids to navigation, infrastructure, and other assets or facilities shall be allocated to and vested in the Coast Guard and the department in which the Coast Guard is operating.

(f) LEASING OF TIDELANDS AND SUBMERGED LANDS.—

(1) AUTHORITY.—The Commandant may lease under subsection (a)(13) submerged lands and tidelands under the control of the Coast Guard without regard to the limitation under that subsection with respect to lease duration.

(2) LIMITATION.—The Commandant may lease submerged lands and tidelands under paragraph (1) only if—

(A) the lease is for cash exclusively;

(B) the lease amount is equal to the fair market value of the use of the leased submerged lands or tidelands for the period during which such lands are leased, as determined by the Commandant;

(C) the lease does not provide authority to or commit the Coast Guard to use or support any improvements to such submerged lands and tidelands, or obtain goods and services from the lessee; and

(D) proceeds from the lease are deposited in the Coast Guard Housing Fund established under section 687.

* * * * *

§ 101. Appeals and waivers

Except for the [Commandant of the Coast Guard] *Commandant*, any individual adjudicating an appeal or waiver of a decision regarding marine safety, including inspection or manning and threats to the environment, shall—

(1) be a qualified specialist with the training, experience, and qualifications in marine safety to effectively judge the facts and circumstances involved in the appeal and make a judgment regarding the merits of the appeal; or

(2) have a senior staff member who—

(A) meets the requirements of paragraph (1);

(B) actively advises the individual adjudicating the appeal; and

(C) concurs in writing on the decision on appeal.

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CHAPTER 7—COOPERATION WITH OTHER AGENCIES

* * * * *

§ 144. Department of the Army and Department of the Air Force

(a) The Secretary of the Army or the Secretary of the Air Force at the request of the Secretary may, with or without reimbursement for the cost thereof, as agreed, receive members of the Coast Guard for instruction in any school, including any aviation school, maintained by the Army or the Air Force, and such members shall be subject to the regulations governing such schools.

(b) Officers and [enlisted men] *enlisted members* of the Coast Guard shall be permitted to purchase quartermaster supplies from the Army at the same price as is charged the officers and [enlisted men] *enlisted members* of the Army.

(c) Articles of ordnance property may be sold by the Secretary of the Army to officers of the Coast Guard for their use in the public service in the same manner as these articles are sold to officers of the Army.

§ 145. Navy Department

(a) The Secretary of the Navy, at the request of the Secretary may, with or without reimbursement for the cost thereof, as agreed:

(1) build any vessel for the Coast Guard at such Navy yards as the Secretary of the Navy may designate;

(2) receive members of the Coast Guard for instruction in any school, including any aviation school maintained by the Navy, and such members shall be subject to the regulations governing such schools;

(3) permit personnel of the Coast Guard and their dependents to occupy any public quarters maintained by the Navy and available for the purpose; and

(4) detail personnel from the Chaplain Corps to provide services, pursuant to section 1789 of title 10, to the Coast Guard.

(b) Officers and [enlisted men] *enlisted members* of the Coast Guard shall be permitted to purchase quartermaster supplies from the Navy and the Marine Corps at the same price as is charged the officers and [enlisted men] *enlisted members* of the Navy and Marine Corps.

(c) When the Coast Guard is operating in the Department of Homeland Security, the Secretary shall provide for such peacetime training and planning of reserve strength and facilities as is necessary to insure an organized, manned, and equipped Coast Guard when it is required for wartime operation in the Navy. To this end, the Secretary of the Navy for the Navy, and the Secretary of Homeland Security, for the Coast Guard, may from time to time exchange such information, make available to each other such personnel, vessels, facilities, and equipment, and agree to undertake such assignments and functions for each other as they may agree are necessary and advisable.

(d)(1) As part of the services provided by the Secretary of the Navy pursuant to subsection (a)(4), the Secretary may provide support services to chaplain-led programs to assist members of the Coast Guard on active duty and their dependents, and members of the reserve component in an active status and their dependents, in building and maintaining a strong family structure.

(2) In this subsection, the term “support services” include transportation, food, lodging, child care, supplies, fees, and training materials for members of the Coast Guard on active duty and their dependents, and members of the reserve component in an active status and their dependents, while participating in programs referred to in paragraph (1), including participation at retreats and conferences.

(3) In this subsection, the term “dependents” has the same meaning as defined in section 1072(2) of title 10.

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CHAPTER 9—COAST GUARD ACADEMY

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§ 196. Participation in Federal, State, or other educational research grants

(a) IN GENERAL.—Notwithstanding any other provision of law, the United States Coast Guard Academy may compete for and accept Federal, State, or other educational research grants, subject to the following limitations:

(1) No award may be accepted for the acquisition or construction of facilities.

(2) No award may be accepted for the routine functions of the Academy.

(b) QUALIFIED ORGANIZATIONS.—

(1) IN GENERAL.—The [Commandant of the Coast Guard] *Commandant* may—

(A) enter into a contract, cooperative agreement, lease, or licensing agreement with a qualified organization;

(B) allow a qualified organization to use, at no cost, personal property of the Coast Guard; and

(C) notwithstanding section 93, accept funds, supplies, and services from a qualified organization.

(2) SOLE-SOURCE BASIS.—Notwithstanding chapter 65 of title 31 and chapter 137 of title 10, the Commandant may enter into a contract or cooperative agreement under paragraph (1)(A) on a sole-source basis.

(3) MAINTAINING FAIRNESS, OBJECTIVITY, AND INTEGRITY.—The Commandant shall ensure that contributions under this subsection do not—

(A) reflect unfavorably on the ability of the Coast Guard, any of its employees, or any member of the armed forces to carry out any responsibility or duty in a fair and objective manner; or

(B) compromise the integrity or appearance of integrity of any program of the Coast Guard, or any individual involved in such a program.

(4) LIMITATION.—For purposes of this subsection, employees or personnel of a qualified organization shall not be employees of the United States.

(5) QUALIFIED ORGANIZATION DEFINED.—In this subsection the term “qualified organization” means an organization—

(A) described under section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code; and

(B) established by the Coast Guard Academy Alumni Association solely for the purpose of supporting academic research and applying for and administering Federal, State, or other educational research grants on behalf of the Coast Guard Academy.

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§ 199. Marine safety curriculum

The [Commandant of the Coast Guard] *Commandant* shall ensure that professional courses of study in marine safety are provided at the Coast Guard Academy, and during other officer accession programs, to give Coast Guard cadets and other officer candidates a background and understanding of the marine safety program. These courses may include such topics as program history, vessel design and construction, vessel inspection, casualty investigation, and administrative law and regulations.

§ 200. Policy on sexual harassment and sexual violence

(a) REQUIRED POLICY.—The [Commandant of the Coast Guard] *Commandant* shall direct the Superintendent of the Coast Guard Academy to prescribe a policy on sexual harassment and sexual violence applicable to the cadets and other personnel of the Academy.

(b) MATTERS TO BE SPECIFIED IN POLICY.—The policy on sexual harassment and sexual violence under this section shall include specification of the following:

(1) Programs to promote awareness of the incidence of rape, acquaintance rape, and other sexual offenses of a criminal nature that involve cadets or other Academy personnel.

(2) Information about how the Coast Guard and the Academy will protect the confidentiality of victims of sexual harassment or sexual violence, including how any records, statistics, or reports intended for public release will be formatted such that the confidentiality of victims is not jeopardized.

(3) Procedures that cadets and other Academy personnel should follow in the case of an occurrence of sexual harassment or sexual violence, including—

(A) if the victim chooses to report an occurrence of sexual harassment or sexual violence, a specification of the person or persons to whom the alleged offense should be reported and options for confidential reporting, including written information to be given to victims that explains how the Coast Guard and the Academy will protect the confidentiality of victims;

(B) a specification of any other person whom the victim should contact; and

- (C) procedures on the preservation of evidence potentially necessary for proof of criminal sexual assault.
- (4) Procedures for disciplinary action in cases of criminal sexual assault involving a cadet or other Academy personnel.
- (5) Sanctions authorized to be imposed in a substantiated case of sexual harassment or sexual violence involving a cadet or other Academy personnel, including with respect to rape, acquaintance rape, or other criminal sexual offense, whether forcible or nonforcible.
- (6) Required training on the policy for all cadets and other Academy personnel who process allegations of sexual harassment or sexual violence involving a cadet or other Academy personnel.
- (c) ASSESSMENT.—
- (1) IN GENERAL.—The Commandant shall direct the Superintendent to conduct at the Academy during each Academy program year an assessment to determine the effectiveness of the policies of the Academy with respect to sexual harassment and sexual violence involving cadets or other Academy personnel.
- (2) BIENNIAL SURVEY.—For the assessment at the Academy under paragraph (1) with respect to an Academy program year that begins in an odd-numbered calendar year, the Superintendent shall conduct a survey of cadets and other Academy personnel—
- (A) to measure—
- (i) the incidence, during that program year, of sexual harassment and sexual violence events, on or off the Academy reservation, that have been reported to an official of the Academy; and
 - (ii) the incidence, during that program year, of sexual harassment and sexual violence events, on or off the Academy reservation, that have not been reported to an official of the Academy; and
- (B) to assess the perceptions of the cadets and other Academy personnel with respect to—
- (i) the Academy's policies, training, and procedures on sexual harassment and sexual violence involving cadets or other Academy personnel;
 - (ii) the enforcement of such policies;
 - (iii) the incidence of sexual harassment and sexual violence involving cadets or other Academy personnel; and
 - (iv) any other issues relating to sexual harassment and sexual violence involving cadets or other Academy personnel.
- (d) REPORT.—
- (1) IN GENERAL.—The Commandant shall direct the Superintendent to submit to the Commandant a report on sexual harassment and sexual violence involving cadets or other Academy personnel for each Academy program year.
- (2) REPORT SPECIFICATIONS.—Each report under paragraph (1) shall include, for the Academy program year covered by the report, the following:

(A) The number of sexual assaults, rapes, and other sexual offenses involving cadets or other Academy personnel that have been reported to Academy officials during the Academy program year and, of those reported cases, the number that have been substantiated.

(B) A plan for the actions that are to be taken in the following Academy program year regarding prevention of and response to sexual harassment and sexual violence involving cadets or other Academy personnel.

(3) BIENNIAL SURVEY.—Each report under paragraph (1) for an Academy program year that begins in an odd-numbered calendar year shall include the results of the survey conducted in that Academy program year under subsection (c)(2).

(4) TRANSMISSION OF REPORT.—The Commandant shall transmit each report received by the Commandant under this subsection, together with the Commandant’s comments on the report, to—

(A) the Committee on Commerce, Science, and Transportation of the Senate; and

(B) the Committee on Transportation and Infrastructure of the House of Representatives.

(5) FOCUS GROUPS.—

(A) IN GENERAL.—For each Academy program year with respect to which the Superintendent is not required to conduct a survey at the Academy under subsection (c)(2), the Commandant shall require focus groups to be conducted at the Academy for the purposes of ascertaining information relating to sexual assault and sexual harassment issues at the Academy.

(B) INCLUSION IN REPORTS.—Information derived from a focus group under subparagraph (A) shall be included in the next transmitted Commandant’s report under this subsection.

(e) VICTIM CONFIDENTIALITY.—To the extent that information collected under the authority of this section is reported or otherwise made available to the public, such information shall be provided in a form that is consistent with applicable privacy protections under Federal law and does not jeopardize the confidentiality of victims.

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CHAPTER 11—PERSONNEL

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SUBCHAPTER —OFFICERS

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d. discharges; retirements; revocation
of commissions

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§ 290. Rear admirals and rear admirals (lower half); continuation on active duty; involuntary retirement

(a) The Secretary shall from time to time convene boards to recommend for continuation on active duty the most senior officers on the active duty promotion list serving in the grade of rear admiral

(lower half) or rear admiral who have not previously been considered for continuation in that grade. [Officers, other than the Commandant, serving] *Officers serving* for the time being or who have served in or above the grade of vice admiral are not subject to consideration for continuation under this subsection, and as to all other provisions of this section shall be considered as having been continued at the grade of rear admiral. A board shall consist of at least 5 officers (other than the Commandant) serving in the grade of admiral or vice admiral or as rear admirals previously continued. Boards shall be convened frequently enough to assure that each officer serving in the grade of rear admiral (lower half) or rear admiral is subject to consideration for continuation during a promotion year in which that officer completes not less than four or more than five years combined service in the grades of rear admiral (lower half) and rear admiral.

(b) The Secretary shall, based upon the needs of the service, furnish each board convened under this section with the number of officers to be considered for continuation on active duty. The number that may be recommended for continuation shall be not less than 50 per centum or more than 75 per centum of the number of officers being considered for continuation.

(c) The provisions of sections 253, 254, 258, and 260 of this title relating to selection and continuation boards shall to the extent they are not inconsistent with the provisions of this section, apply to boards convened under this section.

(d) A board convened under this section shall submit its report to the Secretary. If the board has acted contrary to law or regulation, the Secretary may return the report for proceedings in revision and resubmission to the Secretary. After final review the Secretary shall submit the report of the board to the President for approval.

(e) Each officer who is considered but not continued on active duty under the provisions of this section shall, unless retired under some other provision of law, be retired on July 1 of the promotion year immediately following the promotion year in which the report of the continuation board convened under this section is approved.

(f)(1) Unless retired under another provision of law, each officer who is continued on active duty under this section shall, except as provided in paragraph (2), be retired on July 1 of the promotion year immediately following the promotion year in which that officer completes seven years of combined service in the grades of rear admiral (lower half) and rear admiral, unless that officer is selected for or serving in the grade of admiral or vice admiral or the position of Superintendent of the Coast Guard Academy.

(2) The Commandant, with the approval of the Secretary, may by annual action retain on active duty from promotion year to promotion year any officer who would otherwise be retired under paragraph (1). Unless selected for or serving in the grade of admiral or vice admiral or the position of Superintendent of the Coast Guard Academy, or retired under another provision of law, an officer so retained shall be retired on July 1 of the promotion year immediately following the promotion year in which no action is taken to further retain that officer under this paragraph.

(g)(1) Unless retired under another provision of law, an officer subject to this section shall, except as provided in paragraph (2), be retired on July 1 of the promotion year immediately following the promotion year in which that officer completes a total of thirty-six years of active commissioned service unless selected for or serving in the grade of admiral.

(2) The Commandant, with the approval of the Secretary, may by annual action retain on active duty from promotion year to promotion year any officer who would otherwise be retired under paragraph (1). Unless selected for or serving in the grade of admiral or retired under another provision of law, an officer so retained shall be retired on July 1 of the promotion year immediately following the promotion year in which no action is taken to further retain that officer under this paragraph.

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SUBCHAPTER —ENLISTED MEMBERS

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§ 351. Enlistments; term, grade

(a) Under regulations prescribed by the Secretary, the Commandant may enlist persons for *the duration of their* minority or a period of at least two years but not more than six years.

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

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SUBCHAPTER —GENERAL PROVISIONS

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§ 423. Computation of retired pay

(a)(1) The retired pay of a member who first became a member of a uniformed service (as defined in section 101 of title 10) before September 8, 1980, is determined by multiplying—

- (A) the sum of—
 - (i) the basic pay of the member’s retired grade or rate, and
 - (ii) all permanent additions thereto including longevity credit to which the member was entitled at the time of retirement; by

(B) the retired pay multiplier determined under section 1409 of title 10 for the number of years of service that may be credited to the member under section 1405 of such title.

(2) In the case of an officer who served as **Commandant of the Coast Guard** *Commandant*, retired pay under paragraph (1) shall be computed at the highest rate of basic pay applicable to the officer while so serving.

(3) In the case of an enlisted member who served as the master chief petty officer of the Coast Guard, retired pay under paragraph (1) shall be computed at the highest rate of basic pay to which the member was entitled while so serving, if that basic pay is greater than the basic pay of the grade or rate to

which the member is otherwise entitled at the time of retirement.

(4) In the case of an officer whose retired pay is computed on the pay of a grade for which basic pay is not based upon years of service, retired pay under paragraph (1) shall be computed on the basis of the number of years of service for which the officer would be entitled to credit in the computation of pay on the active list had the officer been serving in the grade of captain at the time of retirement.

(b) The retired pay of a member who first became a member of a uniformed service (as defined in section 101 of title 10) on or after September 8, 1980, is determined by multiplying—

(1) the retired pay base determined under section 1407 of title 10; by

(2) the retired pay multiplier determined under section 1409 of title 10 for the number of years of service that may be credited to the member under section 1405 of such title.

(c)(1) In computing for the purpose of subsection (a) or (b) the number of years of service that may be credited to a member under section 1405 of title 10—

(A) each full month of service that is in addition to the number of full years of service creditable to the member shall be counted as $\frac{1}{12}$ of a year; and

(B) any remaining fractional part of a month shall be disregarded.

(2) Retired pay computed under this section, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

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§ 429. Multirater assessment of certain personnel

(a) MULTIRATER ASSESSMENT OF CERTAIN PERSONNEL.—

(1) IN GENERAL.—Commencing not later than one year after the date of the enactment of the Coast Guard Authorization Act of 2016, the **Commandant of the Coast Guard** *Commandant* shall develop and implement a plan to conduct every two years a multirater assessment for each of the following:

(A) Each flag officer of the Coast Guard.

(B) Each member of the Senior Executive Service of the Coast Guard.

(C) Each officer of the Coast Guard nominated for promotion to the grade of flag officer.

(2) POST-ASSESSMENT ELEMENTS.—Following an assessment of an individual pursuant to paragraph (1), the individual shall be provided appropriate post-assessment counseling and leadership coaching.

(b) MULTIRATER ASSESSMENT DEFINED.—In this section, the term “multirater assessment” means a review that seeks opinion from members senior to the reviewee and the peers and subordinates of the reviewee.

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CHAPTER 15—ACQUISITIONS

SUBCHAPTER SUBCHAPTER I—GENERAL PROVISIONS

Sec.							
561. Acquisition directorate.	*	*	*	*	*	*	*
568. Guidance on excessive pass-through charges.							
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SUBCHAPTER I—GENERAL PROVISIONS

§ 561. Acquisition directorate

(a) **ESTABLISHMENT.**—The **Commandant of the Coast Guard** shall establish an acquisition directorate to provide guidance and oversight for the implementation and management of all Coast Guard acquisition processes, programs, and projects.

(b) **MISSION.**—The mission of the acquisition directorate is—

- (1) to acquire and deliver assets and systems that increase operational readiness, enhance mission performance, and create a safe working environment;
- (2) to assist in the development of a workforce that is trained and qualified to further the Coast Guard’s missions and deliver the best-value products and services to the Nation; and
- (3) to meet the needs of customers of major acquisition programs in the most cost-effective manner practicable.

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§ 565. Required contract terms

(a) **IN GENERAL.**—The Commandant shall ensure that a contract awarded or a delivery order or task order issued for an acquisition of a capability or an asset with an expected service life of 10 or more years and with a total acquisition cost that is equal to or exceeds \$10,000,000 **awarded or issued by the Coast Guard after the date of enactment of the Coast Guard Authorization Act of 2010**—

- (1) provides that all certifications for an end-state capability or asset under such contract, delivery order, or task order, respectively, will be conducted by the Commandant or an independent third party, and that self-certification by a contractor or subcontractor is not allowed;
- (2) provides that the Commandant shall maintain the authority to establish, approve, and maintain technical requirements;
- (3) requires that any measurement of contractor and subcontractor performance be based on the status of all work performed, including the extent to which the work performed met all performance, cost, and schedule requirements;
- (4) specifies that, for the acquisition or upgrade of air, surface, or shore capabilities and assets for which compliance with TEMPEST certification is a requirement, the standard for determining such compliance will be the air, surface, or shore standard then used by the Department of the Navy for that type of capability or asset; and
- (5) for any contract awarded to acquire an Offshore Patrol Cutter, includes provisions specifying the service life, fatigue life, and days underway in general Atlantic and North Pacific

Sea conditions, maximum range, and maximum speed the cutter will be built to achieve.

(b) PROHIBITED PROVISIONS.—

(1) IN GENERAL.—The Commandant shall ensure that any contract awarded or delivery order or task order issued by the Coast Guard [after the date of enactment of the Coast Guard Authorization Act of 2010] does not include any provision allowing for equitable adjustment that is not consistent with the Federal Acquisition Regulations.

(2) EXTENSION OF PROGRAM.—A contract, contract modification, or award term extending a contract with a lead systems integrator—

(A) may not include any minimum requirements for the purchase of a given or determinable number of specific capabilities or assets; and

(B) shall be reviewed by an independent third party with expertise in acquisition management, and the results of that review shall be submitted to the appropriate congressional committees at least 60 days prior to the award of the contract, contract modification, or award term.

(c) INTEGRATED PRODUCT TEAMS.—Integrated product teams, and all teams that oversee integrated product teams, shall be chaired by officers, members, or employees of the Coast Guard.

(d) TECHNICAL AUTHORITY.—The Commandant shall maintain or designate the technical authority to establish, approve, and maintain technical requirements. Any such designation shall be made in writing and may not be delegated to the authority of the Chief Acquisition Officer established by section 56 of this title.

§ 566. Department of Defense consultation

(a) IN GENERAL.—The Commandant shall make arrangements as appropriate with the Secretary of Defense for support in contracting and management of Coast Guard acquisition programs. The Commandant shall also seek opportunities to make use of Department of Defense contracts, and contracts of other appropriate agencies, to obtain the best possible price for assets acquired for the Coast Guard.

(b) INTERSERVICE TECHNICAL ASSISTANCE.—The Commandant shall seek to [enter into] *maintain* a memorandum of understanding or a memorandum of agreement with the Secretary of the Navy to obtain the assistance of the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition, including the Navy Systems Command, with the oversight of Coast Guard major acquisition programs. The memorandum of understanding or memorandum of agreement shall, at a minimum, provide for—

(1) the exchange of technical assistance and support that the Assistant Commandants for Acquisition, Human Resources, Engineering, and Information technology may identify;

(2) the use, as appropriate, of Navy technical expertise; and

(3) the temporary assignment or exchange of personnel between the Coast Guard and the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition, including Naval Systems Command, to facilitate the development of organic capabilities in the Coast Guard.

(c) TECHNICAL REQUIREMENT APPROVAL PROCEDURES.—The Chief Acquisition Officer shall adopt, to the extent practicable, procedures modeled after those used by the Navy Senior Acquisition Official to approve all technical requirements.

[(d) ASSESSMENT.—Within 180 days after the date of enactment of the Coast Guard Authorization Act of 2010, the Comptroller General of the United States shall transmit a report to the appropriate congressional committees that—

[(1) contains an assessment of current Coast Guard acquisition and management capabilities to manage Level 1 and Level 2 acquisitions;

[(2) includes recommendations as to how the Coast Guard can improve its acquisition management, either through internal reforms or by seeking acquisition expertise from the Department of Defense; and

[(3) addresses specifically the question of whether the Coast Guard can better leverage Department of Defense or other agencies' contracts that would meet the needs of Level 1 or Level 2 acquisitions in order to obtain the best possible price.】

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【§ 568. Guidance on excessive pass-through charges

[(a) IN GENERAL.—Not later than 180 days after the date of enactment of the Coast Guard Authorization Act of 2010, the Commandant shall issue guidance to ensure that pass-through charges on contracts, subcontracts, delivery orders, and task orders that are entered into with a private entity acting as a lead systems integrator by or on behalf of the Coast Guard are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor. The guidance shall, at a minimum—

[(1) set forth clear standards for determining when no, or negligible, value has been added to a contract by a contractor or subcontractor;

[(2) set forth procedures for preventing the payment by the Government of excessive pass-through charges; and

[(3) identify any exceptions determined by the Commandant to be in the best interest of the Government.

[(b) EXCESSIVE PASS-THROUGH CHARGE DEFINED.—In this section the term “excessive pass-through charge”, with respect to a contractor or subcontractor that adds no, or negligible, value to a contract or subcontract, means a charge to the Government by the contractor or subcontractor that is for overhead or profit on work performed by a lower tier contractor or subcontractor, other than reasonable charges for the direct costs of managing lower tier contractors and subcontracts and overhead and profit based on such direct costs.

[(c) APPLICATION OF GUIDANCE.—The guidance under this subsection shall apply to contracts awarded to a private entity acting as a lead systems integrator by or on behalf of the Coast Guard on or after the date that is 360 days after the date of enactment of the Coast Guard Authorization Act of 2010.】

§ 569. Mission need statement

(a) IN GENERAL.—On the date on which the President submits to Congress a budget [for fiscal year 2016] *for fiscal year 2019* under section 1105 of title 31[, on the date on which the President submits to Congress a budget for fiscal year 2019 under such section,] and every 4 years thereafter, the Commandant shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate an integrated major acquisition mission need statement.

(b) DEFINITIONS.—In this section, the following definitions apply:

(1) INTEGRATED MAJOR ACQUISITION MISSION NEED STATEMENT.—The term “integrated major acquisition mission need statement” means a document that—

(A) identifies current and projected gaps in Coast Guard mission capabilities using mission hour targets;

(B) explains how each major acquisition program addresses gaps identified under subparagraph (A) if funded at the levels provided for such program in the most recently submitted capital investment plan; and

(C) describes the missions the Coast Guard will not be able to achieve, by fiscal year, for each gap identified under subparagraph (A).

(2) MAJOR ACQUISITION PROGRAM.—The term “major acquisition program” has the meaning given that term in section 2903.

(3) CAPITAL INVESTMENT PLAN.—The term “capital investment plan” means the plan required under section 2902(a)(1).

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SUBCHAPTER II—IMPROVED ACQUISITION PROCESS AND PROCEDURES

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§ 575. Acquisition program baseline breach

(a) IN GENERAL.—The Commandant shall submit a report to the appropriate congressional committees and the Committee on Homeland Security of the House of Representatives as soon as possible, but not later than 30 days, after the Chief Acquisition Officer of the Coast Guard becomes aware of the breach of an acquisition program baseline for any Level 1 or Level 2 acquisition program, by—

(1) a likely cost overrun greater than 15 percent of the acquisition program baseline for that individual capability or asset or a class of capabilities or assets;

(2) a likely delay of more than 180 days in the delivery schedule for any individual capability or asset or class of capabilities or assets; or

(3) an anticipated failure for any individual capability or asset or class of capabilities or assets to satisfy any key performance threshold or parameter under the acquisition program baseline.

(b) CONTENT.—The report submitted under subsection (a) shall include—

- (1) a detailed description of the breach and an explanation of its cause;
- (2) the projected impact to performance, cost, and schedule;
- (3) an updated acquisition program baseline and the complete history of changes to the original acquisition program baseline;
- (4) the updated acquisition schedule and the complete history of changes to the original schedule;
- (5) a full life-cycle cost analysis for the capability or asset or class of capabilities or assets;
- (6) a remediation plan identifying corrective actions and any resulting issues or risks; and
- (7) a description of how progress in the remediation plan will be measured and monitored.

(c) **SUBSTANTIAL VARIANCES IN COSTS OR SCHEDULE.**—If a likely cost overrun is greater than 20 percent or a likely delay is greater than 12 months from the costs and schedule described in the acquisition program baseline for any Level 1 or Level 2 acquisition project or program of the Coast Guard, the Commandant shall include in the report a written [certification, with a supporting explanation, that] *determination, with a supporting explanation, of whether—*

- (1) the capability or asset or capability or asset class to be acquired under the project or program is essential to the accomplishment of Coast Guard missions;
- (2) there are no alternatives to such capability or asset or capability or asset class that will provide equal or greater capability in both a more cost-effective and timely manner;
- (3) the new acquisition schedule and estimates for total acquisition cost are reasonable; and
- (4) the management structure for the acquisition program is adequate to manage and control performance, cost, and schedule.

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§ 577. Advance procurement funding

(a) **IN GENERAL.**—With respect to any Coast Guard vessel for which amounts are appropriated and any amounts otherwise made available for vessels for the Coast Guard in any fiscal year, the [Commandant of the Coast Guard] *Commandant* may enter into a contract or place an order, in advance of a contract or order for construction of a vessel, for—

- (1) materials, parts, components, and labor for the vessel;
- (2) the advance construction of parts or components for the vessel;
- (3) protection and storage of materials, parts, or components for the vessel; and
- (4) production planning, design, and other related support services that reduce the overall procurement lead time of the vessel.

(b) **USE OF MATERIALS, PARTS, AND COMPONENTS MANUFACTURED IN THE UNITED STATES.**—In entering into contracts and placing orders under subsection (a), the Commandant may give priority to

persons that manufacture materials, parts, and components in the United States.

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SUBCHAPTER III—DEFINITIONS

§ 581. Definitions

In this chapter:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(2) **CHIEF ACQUISITION OFFICER.**—The term “Chief Acquisition Officer” means the officer appointed under section 56 of this title.

(3) **CUSTOMER OF A MAJOR ACQUISITION PROGRAM.**—The term “customer of a major acquisition program” means the operating field unit of the Coast Guard that will field the system or systems acquired under a major acquisition program.

[(4) **COMMANDANT.**—The term “Commandant” means the Commandant of the Coast Guard.]

[(5)] (4) **LEVEL 1 ACQUISITION.**—The term “Level 1 acquisition” means—

(A) an acquisition by the Coast Guard—

(i) the estimated life-cycle costs of which exceed \$1,000,000,000; or

(ii) the estimated total acquisition costs of which exceed \$300,000,000; or

(B) any acquisition that the Chief Acquisition Officer of the Coast Guard determines to have a special interest—

(i) due to—

(I) the experimental or technically immature nature of the asset;

(II) the technological complexity of the asset;

(III) the commitment of resources; or

(IV) the nature of the capability or set of capabilities to be achieved; or

(ii) because such acquisition is a joint acquisition.

[(6)] (5) **LEVEL 2 ACQUISITION.**—The term “Level 2 acquisition” means an acquisition by the Coast Guard—

(A) the estimated life-cycle costs of which are equal to or less than \$1,000,000,000, but greater than \$300,000,000; or

(B) the estimated total acquisition costs of which are equal to or less than \$300,000,000, but greater than \$100,000,000.

[(7)] (6) **LIFE-CYCLE COST.**—The term “life-cycle cost” means all costs for development, procurement, construction, and operations and support for a particular capability or asset, without regard to funding source or management control.

[(8)] (7) **MAJOR ACQUISITION PROGRAM.**—The term “major acquisition program” means an ongoing acquisition undertaken by the Coast Guard with a life-cycle cost estimate greater than or equal to \$300,000,000.

[(9)] (8) PROJECT OR PROGRAM MANAGER DEFINED.—The term “project or program manager” means an individual designated—

(A) to develop, produce, and deploy a new asset to meet identified operational requirements; and

(B) to manage cost, schedule, and performance of the acquisition, project, or program.

[(10)] (9) SAFETY CONCERN.—The term “safety concern” means any hazard associated with a capability or asset or a subsystem of a capability or asset that is likely to cause serious bodily injury or death to a typical Coast Guard user in testing, maintaining, repairing, or operating the capability, asset, or subsystem or any hazard associated with the capability, asset, or subsystem that is likely to cause major damage to the capability, asset, or subsystem during the course of its normal operation by a typical Coast Guard user.

[(11)] (10) DEVELOPMENTAL TEST AND EVALUATION.—The term “developmental test and evaluation” means—

(A) the testing of a capability or asset and the subsystems of the capability or asset to determine whether they meet all contractual performance requirements, including technical performance requirements, supportability requirements, and interoperability requirements and related specifications; and

(B) the evaluation of the results of such testing.

[(12)] (11) OPERATIONAL TEST AND EVALUATION.—The term “operational test and evaluation” means—

(A) the testing of a capability or asset and the subsystems of the capability or asset, under conditions similar to those in which the capability or asset and subsystems will actually be deployed, for the purpose of determining the effectiveness and suitability of the capability or asset and subsystems for use by typical Coast Guard users to conduct those missions for which the capability or asset and subsystems are intended to be used; and

(B) the evaluation of the results of such testing.

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CHAPTER 17—ADMINISTRATION

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§ 672a. Long-term lease authority for lighthouse property

(a) The [Commandant of the Coast Guard] *Commandant* may lease to non-Federal entities, including private individuals, lighthouse property under the administrative control of the Coast Guard for terms not to exceed 30 years. Consideration for the use and occupancy of lighthouse property leased under this section, and for the value of any utilities and services furnished to a lessee of such property by the Commandant, may consist, in whole or in part, of non-pecuniary remuneration including the improvement, alteration, restoration, rehabilitation, repair, and maintenance of the leased premises by the lessee. [Section 321 of chapter 314 of the Act of June 30, 1932 (40 U.S.C. 303b)] *Section 1302 of title 40*

shall not apply to leases issued by the Commandant under this section.

(b) Amounts received from leases made under this section, less expenses incurred, shall be deposited in the fund established under section 687.

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§ 678. Aircraft accident investigations

(a) IN GENERAL.—Whenever the [Commandant of the Coast Guard] *Commandant* conducts an accident investigation of an accident involving an aircraft under the jurisdiction of the Commandant, the records and report of the investigation shall be treated in accordance with this section.

(b) PUBLIC DISCLOSURE OF CERTAIN ACCIDENT INVESTIGATION INFORMATION.—

(1) IN GENERAL.—Subject to paragraph (2), the Commandant, upon request, shall publicly disclose unclassified tapes, scientific reports, and other factual information pertinent to an aircraft accident investigation.

(2) CONDITIONS.—The Commandant shall only disclose information requested pursuant to paragraph (1) if the Commandant determines—

(A) that such tapes, reports, or other information would be included within and releasable with the final accident investigation report; and

(B) that release of such tapes, reports, or other information—

(i) would not undermine the ability of accident or safety investigators to continue to conduct the investigation; and

(ii) would not compromise national security.

(3) RESTRICTION.—A disclosure under paragraph (1) may not be made by or through officials with responsibility for, or who are conducting, a safety investigation with respect to the accident.

(c) OPINIONS REGARDING CAUSATION OF ACCIDENT.—Following an aircraft accident referred to in subsection (a)—

(1) if the evidence surrounding the accident is sufficient for the investigators who conduct the accident investigation to come to an opinion as to the cause or causes of the accident, the final report of the accident investigation shall set forth the opinion of the investigators as to the cause or causes of the accident; and

(2) if the evidence surrounding the accident is not sufficient for the investigators to come to an opinion as to the cause or causes of the accident, the final report of the accident investigation shall include a description of those factors, if any, that, in the opinion of the investigators, substantially contributed to or caused the accident.

(d) USE OF INFORMATION IN CIVIL OR CRIMINAL PROCEEDINGS.—For purposes of any civil or criminal proceeding arising from an aircraft accident referred to in subsection (a), any opinion of the accident investigators as to the cause of, or the factors contributing to, the accident set forth in the accident investigation report may not be considered as evidence in such proceeding, nor may such re-

port be considered an admission of liability by the United States or by any person referred to in such report.

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

(1) the term “accident investigation” means any form of investigation by Coast Guard personnel of an aircraft accident referred to in subsection (a), other than a safety investigation; and

(2) the term “safety investigation” means an investigation by Coast Guard personnel of an aircraft accident referred to in subsection (a) that is conducted solely to determine the cause of the accident and to obtain information that may prevent the occurrence of similar accidents.

§ 679. Inventory of real property

(a) IN GENERAL.—[Not later than September 30, 2015, the Commandant shall establish] *The Commandant shall maintain* an inventory of all real property, including submerged lands, under the control of the Coast Guard, which shall include—

(1) the size, the location, and any other appropriate description of each unit of such property;

(2) an assessment of the physical condition of each unit of such property, excluding lands;

(3) a determination of whether each unit of such property should be—

(A) retained to fulfill a current or projected Coast Guard mission requirement; or

(B) subject to divestiture; and

(4) other information the Commandant considers appropriate.

[(b) INVENTORY MAINTENANCE.—The Commandant shall—

[(1) maintain the inventory required under subsection (a) on an ongoing basis; and

[(2) update information on each unit of real property included in such inventory not later than 30 days after any change relating to the control of such property.]

(b) UPDATES.—*The Commandant shall update information on each unit of real property included in the inventory required under subsection (a) not later than 30 days after any change relating to the control of such property.*

(c) RECOMMENDATIONS TO CONGRESS.—Not later than March 30, 2016, and every 5 years thereafter, the Commandant shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that includes—

(1) a list of all real property under the control of the Coast Guard and the location of such property by property type;

(2) recommendations for divestiture with respect to any units of such property; and

(3) recommendations for consolidating any units of such property, including—

(A) an estimate of the costs or savings associated with each recommended consolidation; and

(B) a discussion of the impact that such consolidation would have on Coast Guard mission effectiveness.

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CHAPTER 19—ENVIRONMENTAL COMPLIANCE AND RESTORATION PROGRAM

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§ 693. Annual list of projects to Congress

The [Commandant of the Coast Guard] *Commandant* shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a prioritized list of projects eligible for environmental compliance and restoration funding for each fiscal year concurrent with the President's budget submission for that fiscal year.

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PART II—COAST GUARD RESERVE AND AUXILIARY

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CHAPTER 23—COAST GUARD AUXILIARY

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§ 823a. Members of the Auxiliary; status

(a) Except as otherwise provided in this chapter, a member of the Coast Guard Auxiliary shall not be considered to be a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, Federal employee benefits, ethics, conflicts of interest, and other similar criminal or civil statutes and regulations governing the conduct of Federal employees. However, nothing in this subsection shall constrain the Commandant from prescribing standards for the conduct and behavior of members of the Auxiliary.

(b) A member of the Auxiliary while assigned to duty shall be deemed to be a Federal employee only for the purposes of the following:

- (1) Chapter 171 of title 28 (popularly known as the Federal Tort Claims Act).
- (2) Section 2733 of title 10 (popularly known as the Military Claims Act).
- (3) Section 30101 of title 46 (popularly known as the Admiralty Extension Act).
- (4) Chapter 309 of title 46 (known as the Suits in Admiralty Act).
- (5) Chapter 311 of title 46 (known as the Public Vessels Act).
- (6) Other matters related to noncontractual civil liability.
- (7) Compensation for work injuries under chapter 81 of title 5.
- (8) The resolution of claims relating to damage to or loss of personal property of the member incident to service under the Military Personnel and Civilian Employees' Claims Act of 1964 (31 U.S.C. 3721).

(9) [On or after January 1, 2001, section] *Section* 651 of Public Law 104–208.

(c) A member of the Auxiliary, while assigned to duty, shall be deemed to be a person acting under an officer of the United States or an agency thereof for purposes of section 1442(a)(1) of title 28.

* * * * *

§ 826. Use of member’s facilities

(a) MOTOR BOATS, YACHTS, AIRCRAFT, AND RADIO STATIONS.—The Coast Guard may utilize for any purpose incident to carrying out its functions and duties as authorized by the Secretary any motorboat, yacht, aircraft, or radio station placed at its disposition for any of such purposes by any member of the Auxiliary, by any corporation, partnership, or association, or by any State or political subdivision thereof.

(b) MOTOR VEHICLES.—The Coast Guard may utilize to carry out its functions and duties as authorized by the Secretary any motor vehicle (as defined in [section 154 of title 23, United States Code] *section 30102 of title 49*) placed at its disposition by any member of the Auxiliary, by any corporation, partnership, or association, or by any State or political subdivision thereof, to tow Federal Government property.

* * * * *

§ 830. Availability of appropriations

(a) Appropriations of the Coast Guard shall be available for the payment of actual necessary traveling expense and subsistence, or commutation of ration allowance in lieu of subsistence, of members of the Auxiliary assigned to authorized duties and for actual necessary expenses of operation of any motorboat, yacht, aircraft, radio station, or motorized vehicle utilized under section 826(b) when assigned to Coast Guard duty, but shall not be available for the payment of compensation for personal services, incident to such operation, other than to personnel of the Coast Guard or the Reserve. The term “actual necessary expenses of operation,” as used in this section, shall include payment for fuel, oil, power, water, supplies, provisions, replacement or repair of equipment, repair of any damaged motorboat, yacht, aircraft, radio station, or motorized vehicle utilized under section 826(b) and for the constructive or actual loss of any motorboat, yacht, aircraft, radio station, or motorized vehicle utilized under section 826(b) where it is determined, under applicable regulations, that responsibility for the loss or damage necessitating such replacement or repair of equipment, or for the damage or loss, constructive or actual, of such motorboat, yacht, aircraft, radio station, or motorized vehicle utilized under section 826(b) rests with the Coast Guard.

(b) The Secretary may pay interest on a claim under this section in any case in which a payment authorized under this section is not made within 60 days after the submission of the claim in a manner prescribed by the Secretary. The rate of interest for purposes of this section shall be the annual rate established under section 6621 of the Internal Revenue Code of [1954] 1986.

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**PART III—COAST GUARD AUTHORIZATIONS
AND REPORTS TO CONGRESS**

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CHAPTER 27—AUTHORIZATIONS

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§ 2701. Requirement for prior authorization of appropriations

Amounts may be appropriated to or for the use of the Coast Guard for the following matters only if the amounts have been authorized by law after December 31, 1976:

- (1) For the operation and maintenance of the Coast Guard, not otherwise provided for.
- (2) For the acquisition, construction, renovation, and improvement of aids to navigation, shore facilities, vessels, [and aircraft] *aircraft, and systems*, including equipment related thereto, and for maintenance, rehabilitation, lease, and operation of facilities and equipment.
- (3) For the Coast Guard Reserve program, including operations and maintenance of the program, personnel and training costs, equipment, and services.
- (4) For the environmental compliance and restoration functions of the Coast Guard under chapter 19 of this title.
- (5) For research, development, test, and evaluation of technologies, materials, and human factors directly related to improving the performance of the Coast Guard.
- (6) For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, and for personnel and administrative costs associated with the Alteration of Bridges Program.

§ 2702. Authorization of appropriations

Funds are authorized to be appropriated for each of fiscal years 2016 and 2017 for necessary expenses of the Coast Guard as follows:

- (1) For the operation and maintenance of the Coast Guard, not otherwise provided for—
 - (A) \$6,981,036,000 for fiscal year 2016; and
 - (B) \$6,986,815,000 for fiscal year 2017.
- (2) For the acquisition, construction, renovation, and improvement of aids to navigation, shore facilities, vessels, [and aircraft] *aircraft, and systems*, including equipment related thereto, and for maintenance, rehabilitation, lease, and operation of facilities and equipment—
 - (A) \$1,945,000,000 for fiscal year 2016; and
 - (B) \$1,945,000,000 for fiscal year 2017.
- (3) For the Coast Guard Reserve program, including operations and maintenance of the program, personnel and training costs, equipment, and services—
 - (A) \$140,016,000 for fiscal year 2016; and
 - (B) \$134,237,000 for fiscal year 2017.

(4) For the environmental compliance and restoration functions of the Coast Guard under chapter 19 of this title—

- (A) \$16,701,000 for fiscal year 2016; and
- (B) \$16,701,000 for fiscal year 2017.

(5) To the **Commandant of the Coast Guard** *Commandant* for research, development, test, and evaluation of technologies, materials, and human factors directly related to improving the performance of the Coast Guard’s mission with respect to search and rescue, aids to navigation, marine safety, marine environmental protection, enforcement of laws and treaties, ice operations, oceanographic research, and defense readiness, and for maintenance, rehabilitation, lease, and operation of facilities and equipment—

- (A) \$19,890,000 for fiscal year 2016; and
- (B) \$19,890,000 for fiscal year 2017.

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CHAPTER 29—REPORTS

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§ 2902. Capital investment plan

(a) **IN GENERAL.**—On the date on which the President submits to Congress a budget pursuant to section 1105 of title 31, the **Commandant of the Coast Guard** *Commandant* shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate—

(1) a capital investment plan for the Coast Guard that identifies for each capital asset for which appropriations are proposed in that budget—

- (A) the proposed appropriations included in the budget;
- (B) the total estimated cost of completion based on the proposed appropriations included in the budget;
- (C) projected funding levels for each fiscal year for the next 5 fiscal years or until project completion, whichever is earlier;
- (D) an estimated completion date based on the proposed appropriations included in the budget; and
- (E) an acquisition program baseline, as applicable; and

(2) a list of each unfunded priority for the Coast Guard.

(b) **NEW CAPITAL ASSETS.**—In the fiscal year following each fiscal year for which appropriations are enacted for a new capital asset, the report submitted under subsection (a) shall include—

(1) an estimated life-cycle cost estimate for the new capital asset;

(2) an assessment of the impact the new capital asset will have on—

- (A) delivery dates for each capital asset;
- (B) estimated completion dates for each capital asset;
- (C) the total estimated cost to complete each capital asset; and
- (D) other planned construction or improvement projects; and

(3) recommended funding levels for each capital asset necessary to meet the estimated completion dates and total estimated costs included in the such asset's approved acquisition program baseline.

(c) DEFINITIONS.—In this section—

(1) the term “unfunded priority” means a program or mission requirement that—

(A) has not been selected for funding in the applicable proposed budget;

(B) is necessary to fulfill a requirement associated with an operational need; and

(C) the Commandant would have recommended for inclusion in the applicable proposed budget had additional resources been available or had the requirement emerged before the budget was submitted; and

(2) the term “new capital asset” means—

(A) an acquisition program that does not have an approved acquisition program baseline; or

(B) the acquisition of a capital asset in excess of the number included in the approved acquisition program baseline.

§ 2903. Major acquisitions

(a) IN GENERAL.—In conjunction with the transmittal by the President to Congress of the budget of the United States for fiscal year 2014 and biennially thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the status of all major acquisition programs.

(b) INFORMATION TO BE INCLUDED.—Each report under subsection (a) shall include for each major acquisition program—

(1) a statement of the Coast Guard's mission needs and performance goals relating to such program, including a justification for any change to those needs and goals subsequent to a report previously submitted under this section;

(2) a justification explaining how the projected number and capabilities of assets acquired under such program meet applicable mission needs and performance goals;

(3) an identification of any and all mission hour gaps, accompanied by an explanation of how and when the Coast Guard will close those gaps;

(4) an identification of any changes with respect to such program, including—

(A) any changes to the timeline for the acquisition of each new asset and the phaseout of legacy assets; and

(B) any changes to—

(i) the costs of new assets or legacy assets for that fiscal year or future fiscal years; or

(ii) the total acquisition cost;

(5) a justification explaining how any change to such program fulfills the mission needs and performance goals of the Coast Guard;

(6) a description of how the Coast Guard is planning for the integration of each new asset acquired under such program

into the Coast Guard, including needs related to shore-based infrastructure and human resources;

(7) an identification of how funds in the applicable fiscal year's budget request will be allocated, including information on the purchase of specific assets;

(8) a projection of the remaining operational lifespan and life-cycle cost of each legacy asset that also identifies any anticipated resource gaps;

(9) a detailed explanation of how the costs of legacy assets are being accounted for within such program; and

(10) an annual performance comparison of new assets to legacy assets.

(c) ADEQUACY OF ACQUISITION WORKFORCE.—Each report under subsection (a) shall—

(1) include information on the scope of the acquisition activities to be performed in the next fiscal year and on the adequacy of the current acquisition workforce to meet that anticipated workload;

(2) specify the number of officers, members, and employees of the Coast Guard currently and planned to be assigned to each position designated under section 562(c); and

(3) identify positions that are or will be understaffed and actions that will be taken to correct such understaffing.

(d) CUTTERS NOT MAINTAINED IN CLASS.—Each report under subsection (a) shall identify which, if any, Coast Guard cutters that have been issued a certificate of classification by the American Bureau of Shipping have not been maintained in class, with an explanation detailing the reasons why the cutters have not been maintained in class.

(e) LONG-TERM MAJOR ACQUISITIONS PLAN.—Each report under subsection (a) shall include a plan that describes for the upcoming fiscal year, and for each of the 20 fiscal years thereafter—

(1) the numbers and types of cutters and aircraft to be decommissioned;

(2) the numbers and types of cutters and aircraft to be acquired to—

(A) replace the cutters and aircraft identified under paragraph (1); or

(B) address an identified capability gap; and

(3) the estimated level of funding in each fiscal year required to—

(A) acquire the cutters and aircraft identified under paragraph (2);

(B) acquire related command, control, communications, computer, intelligence, surveillance, and reconnaissance systems; and

(C) acquire, construct, or renovate shoreside infrastructure.

(f) QUARTERLY UPDATES ON RISKS OF PROGRAMS.—

(1) IN GENERAL.—Not later than 15 days after the end of each fiscal year quarter, the [Commandant of the Coast Guard] *Commandant* shall submit to the committees of Congress specified in subsection (a) an update setting forth a current assessment of the risks associated with all current major acquisition programs.

(2) ELEMENTS.—Each update under this subsection shall set forth, for each current major acquisition program, the following:

- (A) The top five current risks to such program.
- (B) Any failure of such program to demonstrate a key performance parameter or threshold during operational test and evaluation conducted during the fiscal year quarter preceding such update.
- (C) Whether there has been any decision during such fiscal year quarter to order full-rate production before all key performance parameters or thresholds are met.
- (D) Whether there has been any breach of major acquisition program cost (as defined by the Major Systems Acquisition Manual) during such fiscal year quarter.
- (E) Whether there has been any breach of major acquisition program schedule (as so defined) during such fiscal year quarter.

(g) MAJOR ACQUISITION PROGRAM DEFINED.—In this section, the term “major acquisition program” means an ongoing acquisition undertaken by the Coast Guard with a life-cycle cost estimate greater than or equal to \$300,000,000.

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SECTION 4 OF THE ACT OF MAY 22, 1926

(Public Law Chapter 371)

AN ACT To authorize the Secretary of Commerce to dispose of certain lighthouse reservations, and to increase the efficiency of the Lighthouse Service, and for other purposes.

SEC. 4. Hereafter officers and crews of vessels of the Lighthouse Service and light keepers and depot keepers of the Lighthouse Service shall be permitted to purchase commissary and quartermaster supplies from the Army, Navy, or Marine Corps at the price charged officers and [enlisted men] *enlisted members* of the Army, Navy, or Marine Corps.

TITLE 46, UNITED STATES CODE

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SUBTITLE II—VESSELS AND SEAMEN

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PART A—GENERAL PROVISIONS

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CHAPTER 21—GENERAL

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§ 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) with the exception of emergency locator beacons for recreational vessels operating beyond 3 nautical miles from the baselines from which the territorial sea of the United States is measured or beyond 3 nautical miles from the coastline of the Great Lakes, does not include radio equipment.

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

(3) “*Commandant*” means the *Commandant of the Coast Guard*.

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

[(5a)] (5) “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.

[(7)] (6) “crude oil” means a liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable 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)] (7) “crude oil tanker” means a tanker engaged in the trade of carrying crude oil.

[(8a)] (8) “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)] (9) “discharge”, when referring to a substance discharged from a vessel, includes spilling, leaking, pumping, pouring, emitting, emptying, or dumping, however caused.

[(10b)] (10) “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)] (11) “fish” means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life, except marine mammals and birds.

[(11a)] (12) “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)] (13) “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.

[(11c)] (14) “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.

[(13)] (15) “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)] (16) “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)] (17) “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)] (18) “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)] (19) “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)] (20) “mobile offshore drilling unit” means a vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources.

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

[(17)] (22) “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)] (23) “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.

[(18)] (24) “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)] (25) “offshore supply vessel” means a motor vessel 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)] (26) “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)] (27) “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)] (28) “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)] (29) “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)] (30) “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)] (31) “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)] (32) “product carrier” means a tanker engaged in the trade of carrying oil except crude oil.

[(24)] (33) “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)] (34) “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)] (35) "recreational vessel manufacturer" means a person engaged in the manufacturing, construction, assembly, or importation of recreational vessels, components, or associated equipment.
- [(26a)] (36) "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 required 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)] (37) "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)] (38) "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)] (39) "sailing school student" means an individual who is on board a sailing school vessel to receive sailing instruction.
- [(30)] (40) "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 1986 (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)] (41) “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)] (42) “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)] (43) “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)] (44) “Secretary” means the Secretary of the department in which the Coast Guard is operating.

[(35)] (45) “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.

[(37)] (46) “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)] (47) “submersible vessel” means a vessel that is capable of operating below the surface of the water.

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

[(39)] (49) “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)] (50) “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.

[(42)] (51) “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)] (52) “uninspected vessel” means a vessel not subject to inspection under section 3301 of this title that is not a recreational vessel.

[(47)] (53) “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)] (54) “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.

* * * * *

§ 2110. Fees

(a)(1) Except as otherwise provided in this title, the Secretary shall establish a fee or charge for a service or thing of value provided by the Secretary under this subtitle, in accordance with section 9701 of title 31.

(2) The Secretary may not establish a fee or charge under paragraph (1) for inspection or examination of a non-self-propelled tank vessel under part B of this subtitle that is more than \$500 annually. The Secretary may not establish a fee or

charge under paragraph (1) for inspection or examination of a small passenger vessel under this title that is more than \$300 annually for such vessels under 65 feet in length, or more than \$600 annually for such vessels 65 feet in length and greater. The Secretary may not establish a fee or charge under paragraph (1) for inspection or examination under this title for any publicly-owned ferry.

(3) The Secretary may, by regulation, adjust a fee or charge collected under this subsection to accommodate changes in the cost of providing a specific service or thing of value, but the adjusted fee or charge may not exceed the total cost of providing the service or thing of value for which the fee or charge is collected, including the cost of collecting the fee or charge.

(4) The Secretary may not collect a fee or charge under this subsection that is in conflict with the international obligations of the United States.

(5) The Secretary may not collect a fee or charge under this subsection for any search or rescue service.

(b)(1) In addition to the collection of fees and charges established under subsection (a), in providing a service or thing of value under this subtitle the Secretary may accept in-kind transportation, travel, and subsistence.

(2) The value of in-kind transportation, travel, and subsistence accepted under this paragraph may not exceed applicable per diem rates set forth in regulations prescribed under section 464 of title 37.

(c) In addition to the collection of fees and charges established under subsection (a), the Secretary may recover appropriate collection and enforcement costs associated with delinquent payments of the fees and charges.

(d)(1) The Secretary may employ any Federal, State, or local agency or instrumentality, or any private enterprise or business, to collect a fee or charge established under this section. A private enterprise or business selected by the Secretary to collect fees or charges—

(A) shall be subject to reasonable terms and conditions agreed to by the Secretary and the enterprise or business;

(B) shall provide appropriate accounting to the Secretary; and

(C) may not institute litigation as part of that collection.

(2) A Federal agency shall account for the agency's costs of collecting the fee or charge under this subsection as a reimbursable expense, and the costs shall be credited to the account from which expended.

(e) A person that violates this section by failing to pay a fee or charge established under this section is liable to the United States Government for a civil penalty of not more than \$5,000 for each violation.

(f) When requested by the Secretary, the Secretary of Homeland Security shall deny the clearance required by section 60105 of this title to a vessel for which a fee or charge established under this section has not been paid until the fee or charge is paid or until a bond is posted for the payment.

(g) The Secretary may exempt a person from paying a fee or charge established under this section if the Secretary determines that it is in the public interest to do so.

(h) Fees and charges collected by the Secretary under this section shall be deposited in the general fund of the Treasury as offsetting receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities.

(i) The collection of a fee or charge under this section does not alter or expand the functions, powers, responsibilities, or liability of the United States under any law for the performance of services or the provision of a thing of value for which a fee or charge is collected under this section.

(j) The Secretary may not establish or collect a fee or charge for the inspection under part B of this subtitle of training vessels operated by State maritime academies.

[(k) The Secretary may not plan, implement or finalize any regulation that would promulgate any new maritime user fee which was not implemented and collected prior to January 1, 1998, including a fee or charge for any domestic icebreaking service or any other navigational assistance service. This subsection expires on September 30, 2006.]

* * * * *

§ 2113. Authority to exempt certain vessels

If the Secretary decides that the application of a provision of part B, C, F, or G of this subtitle is not necessary in performing the mission of the vessel engaged in excursions or an oceanographic research vessel, or not necessary for the safe operation of certain vessels carrying passengers, the Secretary by regulation may—

(1) for a vessel, issue a special permit specifying the conditions of operation and equipment;

(2) exempt an oceanographic research vessel from that provision under conditions the Secretary may specify;

(3) establish different operating and equipment requirements for vessels defined in [section 2101(42)(A)] *section 2101(51)(A)* of this title; *and*

[(4) establish different structural fire protection, manning, operating, and equipment requirements for vessels of at least 100 gross tons but less than 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 carrying not more than 150 passengers on domestic voyages if the owner of the vessel—

[(A) makes application for inspection to the Coast Guard within 6 months of the date of enactment of the Passenger Vessel Safety Act of 1993; and

[(B) provides satisfactory documentation that the vessel was chartered at least once within the previous 12 months prior to the date of enactment of that Act; and

[(5) establish different structural fire protection, manning, operating, and equipment requirements for former public vessels of the United States of at least 100 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, carrying not more than 150 passengers on domestic voyages, if the owner of the vessel—

【(A) makes application for inspection to the Coast Guard within 6 months of the date of enactment of the Passenger Vessel Safety Act of 1993; and

【(B) provides satisfactory documentation that the vessel was chartered at least once within the previous 12 months prior to the date of enactment of that Act.】

(4) maintain different structural fire protection, manning, operating, and equipment requirements for vessels that satisfied requirements set forth in the Passenger Vessel Safety Act of 1993 (Public Law 103–206) before June 21, 1994.

* * * * *

§ 2116. Marine safety strategy, goals, and performance assessments

(a) LONG-TERM STRATEGY AND GOALS.—In conjunction with existing federally required strategic planning efforts, the Secretary shall develop a long-term strategy for improving vessel safety and the safety of individuals on vessels. The strategy shall include the issuance each year of an annual plan and schedule for achieving the following goals:

(1) Reducing the number and rates of marine casualties.

(2) Improving the consistency and effectiveness of vessel and operator enforcement and compliance programs.

(3) Identifying and targeting enforcement efforts at high-risk vessels and operators.

(4) Improving research efforts to enhance and promote vessel and operator safety and performance.

(b) CONTENTS OF STRATEGY AND ANNUAL PLANS.—

(1) MEASURABLE GOALS.—The strategy and annual plans shall include specific numeric or measurable goals designed to achieve the goals set forth in subsection (a). The purposes of the numeric or measurable goals are the following:

(A) To increase the number of safety examinations on all high-risk vessels.

(B) To eliminate the backlog of marine safety-related rulemakings.

(C) To improve the quality and effectiveness of marine safety information databases by ensuring that all Coast Guard personnel accurately and effectively report all safety, casualty, and injury information.

(D) To provide for a sufficient number of Coast Guard marine safety personnel, and provide adequate facilities and equipment to carry out the functions referred to in section 93(c) of title 14.

(2) RESOURCE NEEDS.—The strategy and annual plans shall include estimates of—

(A) the funds and staff resources needed to accomplish each activity included in the strategy and plans; and

(B) the staff skills and training needed for timely and effective accomplishment of each goal.

(c) SUBMISSION WITH THE PRESIDENT'S BUDGET.—【Beginning with fiscal year 2011 and each fiscal year thereafter, the】 *The* Secretary shall submit to Congress the strategy and annual plan not

later than 60 days following the transmission of the President's budget submission under section 1105 of title 31.

(d) ACHIEVEMENT OF GOALS.—

(1) PROGRESS ASSESSMENT.—No less frequently than semi-annually, the **Coast Guard Commandant** *Commandant* shall assess the progress of the Coast Guard toward achieving the goals set forth in subsection (b). The Commandant shall convey the Commandant's assessment to the employees of the marine safety workforce and shall identify any deficiencies that should be remedied before the next progress assessment.

(2) REPORT TO CONGRESS.—The Secretary shall report annually to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate—

(A) on the performance of the marine safety program in achieving the goals of the marine safety strategy and annual plan under subsection (a) for the year covered by the report;

(B) on the program's mission performance in achieving numerical measurable goals established under subsection (b), including—

(i) the number of civilian and military Coast Guard personnel assigned to marine safety positions; and

(ii) an identification of marine safety positions that are understaffed to meet the workload required to accomplish each activity included in the strategy and plans under subsection (a); and

(C) recommendations on how to improve performance of the program.

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PART B—INSPECTION AND REGULATION OF VESSELS

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CHAPTER 32—MANAGEMENT OF VESSELS

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§ 3202. Application

(a) FOREIGN VOYAGES AND FOREIGN VESSELS.—This chapter applies to a vessel that—

(1)(A) is transporting more than 12 passengers described in **section 2101(21)(A)** *section 2101(29)(A)* of this title; or

(B) is of at least 500 gross tons as measured under section 14302 of this title and is a tanker, freight vessel, bulk freight vessel, high speed freight vessel, or self-propelled mobile offshore drilling unit; and

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

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

(b) OTHER PASSENGER VESSELS.—This chapter applies to a vessel that is—

- (1) a passenger vessel or small passenger vessel; and
- (2) is transporting more passengers than a number prescribed by the Secretary based on the number of individuals on the vessel that could be killed or injured in a marine casualty.
- (c) VOLUNTARY APPLICATION.—This chapter applies to a vessel not described in subsection (a) of this section if the owner of the vessel requests the Secretary to apply this chapter to the vessel.
- (d) EXCEPTION.—Except as provided in subsection (c) of this section, this chapter does not apply to—
 - (1) a barge;
 - (2) a recreational vessel not engaged in commercial service;
 - (3) a fishing vessel;
 - (4) a vessel operating on the Great Lakes or its tributary and connecting waters that is not described in subsection (b) of this section; or
 - (5) a public vessel.

* * * * *

CHAPTER 33—INSPECTION GENERALLY

* * * * *

§ 3302. Exemptions

- (a) A vessel is not excluded from one category only because the vessel is—
 - (1) included in another category of section 3301 of this title;
 - or
 - (2) excluded by this section from another category of section 3301 of this title.
- (b) Except as provided in subsection (c)(3) of this section, a fishing vessel, including a vessel chartered part-time as a fish tender vessel, is exempt from section 3301(1), (7), (11), and (12) of this title.
 - (c)(1) Except as provided in paragraph (3) of this subsection, a fish processing vessel of not more than 5,000 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 is exempt from section 3301(1), (6), (7), (11), and (12) of this title.
 - (2) Except as provided in paragraphs (3) and (4) of this subsection, the following fish tender vessels are exempt from section 3301(1), (6), (7), (11), and (12) of this title:
 - (A) A vessel of not more 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) A vessel engaged in the Aleutian trade that is not more than 2,500 gross tons as measured under section 14302 of this title.
 - (3)(A) A fishing vessel or fish processing vessel is exempt from section 3301(1), (6), and (7) of this title when transporting cargo (including fisheries-related cargo) to or from a place in Alaska if—
 - (i) that place does not receive weekly common carrier service by water from a place in the United States;

(ii) that place receives such common carrier service and the cargo is of a type not accepted by that common carrier service; or

(iii) the cargo is proprietary cargo owned by the owner of the vessel or any affiliated entity or subsidiary.

(B) A fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or less than 500 gross tons as measured under section 14502 of this title, or is less than 2,500 gross tons as measured under section 14302 of this title, which is qualified to engage in the Aleutian trade is exempt from section 3301(1), (6), and (7) of this title when transporting cargo (including fisheries-related cargo) to or from a place in Alaska outside the Aleutian trade geographic area if—

(i) that place does not receive weekly common carrier service by water from a place in the United States;

(ii) that place receives such common carrier service and the cargo is of a type not accepted by that common carrier service; or

(iii) the cargo is proprietary cargo owned by the owner of the vessel or any affiliated entity or subsidiary.

(C) In this paragraph, the term “proprietary cargo” means cargo that—

(i) is used by the owner of the vessel or any affiliated entity or subsidiary in activities directly related to fishing or the processing of fish;

(ii) is consumed by employees of the owner of the vessel or any affiliated entity or subsidiary who are engaged in fishing or in the processing of fish; or

(iii) consists of fish or fish products harvested or processed by the owner of the vessel or any affiliated entity or subsidiary.

(D) Notwithstanding the restrictions in subparagraph (B) of this paragraph, vessels qualifying under subparagraph (B) may transport cargo (including fishery-related products) from a place in Alaska receiving weekly common carrier service by water to a final destination in Alaska not receiving weekly service by water from common carriers.

(4) A fish tender vessel is exempt from section 3301(1), (6), and (7) of this title when engaged in the Aleutian trade if the vessel—

(A) is not more than 500 gross tons as measured under section 14502 of this title, or less than 500 gross tons as measured under section 14502 of this title, or is less than 2,500 gross tons as measured under section 14302 of this title;

(B) has an incline test performed by a marine surveyor; and

(C) has written stability instructions posted on board the vessel.

(d)(1) A motor vessel of less than 150 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, constructed before August 23, 1958, is not subject to inspection under section 3301(1) of this title if the vessel is owned or demise chartered to a cooperative or association that only transports cargo owned by at least one of its members on a nonprofit basis between places within the waters of—

(A) southeastern Alaska shoreward of the Boundary Line; or

(B) southeastern Alaska shoreward of the Boundary Line and—

(i) Prince Rupert, British Columbia; or

(ii) waters of Washington shoreward of the Boundary Line, via sheltered waters, as defined in article I of the treaty dated December 9, 1933, between the United States and Canada defining certain waters as sheltered waters.

(2) The transportation authorized under this subsection is limited to and from places not receiving annual weekly transportation service from any part of the United States by an established water common carrier. However, the limitation does not apply to transporting cargo of a character not accepted for transportation by that carrier.

(e) A vessel laid up, dismantled, or out of commission is exempt from inspection.

(f) Section 3301(4) and (8) of this title does not apply to an oceanographic research vessel because it is carrying scientific personnel.

(g)(1) Except when compliance with major structural or major equipment requirements is necessary to remove an especially hazardous condition, an offshore supply vessel is not subject to regulations or standards for those requirements if the vessel—

(A) was operating as an offshore supply vessel before January 2, 1979; or

(B) was contracted for before January 2, 1979, and entered into service as an offshore supply vessel before October 6, 1980.

(2) [After December 31, 1988, this] *This* subsection does not apply to an offshore supply vessel that is at least 20 years of age.

(h) An offshore supply vessel operating on January 1, 1979, under a certificate of inspection issued by the Secretary, is subject to an inspection standard or requirement only if the standard or requirement could have been prescribed for the vessel under authority existing under law on October 5, 1980.

(i)(1) The Secretary may issue a permit exempting a vessel from any part of the requirements of this part for vessels transporting cargo, including bulk fuel, from one place in Alaska to another place in Alaska only if the vessel—

(A) is not more than 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;

(B) is in a condition that does not present an immediate threat to the safety of life or the environment; and

(C) was operating in the waters off Alaska as of June 1, 1976, or the vessel is a replacement for a vessel that was operating in the waters off Alaska as of June 1, 1976, if the vessel being replaced is no longer in service.

(2) Except in a situation declared to be an emergency by the Secretary, a vessel operating under a permit may not transport cargo to or from a place if the cargo could be transported by another commercial vessel that is reasonably available and that does not require exemptions to operate legally or if the cargo could be readily transported by overland routes.

(3) A permit may be issued for a specific voyage or for not more than one year. The permit may impose specific requirements about

the amount or type of cargo to be carried, manning, the areas or specific routes over which the vessel may operate, or other similar matters. The duration of the permit and restrictions contained in the permit shall be at the sole discretion of the Secretary.

(4) A designated Coast Guard official who has reason to believe that a vessel issued a permit is in a condition or is operated in a manner that creates an immediate threat to the safety of life or the environment or is operated in a manner that is inconsistent with the terms of the permit, may direct the master or individual in charge to take immediate and reasonable steps to safeguard life and the environment, including directing the vessel to a port or other refuge.

(5) If a vessel issued a permit creates an immediate threat to the safety of life or the environment, or is operated in a manner inconsistent with the terms of the permit or the requirements of paragraph (2) of this subsection, the permit may be revoked. The owner, charterer, managing operator, agent, master, or individual in charge of a vessel issued a permit, that willfully permits the vessel to be operated, or operates, the vessel in a manner inconsistent with the terms of the permit, is liable to the United States Government for a civil penalty of not more than \$1,000.

(j) Notwithstanding another provision of this chapter, the Secretary is not required to inspect or prescribe regulations for a nautical school vessel of not 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—

(1) when used in connection with a course of instruction dealing with any aspect of maritime education or study; and

(2) operated by—

(A) the United States Merchant Marine Academy; or

(B) a State maritime academy assisted under chapter 515 of this title.

(k) Only the boiler, engine, and other operating machinery of a steam vessel that is a recreational vessel of not more than 65 feet overall in length are subject to inspection under section 3301(9) of this title.

(l)(1) The Secretary may issue a permit exempting the following vessels from the requirements of this part for passenger vessels so long as the vessels are owned by nonprofit organizations and operated as nonprofit memorials to merchant mariners:

(A) The steamship John W. Brown (United States official number 242209), owned by Project Liberty Ship Baltimore, Incorporated, located in Baltimore, Maryland.

(B) The steamship Lane Victory (United States official number 248094), owned by the United States Merchant Marine Veterans of World War II, located in San Pedro, California.

(C) The steamship Jeremiah O'Brien (United States official number 243622), owned by the National Liberty Ship Memorial, Inc.

(D) The SS Red Oak Victory (United States official number 249410), owned by the Richmond Museum Association, located in Richmond, California.

(E) The SS American Victory (United States official number 248005), owned by Victory Ship, Inc., of Tampa, Florida.

(F) The LST-325, owned by USS LST Ship Memorial, Incorporated, located in Mobile, Alabama.

(2) The Secretary may issue a permit for a specific voyage or for not more than one year. The Secretary may impose specific requirements about the number of passengers to be carried, manning, the areas or specific routes over which the vessel may operate, or other similar matters.

(3) A designated Coast Guard official who has reason to believe that a vessel operating under this subsection is in a condition or is operated in a manner that creates an immediate threat to life or the environment or is operated in a manner that is inconsistent with this section, may direct the master or individual in charge to take immediate and reasonable steps to safeguard life and the environment, including directing the vessel to a port or other refuge.

(m) A seagoing barge is not subject to inspection under section 3301(6) of this title if the vessel is unmanned and does not carry—

- (1) a hazardous material as cargo; or
- (2) a flammable or combustible liquid, including oil, in bulk.

* * * * *

§ 3306. Regulations

(a) To carry out this part and to secure the safety of individuals and property on board vessels subject to inspection, the Secretary shall prescribe necessary regulations to ensure the proper execution of, and to carry out, this part in the most effective manner for—

(1) the design, construction, alteration, repair, and operation of those vessels, including superstructures, hulls, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, boilers, unfired pressure vessels, piping, electric installations, and accommodations for passengers and crew, sailing school instructors, and sailing school students;

(2) lifesaving equipment and its use;

(3) firefighting equipment, its use, and precautionary measures to guard against fire;

(4) inspections and tests related to paragraphs (1), (2), and (3) of this subsection; and

(5) the use of vessel stores and other supplies of a dangerous nature.

(b)(1) Equipment and material subject to regulation under this section may not be used on any vessel without prior approval of the Secretary.

(2) Except with respect to use on a public vessel, the Secretary may treat an approval of equipment or materials by a foreign government as approval by the Secretary for purposes of paragraph (1) if the Secretary determines that—

(A) the design standards and testing procedures used by that government meet the requirements of the International Convention for the Safety of Life at Sea, 1974;

(B) the approval of the equipment or material by the foreign government will secure the safety of individuals and property on board vessels subject to inspection; and

(C) for lifesaving equipment, the foreign government—

(i) has given equivalent treatment to approvals of lifesaving equipment by the Secretary; and

- (ii) otherwise ensures that lifesaving equipment approved by the Secretary may be used on vessels that are documented and subject to inspection under the laws of that country.
- (c) In prescribing regulations for sailing school vessels, the Secretary shall consult with representatives of the private sector having experience in the operation of vessels likely to be certificated as sailing school vessels. The regulations shall—
- (1) reflect the specialized nature of sailing school vessel operations, and the character, design, and construction of vessels operating as sailing school vessels; and
 - (2) include requirements for notice to sailing school instructors and sailing school students about the specialized nature of sailing school vessels and applicable safety regulations.
- (d) In prescribing regulations for nautical school vessels operated by the United States Merchant Marine Academy or by a State maritime academy (as defined in section 51102 of this title), the Secretary shall consider the function, purpose, and operation of the vessels, their routes, and the number of individuals who may be carried on the vessels.
- (e) When the Secretary finds it in the public interest, the Secretary may suspend or grant exemptions from the requirements of a regulation prescribed under this section related to lifesaving and firefighting equipment, muster lists, ground tackle and hawsers, and bilge systems.
- (f) In prescribing regulations for offshore supply vessels, the Secretary shall consider the characteristics, methods of operation, and the nature of the service of offshore supply vessels.
- (g) In prescribing regulations for fish processing or fish tender vessels, the Secretary shall consult with representatives of the private sector having experience in the operation of these vessels. The regulations shall reflect the specialized nature and economics of fish processing or fish tender vessel operations and the character, design, and construction of fish processing or fish tender vessels.
- (h) The Secretary shall establish appropriate structural fire protection, manning, operating, and equipment requirements for vessels of at least 100 gross tons but less than 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 carrying not more than 150 passengers on domestic voyages, which meet the eligibility criteria of section 2113(4) of this title.
- (i) The Secretary shall establish appropriate structural fire protection, manning, operating, and equipment requirements for former public vessels of the United States of at least 100 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 carrying not more than 150 passengers on domestic voyages, which meet the eligibility criteria of [section 2113(5)] *section 2113(4)* of this title.
- (j) The Secretary may establish by regulation a safety management system appropriate for the characteristics, methods of operation, and nature of service of towing vessels.

(k)(1) Each vessel of the United States that is constructed under a contract entered into after the date of enactment of the Maritime Safety Act of 2010, or that is delivered after January 1, 2011, with an aggregate capacity of 600 cubic meters or more of oil fuel, shall comply with the requirements of Regulation 12A under Annex I to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, entitled “Oil Fuel Tank Protection”.

(2) The Secretary may prescribe regulations to apply the requirements described in Regulation 12A to vessels described in paragraph (1) that are not otherwise subject to that convention. Any such regulation shall be considered to be an interpretive rule for the purposes of section 553 of title 5.

(3) In this subsection the term “oil fuel” means any oil used as fuel in connection with the propulsion and auxiliary machinery of the vessel in which such oil is carried.

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CHAPTER 35—CARRIAGE OF PASSENGERS

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§ 3507. Passenger vessel security and safety requirements

(a) VESSEL DESIGN, EQUIPMENT, CONSTRUCTION, AND RETROFITTING REQUIREMENTS.—

(1) IN GENERAL.—Each vessel to which this subsection applies shall comply with the following design and construction standards:

(A) The vessel shall be equipped with ship rails that are located not less than 42 inches above the cabin deck.

(B) Each passenger stateroom and crew cabin shall be equipped with entry doors that include peep holes or other means of visual identification.

(C) For any vessel the keel of which is laid after the date of enactment of the Cruise Vessel Security and Safety Act of 2010, each passenger stateroom and crew cabin shall be equipped with—

(i) security latches; and

(ii) time-sensitive key technology.

(D) The vessel shall integrate technology that can be used for capturing images of passengers or detecting passengers who have fallen overboard, to the extent that such technology is available.

(E) The vessel shall be equipped with a sufficient number of operable acoustic hailing or other such warning devices to provide communication capability around the entire vessel when operating in high risk areas (as defined by the United States Coast Guard).

(2) FIRE SAFETY CODES.—In administering the requirements of paragraph (1)(C), the Secretary shall take into consideration fire safety and other applicable emergency requirements established by the U.S. Coast Guard and under international law, as appropriate.

[(3) EFFECTIVE DATE.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), the requirements of paragraph (1) shall take effect 18 months after the date of enactment of the Cruise Vessel Security and Safety Act of 2010.]

[(B) LATCH AND KEY REQUIREMENTS.—The requirements of paragraph (1)(C) take effect on the date of enactment of the Cruise Vessel Security and Safety Act of 2010.]

(b) VIDEO RECORDING.—

(1) REQUIREMENT TO MAINTAIN SURVEILLANCE.—The owner of a vessel to which this section applies shall maintain a video surveillance system to assist in documenting crimes on the vessel and in providing evidence for the prosecution of such crimes, as determined by the Secretary.

(2) ACCESS TO VIDEO RECORDS.—The owner of a vessel to which this section applies shall provide to any law enforcement official performing official duties in the course and scope of an investigation, upon request, a copy of all records of video surveillance that the official believes may provide evidence of a crime reported to law enforcement officials.

(c) SAFETY INFORMATION.—

(1) CRIMINAL ACTIVITY PREVENTION AND RESPONSE GUIDE.—The owner of a vessel to which this section applies (or the owner's designee) shall—

(A) have available for each passenger a guide (referred to in this subsection as the “security guide”), written in commonly understood English, which—

(i) provides a description of medical and security personnel designated on board to prevent and respond to criminal and medical situations with 24 hour contact instructions;

(ii) describes the jurisdictional authority applicable, and the law enforcement processes available, with respect to the reporting of homicide, suspicious death, a missing United States national, kidnapping, assault with serious bodily injury, any offense to which section 2241, 2242, 2243, or 2244(a) or (c) of title 18 applies, firing or tampering with the vessel, or theft of money or property in excess of \$10,000, together with contact information for the appropriate law enforcement authorities for missing persons or reportable crimes which arise—

(I) in the territorial waters of the United States;

(II) on the high seas; or

(III) in any country to be visited on the voyage;

(B) provide a copy of the security guide to the Federal Bureau of Investigation for comment; and

(C) publicize the security guide on the website of the vessel owner.

(2) EMBASSY AND CONSULATE LOCATIONS.—The owner of a vessel to which this section applies shall provide in each passenger stateroom, and post in a location readily accessible to all crew and in other places specified by the Secretary, information regarding the locations of the United States embassy and each consulate of the United States for each country the vessel will visit during the course of the voyage.

(d) **SEXUAL ASSAULT.**—The owner of a vessel to which this section applies shall—

(1) maintain on the vessel adequate, in-date supplies of anti-retroviral medications and other medications designed to prevent sexually transmitted diseases after a sexual assault;

(2) maintain on the vessel equipment and materials for performing a medical examination in sexual assault cases to evaluate the patient for trauma, provide medical care, and preserve relevant medical evidence;

(3) make available on the vessel at all times medical staff who have undergone a credentialing process to verify that he or she—

(A) possesses a current physician's or registered nurse's license and—

(i) has at least 3 years of post-graduate or post-registration clinical practice in general and emergency medicine; or

(ii) holds board certification in emergency medicine, family practice medicine, or internal medicine;

(B) is able to provide assistance in the event of an alleged sexual assault, has received training in conducting forensic sexual assault examination, and is able to promptly perform such an examination upon request and provide proper medical treatment of a victim, including administration of anti-retroviral medications and other medications that may prevent the transmission of human immunodeficiency virus and other sexually transmitted diseases; and

(C) meets guidelines established by the American College of Emergency Physicians relating to the treatment and care of victims of sexual assault;

(4) prepare, provide to the patient, and maintain written documentation of the findings of such examination that is signed by the patient; and

(5) provide the patient free and immediate access to—

(A) contact information for local law enforcement, the Federal Bureau of Investigation, the United States Coast Guard, the nearest United States consulate or embassy, and the National Sexual Assault Hotline program or other third party victim advocacy hotline service; and

(B) a private telephone line and Internet-accessible computer terminal by which the individual may confidentially access law enforcement officials, an attorney, and the information and support services available through the National Sexual Assault Hotline program or other third party victim advocacy hotline service.

(e) **CONFIDENTIALITY OF SEXUAL ASSAULT EXAMINATION AND SUPPORT INFORMATION.**—The master or other individual in charge of a vessel to which this section applies shall—

(1) treat all information concerning an examination under subsection (d) confidential, so that no medical information may be released to the cruise line or other owner of the vessel or any legal representative thereof without the prior knowledge and approval in writing of the patient, or, if the patient is un-

able to provide written authorization, the patient's next-of-kin, except that nothing in this paragraph prohibits the release of—

(A) information, other than medical findings, necessary for the owner or master of the vessel to comply with the provisions of subsection (g) or other applicable incident reporting laws;

(B) information to secure the safety of passengers or crew on board the vessel; or

(C) any information to law enforcement officials performing official duties in the course and scope of an investigation; and

(2) treat any information derived from, or obtained in connection with, post-assault counseling or other supportive [services confidential] *services as confidential*, so no such information may be released to the cruise line or any legal representative thereof without the prior knowledge and approval in writing of the patient, or, if the patient is unable to provide written authorization, the patient's next-of-kin.

(f) CREW ACCESS TO PASSENGER STATEROOMS.—The owner of a vessel to which this section applies shall—

(1) establish and implement procedures and restrictions concerning—

(A) which crewmembers have access to passenger staterooms; and

(B) the periods during which they have that access; and
(2) ensure that the procedures and restrictions are fully and properly implemented and periodically reviewed.

(g) LOG BOOK AND REPORTING REQUIREMENTS.—

(1) IN GENERAL.—The owner of a vessel to which this section applies shall—

(A) record in a log book, either electronically or otherwise, in a centralized location readily accessible to law enforcement personnel, a report on—

(i) all complaints of crimes described in paragraph

(3)(A)(i),

(ii) all complaints of theft of property valued in excess of \$1,000, and

(iii) all complaints of other crimes,

committed on any voyage that embarks or disembarks passengers in the United States; and

(B) make such log book available upon request to any agent of the Federal Bureau of Investigation, any member of the United States Coast Guard, and any law enforcement officer performing official duties in the course and scope of an investigation.

(2) DETAILS REQUIRED.—The information recorded under paragraph (1) shall include, at a minimum—

(A) the vessel operator;

(B) the name of the cruise line;

(C) the flag under which the vessel was operating at the time the reported incident occurred;

(D) the age and gender of the victim and the accused assailant;

(E) the nature of the alleged crime or complaint, as applicable, including whether the alleged perpetrator was a passenger or a crewmember;

(F) the vessel's position at the time of the incident, if known, or the position of the vessel at the time of the initial report;

(G) the time, date, and method of the initial report and the law enforcement authority to which the initial report was made;

(H) the time and date the incident occurred, if known;

(I) the total number of passengers and the total number of crew members on the voyage; and

(J) the case number or other identifier provided by the law enforcement authority to which the initial report was made.

(3) REQUIREMENT TO REPORT CRIMES AND OTHER INFORMATION.—

(A) IN GENERAL.—The owner of a vessel to which this section applies (or the owner's designee)—

(i) shall contact the nearest Federal Bureau of Investigation Field Office or Legal Attache by telephone as soon as possible after the occurrence on board the vessel of an incident involving homicide, suspicious death, a missing United States national, kidnapping, assault with serious bodily injury, any offense to which section 2241, 2242, 2243, or 2244(a) or (c) of title 18 applies, firing or tampering with the vessel, or theft of money or property in excess of \$10,000 to report the incident;

(ii) shall furnish a written report of each incident specified in clause (i) to the Internet website maintained by the Secretary of Transportation under paragraph (4)(A);

(iii) may report any serious incident that does not meet the reporting requirements of clause (i) and that does not require immediate attention by the Federal Bureau of Investigation via the Internet website maintained by the Secretary of Transportation under paragraph (4)(A); and

(iv) may report any other criminal incident involving passengers or crewmembers, or both, to the proper State or local government law enforcement authority.

(B) INCIDENTS TO WHICH SUBPARAGRAPH (A) APPLIES.—Subparagraph (A) applies to an incident involving criminal activity if—

(i) the vessel, regardless of registry, is owned, in whole or in part, by a United States person, regardless of the nationality of the victim or perpetrator, and the incident occurs when the vessel is within the admiralty and maritime jurisdiction of the United States and outside the jurisdiction of any State;

(ii) the incident concerns an offense by or against a United States national committed outside the jurisdiction of any nation;

(iii) the incident occurs in the Territorial Sea of the United States, regardless of the nationality of the vessel, the victim, or the perpetrator; or

(iv) the incident concerns a victim or perpetrator who is a United States national on a vessel during a voyage that departed from or will arrive at a United States port.

(4) AVAILABILITY OF INCIDENT DATA VIA INTERNET.—

(A) WEBSITE.—

(i) IN GENERAL.—The Secretary of Transportation shall maintain a statistical compilation of all incidents on board a cruise vessel specified in paragraph (3)(A)(i) on an Internet website that provides a numerical accounting of the missing persons and alleged crimes reported under that paragraph without regard to the investigative status of the incident.

(ii) UPDATES AND OTHER REQUIREMENTS.—The compilation under clause (i) shall—

(I) be updated not less frequently than quarterly;

(II) be able to be sorted by cruise line;

(III) identify each cruise line by name;

(IV) identify each crime or alleged crime committed or allegedly committed by a passenger or crewmember;

(V) identify the number of individuals alleged overboard; and

(VI) include the approximate number of passengers and crew carried by each cruise line during each quarterly reporting period.

(iii) USER-FRIENDLY FORMAT.—The Secretary of Transportation shall ensure that the compilation, data, and any other information provided on the Internet website maintained under this subparagraph are in a user-friendly format. The Secretary shall, to the greatest extent practicable, use existing commercial off the shelf technology to transfer and establish the website, and shall not independently develop software, or acquire new hardware in operating the site.

(B) ACCESS TO WEBSITE.—Each cruise line taking on or discharging passengers in the United States shall include a link on its Internet website to the website maintained by the Secretary of Transportation under subparagraph (A).

(h) ENFORCEMENT.—

(1) PENALTIES.—

(A) CIVIL PENALTY.—Any person that violates this section or a regulation under this section shall be liable for a civil penalty of not more than \$25,000 for each day during which the violation continues, except that the maximum penalty for a continuing violation is \$50,000.

(B) CRIMINAL PENALTY.—Any person that willfully violates this section or a regulation under this section shall be fined not more than \$250,000 or imprisoned not more than 1 year, or both.

(2) DENIAL OF ENTRY.—The Secretary may deny entry into the United States to a vessel to which this section applies if the owner of the vessel—

(A) commits an act or omission for which a penalty may be imposed under this subsection; or

(B) fails to pay a penalty imposed on the owner under this subsection.

(i) PROCEDURES.—【Within 6 months after the date of enactment of the Cruise Vessel Security and Safety Act of 2010, the Secretary shall issue】 *The Secretary shall maintain* guidelines, training curricula, and inspection and certification procedures necessary to carry out the requirements of this section.

(j) REGULATIONS.—The Secretary and the Commandant shall each issue such regulations as are necessary to implement this section.

(k) APPLICATION.—

(1) IN GENERAL.—This section and section 3508 apply to a passenger vessel (as defined in 【section 2101(22)】 *section 2101(31)*) that—

(A) is authorized to carry at least 250 passengers;

(B) has onboard sleeping facilities for each passenger;

(C) is on a voyage that embarks or disembarks passengers in the United States; and

(D) is not engaged on a coastwise voyage.

(2) FEDERAL AND STATE VESSELS.—This section and section 3508 do not apply to a vessel of the United States operated by the Federal Government or a vessel owned and operated by a State.

【(1) DEFINITIONS.—In this section and section 3508:

【(1) COMMANDANT.—The term “Commandant” means the Commandant of the Coast Guard.

【(2) OWNER.—The term “owner” means the owner, charterer, managing operator, master, or other individual in charge of a vessel.】

(l) DEFINITION.—*In this section and section 3508, the term “owner” means the owner, charterer, managing operator, master, or other individual in charge of a vessel.*

§ 3508. Crime scene preservation training for passenger vessel crewmembers

(a) IN GENERAL.—【Within 1 year after the date of enactment of the Cruise Vessel Security and Safety Act of 2010, the】 *The Secretary, in consultation with the Director of the Federal Bureau of Investigation and the Maritime Administration, shall 【develop】 maintain* training standards and curricula to allow for the certification of passenger vessel security personnel, crewmembers, and law enforcement officials on the appropriate methods for prevention, detection, evidence preservation, and reporting of criminal activities in the international maritime environment. The Administrator of the Maritime Administration may certify organizations in the United States and abroad that offer the curriculum for training and certification under subsection (c).

(b) MINIMUM STANDARDS.—The standards established by the Secretary under subsection (a) shall include—

(1) the training and certification of vessel security personnel, crewmembers, and law enforcement officials in accordance with accepted law enforcement and security guidelines, policies, and procedures, including recommendations for incorporating a background check process for personnel trained and certified in foreign ports;

(2) the training of students and instructors in all aspects of prevention, detection, evidence preservation, and reporting of criminal activities in the international maritime environment; and

(3) the provision or recognition of off-site training and certification courses in the United States and foreign countries to develop and provide the required training and certification described in subsection (a) and to enhance security awareness and security practices related to the preservation of evidence in response to crimes on board passenger vessels.

(c) CERTIFICATION REQUIREMENT.—[Beginning 2 years after the standards are established under subsection (b), no] No vessel to which this section applies may enter a United States port on a voyage (or voyage segment) on which a United States citizen is a passenger unless there is at least 1 crewmember onboard who is certified as having successfully completed training in the prevention, detection, evidence preservation, and reporting of criminal activities in the international maritime environment on passenger vessels under subsection (a).

[(d) INTERIM TRAINING REQUIREMENT.—No vessel to which this section applies may enter a United States port on a voyage (or voyage segment) on which a United States citizen is a passenger unless there is at least 1 crewmember onboard who has been properly trained in the prevention detection, evidence preservation and the reporting requirements of criminal activities in the international maritime environment. The owner of a such a vessel shall maintain certification or other documentation, as prescribed by the Secretary, verifying the training of such individual and provide such documentation upon request for inspection in connection with enforcement of the provisions of this section. This subsection shall take effect 1 year after the date of enactment of the Cruise Vessel Safety and Security Act of 2010 and shall remain in effect until superseded by the requirements of subsection (c).

[(e) (d) CIVIL PENALTY.—Any person that violates this section or a regulation under this section shall be liable for a civil penalty of not more than \$50,000.

[(f) (e) DENIAL OF ENTRY.—The Secretary may deny entry into the United States to a vessel to which this section applies if the owner of the vessel—

(1) commits an act or omission for which a penalty may be imposed under [subsection (e)] subsection (d); or

(2) fails to pay a penalty imposed on the owner under [subsection (e)] subsection (d).

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CHAPTER 37—CARRIAGE OF LIQUID BULK DANGEROUS CARGOES

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§ 3701. Definitions

In this chapter—

(1) “existing”, when referring to a type of vessel to which this chapter applies, means a vessel that is not a new vessel.

[(3)] (2) “new”, when referring to a type of vessel to which this chapter applies, means a vessel—

(A) for which the building contract is placed after June 1, 1979;

(B) in the absence of a building contract, the keel of which is laid, or which is at a similar stage of construction, after January 1, 1980;

(C) the delivery of which is after June 1, 1982; or

(D) that has undergone a major conversion under a contract made after June 1, 1979, or construction work that began after January 1, 1980, or was completed after June 1, 1982.

[(4)] (3) “person” means an individual (even if not a citizen or national of the United States), a corporation, partnership, association, or other entity (even if not organized or existing under the laws of a State), the United States Government, a State or local government, a government of a foreign country, or an entity of one of those governments.

* * * * *

§ 3703a. Tank vessel construction standards

(a) Except as otherwise provided in this section, a vessel to which this chapter applies shall be equipped with a double hull—

(1) if it is constructed or adapted to carry, or carries, oil in bulk as cargo or cargo residue; and

(2) when operating on the waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone.

(b) This section does not apply to—

(1) a vessel used only to respond to a discharge of oil or a hazardous substance;

(2) a vessel of less than 5,000 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 equipped with a double containment system determined by the Secretary to be as effective as a double hull for the prevention of a discharge of oil;

[(3)] before January 1, 2015—

[(A)] a vessel unloading oil in bulk at a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.); or

[(B)] a delivering vessel that is offloading in lightering activities—

[(i)] within a lightering zone established under section 3715(b)(5) of this title; and

[(ii)] more than 60 miles from the baseline from which the territorial sea of the United States is measured;

[(4)] (3) a vessel documented under chapter 121 of this title that was equipped with a double hull before August 12, 1992;

[(5)] (4) a barge of less than 1,500 gross tons (as measured under chapter 145 of this title) carrying refined petroleum product in bulk as cargo in or adjacent to waters of the Bering Sea, Chukchi Sea, and Arctic Ocean and waters tributary thereto and in the waters of the Aleutian Islands and the Alaskan Peninsula west of 155 degrees west longitude; or

[(6)] (5) a vessel in the National Defense Reserve Fleet pursuant to section 57100.

(c)(1) In this subsection, the age of a vessel is determined from the later of the date on which the vessel—

(A) is delivered after original construction;

(B) is delivered after completion of a major conversion; or

(C) had its appraised salvage value determined by the Coast Guard and is qualified for documentation as a wrecked vessel under section 12112 of this title.

(2) A vessel of less than 5,000 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 for which a building contract or contract for major conversion was placed before June 30, 1990, and [that is delivered] *that was delivered* under that contract before January 1, 1994, and a vessel of less than 5,000 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 had its appraised salvage value determined by the Coast Guard before June 30, 1990, and [that qualifies] *that qualified* for documentation as a wrecked vessel under section 12112 of this title before January 1, 1994, may not operate in the navigable waters or the Exclusive Economic Zone of the United States [after January 1, 2015,] unless the vessel is equipped with a double hull or with a double containment system determined by the Secretary to be as effective as a double hull for the prevention of a discharge of oil.

(3) A vessel for which a building contract or contract for major conversion was placed before June 30, 1990, and [that is delivered] *that was delivered* under that contract before January 1, 1994, and a vessel that had its appraised salvage value determined by the Coast Guard before June 30, 1990, and [that qualifies] *that qualified* for documentation as a wrecked vessel under section 12112 of this title before January 1, 1994, may not operate in the navigable waters or Exclusive Economic Zone of the United States unless equipped with a double hull—

[(A)] in the case of a vessel of at least 5,000 gross tons but less than 15,000 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)] after January 1, 1995, if the vessel is 40 years old or older and has a single hull, or is 45 years old or older and has a double bottom or double sides;

[(ii)] after January 1, 1996, if the vessel is 39 years old or older and has a single hull, or is 44 years old or older and has a double bottom or double sides;

- [(iii) after January 1, 1997, if the vessel is 38 years old or older and has a single hull, or is 43 years old or older and has a double bottom or double sides;
 - [(iv) after January 1, 1998, if the vessel is 37 years old or older and has a single hull, or is 42 years old or older and has a double bottom or double sides;
 - [(v) after January 1, 1999, if the vessel is 36 years old or older and has a single hull, or is 41 years old or older and has a double bottom or double sides;
 - [(vi) after January 1, 2000, if the vessel is 35 years old or older and has a single hull, or is 40 years old or older and has a double bottom or double sides; and
 - [(vii) after January 1, 2005, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides;
- [(B) in the case of a vessel of at least 15,000 gross tons but less than 30,000 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) after January 1, 1995, if the vessel is 40 years old or older and has a single hull, or is 45 years old or older and has a double bottom or double sides;
 - [(ii) after January 1, 1996, if the vessel is 38 years old or older and has a single hull, or is 43 years old or older and has a double bottom or double sides;
 - [(iii) after January 1, 1997, if the vessel is 36 years old or older and has a single hull, or is 41 years old or older and has a double bottom or double sides;
 - [(iv) after January 1, 1998, if the vessel is 34 years old or older and has a single hull, or is 39 years old or older and has a double bottom or double sides;
 - [(v) after January 1, 1999, if the vessel is 32 years old or older and has a single hull, or 37 years old or older and has a double bottom or double sides;
 - [(vi) after January 1, 2000, if the vessel is 30 years old or older and has a single hull, or is 35 years old or older and has a double bottom or double sides;
 - [(vii) after January 1, 2001, if the vessel is 29 years old or older and has a single hull, or is 34 years old or older and has a double bottom or double sides;
 - [(viii) after January 1, 2002, if the vessel is 28 years old or older and has a single hull, or is 33 years old or older and has a double bottom or double sides;
 - [(ix) after January 1, 2003, if the vessel is 27 years old or older and has a single hull, or is 32 years old or older and has a double bottom or double sides;
 - [(x) after January 1, 2004, if the vessel is 26 years old or older and has a single hull, or is 31 years old or older and has a double bottom or double sides; and
 - [(xi) after January 1, 2005, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides; and
- [(C) in the case of a vessel of at least 30,000 gross tons as measured under section 14502 of this title, or an alternate ton-

nage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title—

【(i) after January 1, 1995, if the vessel is 28 years old or older and has a single hull, or 33 years old or older and has a double bottom or double sides;

【(ii) after January 1, 1996, if the vessel is 27 years old or older and has a single hull, or is 32 years old or older and has a double bottom or double sides;

【(iii) after January 1, 1997, if the vessel is 26 years old or older and has a single hull, or is 31 years old or older and has a double bottom or double sides;

【(iv) after January 1, 1998, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides;

【(v) after January 1, 1999, if the vessel is 24 years old or older and has a single hull, or 29 years old or older and has a double bottom or double sides; and

【(vi) after January 1, 2000, if the vessel is 23 years old or older and has a single hull, or is 28 years old or older and has a double bottom or double sides.】

(A) *in the case of a vessel of at least 5,000 gross tons but less than 15,000 gross tons as measured under section 14502, or an alternate tonnage measured under section 14302 as prescribed by the Secretary under section 14104, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides;*

(B) *in the case of a vessel of at least 15,000 gross tons but less than 30,000 gross tons as measured under section 14502, or an alternate tonnage measured under section 14302 as prescribed by the Secretary under section 14104, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides; and*

(C) *in the case of a vessel of at least 30,000 gross tons as measured under section 14502, or an alternate tonnage measured under section 14302 as prescribed by the Secretary under section 14104, if the vessel is 23 years old or older and has a single hull, or is 28 years old or older and has a double bottom or double sides.*

(4) Except as provided in subsection (b) of this section—

(A) a vessel that has a single hull may not operate after January 1, 2010; and

(B) a vessel that has a double bottom or double sides may not operate after January 1, 2015.

(d) The operation of barges described in subsection (b)(5) outside waters described in that subsection shall be on any conditions as the Secretary may require.

(e)(1) For the purposes of this section [and except as otherwise provided in paragraphs (2) and (3) of this subsection], the gross tonnage of a vessel shall be the gross tonnage that would have been recognized by the Secretary on July 1, 1997, as the tonnage measured under section 14502 of this title, or as an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title.

【(2)(A) The Secretary may waive the application of paragraph (1) to a tank vessel if—

[(i) the owner of the tank vessel applies to the Secretary for the waiver before January 1, 1998;

[(ii) the Secretary determines that—

[(I) the owner of the tank vessel has entered into a binding agreement to alter the tank vessel in a shipyard in the United States to reduce the gross tonnage of the tank vessel by converting a portion of the cargo tanks of the tank vessel into protectively located segregated ballast tanks; and

[(II) that conversion will result in a significant reduction in the risk of a discharge of oil;

[(iii) at least 60 days before the date of the issuance of the waiver, the Secretary—

[(I) publishes notice that the Secretary has received the application and made the determinations required by clause (ii), including a description of the agreement entered into pursuant to clause (ii)(I); and

[(II) provides an opportunity for submission of comments regarding the application; and

[(iv) the alterations referred to in clause (ii)(I) are completed before the later of—

[(I) the date by which the first special survey of the tank vessel is required to be completed after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998; or

[(II) July 1, 1999.

[(B) A waiver under subparagraph (A) shall not be effective after the expiration of the 3-year period beginning on the first date on which the tank vessel would have been prohibited by subsection (c) from operating if the alterations referred to in subparagraph (A)(ii)(I) were not made.]

[(3)] (2) This subsection does not apply to a tank vessel that, before July 1, 1997, had undergone, or was the subject of a contract for, alterations that reduce the gross tonnage of the tank vessel, as shown by reliable evidence acceptable to the Secretary.

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§ 3705. Crude oil tanker minimum standards

(a) A new crude oil tanker of at least 20,000 deadweight tons shall be equipped with—

(1) protectively located segregated ballast tanks;

(2) a crude oil washing system; and

(3) a cargo tank protection system consisting of a fixed deck froth system and a fixed inert gas system.

(b)[(1)] An existing crude oil tanker of at least 40,000 deadweight tons shall be equipped with—

[(A)] (1) segregated ballast tanks; or

[(B)] (2) a crude oil washing system.

[(2) Compliance with paragraph (1) of this subsection may be delayed until June 1, 1985, for any tanker of less than 70,000 deadweight tons that has dedicated clean ballast tanks.]

(c) An existing crude oil tanker of at least 20,000 deadweight tons but less than 40,000 deadweight tons, and at least 15 years of age, shall be equipped with segregated ballast tanks or a crude

oil washing system [before January 2, 1986, or the date on which the tanker reaches 15 years of age, whichever is later].

(d) An existing crude oil tanker of at least 20,000 deadweight tons shall be equipped with an inert gas system. However, for a crude oil tanker of less than 40,000 deadweight tons not fitted with high capacity tank washing machines, the Secretary may grant an exemption if the vessel's owner can show clearly that compliance would be unreasonable and impracticable due to the vessel's design characteristics.

(e) A crude oil tanker engaged in transferring oil from an offshore oil exploitation or production facility on the Outer Continental Shelf of the United States shall be equipped with segregated ballast tanks, or may operate with dedicated clean ballast tanks or special ballast arrangements. However, the tanker shall comply with other applicable minimum standards of this section.

§ 3706. Product carrier minimum standards

(a) A new product carrier of at least 30,000 deadweight tons shall be equipped with protectively located segregated ballast tanks.

(b) A new product carrier of at least 20,000 deadweight tons shall be equipped with a cargo tank protection system consisting of a fixed deck froth system and a fixed inert gas system or, if the product carrier carries dedicated products incompatible with the cargo tank protection system, an alternate protection system authorized by the Secretary.

(c) An existing product carrier of at least 40,000 deadweight tons shall be equipped with segregated ballast tanks or may operate with dedicated clean ballast tanks.

(d) An existing product carrier of at least 20,000 deadweight tons but less than 40,000 deadweight tons, and at least 15 years of age, shall be equipped with segregated ballast tanks or may operate with dedicated clean ballast tanks [before January 2, 1986, or the date on which it reaches 15 years of age, whichever is later].

(e) An existing product carrier of at least 40,000 deadweight tons, or an existing product carrier of at least 20,000 deadweight tons but less than 40,000 deadweight tons that is fitted with high-capacity tank washing machines, shall be equipped with an inert gas system.

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CHAPTER 41—UNINSPECTED VESSELS GENERALLY

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§ 4105. Uninspected passenger vessels

(a) Chapter 43 of this title applies to an uninspected passenger vessel.

(b)(1) In applying this title with respect to an uninspected vessel of less than 24 meters overall in length that carries passengers to or from a port in the United States Virgin Islands, the Secretary shall substitute "12 passengers" for "6 passengers" each place it appears in [section 2101(42)] *section 2101(51)* if the Secretary determines that the vessel complies with, as applicable to the vessel—

(A) the Code of Practice for the Safety of Small Commercial Motor Vessels (commonly referred to as the "Yellow

Code”), as published by the U.K. Maritime and Coastguard Agency and in effect on January 1, 2014; or

(B) the Code of Practice for the Safety of Small Commercial Sailing Vessels (commonly referred to as the “Blue Code”), as published by such agency and in effect on such date.

(2) If the Secretary establishes standards to carry out this subsection—

(A) such standards shall be identical to those established in the Codes of Practice referred to in paragraph (1); and

(B) on any dates before the date on which such standards are in effect, the Codes of Practice referred to in paragraph (1) shall apply with respect to the vessels referred to in paragraph (1).

(c) The Secretary shall, by regulation, require certain additional equipment which may include liferafts or other lifesaving equipment, construction standards, or specify additional operating standards for those uninspected passenger vessels defined in [section 2101(42)(A)] *section 2101(51)(A)* of this title.

PART D—MARINE CASUALTIES

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CHAPTER 61—REPORTING MARINE CASUALTIES

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§ 6101. Marine casualties and reporting

(a) The Secretary shall prescribe regulations on the marine casualties to be reported and the manner of reporting. The regulations shall require reporting the following marine casualties:

(1) death of an individual.

(2) serious injury to an individual.

(3) material loss of property.

(4) material damage affecting the seaworthiness or efficiency of the vessel.

(5) significant harm to the environment.

(b) A marine casualty shall be reported within 5 days as provided in this part and regulations prescribed under this part. Each report filed under this section shall include information as to whether the use of alcohol contributed to the casualty.

(c) NOTICE TO STATE AND TRIBAL GOVERNMENTS.—Not later than 24 hours after receiving a notice of a major marine casualty under this section, the Secretary shall notify each State or federally recognized Indian tribe that is, or may reasonably be expected to be, affected by such marine casualty.

(d)(1) This part applies to a foreign vessel when involved in a marine casualty on the navigable waters of the United States.

(2) This part applies, to the extent consistent with generally recognized principles of international law, to a foreign vessel constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue involved in a marine casualty described under subsection (a)(4) or (5) in waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone.

(e) A marine casualty not resulting in the death of an individual shall be classified according to the gravity of the casualty, as prescribed by regulation, giving consideration to the extent of injuries to individuals, the extent of property damage, the dangers that the casualty creates, and the size, occupation, and means of propulsion of each vessel involved.

(f)(1) This chapter applies to a marine casualty involving a United States citizen on a foreign passenger vessel operating south of 75 degrees north latitude, west of 35 degrees west longitude, and east of the International Date Line; or operating in the area south of 60 degrees south latitude that—

(A) embarks or disembarks passengers in the United States;

or

(B) transports passengers traveling under any form of air and sea ticket package marketed in the United States.

(2) When there is a marine casualty described in paragraph (1) of this subsection and an investigation is conducted, the Secretary shall ensure that the investigation—

(A) is thorough and timely; and

(B) produces findings and recommendations to improve safety on passenger vessels.

(3) When there is a marine casualty described in paragraph (1) of this subsection, the Secretary may—

(A) seek a multinational investigation of the casualty under auspices of the International Maritime Organization; or

(B) conduct an investigation of the casualty under chapter 63 of this title.

(g) To the extent consistent with generally recognized practices and procedures of international law, this part applies to a foreign vessel involved in a marine casualty or incident, as defined in the International Maritime Organization Code for the Investigation of Marine Casualties and Incidents, where the United States is a Substantially Interested State and is, or has the consent of, the Lead Investigating State under the Code.

(h) The Secretary shall publish all major marine casualty reports prepared in accordance with this section in an electronic form, and shall provide information electronically regarding how other marine casualty reports can be obtained.

(i) For purposes of this section, the term “major marine casualty” means a casualty involving a vessel, other than a public vessel, that results in—

(1) the loss of 6 or more lives;

(2) the loss of a mechanically propelled vessel of 100 or more gross tons;

(3) property damage initially estimated at \$500,000 or more; or

(4) serious threat, as determined by the Commandant [of the Coast Guard] with concurrence by the Chairman of the National Transportation Safety Board, to life, property, or the environment by hazardous materials.

(j) The Secretary shall [, as soon as possible, and no later than January 1, 2005,] publish all marine casualty reports prepared in accordance with this section in an electronic form.

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

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

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§ 7503. Dangerous drugs as grounds for denial

[(b) A license, certificate of registry, or merchant mariner’s document authorized to be issued under this part may be denied to an individual who—

(1) within 10 years before applying for the license, certificate, or document, has been convicted of violating a dangerous drug law of the United States or of a State; or

(2) when applying, has ever been a user of, or addicted to, a dangerous drug unless the individual provides satisfactory proof that the individual is cured.]

§ 7503. Dangerous drugs as grounds for denial

A license, certificate of registry, or merchant mariner’s document authorized to be issued under this part may be denied to an individual who—

(1) within 10 years before applying for the license, certificate, or document, has been convicted of violating a dangerous drug law of the United States or of a State; or

(2) when applying, has ever been a user of, or addicted to, a dangerous drug unless the individual provides satisfactory proof that the individual is cured.

* * * * *

§ 7505. Review of information in National Driver Register

The Secretary shall make information received from the National Driver Register under [section 206(b)(7) of the National Driver Register Act of 1982 (23 U.S.C. 401 note)] *section 30305(b)(7) of title 49* available to an individual for review and written comment before denying, suspending, revoking, or taking any other action relating to a license, certificate of registry, or merchant mariner’s document authorized to be issued for that individual under this part, based on that information.

* * * * *

§ 7510. Examinations for merchant mariner credentials

(a) DISCLOSURE NOT REQUIRED.—Notwithstanding any other provision of law, the Secretary is not required to disclose to the public—

(1) a question from any examination for a merchant mariner credential;

(2) the answer to such a question, including any correct or incorrect answer that may be presented with such question; and

(3) any quality or characteristic of such a question, including—

- (A) the manner in which such question has been, is, or may be selected for an examination;
- (B) the frequency of such selection; and
- (C) the frequency that an examinee correctly or incorrectly answered such question.

(b) EXCEPTION FOR CERTAIN QUESTIONS.—Notwithstanding subsection (a), the Secretary may, for the purpose of preparation by the general public for examinations required for merchant mariner credentials, release an examination question and answer that the Secretary has retired or is not presently on or part of an examination, or that the Secretary determines is appropriate for release.

(c) EXAM REVIEW.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of the Coast Guard Authorization Act of 2016, and once every two years thereafter, the [Commandant of the Coast Guard] *Commandant* shall commission a working group to review new questions for inclusion in examinations required for merchant mariner credentials, composed of—

- (A) 1 subject matter expert from the Coast Guard;
- (B) representatives from training facilities and the maritime industry, of whom—
 - (i) one-half shall be representatives from approved training facilities; and
 - (ii) one-half shall be representatives from the appropriate maritime industry;
- (C) at least 1 representative from the Merchant Marine Personnel Advisory Committee;
- (D) at least 2 representatives from the State maritime academies, of whom one shall be a representative from the deck training track and one shall be a representative of the engineer license track;
- (E) representatives from other Coast Guard Federal advisory committees, as appropriate, for the industry segment associated with the subject examinations;
- (F) at least 1 subject matter expert from the Maritime Administration; and
- (G) at least 1 human performance technology representative.

(2) INCLUSION OF PERSONS KNOWLEDGEABLE ABOUT EXAMINATION TYPE.—The working group shall include representatives knowledgeable about the examination type under review.

(3) LIMITATION.—The requirement to convene a working group under paragraph (1) does not apply unless there are new examination questions to review.

(4) BASELINE REVIEW.—

(A) IN GENERAL.—Within 1 year after the date of the enactment of the Coast Guard Authorization Act of 2016, the Secretary shall convene the working group to complete a baseline review of the Coast Guard's Merchant Mariner Credentialing Examination, including review of—

- (i) the accuracy of examination questions;
- (ii) the accuracy and availability of examination references;

- (iii) the length of merchant mariner examinations; and
- (iv) the use of standard technologies in administering, scoring, and analyzing the examinations.

(B) PROGRESS REPORT.—The Coast Guard shall provide a progress report to the appropriate congressional committees on the review under this paragraph.

(5) FULL MEMBERSHIP NOT REQUIRED.—The Coast Guard may convene the working group without all members present if any non-Coast-Guard representative is present.

(6) NONDISCLOSURE AGREEMENT.—The Secretary shall require all members of the working group to sign a nondisclosure agreement with the Secretary.

(7) TREATMENT OF MEMBERS AS FEDERAL EMPLOYEES.—A member of the working group who is not a Federal Government employee shall not be considered a Federal employee in the service or the employment of the Federal Government, except that such a member shall be considered a special government employee, as defined in section 202(a) of title 18 for purposes of sections 203, 205, 207, 208, and 209 of such title and shall be subject to any administrative standards of conduct applicable to an employee of the department in which the Coast Guard is operating.

(8) FORMAL EXAM REVIEW.—The Secretary shall ensure that the Coast Guard Performance Technology Center—

(A) prioritizes the review of examinations required for merchant mariner credentials; and

(B) not later than 3 years after the date of enactment of the Coast Guard Authorization Act of 2016, completes a formal review, including an appropriate analysis, of the topics and testing methodology employed by the National Maritime Center for merchant seamen licensing.

(9) FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any working group created under this section to review the Coast Guard’s merchant mariner credentialing examinations.

(d) MERCHANT MARINER CREDENTIAL DEFINED.—In this section, the term “merchant mariner credential” means a merchant seaman license, certificate, or document that the Secretary is authorized to issue pursuant to this title.

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CHAPTER 77—SUSPENSION AND REVOCATION

* * * * *

§ 7702. Administrative procedure

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

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

(c)(1) The Secretary shall request a holder of a license, certificate of registry, or merchant mariner's document to make available to the Secretary, under [section 206(b)(4) of the National Driver Register Act of 1982 (23 U.S.C. 401 note)] *section 30305(b)(7) of title 49*, all information contained in the National Driver Register related to an offense described in section 205(a)(3)(A) or (B) of that Act committed by the individual.

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

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

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

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

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

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

(iii) within the 3-year period preceding the initiation of a suspension proceeding, has been convicted of an offense described in section 30304(a)(3)(A) or (B) of title 49; or

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

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

* * * * *

§ 7704. Dangerous drugs as grounds for revocation

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

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

* * * * *

§ 7706. Drug testing reporting

(a) RELEASE OF DRUG TEST RESULTS TO COAST GUARD.—Not later than 2 weeks after receiving from a Medical Review Officer

a report of a verified positive drug test or verified test violation by a civilian employee of a Federal agency, an applicant for employment by a Federal agency, an officer in the Public Health Services, or an officer in the National Oceanic and Atmospheric Administration Commissioned Officer Corps, who is employed in any capacity on board a vessel operated by the agency, the head of the agency shall release to the Commandant [of the Coast Guard] the report.

(b) **STANDARDS, PROCEDURES, AND REGULATIONS.**—The head of a Federal agency shall carry out a release under subsection (a) in accordance with the standards, procedures, and regulations applicable to the disclosure and reporting to the Coast Guard of drug test results and drug test records of individuals employed on vessels documented under the laws of the United States.

(c) **WAIVER.**—Notwithstanding section 503(e) of the Supplemental Appropriations Act, 1987 (5 U.S.C. 7301 note), the report of a drug test of an employee or an applicant for employment by a Federal agency may be released under this section without the prior written consent of the employee or the applicant.

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PART F—MANNING OF VESSELS

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CHAPTER 81—GENERAL

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§ 8106. Riding gangs

(a) **IN GENERAL.**—The owner or managing operator of a freight vessel of the United States on voyages covered by the International Convention for Safety of Life at Sea, 1974 (32 UST 47m) shall—

(1) ensure that—

(A) subject to subsection (d), each riding gang member on the vessel—

(i) is a United States citizen or an alien lawfully admitted to the United States for permanent residence;
or

(ii) possesses a United States nonimmigrant visa for individuals desiring to enter the United States temporarily for business, employment-related and personal identifying information, and any other documentation required by the Secretary;

(B) all required documentation for such member is kept on the vessel and available for inspection by the Secretary;
and

(C) each riding gang member is identified on the vessel's crew list;

(2) ensure that—

(A) the owner or managing operator attests in a certificate that the background of each riding gang member has been examined and found to be free of any credible information indicating a material risk to the security of the vessel, the vessel's cargo, the ports the vessel visits, or other individuals onboard the vessel;

(B) the background check consisted of a search of all information reasonably available to the owner or managing operator in the riding gang member's country of citizenship and any other country in which the riding gang member works, receives employment referrals, or resides;

(C) the certificate required under subparagraph (A) is kept on the vessel and available for inspection by the Secretary; and

(D) the information derived from any such background check is made available to the Secretary upon request;

(3) ensure that each riding gang member, while on board the vessel, is subject to the same random chemical testing and reporting regimes as crew members;

(4) ensure that each such riding gang member receives basic safety familiarization and basic safety training approved by the Coast Guard as satisfying the requirements for such training under the International Convention of Training, Certification, and Watchkeeping for Seafarers, 1978;

(5) prevent from boarding the vessel, or cause the removal from the vessel at the first available port, and disqualify from future service on board any other vessel owned or operated by that owner or operator, any riding gang member—

(A) who has been convicted in any jurisdiction of an offense described in paragraph (2) or (3) of section 7703;

(B) whose license, certificate of registry, or merchant mariner's document has been suspended or revoked under section 7704; or

(C) who otherwise constitutes a threat to the safety of the vessel;

(6) ensure and certify to the Secretary that the sum of—

(A) the number of riding gang members on board a freight vessel, and

(B) the number of individuals in addition to crew permitted under section 3304,

does not exceed 12;

(7) ensure that every riding gang member is employed on board the vessel under conditions that meet or exceed the minimum international standards of all applicable international labor conventions to which the United States is a party, including all of the merchant seamen protection and relief provided under United States law; and

(8) ensure that each riding gang member—

(A) is supervised by an individual who holds a license issued under chapter 71; and

(B) only performs work in conjunction with individuals who hold merchant mariners documents issued under chapter 73 and who are part of the vessel's crew.

(b) PERMITTED WORK.—Subject to subsection (f), a riding gang member on board a vessel to which subsection (a) applies who is neither a United States citizen nor an alien lawfully admitted to the United States for permanent residence may not perform any work on board the vessel other than—

(1) work in preparation of a vessel entering a shipyard located outside of the United States;

(2) completion of the residual repairs after departing a shipyard located outside of the United States; or

(3) technical in-voyage repairs, in excess of any repairs that can be performed by the vessel's crew, in order to advance the vessel's useful life without having to actually enter a shipyard.

(c) WORKDAY LIMIT.—

(1) IN GENERAL.—The maximum number of days in any calendar year that the owner or operator of a vessel to which subsection (a) applies may employ on board riding gang members who are neither United States citizens nor aliens lawfully admitted to the United States for permanent residence for work on board that vessel is 60 days. If the vessel is at sea on the 60th day, each riding gang member shall be discharged from the vessel at the next port of call reached by the vessel after the date on which the 60-workday limit is reached.

(2) CALCULATION.—For the purpose of calculating the 60-workday limit under this subsection, each day worked by a riding gang member who is neither a United States citizen nor an alien lawfully admitted to the United States for permanent residence shall be counted against the limitation.

(d) EXCEPTIONS FOR WARRANTY WORK.—

(1) IN GENERAL.—Subsections (b), (c), (e), and (f) do not apply to a riding gang member employed exclusively to perform, and who performs only, work that is—

(A) customarily performed by original equipment manufacturers' technical representatives;

(B) required by a manufacturer's warranty on specific machinery and equipment; or

(C) required by a contractual guarantee or warranty on actual repairs performed in a shipyard located outside of the United States.

(2) CITIZENSHIP REQUIREMENT.—Subsection (a)(1)(A) applies only to a riding gang member described in paragraph (1) who is on the vessel when it calls at a United States port.

(e) RECORDKEEPING.—In addition to the requirements of subsection (a), the owner or managing operator of a vessel to which subsection (a) applies shall ensure that all information necessary to ensure compliance with this section, as determined by the Secretary, is entered into the vessel's official logbook required by chapter 113.

(f) FAILURE TO EMPLOY QUALIFIED AVAILABLE U.S. CITIZENS OR RESIDENTS.—

(1) IN GENERAL.—The owner or operator of a vessel to which subsection (a) applies may not employ a riding gang member who is neither a United States citizen nor an alien lawfully admitted to the United States for permanent residence to perform work described in subsection (b) unless the owner or operator determines, in accordance with procedures established by the Secretary to carry out section 8103(b)(3)(C), that there is not a sufficient number of United States citizens or individuals lawfully admitted to the United States for permanent residence who are qualified and available for the work for which the riding gang member is to be employed.

(2) CIVIL PENALTY.—A violation of paragraph (1) is punishable by a civil penalty of not more than \$10,000 for each day during which the violation continues.

[(3) CONTINUING VIOLATIONS.—The maximum amount of a civil penalty for a violation under this subsection shall not exceed—

[(A) \$50,000 if the violation occurs in fiscal year 2006;

[(B) \$75,000 if the violation occurs in fiscal year 2007;

and

[(C) \$100,000 if the violation occurs after fiscal year 2007.]

(3) CONTINUING VIOLATIONS.—*The maximum amount of a civil penalty for a violation under this subsection shall be \$100,000.*

(4) DETERMINATION OF AMOUNT.—In determining the amount of the penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, the history of prior offenses, the ability to pay, and such other matters as justice may require.

(5) COMPROMISE, MODIFICATION, AND REMITTAL.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty imposed under this section.

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§ 8108. Merchant Marine Personnel Advisory Committee

(a) ESTABLISHMENT.—The Secretary shall establish a Merchant Marine Personnel Advisory Committee (in this section referred to as “the Committee”). The Committee—

(1) shall act solely in an advisory capacity to the Secretary through the Commandant [of the Coast Guard] on matters relating to personnel in the United States merchant marine, including training, qualifications, certification, documentation, and fitness standards, and other matters as assigned by the Commandant;

(2) shall review and comment on proposed Coast Guard regulations and policies relating to personnel in the United States merchant marine, including training, qualifications, certification, documentation, and fitness standards;

(3) may be given special assignments by the Secretary and may conduct studies, inquiries, workshops, and fact finding in consultation with individuals and groups in the private sector and with State or local governments;

(4) shall advise, consult with, and make recommendations reflecting its independent judgment to the Secretary;

(5) shall meet not less than twice each year; and

(6) may make available to Congress recommendations that the Committee makes to the Secretary.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Committee shall consist of not more than 19 members who are appointed by and serve terms of a duration determined by the Secretary. Before filling a position on the Committee, the Secretary shall publish a notice in the Federal Register soliciting nominations for membership on the Committee.

(2) REQUIRED MEMBERS.—Subject to paragraph (3), the Secretary shall appoint as members of the Committee—

(A) 9 United States citizens with active licenses or certificates issued under chapter 71 or merchant mariner documents issued under chapter 73, including—

(i) 3 deck officers who represent the viewpoint of merchant marine deck officers, of whom—

(I) 2 shall be licensed for oceans any gross tons;

(II) 1 shall be licensed for inland river route with a limited or unlimited tonnage;

(III) 2 shall have a master's license or a master of towing vessels license;

(IV) 1 shall have significant tanker experience; and

(V) to the extent practicable—

(aa) 1 shall represent the viewpoint of labor; and

(bb) another shall represent a management perspective;

(ii) 3 engineering officers who represent the viewpoint of merchant marine engineering officers, of whom—

(I) 2 shall be licensed as chief engineer any horsepower;

(II) 1 shall be licensed as either a limited chief engineer or a designated duty engineer; and

(III) to the extent practicable—

(aa) 1 shall represent a labor viewpoint; and

(bb) another shall represent a management perspective;

(iii) 2 unlicensed seamen, of whom—

(I) 1 shall represent the viewpoint of able-bodied seamen; and

(II) another shall represent the viewpoint of qualified members of the engine department; and

(iv) 1 pilot who represents the viewpoint of merchant marine pilots;

(B) 6 marine educators, including—

(i) 3 marine educators who represent the viewpoint of maritime academies, including—

(I) 2 who represent the viewpoint of State maritime academies and are jointly recommended by such State maritime academies; and

(II) 1 who represents either the viewpoint of the State maritime academies or the United States Merchant Marine Academy; and

(ii) 3 marine educators who represent the viewpoint of other maritime training institutions, 1 of whom shall represent the viewpoint of the small vessel industry;

(C) 2 individuals who represent the viewpoint of shipping companies employed in ship operation management; and

(D) 2 members who are appointed from the general public.

(3) CONSULTATION.—The Secretary shall consult with the Secretary of Transportation in making an appointment under paragraph (2)(B)(i)(II).

(c) CHAIRMAN AND VICE CHAIRMAN.—The Secretary shall designate one member of the Committee as the Chairman and one member of the Committee as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of the Chairman, or in the event of a vacancy in the office of the Chairman.

(d) SUBCOMMITTEES.—The Committee may establish and disestablish subcommittees and working groups for any purpose consistent with this section, subject to conditions imposed by the Committee. Members of the Committee and additional persons drawn from the general public may be assigned to such subcommittees and working groups. Only Committee members may chair subcommittee or working groups.

(e) TERMINATION.—The Committee shall terminate on September 30, 2020.

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CHAPTER 87—UNLICENSED PERSONNEL

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§ 8703. Tankermen on tank vessels

(a) A vessel of the United States to which chapter 37 of this title applies, that has on board oil or hazardous material in bulk as cargo or cargo residue, shall have a specified number of the crew certified as tankermen as required by the Secretary. This requirement shall be noted on the certificate of inspection issued to the vessel.

[(c)] (b) A vessel to which section 3702(b) of this title applies shall have on board as a crewmember in charge of the transfer operation an individual certified as a tankerman (qualified for the grade of fuel transferred), unless a master, mate, pilot, engineer, or operator licensed under section 7101 of this title is present in charge of the transfer. If the vessel does not have that individual on board, chapter 37 of this title applies to the vessel.

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PART G—MERCHANT SEAMEN PROTECTION AND RELIEF

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CHAPTER 111—PROTECTION AND RELIEF

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§ 11113. Treatment of abandoned seafarers

(a) ABANDONED SEAFARERS FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury a separate account to be known as the Abandoned Seafarers Fund.

(2) AUTHORIZED USES.—Amounts in the Fund may be appropriated to the Secretary for use—

(A) to pay necessary support of a seafarer—

(i) who—

(I) was paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)), or for whom the Secretary has requested parole under such section; and

(II) is involved in an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of law by the Coast Guard; or

(ii) who—

(I) is physically present in the United States;

(II) the Secretary determines was abandoned in the United States; and

(III) has not applied for asylum under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); and

(B) to reimburse a vessel owner or operator for the costs of 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 law by the Coast Guard, if—

(i) the vessel owner or operator is not convicted of a criminal offense related to such matter; or

(ii) the Secretary determines that reimbursement is appropriate.

(3) CREDITING OF AMOUNTS TO FUND.—

(A) IN GENERAL.—Except as provided in subparagraph (B), there shall be credited to the Fund the following:

(i) Penalties deposited in the Fund under section 9 of the Act to Prevent Pollution from Ships (33 U.S.C. 1908).

(ii) Amounts reimbursed or recovered under subsection (c).

(B) LIMITATION.—Amounts may be credited to the Fund under subparagraph (A) only if the unobligated balance of the Fund is less than \$5,000,000.

(4) REPORT REQUIRED.—On the date on which the President submits each budget for a fiscal year pursuant to section 1105 of title 31, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that describes—

(A) the amounts credited to the Fund under [paragraph (2)] *paragraph (3)* for the preceding fiscal year; and

(B) amounts in the Fund that were expended for the preceding fiscal year.

(b) LIMITATION.—Nothing in this section shall be construed—

(1) to create a private right of action or any other right, benefit, or entitlement to necessary support for any person; or

(2) to compel the Secretary to pay or reimburse the cost of necessary support.

(c) REIMBURSEMENT; RECOVERY.—

(1) IN GENERAL.—A vessel owner or operator shall reimburse the Fund an amount equal to the total amount paid from the Fund for necessary support of a seafarer, if—

(A) the vessel owner or operator—

(i) 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 was paroled into the United States to facilitate the investigation, reporting, documentation, or adjudication; and

(ii) subsequently is—

(I) convicted of a criminal offense related to such matter; or

(II) required to reimburse the Fund pursuant to a court order or negotiated settlement related to such matter; or

(B) the vessel owner or operator abandons a seafarer in the United States, as determined by the Secretary based on substantial evidence.

(2) ENFORCEMENT.—If a vessel owner or operator fails to reimburse the Fund under paragraph (1) within 60 days after receiving a written, itemized description of reimbursable expenses and a demand for payment, the Secretary may—

(A) proceed in rem against the vessel on which the seafarer served in the Federal district court for the district in which the vessel is found; and

(B) withhold or revoke the clearance required under section 60105 for the vessel and any other vessel operated by the same operator (as that term is defined in [section 2(9)(a)] *section 2(a)(9)(A)* of the Act to Prevent Pollution from Ships ([33 U.S.C. 1901(9)(a)] 33 U.S.C. 1901(a)(9)(A)) as the vessel on which the seafarer served.

(3) OBTAINING CLEARANCE.—A vessel may obtain clearance from the Secretary after it is withheld or revoked under paragraph (2)(B) if the vessel owner or operator—

(A) reimburses the Fund the amount required under paragraph (1); or

(B) provides a bond, or other evidence of financial responsibility, sufficient to meet the amount required to be reimbursed under paragraph (1).

(4) NOTIFICATION REQUIRED.—The Secretary shall notify the vessel at least 72 hours before taking any action under paragraph (2)(B).

(d) DEFINITIONS.—In this section:

(1) ABANDONS; ABANDONED.—Each of the terms “abandons” and “abandoned” means—

(A) a vessel owner’s or operator’s unilateral severance of ties with a seafarer; or

(B) a vessel owner’s or operator’s failure to provide necessary support of a seafarer.

(2) **FUND.**—The term “Fund” means the Abandoned Seafarers Fund established under this section.

(3) **NECESSARY SUPPORT.**—The term “necessary support” means normal wages and expenses the Secretary considers reasonable for lodging, subsistence, clothing, medical care (including hospitalization), repatriation, and any other support the Secretary considers to be appropriate.

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

(5) **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(c), except that it does not include a vessel that is—

(A) owned, or operated under a bareboat charter, by the United States, a State or political subdivision thereof, or a foreign nation; and

(B) not engaged in commerce.

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PART H—IDENTIFICATION OF VESSELS

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CHAPTER 121—DOCUMENTATION OF VESSELS

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SUBCHAPTER II—ENDORSEMENTS AND SPECIAL DOCUMENTATION

* * * * *

§ 12113. Fishery endorsement

(a) **REQUIREMENTS.**—A fishery endorsement may be issued for a vessel that—

(1) satisfies the requirements of section 12103 of this title and, if owned by an entity, the entity satisfies the ownership requirements in subsection (c);

(2) was built in the United States;

(3) if rebuilt, was rebuilt in the United States;

(4) was not forfeited to the United States Government after July 1, 2001, for a breach of the laws of the United States; and

(5) otherwise qualifies under the laws of the United States to engage in the fisheries.

(b) **AUTHORIZED ACTIVITY.**—

(1) **IN GENERAL.**—Subject to the laws of the United States regulating the fisheries, a vessel for which a fishery endorsement is issued may engage in the fisheries.

(2) **USE BY PROHIBITED PERSONS.**—A fishery endorsement is invalid immediately if the vessel for which it is issued is used as a fishing vessel while it is chartered or leased to an individual who is not a citizen of the United States or to an entity that is not eligible to own a vessel with a fishery endorsement.

(c) **OWNERSHIP REQUIREMENTS FOR ENTITIES.**—

(1) IN GENERAL.—A vessel owned by an entity is eligible for a fishery endorsement only if at least 75 percent of the interest in the entity, at each tier of ownership and in the aggregate, is owned and controlled by citizens of the United States.

(2) DETERMINING 75 PERCENT INTEREST.—In determining whether at least 75 percent of the interest in the entity is owned and controlled by citizens of the United States under paragraph (1), the Secretary shall apply section 50501(d) of this title, except that for this purpose the terms “control” or “controlled”—

(A) include the right to—

- (i) direct the business of the entity;
- (ii) limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity; or
- (iii) direct the transfer, operation, or manning of a vessel with a fishery endorsement; but

(B) do not include the right to simply participate in the activities under subparagraph (A), or the exercise of rights under loan or mortgage covenants by a mortgagee eligible to be a preferred mortgagee under section 31322(a) of this title, except that a mortgagee not eligible to own a vessel with a fishery endorsement may only operate such a vessel to the extent necessary for the immediate safety of the vessel or for repairs, drydocking, or berthing changes.

(3) EXCEPTIONS.—This subsection does not apply to a vessel when it is engaged in the fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council established under section 302(a)(1)(H) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(H)) or to a purse seine vessel when it is engaged in tuna fishing in the Pacific Ocean outside the exclusive economic zone or pursuant to the South Pacific Regional Fisheries Treaty, provided that the owner of the vessel continues to comply with the eligibility requirements for a fishery endorsement under the Federal law that was in effect on October 1, 1998. A fishery endorsement issued pursuant to this paragraph is valid for engaging only in the activities described in this paragraph.

(d) REQUIREMENTS BASED ON LENGTH, TONNAGE, OR HORSEPOWER.—

(1) APPLICATION.—This subsection applies to a vessel that—

- (A) is greater than 165 feet in registered length;
- (B) is more than 750 gross registered tons as measured under chapter 145 of this title or 1,900 gross registered tons as measured under chapter 143 of this title; or
- (C) has an engine or engines capable of producing a total of more than 3,000 shaft horsepower.

(2) REQUIREMENTS.—A vessel subject to this subsection is not eligible for a fishery endorsement unless—

- (A)(i) a certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997; and

(ii) the vessel is not placed under foreign registry after October 21, 1998;

(B) the owner of the vessel demonstrates to the Secretary that—

(i) the regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)) has recommended after October 21, 1998, and the Secretary of Commerce has approved, conservation and management measures in accordance with the American Fisheries Act (Public Law 105–277, div. C, title II) (16 U.S.C. 1851 note) to allow the vessel to be used in fisheries under the council's authority; and

(ii) in the case of a vessel listed in paragraphs (1) through (20) of section 208(e) of the American Fisheries Act (title II of division C of Public Law 105–277; 112 Stat. 2681–625 et seq.), the vessel is neither participating in nor eligible to participate in the non-AFA trawl catcher processor subsector (as that term is defined under section 219(a)(7) of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 2887));

(C) the vessel—

(i) is either a rebuilt vessel or replacement vessel under section 208(g) of the American Fisheries Act (title II of division C of Public Law 105–277; 112 Stat. 2681–627);

(ii) is eligible for a fishery endorsement under this section; and

(iii) in the case of a vessel listed in paragraphs (1) through (20) of section 208(e) of the American Fisheries Act (title II of division C of Public Law 105–277; 112 Stat. 2681–625 et seq.), is neither participating in nor eligible to participate in the non-AFA trawl catcher processor subsector (as that term is defined under section 219(a)(7) of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Public Law 108–447; [118 Stat. 2887] *118 Stat. 2887*)); or

(D) the vessel is a fish tender vessel that is not engaged in the harvesting or processing of fish.

(e) VESSELS MEASURING 100 FEET OR GREATER.—

(1) IN GENERAL.—The Administrator of the Maritime Administration shall administer subsections (c) and (d) with respect to vessels 100 feet or greater in registered length. The owner of each such vessel shall file a statement of citizenship setting forth all relevant facts regarding vessel ownership and control with the Administrator on an annual basis to demonstrate compliance with those provisions.

(2) REGULATIONS.—Regulations to implement this subsection shall conform to the extent practicable with the regulations establishing the form of citizenship affidavit set forth in part 355 of title 46, Code of Federal Regulations, as in effect on September 25, 1997, except that the form of the statement shall be written in a manner to allow the owner of the vessel to sat-

isfy any annual renewal requirements for a certificate of documentation for the vessel and to comply with this subsection and subsections (c) and (d), and shall not be required to be notarized.

(3) TRANSFER OF OWNERSHIP.—Transfers of ownership and control of vessels subject to subsection (c) or (d), which are 100 feet or greater in registered length, shall be rigorously scrutinized for violations of those provisions, with particular attention given to—

(A) leases, charters, mortgages, financing, and similar arrangements;

(B) the control of persons not eligible to own a vessel with a fishery endorsement under subsection (c) or (d), over the management, sales, financing, or other operations of an entity; and

(C) contracts involving the purchase over extended periods of time of all, or substantially all, of the living marine resources harvested by a fishing vessel.

(f) VESSELS MEASURING LESS THAN 100 FEET.—The Secretary shall establish reasonable and necessary requirements to demonstrate compliance with subsections (c) and (d), with respect to vessels measuring less than 100 feet in registered length, and shall seek to minimize the administrative burden on individuals who own and operate those vessels.

(g) VESSELS PURCHASED THROUGH FISHING CAPACITY REDUCTION PROGRAM.—A vessel purchased by the Secretary of Commerce through a fishing capacity reduction program under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) or section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107) is not eligible for a fishery endorsement, and any fishery endorsement issued for that vessel is invalid.

(h) REVOCATION OF ENDORSEMENTS.—The Secretary shall revoke the fishery endorsement of any vessel subject to subsection (c) or (d) whose owner does not comply with those provisions.

(i) REGULATIONS.—Regulations to implement subsections (c) and (d) and sections 12151(c) and 31322(b) of this title shall prohibit impermissible transfers of ownership or control, specify any transactions that require prior approval of an implementing agency, identify transactions that do not require prior agency approval, and to the extent practicable, minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of that industry, and to the opportunity to form fishery cooperatives.

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§ 12119. Owners engaged primarily in leasing or financing transactions

(a) DEFINITIONS.—In this section:

(1) AFFILIATE.—The term “affiliate” means, with respect to any person, any other person that is—

(i) directly or indirectly controlled by, under common control with, or controlling that person; or

(ii) named as being part of the same consolidated group in any report or other document submitted to

the United States Securities and Exchange Commission or the Internal Revenue Service.

(2) CARGO.—The term “cargo” does not include cargo to which title is held for non-commercial reasons and primarily for the purpose of evading the requirements of subsection (c)(3).

(3) OIL.—The term “oil” has the meaning given that term in **section 2101(20)** *section 2101(26)* of this title.

(4) PASSIVE INVESTMENT.—The term “passive investment” means an investment in which neither the investor nor any affiliate of the investor is involved in, or has the power to be involved in, the formulation, determination, or direction of any activity or function concerning the management, use, or operation of the asset that is the subject of the investment.

(5) QUALIFIED PROPRIETARY CARGO.—The term “qualified proprietary cargo” means—

(A) oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person that submits to the Secretary an application or annual certification under subsection (c)(3), or by an affiliate of that person, immediately before, during, or immediately after the cargo is carried in coastwise trade on a vessel owned by that person;

(B) oil, petroleum products, petrochemicals, or liquefied natural gas cargo not beneficially owned by the person that submits to the Secretary an application or an annual certification under subsection (c)(3), or by an affiliate of that person, but which is carried in coastwise trade by a vessel owned by that person and which is part of an arrangement in which vessels owned by that person and at least one other person are operated collectively as one fleet, to the extent that an equal amount of oil, petroleum products, petrochemicals, or liquefied natural gas cargo beneficially owned by that person, or by an affiliate of that person, is carried in coastwise trade on one or more other vessels, not owned by that person, or by an affiliate of that person, if the other vessel or vessels are also part of the same arrangement;

(C) in the case of a towing vessel associated with a non-self-propelled tank vessel where both vessels function as a single self-propelled vessel, oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person that owns both the towing vessel and the non-self-propelled tank vessel, or any United States affiliate of that person, immediately before, during, or immediately after the cargo is carried in coastwise trade on either of those vessels; or

(D) any oil, petroleum products, petrochemicals, or liquefied natural gas cargo carried on any vessel that is either a self-propelled tank vessel having a length of at least 210 meters or a tank vessel that is a liquefied natural gas carrier that—

(i) was delivered by the builder of the vessel to the owner of the vessel after December 31, 1999; and

(ii) was purchased by a person for the purpose, and with the reasonable expectation, of transporting on the vessel liquefied natural gas or unrefined petroleum beneficially owned by the owner of the vessel, or an affiliate of the owner, from Alaska to the continental United States.

(6) UNITED STATES AFFILIATE.—The term “United States affiliate” means, with respect to any person, an affiliate the principal place of business of which is located in the United States.

(b) REQUIREMENTS.—A coastwise endorsement may be issued for a vessel if—

(1) the vessel satisfies the requirements for a coastwise endorsement, except for the ownership requirement otherwise applicable without regard to this section;

(2) the person that owns the vessel (or, if the vessel is owned by a trust or similar arrangement, the beneficiary of the trust or similar arrangement) meets the requirements of subsection (c);

(3) the vessel is under a demise charter to a person that certifies to the Secretary that the person is a citizen of the United States under section 50501 of this title for engaging in the coastwise trade; and

(4) the demise charter is for a period of at least 3 years or a shorter period as may be prescribed by the Secretary.

(c) OWNERSHIP CERTIFICATION.—

(1) IN GENERAL.—A person meets the requirements of this subsection if the person transmits to the Secretary each year the certification required by paragraph (2) or (3) with respect to a vessel.

(2) INVESTMENT CERTIFICATION.—To meet the certification requirement of this paragraph, a person shall certify that it—

(A) is a leasing company, bank, or financial institution;

(B) owns, or holds the beneficial interest in, the vessel solely as a passive investment;

(C) does not operate any vessel for hire and is not an affiliate of any person that operates any vessel for hire; and

(D) is independent from, and not an affiliate of, any charterer of the vessel or any other person that has the right, directly or indirectly, to control or direct the movement or use of the vessel.

(3) CERTAIN TANK VESSELS.—

(A) IN GENERAL.—To meet the certification requirement of this paragraph, a person shall certify that—

(i) the aggregate book value of the vessels owned by the person and United States affiliates of the person does not exceed 10 percent of the aggregate book value of all assets owned by the person and its United States affiliates;

(ii) not more than 10 percent of the aggregate revenues of the person and its United States affiliates is derived from the ownership, operation, or management of vessels;

(iii) at least 70 percent of the aggregate tonnage of all cargo carried by all vessels owned by the person and its United States affiliates and documented with

a coastwise endorsement is qualified proprietary cargo;

(iv) any cargo other than qualified proprietary cargo carried by all vessels owned by the person and its United States affiliates and documented with a coastwise endorsement consists of oil, petroleum products, petrochemicals, or liquified natural gas;

(v) no vessel owned by the person or any of its United States affiliates and documented with a coastwise endorsement carries molten sulphur; and

(vi) the person owned one or more vessels documented under this section as of August 9, 2004.

(B) APPLICATION ONLY TO CERTAIN VESSELS.—A person may make a certification under this paragraph only with respect to—

(i) a tank vessel having a tonnage of at least 6,000 gross tons, as measured under section 14502 of this title (or an alternative tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title); or

(ii) a towing vessel associated with a non-self-propelled tank vessel that meets the requirements of clause (i), where both vessels function as a single self-propelled vessel.

(d) FILING OF DEMISE CHARTER.—The demise charter and any amendments to the charter shall be filed with the certification required by subsection (b)(3) or within 10 days after filing an amendment to the charter. The charter and amendments shall be made available to the public.

(e) CONTINUATION OF ENDORSEMENT AFTER TERMINATION OF CHARTER.—When a charter required by subsection (b)(3) is terminated for default by the charterer, the Secretary may continue the coastwise endorsement for not more than 6 months on terms and conditions the Secretary may prescribe.

(f) DEEMED OWNED BY CITIZENS.—A vessel satisfying the requirements of this section is deemed to be owned only by citizens of the United States under sections 12103 and 50501 of this title.

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PART I—STATE BOATING SAFETY PROGRAMS

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CHAPTER 131—RECREATIONAL BOATING SAFETY

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§ 13107. Authorization of appropriations

(a) Subject to subsection (c), the Secretary shall expend in each fiscal year for State recreational boating safety programs, under contracts with States under this chapter, an amount equal to the amount transferred to the Secretary under subsections (a)(2) and (f) of section 4 of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(a)(2) and (f)). The amount shall be allocated as provided under section 13104 of this title and shall be available for

State recreational boating safety programs as provided under the guidelines established under subsection (b) of this section. Amounts authorized to be expended for State recreational boating safety programs shall remain available until expended and are deemed to have been expended only if an amount equal to the total amounts authorized to be expended under this section for the fiscal year in question and all prior fiscal years have been obligated. Amounts previously obligated but released by payment of a final voucher or modification of a program acceptance shall be credited to the balance of unobligated amounts and are immediately available for expenditure.

(b) The Secretary shall establish guidelines prescribing the purposes for which amounts available under this chapter for State recreational boating safety programs may be used. Those purposes shall include—

(1) providing facilities, equipment, and supplies for boating safety education and law enforcement, including purchase, operation, maintenance, and repair;

(2) training personnel in skills related to boating safety and to the enforcement of boating safety laws and regulations;

(3) providing public boating safety education, including educational programs and lectures, to the boating community and the public school system;

(4) acquiring, constructing, or repairing public access sites used primarily by recreational boaters;

(5) conducting boating safety inspections and marine casualty investigations;

(6) establishing and maintaining emergency or search and rescue facilities, and providing emergency or search and rescue assistance;

(7) establishing and maintaining waterway markers and other appropriate aids to navigation; and

(8) providing State recreational vessel numbering and titling programs.

(c)(1)(A) The Secretary may use amounts made available each fiscal year under section 4(b)(2) of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(b)(2)) for payment of expenses of the Coast Guard for investigations, personnel, and activities directly related to—

(i) administering State recreational boating safety programs under this chapter; or

(ii) coordinating or carrying out the national recreational boating safety program under this title.

(B) Of the amounts used by the Secretary each fiscal year under subparagraph (A)—

(i) not less than \$2,100,000 is available to ensure compliance with chapter 43 of this title; and

(ii) not more than \$1,500,000 is available to conduct by grant or contract a survey of levels of recreational boating participation and related matters in the United States.

(2) **[On and after October 1, 2016, no]** No funds available to the Secretary under this subsection may be used to replace funding provided through general appropriations, nor for any purposes except those purposes authorized by this section.

(3) Amounts made available by this subsection shall remain available during the 2 succeeding fiscal years. Any amount that is unexpended or unobligated at the end of the 3-year period during which it is available shall be withdrawn by the Secretary and allocated to the States in addition to any other amounts available for allocation in the fiscal year in which they are withdrawn or the following fiscal year.

(4) The Secretary shall publish annually in the Federal Register a detailed accounting of the projects, programs, and activities funded under this subsection.

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SUBTITLE III—MARITIME LIABILITY

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CHAPTER 313—COMMERCIAL INSTRUMENTS AND MARITIME LIENS

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SUBCHAPTER II—COMMERCIAL INSTRUMENTS

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§ 31322. Preferred mortgages

(a) A preferred mortgage is a mortgage, whenever made, that—

- (1) includes the whole of the vessel;
- (2) is filed in substantial compliance with section 31321 of this title;
- (3)(A) covers a documented vessel; or
- (B) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter; and
- (4) with respect to a vessel with a fishery endorsement that is 100 feet or greater in registered length, has as the mortgagee—

- (A) a person eligible to own a vessel with a fishery endorsement under section 12113(c) of this title;
- (B) a [state] State or federally chartered financial institution that is insured by the Federal Deposit Insurance Corporation;
- (C) a farm credit lender established under title 12, chapter 23 of the United States Code;
- (D) a commercial fishing and agriculture bank established pursuant to State law;
- (E) a commercial lender organized under the laws of the United States or of a State and eligible to own a vessel for purposes of documentation under section 12103 of this title; or
- (F) a mortgage trustee under subsection (f) of this section.

(b) Any indebtedness secured by a preferred mortgage that is filed or recorded under this chapter, or that is subject to a mortgage, security agreement, or instruments granting a security inter-

est that is deemed to be a preferred mortgage under subsection (d) of this section, may have any rate of interest to which the parties agree.

(c)(1) If a preferred mortgage includes more than one vessel or property that is not a vessel, the mortgage may provide for the separate discharge of each vessel and all property not a vessel by the payment of a part of the mortgage indebtedness.

(2) If a vessel covered by a preferred mortgage that includes more than one vessel or property that is not a vessel is to be sold on the order of a district court in a civil action in rem, and the mortgage does not provide for separate discharge as provided under paragraph (1) of this subsection—

(A) the mortgage constitutes a lien on that vessel in the full amount of the outstanding mortgage indebtedness; and

(B) an allocation of mortgage indebtedness for purposes of separate discharge may not be made among the vessel and other property covered by the mortgage.

(d)(1) A mortgage, security agreement, or instrument granting a security interest perfected under State law covering the whole of a vessel titled in a State is deemed to be a preferred mortgage if—

(A) the Secretary certifies that the State titling system complies with the Secretary's guidelines for a titling system under section 13107(b)(8) of this title; and

(B) information on the vessel covered by the mortgage, security agreement, or instrument is made available to the Secretary under chapter 125 of this title.

(2) This subsection applies to mortgages, security agreements, or instruments covering vessels titled in a State after—

(A) the Secretary's certification under paragraph (1)(A) of this subsection; and

(B) the State begins making information available to the Secretary under chapter 125 of this title.

(3) A preferred mortgage under this subsection continues to be a preferred mortgage even if the vessel is no longer titled in the State where the mortgage, security agreement, or instrument granting a security interest became a preferred mortgage under this subsection.

(e) If a vessel is already covered by a preferred mortgage when an application for titling or documentation is filed—

(1) the status of the preferred mortgage covering the vessel to be titled in the State is determined by the law of the jurisdiction where the vessel is currently titled or documented; and

(2) the status of the preferred mortgage covering the vessel to be documented under chapter 121 is determined by subsection (a) of this section.

(f)(1) A mortgage trustee may hold in trust, for an individual or entity, an instrument or evidence of indebtedness, secured by a mortgage of the vessel to the mortgage trustee, provided that the mortgage trustee—

(A) is eligible to be a preferred mortgagee under subsection (a)(4), subparagraphs (A)–(E) of this section;

(B) is organized as a corporation, and is doing business, under the laws of the United States or of a State;

(C) is authorized under those laws to exercise corporate trust powers;

(D) is subject to supervision or examination by an official of the United States Government or a State;

(E) has a combined capital and surplus (as stated in its most recent published report of condition) of at least \$3,000,000; and

(F) meets any other requirements prescribed by the Secretary.

(2) If the beneficiary under the trust arrangement is not a commercial lender, a lender syndicate or eligible to be a preferred mortgagee under subsection (a)(4), subparagraphs (A)–(E) of this section, the Secretary must determine that the issuance, assignment, transfer, or trust arrangement does not result in an impermissible transfer of control of the vessel to a person not eligible to own a vessel with a fishery endorsement under section 12113(c) of this title.

(3) A vessel with a fishery endorsement may be operated by a mortgage trustee only with the approval of the Secretary.

(4) A right under a mortgage of a vessel with a fishery endorsement may be issued, assigned, or transferred to a person not eligible to be a mortgagee of that vessel under this section only with the approval of the Secretary.

(5) The issuance, assignment, or transfer of an instrument or evidence of indebtedness contrary to this subsection is voidable by the Secretary.

(g) For purposes of this section a “commercial lender” means an entity primarily engaged in the business of lending and other financing transactions with a loan portfolio in excess of \$100,000,000, of which not more than 50 per centum in dollar amount consists of loans to borrowers in the commercial fishing industry, as certified to the Secretary by such lender.

(h) For purposes of this section a “lender syndicate” means an arrangement established for the combined extension of credit of not less than \$20,000,000 made up of four or more entities that each have a beneficial interest, held through an agent, under a trust arrangement established pursuant to subsection (f), no one of which may exercise powers thereunder without the concurrence of at least one other unaffiliated beneficiary.

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SUBTITLE V—MERCHANT MARINE

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PART B—MERCHANT MARINE SERVICE

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CHAPTER 521—MISCELLANEOUS

Sec.
52101. Reemployment rights for certain merchant seamen.

§ 52101. Reemployment rights for certain merchant seamen

(a) IN GENERAL.—An individual who is certified by the Secretary of Transportation under subsection (c) shall be entitled to reemployment rights and other benefits substantially equivalent to the

rights and benefits provided for by chapter 43 of title 38 for any member of a reserve component of the armed forces of the United States who is ordered to active duty.

(b) TIME FOR APPLICATION.—An individual may submit an application for certification under subsection (c) to the Secretary not later than 45 days after the date the individual completes a period of employment described in subsection (c)(1)(A) with respect to which the application is submitted.

(c) CERTIFICATION DETERMINATION.—Not later than 20 days after the date the Secretary receives from an individual an application for certification under this subsection, the Secretary shall—

(1) determine whether the individual—

(A) was employed in the activation or operation of a vessel—

(i) in the National Defense Reserve Fleet maintained under section 57100 in a period in which the vessel was in use or being activated for use under subsection (b) of that section;

(ii) requisitioned or purchased under chapter 563 of this title; or

(iii) owned, chartered, or controlled by the United States Government and used by the Government for a war, armed conflict, national emergency, or maritime mobilization need (including for training purposes or testing for readiness and suitability for mission performance); and

(B) during the period of that employment, possessed a valid license, certificate of registry, or merchant mariner's document issued under chapter 71 or 73 of this title; and

(2) if the Secretary makes affirmative determinations under subparagraphs (A) and (B) of paragraph (1), certify that individual under this subsection.

(d) EQUIVALENCE TO MILITARY SELECTIVE SERVICE ACT CERTIFICATE.—For purposes of reemployment rights and benefits provided by this section, a certification under subsection (c) shall be considered to be the equivalent of a certificate described in section 9(a) of the Military Selective Service Act [(50 App. U.S.C. 459(a))] (50 U.S.C. 3808(a)).

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PART C—FINANCIAL ASSISTANCE PROGRAMS

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CHAPTER 531—MARITIME SECURITY FLEET

Sec.

53101. Definitions.

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【53109. Special rule regarding age of participating fleet vessel.】

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§ 53106. Payments

(a) ANNUAL PAYMENT.—

(1) IN GENERAL.—The Secretary, subject to the availability of appropriations and the other provisions of this section, shall pay to the contractor for an operating agreement, for each vessel that is covered by the operating agreement, an amount equal to—

[(A) \$2,600,000 for each of fiscal years 2006, 2007, and 2008;

[(B) \$2,900,000 for each of fiscal years 2009, 2010, and 2011;

[(C) \$3,100,000 for each of fiscal years 2012, 2013, 2014, and 2015;

[(D) \$4,999,950 for fiscal year 2017;]

[(E)] (A) \$5,000,000 for each of fiscal years 2018, 2019, and 2020;

[(F)] (B) \$5,233,463 for fiscal year 2021; and

[(G)] (C) \$3,700,000 for each of fiscal years 2022, 2023, 2024, and 2025.

(2) TIMING.—The amount shall be paid in equal monthly installments at the end of each month. The amount shall not be reduced except as provided by this section.

(b) CERTIFICATION REQUIRED FOR PAYMENT.—As a condition of receiving payment under this section for a fiscal year for a vessel, the contractor for the vessel shall certify, in accordance with regulations issued by the Secretary, that the vessel has been and will be operated in accordance with paragraph (1) and (2) of section 53105(a), as otherwise applicable with respect to such vessel, for at least 320 days in the fiscal year. Days during which the vessel is drydocked, surveyed, inspected, or repaired shall be considered days of operation for purposes of this subsection.

(c) GENERAL LIMITATIONS.—The Secretary of Transportation shall not make any payment under this chapter for a vessel with respect to any days for which the vessel is—

(1) under a charter to the United States Government, other than a charter pursuant to an Emergency Preparedness Agreement under section 53107;

(2) not operated or maintained in accordance with an operating agreement under this chapter; or

(3) more than—

(A) 25 years of age, except as provided in subparagraph (B); or

(B) 20 years of age, in the case of a tank vessel.

(d) REDUCTIONS IN PAYMENTS.—With respect to payments under this chapter for a vessel covered by an operating agreement, the Secretary—

(1) except as provided in paragraph (2), shall not reduce any payment for the operation of the vessel to carry military or other preference cargoes under section 55302(a), 55304, 55305, or 55314 of this title, section 2631 of title 10, or any other cargo preference law of the United States;

(2) shall not make any payment for any day that the vessel is engaged in transporting more than 7,500 tons of civilian bulk preference cargoes pursuant to section 55302(a), 55305, or 55314 of this title that is bulk cargo; and

(3) shall make a pro rata reduction in payment for each day less than 320 in a fiscal year that the vessel is not operated

in accordance with paragraph (1) and (2) of section 53105(a), as otherwise applicable with respect to such vessel, with days during which the vessel is drydocked or undergoing survey, inspection, or repair considered to be days on which the vessel is operated.

(e) **LIMITATION REGARDING NONCONTIGUOUS DOMESTIC TRADE.—**

(1) **IN GENERAL.—**No contractor shall receive payments pursuant to this chapter during a period in which it participates in noncontiguous domestic trade.

(2) **LIMITATION ON APPLICATION.—**Paragraph (1) shall not apply to any person that is a citizen of the United States within the meaning of section 50501 of this title, applying the 75 percent ownership requirement of that section.

(3) **PARTICIPATES IN A NONCONTIGUOUS DOMESTIC TRADE DEFINED.—**In this subsection the term “participates in a noncontiguous domestic trade” means directly or indirectly owns, charters, or operates a vessel engaged in transportation of cargo between a point in the contiguous 48 States and a point in Alaska, Hawaii, or Puerto Rico, other than a point in Alaska north of the Arctic Circle.

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§ 53111. Authorization of appropriations

There are authorized to be appropriated for payments under section 53106, to remain available until expended—

[(1) \$156,000,000 for each of fiscal years 2006, 2007, and 2008;

[(2) \$174,000,000 for each of fiscal years 2009, 2010, and 2011;

[(3) \$186,000,000 for each of fiscal years 2012, 2013, 2014, and 2015

[(4) \$299,997,000 for fiscal year 2017;]

[(5)] (1) \$300,000,000 for each of fiscal years 2018, 2019, and 2020;

[(6)] (2) \$314,007,780 for fiscal year 2021; and

[(7)] (3) \$222,000,000 for each fiscal year thereafter through fiscal year 2025.

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CHAPTER 535—CAPITAL CONSTRUCTION FUNDS

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§ 53501. Definitions

In this chapter:

(1) **AGREEMENT VESSEL.—**The term “agreement vessel” means—

(A) an eligible vessel or a qualified vessel that is subject to an agreement under this chapter; and

(B) a barge or container that is part of the complement of a vessel described in subparagraph (A) if provided for in the agreement.

(2) **ELIGIBLE VESSEL.—**The term “eligible vessel” means—

(A) a vessel—

(i) constructed in the United States (and, if reconstructed, reconstructed in the United States), constructed outside the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in the United States foreign trade pursuant to a contract made before April 15, 1970;

(ii) documented under the laws of the United States; and

(iii) operated in the foreign or domestic trade of the United States or in the fisheries of the United States; and

(B) a commercial fishing vessel—

(i) constructed in the United States and, if reconstructed, reconstructed in the United States;

(ii) of at least 2 net tons but less than 5 net tons;

(iii) owned by a citizen of the United States;

(iv) having its home port in the United States; and

(v) operated in the commercial fisheries of the United States.

(3) JOINT REGULATIONS.—The term “joint regulations” means regulations prescribed jointly by the Secretary and the Secretary of the Treasury under section 53502(b) of this title.

(4) NONCONTIGUOUS TRADE.—The term “noncontiguous trade” means—

(A) trade between—

(i) one of the contiguous 48 States; and

(ii) Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States; and

(B) trade between—

(i) a place in Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States; and

(ii) another place in Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States.

(5) QUALIFIED VESSEL.—The term “qualified vessel” means—

(A) a vessel—

(i) constructed in the United States (and, if reconstructed, reconstructed in the United States), constructed outside the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in the United States foreign trade pursuant to a contract made before April 15, 1970;

(ii) documented under the laws of the United States; and

(iii) agreed, between the Secretary and the person maintaining the capital construction fund established under section 53503 of this title, to be operated in the United States foreign, Great Lakes, noncontiguous domestic, or short sea [transportation trade trade or] *transportation trade* or in the fisheries of the United States; and

(B) a commercial fishing vessel—

(i) constructed in the United States and, if reconstructed, reconstructed in the United States;

- (ii) of at least 2 net tons but less than 5 net tons;
- (iii) owned by a citizen of the United States;
- (iv) having its home port in the United States; and
- (v) operated in the commercial fisheries of the United States.

(6) SECRETARY.—The term “Secretary” means—

- (A) the Secretary of Commerce with respect to an eligible vessel or a qualified vessel operated or to be operated in the fisheries of the United States; and
- (B) the Secretary of Transportation with respect to other vessels.

(7) SHORT SEA TRANSPORTATION TRADE.—The term “short sea transportation trade” means the carriage by vessel of cargo—

- (A) that is—
 - (i) contained in intermodal cargo containers and loaded by crane on the vessel; or
 - (ii) loaded on the vessel by means of wheeled technology; and
- (B) that is—
 - (i) loaded at a port in the United States and unloaded either at another port in the United States or at a port in Canada located in the Great Lakes Saint Lawrence Seaway System; or
 - (ii) loaded at a port in Canada located in the Great Lakes Saint Lawrence Seaway System and unloaded at a port in the United States.

(8) UNITED STATES FOREIGN TRADE.—*The term “United States foreign trade” includes those areas in domestic trade in which a vessel built with a construction-differential subsidy is allowed to operate under the first sentence of section 506 of the Merchant Marine Act, 1936.*

【(7) UNITED STATES FOREIGN TRADE.—The term “United States foreign trade” includes those areas in domestic trade in which a vessel built with a construction-differential subsidy is allowed to operate under the first sentence of section 506 of the Merchant Marine Act, 1936.】

【(8)】(9) VESSEL.—The term “vessel” includes—

- (A) cargo handling equipment that the Secretary determines is intended for use primarily on the vessel; and
- (B) an ocean-going towing vessel, an ocean-going barge, or a comparable towing vessel or barge operated on the Great Lakes.

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CHAPTER 541—MISCELLANEOUS

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§ 54101. Assistance for small shipyards

(a) ESTABLISHMENT OF PROGRAM.—Subject to the availability of appropriations, the Administrator of the Maritime Administration shall execute agreements with shipyards to provide assistance—

- (1) in the form of grants, loans, and loan guarantees to small shipyards for capital improvements; and

(2) for maritime training programs to foster technical skills and operational productivity relating to shipbuilding, ship repair, and associated industries.

(b) AWARDS.—

(1) IN GENERAL.—In providing assistance under the program, the Administrator shall consider projects that foster—

(A) efficiency, competitive operations, and quality ship construction, repair, and reconfiguration; and

(B) employee skills and enhanced productivity related to shipbuilding, ship repair, and associated industries.

(2) TIMING OF GRANTS.—The Administrator shall award grants under this section not later than 120 days after the date of the enactment of the appropriations Act for the fiscal year concerned.

(3) REUSE OF UNEXPENDED GRANT FUNDS.—Notwithstanding paragraph (2), amounts awarded as a grant under this section that are not expended by the grantee shall remain available to the Administrator for use for grants under this section.

(c) USE OF FUNDS.—

(1) IN GENERAL.—Assistance provided under this section may be used to—

(A) make capital and related improvements in small shipyards; and

(B) provide training for workers in shipbuilding, ship repair, and associated industries.

(2) ADMINISTRATIVE COSTS.—Not more than 2 percent of amounts made available to carry out the program may be used for the necessary costs of grant administration.

(d) PROHIBITED USES.—Grants awarded under this section may not be used to construct buildings or other physical facilities or to acquire land.

(e) MATCHING REQUIREMENTS; ALLOCATION.—

(1) FEDERAL FUNDING.—Federal funds for any eligible project under this section shall not exceed 75 percent of the total cost of such project.

(2) ALLOCATION OF FUNDS.—The Administrator may not award more than 25 percent of the funds appropriated to carry out this section for any fiscal year to any small shipyard in one geographic location that has more than 600 employees.

(f) APPLICATIONS.—

(1) IN GENERAL.—To be eligible for assistance under this section, an applicant shall submit an application, in such form, and containing such information and assurances as the Administrator may require, within 60 days after the date of enactment of the appropriations Act for the fiscal year concerned.

[(2) MINIMUM STANDARDS FOR PAYMENT OR REIMBURSEMENT.—Each application submitted under paragraph (1) shall include—

[(A) a comprehensive description of—

[(i) the need for the project;

[(ii) the methodology for implementing the project;

and

[(iii) any existing programs or arrangements that can be used to supplement or leverage assistance under the program.]

(2) *MINIMUM STANDARDS FOR PAYMENT OR REIMBURSEMENT.*—Each application submitted under paragraph (1) shall include a comprehensive description of—

- (A) *the need for the project;*
- (B) *the methodology for implementing the project; and*
- (C) *any existing programs or arrangements that can be used to supplement or leverage assistance under the program.*

(3) *PROCEDURAL SAFEGUARDS.*—The Administrator, in consultation with the Office of the Inspector General, shall issue guidelines to establish appropriate accounting, reporting, and review procedures to ensure that—

- (A) grant funds are used for the purposes for which they were made available;
- (B) grantees have properly accounted for all expenditures of grant funds; and
- (C) grant funds not used for such purposes and amounts not obligated or expended are returned.

(4) *PROJECT APPROVAL REQUIRED.*—The Administrator may not award a grant under this section unless the Administrator determines that—

- (A) sufficient funding is available to meet the matching requirements of subsection (e);
- (B) the project will be completed without unreasonable delay; and
- (C) the recipient has authority to carry out the proposed project.

(g) *AUDITS AND EXAMINATIONS.*—All grantees under this section shall maintain such records as the Administrator may require and make such records available for review and audit by the Administrator.

(h) *SMALL SHIPYARD DEFINED.*—In this section, the term “small shipyard” means a shipyard facility in one geographic location that does not have more than 1,200 employees.

(i) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to the Administrator of the Maritime Administration for each of fiscal years 2018, 2019, and 2020 to carry out this section \$35,000,000.

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PART D—PROMOTIONAL PROGRAMS

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CHAPTER 553—PASSENGER AND CARGO PREFERENCES

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SUBCHAPTER I—GENERAL

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§ 55305. Cargoes procured, furnished, or financed by the United States Government

(a) *DEFINITION.*—In this section, the term “privately-owned commercial vessel of the United States” does not include a vessel that,

after September 21, 1961, was built or rebuilt outside the United States or documented under the laws of a foreign country, until the vessel has been documented under the laws of the United States for at least 3 years.

(b) **MINIMUM TONNAGE.**—When the United States Government procures, contracts for, or otherwise obtains for its own account, or furnishes to or for the account of a foreign country, organization, or persons without provision for reimbursement, any equipment, materials, or commodities, or provides financing in any way with Federal funds for the account of any persons unless otherwise exempted, within or without the United States, or advances funds or credits, or guarantees the convertibility of foreign currencies in connection with the furnishing or obtaining of the equipment, materials, or commodities, the appropriate agencies shall take steps necessary and practicable to ensure that at least 50 percent of the gross tonnage of the equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) which may be transported on ocean vessels is transported on privately-owned commercial vessels of the United States, to the extent those vessels are available at fair and reasonable rates for commercial vessels of the United States, in a manner that will ensure a fair and reasonable participation of commercial vessels of the United States in those cargoes by geographic areas.

(c) **WAIVERS.**—The President, the Secretary of Defense, or Congress (by concurrent resolution or otherwise) may waive this section temporarily by—

- (1) declaring the existence of an emergency justifying a waiver; and
- (2) notifying the appropriate agencies of the waiver.

(d) **PROGRAMS OF OTHER AGENCIES.**—

- (1) Each department or agency that has responsibility for a program under this section shall administer that program with respect to this section under regulations and guidance issued by the Secretary of Transportation. The Secretary, after consulting with the department or agency or organization or person involved, shall have the sole responsibility for determining if a program is subject to the requirements of this section.

(2) The Secretary—

(A) shall conduct an annual review of the administration of programs determined pursuant to paragraph (1) as subject to the requirements of this section;

(B) may direct agencies to require the transportation on United States-flagged vessels of cargo shipments not otherwise subject to this section in equivalent amounts to cargo determined to have been shipped on foreign carriers in violation of this section;

(C) may impose on any person that violates this section, or a regulation prescribed under this section, a civil penalty of not more than \$25,000 for each violation willfully and knowingly committed, with each day of a continuing violation following the date of shipment to be a separate violation; and

(D) may take other measures as appropriate under the Federal Acquisition Regulations issued pursuant to section 25(c)(1) of the Office of Federal Procurement Policy Act (41

U.S.C. [421(c)(1)] 1303(a)(1) or contract with respect to each violation.

(e) SECURITY OF GOVERNMENT-IMPELLED CARGO.—

(1) In order to ensure the safety of vessels and crewmembers transporting equipment, materials, or commodities under this section, the Secretary of Transportation shall direct each department or agency (except the Department of Defense), when responsible for the carriage of such equipment, materials, or commodities, to reimburse, subject to the availability of appropriations, the owners or operators of vessels of the United States carrying such equipment, materials, or commodities for the cost of providing armed personnel aboard such vessels if the vessels are transiting high-risk waters.

(2) In this subsection, the term “high-risk waters” means waters so designated by the Commandant of the Coast Guard in the maritime security directive issued by the Commandant and in effect on the date on which an applicable voyage begins, if the Secretary of Transportation—

(A) determines that an act of piracy occurred in the 12-month period preceding the date the voyage begins; or

(B) in such period, issued an advisory warning that an act of piracy is possible in such waters.

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PART F—GOVERNMENT-OWNED MERCHANT VESSELS

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CHAPTER 575—CONSTRUCTION, CHARTER, AND SALE OF VESSELS

Sec.

57501. Completion of long-range program.

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SUBCHAPTER SUBCHAPTER III—MISCELLANEOUS

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57533. Vessel chartering authority.

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SUBCHAPTER III—MISCELLANEOUS

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§ 57532. Operation of experimental vessels

(a) DEFINITION.—In this section, the term “experimental vessel” means a vessel owned by the United States Government (including a vessel in the National Defense Reserve Fleet) that has been constructed, reconditioned, or remodeled for experimental or testing purposes.

(b) AUTHORITY TO OPERATE.—The Secretary of Transportation, for the purpose of practical development, trial, and testing, may operate an experimental vessel under a bareboat charter or general agency agreement in the foreign or domestic trade of the United

States or for use for the account of a department or agency of the Government, without regard to other provisions of this subtitle and other laws related to chartering and general agency operations. Not more than 10 vessels may be operated and tested under this section in any one year.

(c) **TERMS OF OPERATION.**—Operation of a vessel under this section shall be on terms the Secretary considers appropriate to carry out the purposes of this subtitle. A bareboat charter under this section shall be at reasonable rates and include restrictions the Secretary considers appropriate to protect the public interest, including provisions for recapture of profits under section 57517 of this title. A charter or general agency agreement under this section shall be reviewed annually to determine whether conditions exist to justify continuance of the charter or agreement.

(d) **RIGHTS OF SEAMEN.**—A seaman engaged in vessel operations of the Secretary under this section and employed through a general agent in connection with a charter or agreement under this section is entitled to all the rights and remedies provided in sections 1(a) and (c), 3(c), and 4 of the Act of March 24, 1943 [(50 App. U.S.C. 1291(a), (c), 1293(c), 1294)] (50 U.S.C. 4701(a), (c), 4703(c), and 4704).

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**SUBTITLE VI—CLEARANCE, TONNAGE TAXES,
AND DUTIES**

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CHAPTER 603—TONNAGE TAXES AND LIGHT MONEY

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§ 60303. Light money

(a) **IMPOSITION OF TAX.**—A tax of 50 cents per ton, to be called “light money”, is imposed on a vessel not of the United States at each entry in a port of the United States. This tax shall be imposed and collected under the same regulations that apply to tonnage taxes.

(b) **EXCEPTION FOR VESSELS OWNED BY CITIZENS.**—

(1) **IN GENERAL.**—Subsection (a) does not apply to a vessel owned only by citizens of the United States if—

(A) the vessel is carrying a regular document issued by a customhouse of the United States proving the vessel to be owned only by citizens of the United States; and

(B) on entry of the vessel from a foreign port, the individual designated under paragraph (2) states under oath that—

(i) the document contains the names of all the owners of the vessel; or

(ii) part of the ownership has been transferred since the document was issued and, to the best of that individual’s knowledge and belief, the vessel is still owned only by citizens of the United States.

(2) **PERSON TO MAKE STATEMENT.**—The statement under paragraph (1)(B) shall be made by—

- (A) an owner if one resides at the port of entry; or
- (B) the master if an owner does not reside at the port of entry.
- (c) EXCEPTION FOR VESSELS BECOMING DOCUMENTED.—[Subsection (a) section does] *Subsection (a) does* not apply to a vessel that—
 - (1) is owned only by citizens of the United States; and
 - (2) after entering a port of the United States, becomes documented as a vessel of the United States before leaving that port.

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SUBTITLE VIII—MISCELLANEOUS

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CHAPTER 803—ICE AND DERELICTS

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§ 80302. Patrol services

(a) GENERAL REQUIREMENTS.—Unless the agreements made under section 80301 of this title provide otherwise, an ice patrol shall be maintained during the entire ice season in guarding the southeastern, southern, and southwestern limits of the region of icebergs in the vicinity of the Grand Banks of Newfoundland. The patrol shall inform trans-Atlantic and other passing vessels by radio and other available means of the ice conditions and the extent of the dangerous region. During the ice season, there shall be maintained a service of study of ice and current conditions, a service of providing assistance to vessels and crews requiring assistance, and a service of removing and destroying derelicts. Any of these services may be maintained during the remainder of the year as may be advisable.

(b) WARNINGS TO VESSELS.—The ice patrol shall warn any vessel known to be approaching a dangerous area and recommend safe routes.

(c) RECORDING AND REPORTING INCIDENTS.—

(1) RECORDING.—The ice patrol shall record the name of a vessel and the facts of the case when the patrol observes or knows that the vessel—

(A) is on other than a regular recognized or advertised route crossing the North Atlantic Ocean;

(B) has crossed the fishing banks of Newfoundland north of latitude 43 degrees north during the fishing season; or

(C) has passed through regions known or believed to be endangered by ice when proceeding to and from ports of North America.

(2) REPORTING.—The name of the vessel and all pertinent information about the incident shall be reported to the government of the country to which the vessel belongs if that government requests.

(d) ADMINISTRATION.—The Commandant [of the Coast Guard], under the direction of the Secretary of the department in which the Coast Guard is operating, shall carry out the services provided for

in this section and shall assign necessary aircraft, material, and personnel of the Coast Guard. On request of such Secretary, the head of an agency may detail personnel, lend or contribute material or equipment, or otherwise assist in carrying out the services provided for in this section.

(e) ANNUAL REPORT.—The Commandant shall publish an annual report of the activities of the services provided for in this section. A copy of the report shall be provided to each interested foreign government and to each agency assisting in the work.

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MARINE MAMMAL PROTECTION ACT OF 1972

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TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

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INTERIM EXEMPTION FOR COMMERCIAL FISHERIES

SEC. 114. (a)(1) During the period beginning on the date of enactment of this section and until superseded by regulations prescribed under section 118, or until September 1, 1995, whichever is earlier, except as provided in paragraph (2), the provisions of this section, rather than sections 101, 103, and 104, shall govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States and vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)). In any event it shall be the immediate goal that the incidental kill or serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate.

(2) The provisions of this section other than subsection (e)(6)(A) shall not govern the incidental taking of marine mammals in the course of commercial yellowfin tuna fishing subject to section 104(h)(2) of this title.

(b)(1) The Secretary shall, after consultation with the Marine Mammal Commission—

(A) publish in the Federal Register, for public comment, not later than sixty days after the date of enactment of this section a proposed list of those fisheries, along with a statement of the marine mammals and the approximate number of vessels or persons involved in each such fishery, that have—

- (i) frequent incidental taking of marine mammals;
- (ii) occasional incidental taking of marine mammals; or
- (iii) a remote likelihood of or no known incidental taking of marine mammals;

(B) publish in the Federal Register not later than one hundred and twenty days after the date of enactment of this section a final list of the fisheries and other information required by paragraph (A), together with a summary of the provisions

of this section and information sufficient to advise vessel owners on how to obtain an exemption and otherwise comply with the requirements of this section; and

(C) at least once each year thereafter, and at such other times as the Secretary considers appropriate, reexamine, based on information gathered from the program established under subsections (c), (d), (e), and (f), and other relevant sources and after notice and opportunity for public comment, the classification of fisheries and other determinations required under subparagraph (A) and publish in the Federal Register any necessary changes.

(2)(A) An exemption shall be granted by the Secretary in accordance with this section for a vessel engaged in a fishery identified under paragraph (1)(A) (i) or (ii), upon receipt by the Secretary of a completed registration form providing the name of the vessel owner, the name and description of the vessel, the fisheries in which it will be engaged, and such other information as the Secretary considers necessary. A decal or other physical evidence that the exemption is current and valid shall be issued by the Secretary at the time an exemption is granted, and so long as the exemption remains current and valid, shall be reissued annually thereafter.

(B) No exemption may be granted under this section to the owner of a vessel unless such vessel

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

(ii) has a valid fishing permit issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)).

(C) Notwithstanding any other provision of this title, exemptions granted under this section shall authorize the incidental taking of marine mammals, other than California sea otters, from any species or stock, including a population stock designated as depleted, but shall not authorize the intentional lethal taking of any Steller sea lion, any cetacean, or any marine mammals from a population stock designated as depleted.

(3)(A) Beginning two hundred and forty days after the date of enactment of this section, each owner of a vessel engaged in any fishery identified under paragraph (1)(A) (i) or (ii) shall, in order to engage lawfully in that fishery—

(i) have registered with the Secretary in order to obtain for each such vessel owned an exemption for the purpose of incidentally taking marine mammals in accordance with this section;

(ii) ensure that a decal or such other physical evidence of a current and valid exemption as the Secretary may require is displayed on or is in the possession of the master of each such vessel; and

(iii) report as required by subsection (c).

(B) Any owner of a vessel receiving an exemption under this section for any fishery identified under paragraph (1)(A)(i) shall, as a condition of that exemption, take on board a natural resource observer if requested to do so by the Secretary.

(C) An owner of a vessel engaged in a fishery identified under paragraph (1)(A) (i) or (ii) who—

(i) fails to obtain from the Secretary an exemption under this section;

(ii) fails to maintain a current and valid exemption; or
 (iii) fails to ensure that a decal or other physical evidence of such exemption issued by the Secretary is displayed on or is in possession of the master of the vessel,
 and the master of any such vessel engaged in such fishery, shall be deemed to have violated this title, and shall be subject to the penalties of this title except in the case of unknowing violations before January 1, 1990.

(D) If the owner of a vessel has obtained and maintains a current and valid exemption from the Secretary under this section and meets the requirements set forth in this section, the owner of such vessel, and the master and crew members of the vessel, shall not be subject to the penalties set forth in this title for the incidental taking of marine mammals while such vessel is engaged in a fishery to which the exemption applies.

(E) Each owner of a vessel engaged in any fishery not identified in paragraph (1)(A) (i) or (ii), and the master and crew members of such a vessel, shall not be subject to the penalties set forth in this title for the incidental taking of marine mammals if such owner reports to the Secretary, in such form and manner as the Secretary may require, instances of lethal incidental taking in the course of that fishery.

(4) The Secretary shall suspend or revoke an exemption granted under this section and shall not issue a decal or other physical evidence of the exemption for any vessel until the owner of such vessel complies with the reporting requirements under subsection (c) and such requirements to take on board a natural resource observer under paragraph (3)(B) as are applicable to such vessel.

(5)(A) The Secretary shall develop, in consultation with the appropriate States, Regional Fishery Management Councils, and other interested parties, the means by which the granting and administration of exemptions under this section shall be integrated and coordinated, to the maximum extent practicable, with existing fishery licenses, registrations, and related programs.

(B) The Secretary shall utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of the provisions of this section and the means by which they can comply with its requirements.

(C) The Secretary is authorized to charge a fee for the granting of an exemption under this subsection. The level of fees charged under this subparagraph shall not exceed the administrative costs incurred in granting an exemption. Fees collected under this subparagraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in the granting and administration of exemptions under this section.

(c) The owner of each vessel holding an exemption granted under subsection (b) of this section shall regularly compile information which shall be used in a report to be submitted to the Secretary at the close of the fishing season or annually, as the Secretary may prescribe. Such report shall be submitted in such form as the Secretary may require and shall include the following:

- (1) the type of fishery engaged in by the owner's vessel;
- (2) the date and approximate time of any incidental taking of a marine mammal, together with the area in which the inci-

dental taking occurred, the fishing gear used at the time of the incidental taking, and the species of fish involved; and

(3) for each incidental taking, the number and species of marine mammals involved, whether the marine mammals were deterred from gear or catch, incidentally injured, incidentally killed, or lethally removed to protect gear, catch, or human life.

If there was no incidental taking of marine mammals during the reporting period, a report stating that fact shall be filed with the Secretary.

(d)(1) The Secretary shall establish a program to enhance the quality of and verify information received from reports submitted by owners of vessels who have been granted an exemption under subsection (b) of this section. The program shall include, but not be limited to—

(A) education efforts regarding the information that must be submitted;

(B) interviews with fishermen; and

(C) other such information gathering and verification activities that will enable the Secretary to determine reliably the nature, type, and extent of the incidental taking of marine mammals that occurs in a fishery.

Except to the extent authorized by the provisions of subsection (e), the program shall not include placement of observers aboard exempted vessels.

(2) Information obtained under this subsection shall be subject to the confidentiality provisions of subsection (j).

(e)(1) For each fishery identified under subsection (b)(1)(A)(i) of this section, the Secretary shall, after consultation with the appropriate Regional Fishery Management Councils, other Federal and State agencies, and other interested parties, and subject to paragraph (6), place observers on board exempted vessels so as to monitor not less than 20 percent nor more than 35 percent of the fishing operations by vessels in the fishery to obtain statistically reliable information on the species and number of marine mammals incidentally taken in the fishery. If the Secretary determines that fewer than 20 percent of the fishing operations by vessels in the fishery will be monitored during the course of the fishing season, the Secretary shall implement the alternative observation program described in subsection (f) to the extent necessary to supplement the observer program described in this subsection.

(2) When determining the distribution of observers among fisheries and between vessels in a particular fishery, the Secretary shall be guided by the following standards:

(A) the requirement to obtain the best scientific information available;

(B) the requirement that assignment of observers is fair and equitable among fisheries and among vessels in a fishery;

(C) consistent with paragraph (1), the requirement that no individual person or vessel, or group of persons or vessels, be subject to excessive or overly burdensome observer coverage; and

(D) where practicable, the need to minimize costs and avoid duplication.

(3) If the Secretary finds that, for reasons beyond his or her control, the Secretary cannot assign observers to all the fisheries iden-

tified under subsection (b)(1)(A)(i) of this section at the level of observer coverage set forth in paragraph (1), the Secretary shall allocate available observers among such fisheries, consistent with paragraph (2), according to the following priority:

(A) those fisheries that incidentally take marine mammals from any population stock designated as depleted;

(B) those fisheries that incidentally take marine mammals from population stocks that the Secretary believes are declining;

(C) those fisheries other than those described in subparagraphs (A) and (B) in which the greatest incidental take of marine mammals occur; and

(D) any other fishery identified under subsection (b)(1)(A)(i). The Secretary may, with the consent of the vessel owner, station an observer on board a vessel engaged in a fishery not identified under subsection (b)(1)(A)(i).

(4) Information gathered by observers shall be subject to the provisions of subsection (j). Consistent with the requirements of paragraph (1), the Secretary shall, if requested by the Appropriate Regional Fishery Management Council, or in the case of a State fishery, the State, require observers to collect additional information, including but not limited to the quantities, species, and physical condition of target and non-target fishery resources and, if requested by the Secretary of the Interior, seabirds.

(5) Notwithstanding the provisions of paragraph (4), the Secretary may decline to require observers to collect information described in such paragraph, if the Secretary finds in writing, following public notice and opportunity for comment, that such information will not contribute to the protection of marine mammals or the understanding of the marine ecosystem, including fishery resources and seabirds.

(6) The Secretary shall not be required to place an observer on a vessel in a fishery if the Secretary finds that—

(A) in a situation where harvesting vessels are delivering fish to a processing vessel and the catch is not taken on board the harvesting vessel, statistically reliable information can be obtained from an observer on board the processing vessel to which the fish are delivered;

(B) the facilities of a vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; or

(C) for reasons beyond the control of the Secretary, an observer is not available.

(7)(A) An observer on a vessel (or the observer's personal representative) under the requirements of this section or section 104 that is ill, disabled, injured, or killed from service as an observer on that vessel may not bring a civil action under any law of the United States for that illness, disability, injury, or death against the vessel or vessel owner, except that a civil action may be brought against the vessel owner for the owner's willful misconduct.

(B) This paragraph does not apply if the observer is engaged by the owner, master, or individual in charge of a vessel to perform any duties in service to the vessel.

(8) There are authorized to be appropriated to the Department of Commerce for the purposes of carrying out this subsection not to exceed \$2,700,000 for fiscal year 1989 and not to exceed \$8,000,000 for each of the fiscal years 1990, 1991, 1992, and 1993.

(f)(1) The Secretary shall establish an alternative observation program to provide statistically reliable information on the species and number of marine mammals incidentally taken in those fisheries identified pursuant to subsection (b)(1)(A)(i) of this section for which the required level of observer coverage has not been met or for any other fisheries about which such reliable information is not otherwise available. The alternative program shall include, but not be limited to, direct observation of fishing activities from vessels, airplanes, or points on shore.

(2) Individuals engaged in the alternative observation program shall collect scientific information on the fisheries subject to observation, consistent with the requirements of paragraph (1) and subsection (e) (4) and (5). All information collected shall be subject to the provisions of subsection (j).

(g)(1) The Secretary shall review information regarding the incidental taking of marine mammals and evaluate the effects of such incidental taking on the affected population stocks of marine mammals.

(2) If the Secretary finds, based on the information received from the programs established under subsections (c), (d), (e), and (f), that the incidental taking of marine mammals in a fishery is having an immediate and significant adverse impact on a marine mammal population stock or, in the case of Steller sea lions and North Pacific fur seals, that more than 1,350 and 50, respectively, will be incidentally killed during a calendar year, the Secretary shall consult with appropriate Regional Fishery Management Councils and State fishery managers and prescribe emergency regulations to prevent to the maximum extent practicable any further taking. Any emergency regulations prescribed under this paragraph—

(A) shall, to the maximum extent practicable, avoid interfering with existing State or regional fishery management plans;

(B) shall be published in the Federal Register together with the reasons therefor;

(C) shall remain in effect for not more than one hundred and eighty days or until the end of the fishing season, whichever is earlier; and

(D) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination if the Secretary determines the reasons for the emergency regulations no longer exist.

In prescribing emergency regulations under this paragraph, the Secretary shall take into account the economics of the fishery concerned and the availability of existing technology to prevent or minimize incidental taking of marine mammals.

(3) If the Secretary finds, based on information received from the programs established under subsections (c), (d), (e), and (f), that incidental taking of marine mammals in a fishery is not having an immediate and significant adverse impact on a marine mammal population stock but that it will likely have a significant adverse

impact over a period of time longer than one year, the Secretary shall request the appropriate Regional Fishery Management Council or State to initiate, recommend, or take such action within its authority as it considers necessary to mitigate the adverse impacts, including adjustments to requirements on fishing times or areas or the imposition of restrictions on the use of vessels or gear.

(4) The Secretary shall impose appropriate conditions and restrictions on an exemption granted under subsection (b) if—

(A) a Regional Fishery Management Council or State does not act in a reasonable period of time on a request made by the Secretary under paragraph (3); or

(B) if the Secretary determines after notice and opportunity for public comment that the purposes of this section would be better served by such action.

(h) The Secretary shall design and implement an information management system capable of processing and analyzing reports received from the programs established under subsections (c), (d), (e), and (f), and other relevant sources, including Federal and State enforcement authorities, marine mammal stranding networks, and the marine mammal researchers. The information shall be made accessible to the public on a continuing basis, but in any case no later than six months after it is received, subject to the provisions of subsection (j).

(i) When carrying out the Secretary's responsibilities under subsections (b), (d), (e), (f), and (h) of this section, the Secretary shall, to the maximum extent practicable, utilize the services and programs of State agencies, Federal agencies (including programs established by Regional Fishery Management Councils), marine fisheries commissions, universities, and private entities, on a reimbursable basis or otherwise. The Secretary is authorized to enter into contracts and agreements to carry out his or her responsibilities and shall establish appropriate guidelines to ensure that other programs used or contracted for will meet the same standards as a program established by the Secretary. A person contracting with the Secretary to provide observer services under subsection (e) of this section must provide evidence of financial responsibility in an amount and form prescribed by the Secretary to compensate employees (or their survivors) adequately for any illness, disability, injury, or death from service on a vessel.

(j)(1) Any information collected under subsection (c), (d), (e), (f), or (h) of this section shall be confidential and shall not be disclosed except—

(A) to Federal employees whose duties require access to such information;

(B) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

(C) when required by court order; or

(D) in the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

(2) The Secretary shall prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary shall release or make public any such information in aggregate,

summary, or other form which does not directly or indirectly disclose the identity or business of any person.

(k) The Secretary, in consultation with any other Federal agency to the extent that such agency may be affected, shall prescribe such regulations as necessary and appropriate to carry out the purposes of this section.

(1)(1) The Chairman of the Marine Mammal Commission shall, after consultation with interested parties and not later than February 1, 1990, transmit to the Secretary and make available to the public recommended guidelines to govern the incidental taking of marine mammals in the course of commercial fishing operations, other than those subject to section 104(h)(2), after October 1, 1993. Such guidelines shall be developed by the Commission and its Committee of Scientific Advisers on Marine Mammals and shall—

(A) be designed to provide a scientific rationale and basis for determining how many marine mammals may be incidentally taken under a regime to be adopted to govern such taking after October 1, 1993;

(B) be based on sound principles of wildlife management, and be consistent with and in furtherance of the purposes and policies set forth in this Act; and

(C) to the maximum extent practicable, include as factors to be considered and utilized in determining permissible levels of such taking—

(i) the status and trends of the affected marine mammal population stocks;

(ii) the abundance and annual net recruitment of such stocks;

(iii) the level of confidence in the knowledge of the affected stocks; and

(iv) the extent to which incidental taking will likely cause or contribute to their decline or prevent their recovery to optimum sustainable population levels.

(2) The Secretary shall advise the Chairman of the Commission in writing if the Secretary determines that any additional information or explanation of the Chairman's recommendations is needed, and the Chairman shall respond in writing to any such request by the Secretary.

(3) On or before February 1, 1991, the Secretary, after consultation with the Marine Mammal Commission, Regional Fishery Management Councils, and other interested governmental and non-governmental organizations, shall publish in the Federal Register, for public comment, the suggested regime that the Secretary considers should, if authorized by enactment of any additional legislation, govern incidental taking of marine mammals, other than those subject to section 104(h)(2), after October 1, 1993. The suggested regime shall include—

(A) the scientific guidelines to be used in determining permissible levels of incidental taking;

(B) a description of the arrangements for consultation and cooperation with other Federal agencies, the appropriate Regional Fishery Management Councils and States, the commercial fishing industry, and conservation organizations; and

(C) a summary of such regulations and legislation as would be necessary to implement the suggested regime.

(4) On or before January 1, 1992, the Secretary, after consultation with the Marine Mammal Commission, and consideration of public comment, shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives recommendations pertaining to the incidental taking of marine mammals, other than those subject to section 104(h)(2), after October 1, 1993. The recommendations shall include—

(A) the suggested regime developed under paragraph (3) of this subsection as modified after comment and consultations;

(B) a proposed schedule for implementing the suggested regime; and

(C) such recommendations for additional legislation as the Secretary considers necessary or desirable to implement the suggested regime.

(m) The Secretary shall consult with the Secretary of the Interior prior to taking actions or making determinations under this section that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under this title.

(n) For the purposes of this section, the owner of fixed or other commercial fishing gear that is deployed with or without the use of a vessel shall be deemed to be an owner of a vessel engaged in the fishery in which that gear is deployed.

(o) As used in this section—

(1) the term “fishery” has the same meaning as it does in section 3(8) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(8)).

(2) the term “Secretary” means the Secretary of Commerce.

(3) the term “vessel engaged in a fishery” means a fishing vessel as defined in [section 2101(11a)] *section 2101(12)* of Title 46, United States Code, or a fish processing vessel as defined in [section 2101(11b)] *section 2101(13)* of that title, which is engaged in fishery.

(4) the term “vessel of the United States” has the same meaning as it does in section 3(27) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(27)).

* * * * *

**MAGNUSON-STEVENS FISHERY CONSERVATION AND
MANAGEMENT ACT**

* * * * *

SEC. 3. DEFINITIONS.

As used in this Act, unless the context otherwise requires—

(1) The term “anadromous species” means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

(2) The term “bycatch” means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program.

(3) The term “charter fishing” means fishing from a vessel carrying a passenger for hire (as defined in [section 2101(21a)] *section 2101(30)* of title 46, United States Code) who is engaged in recreational fishing.

(4) The term “commercial fishing” means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.

(5) The term “conservation and management” refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that—

(i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources.

(6) The term “Continental Shelf” means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas.

(7) The term “Continental Shelf fishery resources” means the following:

COLEENTERATA

Bamboo Coral—*Acanella* spp.;
 Black Coral—*Antipathes* spp.;
 Gold Coral—*Callogorgia* spp.;
 Precious Red Coral—*Corallium* spp.;
 Bamboo Coral—*Keratoisis* spp.; and
 Gold Coral—*Parazoanthus* spp.

CRUSTACEA

Tanner Crab—*Chionoecetes tanneri*;
 Tanner Crab—*Chionoecetes opilio*;
 Tanner Crab—*Chionoecetes angulatus*;
 Tanner Crab—*Chionoecetes bairdi*;
 King Crab—*Paralithodes camtschatica*;
 King Crab—*Paralithodes platypus*;
 King Crab—*Paralithodes brevipes*;
 Lobster—*Homarus americanus*;
 Dungeness Crab—*Cancer magister*;
 California King Crab—*Paralithodes californiensis*;
 California King Crab—*Paralithodes rathbuni*;
 Golden King Crab—*Lithodes aequispinus*;
 Northern Stone Crab—*Lithodes maja*;
 Stone Crab—*Menippe mercenaria*; and
 Deep-sea Red Crab—*Chaceon quinque-dens*.

MOLLUSKS

Red Abalone—*Haliotis rufescens*;
 Pink Abalone—*Haliotis corrugata*;
 Japanese Abalone—*Haliotis kamtschatkana*;
 Queen Conch—*Strombus gigas*;
 Surf Clam—*Spisula solidissima*, and
 Ocean Quahog—*Arctica islandica*.

SPONGES

Glove Sponge—*Spongia cheiris*
 Sheepswool Sponge—*Hippiospongia lachne*;
 Grass Sponge—*Spongia graminea*; and
 Yellow Sponge—*Spongia barbera*.

If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are, at the harvestable stage, either—

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil,

of the Continental Shelf which appertains to the United States, and publishes notice of such determination in the Federal Register, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this Act.

(8) The term “Council” means any Regional Fishery Management Council established under section 302.

(9) The term “economic discards” means fish which are the target of a fishery, but which are not retained because they are of an undesirable size, sex, or quality, or for other economic reasons.

(10) The term “essential fish habitat” means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.

(11) The term “exclusive economic zone” means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this Act, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.

(12) The term “fish” means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.

(13) The term “fishery” means—

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

(14) The term “regional fishery association” means an association formed for the mutual benefit of members—

(A) to meet social and economic needs in a region or sub-region; and

(B) comprised of persons engaging in the harvest or processing of fishery resources in that specific region or

subregion or who otherwise own or operate businesses substantially dependent upon a fishery.

(15) The term “fishery resource” means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(16) The term “fishing” means—

- (A) the catching, taking, or harvesting of fish;
- (B) the attempted catching, taking, or harvesting of fish;
- (C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or
- (D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity which is conducted by a scientific research vessel.

(17) The term “fishing community” means a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such community.

(18) The term “fishing vessel” means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

- (A) fishing; or
- (B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(19) The term “foreign fishing” means fishing by a vessel other than a vessel of the United States.

(20) The term “high seas” means all waters beyond the territorial sea of the United States and beyond any foreign nation’s territorial sea, to the extent that such sea is recognized by the United States.

(21) The term “highly migratory species” means tuna species, marlin (*Tetrapturus* spp. and *Makaira* spp.), oceanic sharks, sailfishes (*Istiophorus* spp.), and swordfish (*Xiphias gladius*).

(22) The term “import”—

- (A) means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States; but

- (B) does not include any activity described in subparagraph (A) with respect to fish caught in the exclusive economic zone or by a vessel of the United States.

(23) The term “individual fishing quota” means a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. Such term does not include community development quotas as described in section 305(i).

(24) The term “international fishery agreement” means any bilateral or multilateral treaty, convention, or agreement

which relates to fishing and to which the United States is a party.

(25) The term “large-scale driftnet fishing” means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of two and one-half kilometers or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(26) The term “limited access privilege”—

(A) means a Federal permit, issued as part of a limited access system under section 303A to harvest a quantity of fish expressed by a unit or units representing a portion of the total allowable catch of the fishery that may be received or held for exclusive use by a person; and

(B) includes an individual fishing quota; but

(C) does not include community development quotas as described in section 305(i).

(27) The term “limited access system” means a system that limits participation in a fishery to those satisfying certain eligibility criteria or requirements contained in a fishery management plan or associated regulation.

(28) The term “Marine Fisheries Commission” means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific Marine Fisheries Commission.

(29) The term “migratory range” means the maximum area at a given time of the year within which fish of an anadromous species or stock thereof can be expected to be found, as determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.

(30) The term “national standards” means the national standards for fishery conservation and management set forth in section 301.

(31) The term “observer” means any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this Act.

(32) The term “observer information” means any information collected, observed, retrieved, or created by an observer or electronic monitoring system pursuant to authorization by the Secretary, or collected as part of a cooperative research initiative, including fish harvest or processing observations, fish sampling or weighing data, vessel logbook data, vessel or processor-specific information (including any safety, location, or operating condition observations), and video, audio, photographic, or written documents.

(33) The term “optimum”, with respect to the yield from a fishery, means the amount of fish which—

(A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

(B) is prescribed on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant social, economic, or ecological factor; and

(C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

(34) The terms “overfishing” and “overfished” mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

(35) The term “Pacific Insular Area” means American Samoa, Guam, the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Wake Island, or Palmyra Atoll, as applicable, and includes all islands and reefs appurtenant to such island, reef, or atoll.

(36) The term “person” means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(37) The term “recreational fishing” means fishing for sport or pleasure.

(38) The term “regulatory discards” means fish harvested in a fishery which fishermen are required by regulation to discard whenever caught, or are required by regulation to retain but not sell.

(39) The term “Secretary” means the Secretary of Commerce or his designee.

(40) The term “special areas” means 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; in particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.

(41) The term “special areas” means 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. In particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.

(42) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

(43) The term “stock of fish” means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

(44) The term “treaty” means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

(45) The term “tuna species” means the following:

- Albacore Tuna—*Thunnus alalunga*;
- Bigeye Tuna—*Thunnus obesus*;
- Bluefin Tuna—*Thunnus thynnus*;
- Skipjack Tuna—*Katsuwonus pelamis*; and
- Yellowfin Tuna—*Thunnus albacares*.

(46) The term “United States”, when used in a geographical context, means all the States thereof.

(47) The term “United States fish processors” means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

(48) The term “United States harvested fish” means fish caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan prepared under title III or a preliminary fishery management plan prepared under section 201(h) has been implemented.

(49) The term “vessel subject to the jurisdiction of the United States” has the same meaning such term has in section 3(c) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(c)).

(50) The term “vessel of the United States” means—

- (A) any vessel documented under chapter 121 of title 46, United States Code;
- (B) any vessel numbered in accordance with chapter 123 of title 46, United States Code, and measuring less than 5 net tons;
- (C) any vessel numbered in accordance with chapter 123 of title 46, United States Code, and used exclusively for pleasure; or
- (D) any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

(33) The term “waters of a foreign nation” means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial sea or exclusive economic zone is recognized by the United States.

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TITLE 18, UNITED STATES CODE

PART I—CRIMES

* * * * *

CHAPTER 97—RAILROAD CARRIERS AND MASS TRANSPORTATION SYSTEMS ON LAND, ON WATER, OR THROUGH THE AIR

* * * * *

§ 1992. Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air

(a) GENERAL PROHIBITIONS.—Whoever, in a circumstance described in subsection (c), knowingly and without lawful authority or permission—

(1) wrecks, derails, sets fire to, or disables railroad on-track equipment or a mass transportation vehicle;

(2) places any biological agent or toxin, destructive substance, or destructive device in, upon, or near railroad on-track equipment or a mass transportation vehicle with intent to endanger the safety of any person, or with a reckless disregard for the safety of human life;

(3) places or releases a hazardous material or a biological agent or toxin on or near any property described in subparagraph (A) or (B) of paragraph (4), with intent to endanger the safety of any person, or with reckless disregard for the safety of human life;

(4) sets fire to, undermines, makes unworkable, unusable, or hazardous to work on or use, or places any biological agent or toxin, destructive substance, or destructive device in, upon, or near any—

(A) tunnel, bridge, viaduct, trestle, track, electromagnetic guideway, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance used in the operation of, or in support of the operation of, a railroad carrier, and with intent to, or knowing or having reason to know, such activity would likely, derail, disable, or wreck railroad on-track equipment; or

(B) garage, terminal, structure, track, electromagnetic guideway, supply, or facility used in the operation of, or in support of the operation of, a mass transportation vehicle, and with intent to, or knowing or having reason to know, such activity would likely, derail, disable, or wreck a mass transportation vehicle used, operated, or employed by a mass transportation provider;

(5) removes an appurtenance from, damages, or otherwise impairs the operation of a railroad signal system or mass transportation signal or dispatching system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal;

(6) with intent to endanger the safety of any person, or with a reckless disregard for the safety of human life, interferes with, disables, or incapacitates any dispatcher, driver, captain, locomotive engineer, railroad conductor, or other person while the person is employed in dispatching, operating, controlling, or maintaining railroad on-track equipment or a mass transportation vehicle;

(7) commits an act, including the use of a dangerous weapon, with the intent to cause death or serious bodily injury to any

person who is on property described in subparagraph (A) or (B) of paragraph (4);

(8) surveils, photographs, videotapes, diagrams, or otherwise collects information with the intent to plan or assist in planning any of the acts described in paragraphs (1) through (6);

(9) conveys false information, knowing the information to be false, concerning an attempt or alleged attempt to engage in a violation of this subsection; or

(10) attempts, threatens, or conspires to engage in any violation of any of paragraphs (1) through (9), shall be fined under this title or imprisoned not more than 20 years, or both, and if the offense results in the death of any person,

shall be imprisoned for any term of years or for life, or subject to death, except in the case of a violation of paragraph (8), (9), or (10).

(b) AGGRAVATED OFFENSE.—Whoever commits an offense under subsection (a) of this section in a circumstance in which—

(1) the railroad on-track equipment or mass transportation vehicle was carrying a passenger or employee at the time of the offense;

(2) the railroad on-track equipment or mass transportation vehicle was carrying high-level radioactive waste or spent nuclear fuel at the time of the offense; or

(3) the offense was committed with the intent to endanger the safety of any person, or with a reckless disregard for the safety of any person, and the railroad on-track equipment or mass transportation vehicle was carrying a hazardous material at the time of the offense that—

(A) was required to be placarded under subpart F of part 172 of title 49, Code of Federal Regulations; and

(B) is identified as class number 3, 4, 5, 6.1, or 8 and packing group I or packing group II, or class number 1, 2, or 7 under the hazardous materials table of section 172.101 of title 49, Code of Federal Regulations,

shall be fined under this title or imprisoned for any term of years or life, or both, and if the offense resulted in the death of any person, the person may be sentenced to death.

(c) CIRCUMSTANCES REQUIRED FOR OFFENSE.—A circumstance referred to in subsection (a) is any of the following:

(1) Any of the conduct required for the offense is, or, in the case of an attempt, threat, or conspiracy to engage in conduct, the conduct required for the completed offense would be, engaged in, on, against, or affecting a mass transportation provider, or a railroad carrier engaged in interstate or foreign commerce.

(2) Any person travels or communicates across a State line in order to commit the offense, or transports materials across a State line in aid of the commission of the offense.

(d) DEFINITIONS.—In this section—

(1) the term “biological agent” has the meaning given to that term in section 178(1);

(2) the term “dangerous weapon” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, including a pocket knife with a blade of less than 2½ inches in length and a box cutter;

(3) the term “destructive device” has the meaning given to that term in section 921(a)(4);

(4) the term “destructive substance” means an explosive substance, flammable material, infernal machine, or other chemical, mechanical, or radioactive device or material, or matter of a combustible, contaminative, corrosive, or explosive nature, except that the term “radioactive device” does not include any radioactive device or material used solely for medical, industrial, research, or other peaceful purposes;

(5) the term “hazardous material” has the meaning given to that term in chapter 51 of title 49;

(6) the term “high-level radioactive waste” has the meaning given to that term in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12));

(7) the term “mass transportation” has the meaning given to that term in section 5302(a)(7) of title 49, except that the term includes intercity bus transportation school bus, charter, and sightseeing transportation and passenger vessel as that term is defined in [section 2101(22)] *section 2101(31)* of title 46, United States Code;

(8) the term “on-track equipment” means a carriage or other contrivance that runs on rails or electromagnetic guideways;

(9) the term “railroad on-track equipment” means a train, locomotive, tender, motor unit, freight or passenger car, or other on-track equipment used, operated, or employed by a railroad carrier;

(10) the term “railroad” has the meaning given to that term in chapter 201 of title 49;

(11) the term “railroad carrier” has the meaning given to that term in chapter 201 of title 49;

(12) the term “serious bodily injury” has the meaning given to that term in section 1365;

(13) the term “spent nuclear fuel” has the meaning given to that term in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23));

(14) the term “State” has the meaning given to that term in section 2266;

(15) the term “toxin” has the meaning given to that term in section 178(2); and

(16) the term “vehicle” means any carriage or other contrivance used, or capable of being used, as a means of transportation on land, on water, or through the air.

* * * * *

FISHERMEN’S PROTECTIVE ACT OF 1967

* * * * *

SEC. 12. (a) If the Secretary of State finds that the government of any nation imposes conditions on the operation or transit of United States fishing vessels which the United States regards as being inconsistent with international law or an international agreement, the Secretary of State shall certify that fact to the President.

(b) Upon receipt of a certification under subsection (a), the President shall direct the heads of Federal agencies to impose similar

conditions on the operation or transit of fishing vessels registered under the laws of the nation which has imposed conditions on United States fishing vessels.

(c) For the purposes of this section, the term “fishing vessel” has the meaning given that term in [section 2101(11a)] *section 2101(12)* of title 46, United States Code.

(d) It is the sense of the Congress that any action taken by any Federal agency under subsection (b) should be commensurate with any conditions certified by the Secretary of State under subsection (a).

FEDERAL WATER POLLUTION CONTROL ACT

* * * * *

TITLE III—STANDARDS AND ENFORCEMENT

* * * * *

OIL AND HAZARDOUS SUBSTANCE LIABILITY

SEC. 311. (a) 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 application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems, and (D) discharges incidental to mechanical removal authorized by the President under subsection (c) of this section;

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

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

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

(6) “owner or operator” means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore fa-

cility, 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, 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, and, for the purposes of applying subsections (b), (c), (e), and (o), any foreign offshore unit (as defined in section 1001 of the Oil Pollution Act) or any other facility located seaward of the exclusive economic zone;

(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;
- (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)] *section 2101(23)* of that title;
- (27) the term “best available science” means science that—
- (A) maximizes the quality, objectivity, and integrity of information, including statistical information;
 - (B) uses peer-reviewed and publicly available data; and
 - (C) clearly documents and communicates risks and uncertainties in the scientific basis for such projects;
- (28) the term “Chairperson” means the Chairperson of the Council;
- (29) the term “coastal political subdivision” means any local political jurisdiction that is immediately below the State level of government, including a county, parish, or borough, with a coastline that is contiguous with any portion of the United States Gulf of Mexico;
- (30) the term “Comprehensive Plan” means the comprehensive plan developed by the Council pursuant to subsection (t);
- (31) the term “Council” means the Gulf Coast Ecosystem Restoration Council established pursuant to subsection (t);
- (32) the term “Deepwater Horizon oil spill” means the blow-out and explosion of the mobile offshore drilling unit *Deepwater Horizon* that occurred on April 20, 2010, and resulting hydrocarbon releases into the environment;
- (33) the term “Gulf Coast region” means—
- (A) in the Gulf Coast States, the coastal zones (as that term is defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453)), except that, in this section, the term “coastal zones” includes land within the coastal zones that is held in trust by, or the use of which is by law subject solely to the discretion of, the Federal

Government or officers or agents of the Federal Government)) that border the Gulf of Mexico;

(B) any adjacent land, water, and watersheds, that are within 25 miles of the coastal zones described in subparagraph (A) of the Gulf Coast States; and

(C) all Federal waters in the Gulf of Mexico;

(34) the term "Gulf Coast State" means any of the States of Alabama, Florida, Louisiana, Mississippi, and Texas; and

(35) the term "Trust Fund" means the Gulf Coast Restoration Trust Fund established pursuant to section 1602 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

(b)(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 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 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 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 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, the Secretary of Transportation, 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 Adminis-

trator'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 re-

move the discharge or to mitigate or prevent the threat of the discharge.

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

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

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

(3) ACTIONS IN ACCORDANCE WITH NATIONAL CONTINGENCY PLAN.—(A) Each Federal agency, State, owner or operator, or other person participating in efforts under this subsection shall act in accordance with the National Contingency Plan or as directed by the President.

(B) An owner or operator participating in efforts under this subsection shall act in accordance with the National Contingency Plan and the applicable response plan required under subsection (j), or as directed by the President, except that the owner or operator may deviate from the applicable response plan if the President or the Federal On-Scene Coordinator determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.

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

(B) Subparagraph (A) does not apply—

(i) to a responsible party;

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

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

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

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

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

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

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

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

(d) NATIONAL CONTINGENCY PLAN.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) the quantities of such dispersant, other chemicals, or other spill mitigating device or substance which can be used safely in such waters,

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

which they may be used, and the quantities which can be used safely in such waters.

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

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

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

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

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

- (i) Coast Guard strike teams established under subparagraph (C);
- (ii) Federal On-Scene Coordinators designated under subparagraph (K);
- (iii) District Response Groups established under subsection (j); and
- (iv) Area Committees established under subsection (j).

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

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

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

(e) CIVIL ENFORCEMENT.—

(1) ORDERS PROTECTING PUBLIC HEALTH.—In addition to any action taken by a State or local government, when the President determines that there may be an imminent and substantial threat to the public health or welfare of the United States,

including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitat, and other living and 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)(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, 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 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) 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, not withstanding 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, \$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) 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) In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Claims Court, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Govern-

ment, 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 clauses.

(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 oper-

ating 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—

- (i) personnel of Federal, State, and local agencies; and
- (ii) members of federally recognized Indian tribes, where applicable.

(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, local, and tribal 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, including advance planning with respect to the closing and reopening of fishing areas following a discharge; and
- (iii) work with State, local, and tribal 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 on-shore 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 re-

moving 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, Federal, State, and local agencies, and tribal governments, 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 a framework for advance planning and decisionmaking with respect to the closing and reopening of fishing areas following a discharge, including protocols and standards for the closing and reopening of fishing areas;

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

(ix) 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 prepare and submit to the Secretary a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of a noxious liquid substance 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.

(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.

(l) 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, the Secretary of Transportation, 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, the Secretary of Transportation, 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, the Secretary of Transportation, or the Secretary of the Department in which the Coast Guard is operating or an authorized representative of the Administrator, the Secretary of Transportation, 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) 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)(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.

(q) 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) 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) 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 except as provided in subsection (t).

(t) GULF COAST RESTORATION AND RECOVERY.—

(1) STATE ALLOCATION AND EXPENDITURES.—

(A) IN GENERAL.—Of the total amounts made available in any fiscal year from the Trust Fund, 35 percent shall be available, in accordance with the requirements of this section, to the Gulf Coast States in equal shares for expenditure for ecological and economic restoration of the Gulf Coast region in accordance with this subsection.

(B) USE OF FUNDS.—

(i) ELIGIBLE ACTIVITIES IN THE GULF COAST REGION.—Subject to clause (iii), amounts provided to the Gulf Coast States under this subsection may only be used to carry out 1 or more of the following activities in the Gulf Coast region:

(I) Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

(II) Mitigation of damage to fish, wildlife, and natural resources.

(III) Implementation of a federally approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring.

(IV) Workforce development and job creation.

(V) Improvements to or on State parks located in coastal areas affected by the Deepwater Horizon oil spill.

(VI) Infrastructure projects benefitting the economy or ecological resources, including port infrastructure.

(VII) Coastal flood protection and related infrastructure.

(VIII) Planning assistance.

(IX) Administrative costs of complying with this subsection.

(ii) ACTIVITIES TO PROMOTE TOURISM AND SEAFOOD IN THE GULF COAST REGION.—Amounts provided to the Gulf Coast States under this subsection may be used to carry out 1 or more of the following activities:

(I) Promotion of tourism in the Gulf Coast Region, including recreational fishing.

(II) Promotion of the consumption of seafood harvested from the Gulf Coast Region.

(iii) LIMITATION.—

(I) IN GENERAL.—Of the amounts received by a Gulf Coast State under this subsection, not more than 3 percent may be used for administrative costs eligible under clause (i)(IX).

(II) CLAIMS FOR COMPENSATION.—Activities funded under this subsection may not be included in any claim for compensation paid out by the Oil Spill Liability Trust Fund after the date of enactment of this subsection.

(C) COASTAL POLITICAL SUBDIVISIONS.—

(i) DISTRIBUTION.—In the case of a State where the coastal zone includes the entire State—

(I) 75 percent of funding shall be provided directly to the 8 disproportionately affected counties impacted by the Deepwater Horizon oil spill; and

(II) 25 percent shall be provided directly to non-disproportionately impacted counties within the State.

(ii) NONDISPROPORTIONATELY IMPACTED COUNTIES.—The total amounts made available to coastal political subdivisions in the State of Florida under clause (i)(II) shall be distributed according to the following weighted formula:

(I) 34 percent based on the weighted average of the population of the county.

(II) 33 percent based on the weighted average of the county per capita sales tax collections estimated for fiscal year 2012.

(III) 33 percent based on the inverse proportion of the weighted average distance from the Deepwater Horizon oil rig to each of the nearest and farthest points of the shoreline.

(D) LOUISIANA.—

(i) IN GENERAL.—Of the total amounts made available to the State of Louisiana under this paragraph:

(I) 70 percent shall be provided directly to the State in accordance with this subsection.

(II) 30 percent shall be provided directly to parishes in the coastal zone (as defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453)) of the State of Louisiana according to the following weighted formula:

(aa) 40 percent based on the weighted average of miles of the parish shoreline oiled.

(bb) 40 percent based on the weighted average of the population of the parish.

(cc) 20 percent based on the weighted average of the land mass of the parish.

(ii) CONDITIONS.—

(I) LAND USE PLAN.—As a condition of receiving amounts allocated under this paragraph, the chief executive of the eligible parish shall certify to the Governor of the State that the parish has completed a comprehensive land use plan.

(II) OTHER CONDITIONS.—A coastal political subdivision receiving funding under this paragraph shall meet all of the conditions in subparagraph (E).

(E) CONDITIONS.—As a condition of receiving amounts from the Trust Fund, a Gulf Coast State, including the entities described in subparagraph (F), or a coastal political subdivision shall—

(i) agree to meet such conditions, including audit requirements, as the Secretary of the Treasury deter-

mines necessary to ensure that amounts disbursed from the Trust Fund will be used in accordance with this subsection;

(ii) certify in such form and in such manner as the Secretary of the Treasury determines necessary that the project or program for which the Gulf Coast State or coastal political subdivision is requesting amounts—

(I) is designed to restore and protect the natural resources, ecosystems, fisheries, marine and wild-life habitats, beaches, coastal wetlands, or economy of the Gulf Coast;

(II) carries out 1 or more of the activities described in clauses (i) and (ii) of subparagraph (B);

(III) was selected based on meaningful input from the public, including broad-based participation from individuals, businesses, and nonprofit organizations; and

(IV) in the case of a natural resource protection or restoration project, is based on the best available science;

(iii) certify that the project or program and the awarding of a contract for the expenditure of amounts received under this paragraph are consistent with the standard procurement rules and regulations governing a comparable project or program in that State, including all applicable competitive bidding and audit requirements; and

(iv) develop and submit a multiyear implementation plan for the use of such amounts, which may include milestones, projected completion of each activity, and a mechanism to evaluate the success of each activity in helping to restore and protect the Gulf Coast region impacted by the Deepwater Horizon oil spill.

(F) APPROVAL BY STATE ENTITY, TASK FORCE, OR AGENCY.—The following Gulf Coast State entities, task forces, or agencies shall carry out the duties of a Gulf Coast State pursuant to this paragraph:

(i) ALABAMA.—

(I) IN GENERAL.—In the State of Alabama, the Alabama Gulf Coast Recovery Council, which shall be comprised of only the following:

(aa) The Governor of Alabama, who shall also serve as Chairperson and preside over the meetings of the Alabama Gulf Coast Recovery Council.

(bb) The Director of the Alabama State Port Authority, who shall also serve as Vice Chairperson and preside over the meetings of the Alabama Gulf Coast Recovery Council in the absence of the Chairperson.

(cc) The Chairman of the Baldwin County Commission.

(dd) The President of the Mobile County Commission.

(ee) The Mayor of the city of Bayou La Batre.

(ff) The Mayor of the town of Dauphin Island.

(gg) The Mayor of the city of Fairhope.

(hh) The Mayor of the city of Gulf Shores.

(ii) The Mayor of the city of Mobile.

(jj) The Mayor of the city of Orange Beach.

(II) VOTE.—Each member of the Alabama Gulf Coast Recovery Council shall be entitled to 1 vote.

(III) MAJORITY VOTE.—All decisions of the Alabama Gulf Coast Recovery Council shall be made by majority vote.

(IV) LIMITATION ON ADMINISTRATIVE EXPENSES.—Administrative duties for the Alabama Gulf Coast Recovery Council may only be performed by public officials and employees that are subject to the ethics laws of the State of Alabama.

(ii) LOUISIANA.—In the State of Louisiana, the Coastal Protection and Restoration Authority of Louisiana.

(iii) MISSISSIPPI.—In the State of Mississippi, the Mississippi Department of Environmental Quality.

(iv) TEXAS.—In the State of Texas, the Office of the Governor or an appointee of the Office of the Governor.

(G) COMPLIANCE WITH ELIGIBLE ACTIVITIES.—If the Secretary of the Treasury determines that an expenditure by a Gulf Coast State or coastal political subdivision of amounts made available under this subsection does not meet one of the activities described in clauses (i) and (ii) of subparagraph (B), the Secretary shall make no additional amounts from the Trust Fund available to that Gulf Coast State or coastal political subdivision until such time as an amount equal to the amount expended for the unauthorized use—

(i) has been deposited by the Gulf Coast State or coastal political subdivision in the Trust Fund; or

(ii) has been authorized by the Secretary of the Treasury for expenditure by the Gulf Coast State or coastal political subdivision for a project or program that meets the requirements of this subsection.

(H) COMPLIANCE WITH CONDITIONS.—If the Secretary of the Treasury determines that a Gulf Coast State or coastal political subdivision does not meet the requirements of this paragraph, including the conditions of subparagraph (E), where applicable, the Secretary of the Treasury shall make no amounts from the Trust Fund available to that Gulf Coast State or coastal political subdivision until all conditions of this paragraph are met.

(I) PUBLIC INPUT.—In meeting any condition of this paragraph, a Gulf Coast State may use an appropriate procedure for public consultation in that Gulf Coast State, including consulting with one or more established task forces or other entities, to develop recommendations for proposed

projects and programs that would restore and protect the natural resources, ecosystems, fisheries, marine and wild-life habitats, beaches, coastal wetlands, and economy of the Gulf Coast.

(J) PREVIOUSLY APPROVED PROJECTS AND PROGRAMS.—A Gulf Coast State or coastal political subdivision shall be considered to have met the conditions of subparagraph (E) for a specific project or program if, before the date of enactment of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012—

(i) the Gulf Coast State or coastal political subdivision has established conditions for carrying out projects and programs that are substantively the same as the conditions described in subparagraph (E); and

(ii) the applicable project or program carries out 1 or more of the activities described in clauses (i) and (ii) of subparagraph (B).

(K) LOCAL PREFERENCE.—In awarding contracts to carry out a project or program under this paragraph, a Gulf Coast State or coastal political subdivision may give a preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in the State of project execution.

(L) UNUSED FUNDS.—Funds allocated to a State or coastal political subdivision under this paragraph shall remain in the Trust Fund until such time as the State or coastal political subdivision develops and submits a plan identifying uses for those funds in accordance with subparagraph (E)(iv).

(M) JUDICIAL REVIEW.—If the Secretary of the Treasury determines that a Gulf Coast State or coastal political subdivision does not meet the requirements of this paragraph, including the conditions of subparagraph (E), the Gulf Coast State or coastal political subdivision may obtain expedited judicial review within 90 days after that decision in a district court of the United States, of appropriate jurisdiction and venue, that is located within the State seeking the review.

(N) COST-SHARING.—

(i) IN GENERAL.—A Gulf Coast State or coastal political subdivision may use, in whole or in part, amounts made available under this paragraph to that Gulf Coast State or coastal political subdivision to satisfy the non-Federal share of the cost of any project or program authorized by Federal law that is an eligible activity described in clauses (i) and (ii) of subparagraph (B).

(ii) EFFECT ON OTHER FUNDS.—The use of funds made available from the Trust Fund to satisfy the non-Federal share of the cost of a project or program that meets the requirements of clause (i) shall not affect the priority in which other Federal funds are allocated or awarded.

(2) COUNCIL ESTABLISHMENT AND ALLOCATION.—

(A) IN GENERAL.—Of the total amount made available in any fiscal year from the Trust Fund, 30 percent shall be disbursed to the Council to carry out the Comprehensive Plan.

(B) COUNCIL EXPENDITURES.—

(i) IN GENERAL.—In accordance with this paragraph, the Council shall expend funds made available from the Trust Fund to undertake projects and programs, using the best available science, that would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast.

(ii) ALLOCATION AND EXPENDITURE PROCEDURES.—The Secretary of the Treasury shall develop such conditions, including audit requirements, as the Secretary of the Treasury determines necessary to ensure that amounts disbursed from the Trust Fund to the Council to implement the Comprehensive Plan will be used in accordance with this paragraph.

(iii) ADMINISTRATIVE EXPENSES.—Of the amounts received by the Council under this paragraph, not more than 3 percent may be used for administrative expenses, including staff.

(C) GULF COAST ECOSYSTEM RESTORATION COUNCIL.—

(i) ESTABLISHMENT.—There is established as an independent entity in the Federal Government a council to be known as the “Gulf Coast Ecosystem Restoration Council”.

(ii) MEMBERSHIP.—The Council shall consist of the following members, or in the case of a Federal agency, a designee at the level of the Assistant Secretary or the equivalent:

- (I) The Secretary of the Interior.
- (II) The Secretary of the Army.
- (III) The Secretary of Commerce.
- (IV) The Administrator of the Environmental Protection Agency.
- (V) The Secretary of Agriculture.
- (VI) The head of the department in which the Coast Guard is operating.
- (VII) The Governor of the State of Alabama.
- (VIII) The Governor of the State of Florida.
- (IX) The Governor of the State of Louisiana.
- (X) The Governor of the State of Mississippi.
- (XI) The Governor of the State of Texas.

(iii) ALTERNATE.—A Governor appointed to the Council by the President may designate an alternate to represent the Governor on the Council and vote on behalf of the Governor.

(iv) CHAIRPERSON.—From among the Federal agency members of the Council, the representatives of States on the Council shall select, and the President shall appoint, 1 Federal member to serve as Chairperson of the Council.

(v) PRESIDENTIAL APPOINTMENT.—All Council members shall be appointed by the President.

(vi) COUNCIL ACTIONS.—

(I) IN GENERAL.—The following actions by the Council shall require the affirmative vote of the Chairperson and a majority of the State members to be effective:

(aa) Approval of a Comprehensive Plan and future revisions to a Comprehensive Plan.

(bb) Approval of State plans pursuant to paragraph (3)(B)(iv).

(cc) Approval of reports to Congress pursuant to clause (vii)(VII).

(dd) Approval of transfers pursuant to subparagraph (E)(ii)(I).

(ee) Other significant actions determined by the Council.

(II) QUORUM.—A majority of State members shall be required to be present for the Council to take any significant action.

(III) AFFIRMATIVE VOTE REQUIREMENT CONSIDERED MET.—For approval of State plans pursuant to paragraph (3)(B)(iv), the certification by a State member of the Council that the plan satisfies all requirements of clauses (i) and (ii) of paragraph (3)(B), when joined by an affirmative vote of the Federal Chairperson of the Council, shall be considered to satisfy the requirements for affirmative votes under subclause (I).

(IV) PUBLIC TRANSPARENCY.—Appropriate actions of the Council, including significant actions and associated deliberations, shall be made available to the public via electronic means prior to any vote.

(vii) DUTIES OF COUNCIL.—The Council shall—

(I) develop the Comprehensive Plan and future revisions to the Comprehensive Plan;

(II) identify as soon as practicable the projects that—

(aa) have been authorized prior to the date of enactment of this subsection but not yet commenced; and

(bb) if implemented quickly, would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, barrier islands, dunes, and coastal wetlands of the Gulf Coast region;

(III) establish such other 1 or more advisory committees as may be necessary to assist the Council, including a scientific advisory committee and a committee to advise the Council on public policy issues;

(IV) collect and consider scientific and other research associated with restoration of the Gulf Coast ecosystem, including research, observation,

and monitoring carried out pursuant to sections 1604 and 1605 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012;

(V) develop standard terms to include in contracts for projects and programs awarded pursuant to the Comprehensive Plan that provide a preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in a Gulf Coast State;

(VI) prepare an integrated financial plan and recommendations for coordinated budget requests for the amounts proposed to be expended by the Federal agencies represented on the Council for projects and programs in the Gulf Coast States; and

(VII) submit to Congress an annual report that—

(aa) summarizes the policies, strategies, plans, and activities for addressing the restoration and protection of the Gulf Coast region;

(bb) describes the projects and programs being implemented to restore and protect the Gulf Coast region, including—

(AA) a list of each project and program;

(BB) an identification of the funding provided to projects and programs identified in subitem (AA);

(CC) an identification of each recipient for funding identified in subitem (BB); and

(DD) a description of the length of time and funding needed to complete the objectives of each project and program identified in subitem (AA);

(cc) makes such recommendations to Congress for modifications of existing laws as the Council determines necessary to implement the Comprehensive Plan;

(dd) reports on the progress on implementation of each project or program—

(AA) after 3 years of ongoing activity of the project or program, if applicable; and

(BB) on completion of the project or program;

(ee) includes the information required to be submitted under section 1605(c)(4) of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012; and

(ff) submits the reports required under item (dd) to—

(AA) the Committee on Science, Space, and Technology, the Committee on Nat-

ural Resources, the Committee on Transportation and Infrastructure, and the Committee on Appropriations of the House of Representatives; and

(BB) the Committee on Environment and Public Works, the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, and the Committee on Appropriations of the Senate.

(viii) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—The Council, or any other advisory committee established under this subparagraph, shall not be considered an advisory committee under the Federal Advisory Committee Act (5 U.S.C. App.).

(ix) SUNSET.—The authority for the Council, and any other advisory committee established under this subparagraph, shall terminate on the date all funds in the Trust Fund have been expended.

(D) COMPREHENSIVE PLAN.—

(i) PROPOSED PLAN.—

(I) IN GENERAL.—Not later than 180 days after the date of enactment of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012, the Chairperson, on behalf of the Council and after appropriate public input, review, and comment, shall publish a proposed plan to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

(II) INCLUSIONS.—The proposed plan described in subclause (I) shall include and incorporate the findings and information prepared by the President's Gulf Coast Restoration Task Force.

(ii) PUBLICATION.—

(I) INITIAL PLAN.—Not later than 1 year after the date of enactment of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 and after notice and opportunity for public comment, the Chairperson, on behalf of the Council and after approval by the Council, shall publish in the Federal Register the initial Comprehensive Plan to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

(II) COOPERATION WITH GULF COAST RESTORATION TASK FORCE.—The Council shall develop the initial Comprehensive Plan in close coordination with the President's Gulf Coast Restoration Task Force.

(III) CONSIDERATIONS.—In developing the initial Comprehensive Plan and subsequent updates, the

Council shall consider all relevant findings, reports, or research prepared or funded under section 1604 or 1605 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

(IV) CONTENTS.—The initial Comprehensive Plan shall include—

(aa) such provisions as are necessary to fully incorporate in the Comprehensive Plan the strategy, projects, and programs recommended by the President’s Gulf Coast Restoration Task Force;

(bb) a list of any project or program authorized prior to the date of enactment of this subsection but not yet commenced, the completion of which would further the purposes and goals of this subsection and of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012;

(cc) a description of the manner in which amounts from the Trust Fund projected to be made available to the Council for the succeeding 10 years will be allocated; and

(dd) subject to available funding in accordance with clause (iii), a prioritized list of specific projects and programs to be funded and carried out during the 3-year period immediately following the date of publication of the initial Comprehensive Plan, including a table that illustrates the distribution of projects and programs by the Gulf Coast State.

(V) PLAN UPDATES.—The Council shall update—

(aa) the Comprehensive Plan every 5 years in a manner comparable to the manner established in this subparagraph for each 5-year period for which amounts are expected to be made available to the Gulf Coast States from the Trust Fund; and

(bb) the 3-year list of projects and programs described in subclause (IV)(dd) annually.

(iii) RESTORATION PRIORITIES.—Except for projects and programs described in clause (ii)(IV)(bb), in selecting projects and programs to include on the 3-year list described in clause (ii)(IV)(dd), based on the best available science, the Council shall give highest priority to projects that address 1 or more of the following criteria:

(I) Projects that are projected to make the greatest contribution to restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region, without regard to geographic location within the Gulf Coast region.

(II) Large-scale projects and programs that are projected to substantially contribute to restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast ecosystem.

(III) Projects contained in existing Gulf Coast State comprehensive plans for the restoration and protection of natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

(IV) Projects that restore long-term resiliency of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands most impacted by the Deepwater Horizon oil spill.

(E) IMPLEMENTATION.—

(i) IN GENERAL.—The Council, acting through the Federal agencies represented on the Council and Gulf Coast States, shall expend funds made available from the Trust Fund to carry out projects and programs adopted in the Comprehensive Plan.

(ii) ADMINISTRATIVE RESPONSIBILITY.—

(I) IN GENERAL.—Primary authority and responsibility for each project and program included in the Comprehensive Plan shall be assigned by the Council to a Gulf Coast State represented on the Council or a Federal agency.

(II) TRANSFER OF AMOUNTS.—Amounts necessary to carry out each project or program included in the Comprehensive Plan shall be transferred by the Secretary of the Treasury from the Trust Fund to that Federal agency or Gulf Coast State as the project or program is implemented, subject to such conditions as the Secretary of the Treasury, in consultation with the Secretary of the Interior and the Secretary of Commerce, established pursuant to section 1602 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

(III) LIMITATION ON TRANSFERS.—

(aa) GRANTS TO NONGOVERNMENTAL ENTITIES.—In the case of funds transferred to a Federal or State agency under subclause (II), the agency shall not make 1 or more grants or cooperative agreements to a nongovernmental entity if the total amount provided to the entity would equal or exceed 10 percent of the total amount provided to the agency for that particular project or program, unless the 1 or more grants have been reported in accordance with item (bb).

(bb) REPORTING OF GRANTEES.—At least 30 days prior to making a grant or entering into a cooperative agreement described in item

(aa), the name of each grantee, including the amount and purpose of each grant or cooperative agreement, shall be published in the Federal Register and delivered to the congressional committees listed in subparagraph (C)(vii)(VII)(ff).

(cc) ANNUAL REPORTING OF GRANTEES.—Annually, the name of each grantee, including the amount and purposes of each grant or cooperative agreement, shall be published in the Federal Register and delivered to Congress as part of the report submitted pursuant to subparagraph (C)(vii)(VII).

(IV) PROJECT AND PROGRAM LIMITATION.—The Council, a Federal agency, or a State may not carry out a project or program funded under this paragraph outside of the Gulf Coast region.

(F) COORDINATION.—The Council and the Federal members of the Council may develop memoranda of understanding establishing integrated funding and implementation plans among the member agencies and authorities.

(3) OIL SPILL RESTORATION IMPACT ALLOCATION.—

(A) IN GENERAL.—

(i) DISBURSEMENT.—Of the total amount made available from the Trust Fund, 30 percent shall be disbursed pursuant to the formula in clause (ii) to the Gulf Coast States on the approval of the plan described in subparagraph (B)(i).

(ii) FORMULA.—Subject to subparagraph (B), for each Gulf Coast State, the amount disbursed under this paragraph shall be based on a formula established by the Council by regulation that is based on a weighted average of the following criteria:

(I) 40 percent based on the proportionate number of miles of shoreline in each Gulf Coast State that experienced oiling on or before April 10, 2011, compared to the total number of miles of shoreline that experienced oiling as a result of the Deepwater Horizon oil spill.

(II) 40 percent based on the inverse proportion of the average distance from the mobile offshore drilling unit *Deepwater Horizon* at the time of the explosion to the nearest and farthest point of the shoreline that experienced oiling of each Gulf Coast State.

(III) 20 percent based on the average population in the 2010 decennial census of coastal counties bordering the Gulf of Mexico within each Gulf Coast State.

(iii) MINIMUM ALLOCATION.—The amount disbursed to a Gulf Coast State for each fiscal year under clause (ii) shall be at least 5 percent of the total amounts made available under this paragraph.

(B) DISBURSEMENT OF FUNDS.—

(i) IN GENERAL.—The Council shall disburse amounts to the respective Gulf Coast States in accordance with the formula developed under subparagraph (A) for projects, programs, and activities that will improve the ecosystems or economy of the Gulf Coast region, subject to the condition that each Gulf Coast State submits a plan for the expenditure of amounts disbursed under this paragraph that meets the following criteria:

(I) All projects, programs, and activities included in the plan are eligible activities pursuant to clauses (i) and (ii) of paragraph (1)(B).

(II) The projects, programs, and activities included in the plan contribute to the overall economic and ecological recovery of the Gulf Coast.

(III) The plan takes into consideration the Comprehensive Plan and is consistent with the goals and objectives of the Plan, as described in paragraph (2)(B)(i).

(ii) FUNDING.—

(I) IN GENERAL.—Except as provided in subclause (II), the plan described in clause (i) may use not more than 25 percent of the funding made available for infrastructure projects eligible under subclauses (VI) and (VII) of paragraph (1)(B)(i).

(II) EXCEPTION.—The plan described in clause (i) may propose to use more than 25 percent of the funding made available for infrastructure projects eligible under subclauses (VI) and (VII) of paragraph (1)(B)(i) if the plan certifies that—

(aa) ecosystem restoration needs in the State will be addressed by the projects in the proposed plan; and

(bb) additional investment in infrastructure is required to mitigate the impacts of the Deepwater Horizon Oil Spill to the ecosystem or economy.

(iii) DEVELOPMENT.—The plan described in clause (i) shall be developed by—

(I) in the State of Alabama, the Alabama Gulf Coast Recovery Council established under paragraph (1)(F)(i);

(II) in the State of Florida, a consortia of local political subdivisions that includes at a minimum 1 representative of each affected county;

(III) in the State of Louisiana, the Coastal Protection and Restoration Authority of Louisiana;

(IV) in the State of Mississippi, the Office of the Governor or an appointee of the Office of the Governor; and

(V) in the State of Texas, the Office of the Governor or an appointee of the Office of the Governor.

(iv) APPROVAL.—Not later than 60 days after the date on which a plan is submitted under clause (i), the

Council shall approve or disapprove the plan based on the conditions of clause (i).

(C) DISAPPROVAL.—If the Council disapproves a plan pursuant to subparagraph (B)(iv), the Council shall—

- (i) provide the reasons for disapproval in writing; and
- (ii) consult with the State to address any identified deficiencies with the State plan.

(D) FAILURE TO SUBMIT ADEQUATE PLAN.—If a State fails to submit an adequate plan under this paragraph, any funds made available under this paragraph shall remain in the Trust Fund until such date as a plan is submitted and approved pursuant to this paragraph.

(E) JUDICIAL REVIEW.—If the Council fails to approve or take action within 60 days on a plan, as described in subparagraph (B)(iv), the State may obtain expedited judicial review within 90 days of that decision in a district court of the United States, of appropriate jurisdiction and venue, that is located within the State seeking the review.

(F) COST-SHARING.—

(i) IN GENERAL.—A Gulf Coast State or coastal political subdivision may use, in whole or in part, amounts made available to that Gulf Coast State or coastal political subdivision under this paragraph to satisfy the non-Federal share of any project or program that—

- (I) is authorized by other Federal law; and
- (II) is an eligible activity described in clause (i) or (ii) of paragraph (1)(B).

(ii) EFFECT ON OTHER FUNDS.—The use of funds made available from the Trust Fund under this paragraph to satisfy the non-Federal share of the cost of a project or program described in clause (i) shall not affect the priority in which other Federal funds are allocated or awarded.

(4) AUTHORIZATION OF INTEREST TRANSFERS.—Of the total amount made available for any fiscal year from the Trust Fund that is equal to the interest earned by the Trust Fund and proceeds from investments made by the Trust Fund in the preceding fiscal year—

(A) 50 percent shall be divided equally between—

- (i) the Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology program authorized in section 1604 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012; and
- (ii) the centers of excellence research grants authorized in section 1605 of that Act; and

(B) 50 percent shall be made available to the Gulf Coast Ecosystem Restoration Council to carry out the Comprehensive Plan pursuant to paragraph (2).

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TITLE 49, UNITED STATES CODE

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SUBTITLE II—OTHER GOVERNMENT AGENCIES

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CHAPTER 11—NATIONAL TRANSPORTATION SAFETY BOARD

SUBCHAPTER I—GENERAL

* * * * *

§ 1101. Definitions

[Section 2101(17a)] *Section 2101(23)* of title 46 and section 40102(a) of this title apply to this chapter. In this chapter, the term “accident” includes damage to or destruction of vehicles in surface or air transportation or pipelines, regardless of whether the initiating event is accidental or otherwise.

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OIL POLLUTION ACT OF 1990

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SEC. 2. TABLE OF CONTENTS.

The contents of this Act are as follows:

TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

Sec. 1001. Definitions.

* * * * *

TITLE V—PRINCE WILLIAM SOUND PROVISIONS

* * * * *
Sec. 5008. North Pacific Marine Research Institute.

TITLE VI—MISCELLANEOUS

* * * * *
[Sec. 6003. Outer Banks protection.]
 * * * * *

TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

SEC. 1001. DEFINITIONS.

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 facility, offshore facility, or foreign offshore unit or other facility located

seaward of the exclusive economic zone, any person or entity owning or operating such facility;

(iii) in the case of any abandoned offshore facility or foreign offshore unit or other facility located seaward of the exclusive economic zone, the person or entity that 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. In the case of a vessel, the term “responsible party” also includes the owner of oil being transported in a tank vessel with a single hull after December 31, 2010 [(other than a vessel described in section 3703a(b)(3) of title 46, United States Code)].

(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) FOREIGN FACILITIES.—In the case of a foreign offshore unit or other facility located seaward of the exclusive economic zone, any person or other entity owning or operating the facility, and any leaseholder, permit holder, assignee, or holder of a right of use and easement granted under applicable foreign law for the area in which the facility is located.

(E) 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.

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

(G) ABANDONMENT.—In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, offshore facility, or foreign offshore unit or other facility located seaward of the exclusive economic zone, the persons or entities that 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. 1003. DEFENSES TO LIABILITY.

(a) COMPLETE DEFENSES.—A responsible party is not liable for removal costs or damages under section 1002 if the responsible party establishes, by a preponderance of the evidence, that the discharge or substantial threat of a discharge of oil and the resulting damages or removal costs were caused solely by—

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party, other than an employee or agent of the responsible party or a third party whose act or omission occurs in connection with any contractual relationship with the responsible party (except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail), if the responsible party establishes, by a preponderance of the evidence, that the responsible party—

(A) exercised due care with respect to the oil concerned, taking into consideration the characteristics of the oil and in light of all relevant facts and circumstances; and

(B) took precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of those acts or omissions; or

(4) any combination of paragraphs (1), (2), and (3).

(b) DEFENSES AS TO PARTICULAR CLAIMANTS.—A responsible party is not liable under section 1002 to a claimant, to the extent

that the incident is caused by the gross negligence or willful misconduct of the claimant.

(c) LIMITATION ON COMPLETE DEFENSE.—Subsection (a) does not apply with respect to a responsible party who fails or refuses—

(1) to report the incident as required by law if the responsible party knows or has reason to know of the incident;

(2) to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities; or

(3) without sufficient cause, to comply with an order issued under subsection (c) or (e) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), as amended by this Act, or the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.).

(d) DEFINITION OF CONTRACTUAL RELATIONSHIP.—

(1) IN GENERAL.—For purposes of subsection (a)(3) the term “contractual relationship” includes, but is not limited to, land contracts, deeds, easements, leases, or other instruments transferring title or possession, unless—

(A) the real property on which the facility concerned is located was acquired by the responsible party after the placement of the oil on, in, or at the real property on which the facility concerned is located;

(B) one or more of the circumstances described in subparagraph (A), (B), or (C) of paragraph (2) is established by the responsible party by a preponderance of the evidence; and

(C) the responsible party complies with paragraph (3).

(2) REQUIRED CIRCUMSTANCE.—The circumstances referred to in paragraph (1)(B) are the following:

(A) At the time the responsible party acquired the real property on which the facility is located the responsible party did not know and had no reason to know that oil that is the subject of the discharge or substantial threat of discharge was located on, in, or at the facility.

(B) The responsible party is a government entity that acquired the facility—

(i) by escheat;

(ii) through any other involuntary transfer or acquisition; or

(iii) through the exercise of eminent domain authority by purchase or condemnation.

(C) The responsible party acquired the facility by inheritance or bequest.

(3) ADDITIONAL REQUIREMENTS.—For purposes of paragraph (1)(C), the responsible party must establish by a preponderance of the evidence that the responsible party—

(A) has satisfied the requirements of section 1003(a)(3)(A) and (B);

(B) has provided full cooperation, assistance, and facility access to the persons that are authorized to conduct removal actions, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial removal action;

(C) is in compliance with any land use restrictions established or relied on in connection with the removal action; and

(D) has not impeded the effectiveness or integrity of any institutional control employed in connection with the removal action.

(4) REASON TO KNOW.—

(A) APPROPRIATE INQUIRIES.—To establish that the responsible party had no reason to know of the matter described in paragraph (2)(A), the responsible party must demonstrate to a court that—

(i) on or before the date on which the responsible party acquired the real property on which the facility is located, the responsible party carried out all appropriate inquiries, as provided in subparagraphs (B) and (D), into the previous ownership and uses of the real property on which the facility is located in accordance with generally accepted good commercial and customary standards and practices; and

(ii) the responsible party took reasonable steps to—

(I) stop any continuing discharge;

(II) prevent any substantial threat of discharge; and

(III) prevent or limit any human, environmental, or natural resource exposure to any previously discharged oil.

(B) REGULATIONS ESTABLISHING STANDARDS AND PRACTICES.—Not later than 2 years after the date of the enactment of this paragraph, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall by regulation establish standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries under subparagraph (A).

(C) CRITERIA.—In promulgating regulations that establish the standards and practices referred to in subparagraph (B), the Secretary shall include in such standards and practices provisions regarding each of the following:

(i) The results of an inquiry by an environmental professional.

(ii) Interviews with past and present owners, operators, and occupants of the facility and the real property on which the facility is located for the purpose of gathering information regarding the potential for oil at the facility and on the real property on which the facility is located.

(iii) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property on which the facility is located since the property was first developed.

(iv) Searches for recorded environmental cleanup liens against the facility and the real property on which the facility is located that are filed under Federal, State, or local law.

(v) Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and waste handling, generation, treatment, disposal, and spill records, concerning oil at or near the facility and on the real property on which the facility is located.

(vi) Visual inspections of the facility, the real property on which the facility is located, and adjoining properties.

(vii) Specialized knowledge or experience on the part of the responsible party.

(viii) The relationship of the purchase price to the value of the facility and the real property on which the facility is located, if oil was not at the facility or on the real property.

(ix) Commonly known or reasonably ascertainable information about the facility and the real property on which the facility is located.

(x) The degree of obviousness of the presence or likely presence of oil at the facility and on the real property on which the facility is located, and the ability to detect the oil by appropriate investigation.

(D) INTERIM STANDARDS AND PRACTICES.—

(i) REAL PROPERTY PURCHASED BEFORE MAY 31, 1997.—With respect to real property purchased before May 31, 1997, in making a determination with respect to a responsible party described in subparagraph (A), a court shall take into account—

(I) any specialized knowledge or experience on the part of the responsible party;

(II) the relationship of the purchase price to the value of the facility and the real property on which the facility is located, if the oil was not at the facility or on the real property;

(III) commonly known or reasonably ascertainable information about the facility and the real property on which the facility is located;

(IV) the obviousness of the presence or likely presence of oil at the facility and on the real property on which the facility is located; and

(V) the ability of the responsible party to detect oil by appropriate inspection.

(ii) REAL PROPERTY PURCHASED ON OR AFTER MAY 31, 1997.—With respect to real property purchased on or after May 31, 1997, until the Secretary promulgates the regulations described in clause (ii), the procedures of the American Society for Testing and Materials, including the document known as “Standard E1527–97”, entitled “Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process”, shall satisfy the requirements in subparagraph (A).

(E) SITE INSPECTION AND TITLE SEARCH.—In the case of real property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, in-

spection and title search of the facility and the real property on which the facility is located that reveal no basis for further investigation shall be considered to satisfy the requirements of this paragraph.

(5) PREVIOUS OWNER OR OPERATOR.—Nothing in this paragraph or in section 1003(a)(3) shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this Act. Notwithstanding this paragraph, if a responsible party obtained actual knowledge of the discharge or substantial threat of discharge of oil at such facility when the responsible party owned the facility and then subsequently transferred ownership of the facility or the real property on which the facility is located to another person without disclosing such knowledge, the responsible party shall be treated as liable under *section 1002(a)* and no defense under section 1003(a) shall be available to such responsible party.

(6) LIMITATION ON DEFENSE.—Nothing in this paragraph shall affect the liability under this Act of a responsible party who, by any act or omission, caused or contributed to the discharge or substantial threat of discharge of oil which is the subject of the action relating to the facility.

SEC. 1004. LIMITS ON LIABILITY.

(a) GENERAL RULE.—Except as otherwise provided in this section, the total of the liability of a responsible party under section 1002 and any removal costs incurred by, or on behalf of, the responsible party, with respect to each incident shall not exceed—

(1) for a tank vessel, the greater of—

(A) with respect to a single-hull vessel, including a single-hull vessel fitted with double sides only or a double bottom only, \$3,000 per gross ton;

(B) with respect to a vessel other than a vessel referred to in subparagraph (A), \$1,900 per gross ton; or

(C)(i) with respect to a vessel greater than 3,000 gross tons that is—

(I) a vessel described in subparagraph (A), \$22,000,000; or

(II) a vessel described in subparagraph (B), \$16,000,000; or

(ii) with respect to a vessel of 3,000 gross tons or less that is—

(I) a vessel described in subparagraph (A), \$6,000,000; or

(II) a vessel described in subparagraph (B), \$4,000,000;

(2) for any other vessel, \$950 per gross ton or \$800,000, whichever is greater;

(3) for an offshore facility except a deepwater port, the total of all removal costs plus \$75,000,000; and

(4) for any onshore facility and a deepwater port, \$350,000,000.

(b) DIVISION OF LIABILITY FOR MOBILE OFFSHORE DRILLING UNITS.—

(1) TREATED FIRST AS TANK VESSEL.—For purposes of determining the responsible party and applying this Act and except as provided in paragraph (2), a mobile offshore drilling unit

which is being used as an offshore facility is deemed to be a tank vessel with respect to the discharge, or the substantial threat of a discharge, of oil on or above the surface of the water.

(2) TREATED AS FACILITY FOR EXCESS LIABILITY.—To the extent that removal costs and damages from any incident described in paragraph (1) exceed the amount for which a responsible party is liable (as that amount may be limited under subsection (a)(1)), the mobile offshore drilling unit is deemed to be an offshore facility. For purposes of applying subsection (a)(3), the amount specified in that subsection shall be reduced by the amount for which the responsible party is liable under paragraph (1).

(c) EXCEPTIONS.—

(1) ACTS OF RESPONSIBLE PARTY.—Subsection (a) does not apply if the incident was proximately caused by—

(A) gross negligence or willful misconduct of, or

(B) the violation of an applicable Federal safety, construction, or operating regulation by, the responsible party, an agent or employee of the responsible party, or a person acting pursuant to a contractual relationship with the responsible party (except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail).

(2) FAILURE OR REFUSAL OF RESPONSIBLE PARTY.—Subsection (a) does not apply if the responsible party fails or refuses—

(A) to report the incident as required by law and the responsible party knows or has reason to know of the incident;

(B) to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities; or

(C) without sufficient cause, to comply with an order issued under subsection (c) or (e) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), as amended by this Act, or the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.).

(3) OCS FACILITY OR VESSEL.—Notwithstanding the limitations established under subsection (a) and the defenses of section 1003, all removal costs incurred by the United States Government or any State or local official or agency in connection with a discharge or substantial threat of a discharge of oil from any Outer Continental Shelf facility or a vessel carrying oil as cargo from such a facility shall be borne by the owner or operator of such facility or vessel.

(4) CERTAIN TANK VESSELS.—Subsection (a)(1) shall not apply to—

(A) a tank vessel on which the only oil carried as cargo is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act; and

(B) a tank vessel that is designated in its certificate of inspection as an oil spill response vessel (as that term is defined in section 2101 of title 46, United States Code) and that is used solely for removal.

(d) ADJUSTING LIMITS OF LIABILITY.—

(1) ONSHORE FACILITIES.—Subject to paragraph (2), the President may establish by regulation, with respect to any class or category of onshore facility, a limit of liability under this section of less than \$350,000,000, but not less than \$8,000,000, taking into account size, storage capacity, oil throughput, proximity to sensitive areas, type of oil handled, history of discharges, and other factors relevant to risks posed by the class or category of facility.

(2) DEEPWATER PORTS AND ASSOCIATED VESSELS.—

(A) STUDY.—The Secretary shall conduct a study of the relative operational and environmental risks posed by the transportation of oil by vessel to deepwater ports (as defined in section 3 of the Deepwater Port Act of 1974 (33 U.S.C. 1502)) versus the transportation of oil by vessel to other ports. The study shall include a review and analysis of offshore lightering practices used in connection with that transportation, an analysis of the volume of oil transported by vessel using those practices, and an analysis of the frequency and volume of oil discharges which occur in connection with the use of those practices.

(B) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to the Congress a report on the results of the study conducted under subparagraph (A).

(C) RULEMAKING PROCEEDING.—If the Secretary determines, based on the results of the study conducted [under this subparagraph (A)] *under subparagraph (A)*, that the use of deepwater ports in connection with the transportation of oil by vessel results in a lower operational or environmental risk than the use of other ports, the Secretary shall initiate, not later than the 180th day following the date of submission of the report to the Congress under subparagraph (B), a rulemaking proceeding to lower the limits of liability under this section for deepwater ports as the Secretary determines appropriate. The Secretary may establish a limit of liability of less than \$350,000,000, but not less than \$50,000,000, in accordance with paragraph (1).

(3) PERIODIC REPORTS.—The President shall, within 6 months after the date of the enactment of this Act, and from time to time thereafter, report to the Congress on the desirability of adjusting the limits of liability specified in subsection (a).

(4) ADJUSTMENT TO REFLECT CONSUMER PRICE INDEX.—The President, by regulations issued not later than 3 years after the date of enactment of the Delaware River Protection Act of 2006 and not less than every 3 years thereafter, shall adjust the limits on liability specified in subsection (a) to reflect significant increases in the Consumer Price Index.

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TITLE IV—PREVENTION AND REMOVAL

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Subtitle C—Penalties and Miscellaneous

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SEC. 4303. FINANCIAL RESPONSIBILITY CIVIL PENALTIES.

(a) ADMINISTRATIVE.—Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 1016 or the regulations issued under that section, or with a denial or detention order issued under [subsection (c)(2)] *subsection (b)(2)* of that section, shall be liable to the United States for a civil penalty, not to exceed \$25,000 per day of violation. The amount of the civil penalty shall be assessed by the President by written notice. In determining the amount of the penalty, the President shall take into account the nature, circumstances, extent, and gravity of the violation, the degree of culpability, any history of prior violation, ability to pay, and such other matters as justice may require. The President may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this paragraph. If any person fails to pay an assessed civil penalty after it has become final, the President may refer the matter to the Attorney General for collection.

(b) JUDICIAL.—In addition to, or in lieu of, assessing a penalty under subsection (a), the President may request the Attorney General to secure such relief as necessary to compel compliance with [this section 1016] *section 1016*, including a judicial order terminating operations. The district courts of the United States shall have jurisdiction to grant any relief as the public interest and the equities of the case may require.

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TITLE V—PRINCE WILLIAM SOUND PROVISIONS

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SEC. 5002. TERMINAL AND TANKER OVERSIGHT AND MONITORING.

(a) SHORT TITLE AND FINDINGS.—

(1) SHORT TITLE.—This section may be cited as the “Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990”.

(2) FINDINGS.—The Congress finds that—

(A) the March 24, 1989, grounding and rupture of the fully loaded oil tanker, the EXXON VALDEZ, spilled 11 million gallons of crude oil in Prince William Sound, an environmentally sensitive area;

(B) many people believe that complacency on the part of the industry and government personnel responsible for monitoring the operation of the Valdez terminal and vessel traffic in Prince William Sound was one of the contributing factors to the EXXON VALDEZ oil spill;

(C) one way to combat this complacency is to involve local citizens in the process of preparing, adopting, and revising oil spill contingency plans;

(D) a mechanism should be established which fosters the long-term partnership of industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals;

(E) such a mechanism presently exists at the Sullom Voe terminal in the Shetland Islands and this terminal should serve as a model for others;

(F) because of the effective partnership that has developed at Sullom Voe, Sullom Voe is considered the safest terminal in Europe;

(G) the present system of regulation and oversight of crude oil terminals in the United States has degenerated into a process of continual mistrust and confrontation;

(H) only when local citizens are involved in the process will the trust develop that is necessary to change the present system from confrontation to consensus;

(I) a pilot program patterned after Sullom Voe should be established in Alaska to further refine the concepts and relationships involved; and

(J) similar programs should eventually be established in other major crude oil terminals in the United States because the recent oil spills in Texas, Delaware, and Rhode Island indicate that the safe transportation of crude oil is a national problem.

(b) DEMONSTRATION PROGRAMS.—

(1) ESTABLISHMENT.—There are established 2 Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Demonstration Programs (hereinafter referred to as “Programs”) to be carried out in the State of Alaska.

(2) ADVISORY FUNCTION.—The function of these Programs shall be advisory only.

(3) PURPOSE.—The Prince William Sound Program shall be responsible for environmental monitoring of the terminal facilities in Prince William Sound and the crude oil tankers operating in Prince William Sound. The Cook Inlet Program shall be responsible for environmental monitoring of the terminal facilities and crude oil tankers operating in Cook Inlet located South of the latitude at Point Possession and North of the latitude at Amatuli Island, including offshore facilities in Cook Inlet.

(4) SUITS BARRED.—No program, association, council, committee or other organization created by this section may sue any person or entity, public or private, concerning any matter arising under this section except for the performance of contracts.

(c) OIL TERMINAL FACILITIES AND OIL TANKER OPERATIONS ASSOCIATION.—

(1) ESTABLISHMENT.—There is established an Oil Terminal Facilities and Oil Tanker Operations Association (hereinafter in this section referred to as the “Association”) for each of the Programs established under subsection (b).

(2) MEMBERSHIP.—Each Association shall be comprised of 4 individuals as follows:

(A) One individual shall be designated by the owners and operators of the terminal facilities and shall represent those owners and operators.

(B) One individual shall be designated by the owners and operators of the crude oil tankers calling at the terminal facilities and shall represent those owners and operators.

(C) One individual shall be an employee of the State of Alaska, shall be designated by the Governor of the State of Alaska, and shall represent the State government.

(D) One individual shall be an employee of the Federal Government, shall be designated by the President, and shall represent the Federal Government.

(3) RESPONSIBILITIES.—Each Association shall be responsible for reviewing policies relating to the operation and maintenance of the oil terminal facilities and crude oil tankers which affect or may affect the environment in the vicinity of their respective terminals. Each Association shall provide a forum among the owners and operators of the terminal facilities, the owners and operators of crude oil tankers calling at those facilities, the United States, and the State of Alaska to discuss and to make recommendations concerning all permits, plans, and site-specific regulations governing the activities and actions of the terminal facilities which affect or may affect the environment in the vicinity of the terminal facilities and of crude oil tankers calling at those facilities.

(4) DESIGNATION OF EXISTING ORGANIZATION.—The Secretary may designate an existing nonprofit organization as an Association under this subsection if the organization is organized to meet the purposes of this section and consists of at least the individuals listed in paragraph (2).

(d) REGIONAL CITIZENS' ADVISORY COUNCILS.—

(1) MEMBERSHIP.—There is established a Regional Citizens' Advisory Council (hereinafter in this section referred to as the "Council") for each of the programs established by subsection (b).

(2) MEMBERSHIP.—Each Council shall be composed of voting members and nonvoting members, as follows:

(A) VOTING MEMBERS.—Voting members shall be Alaska residents and, except as provided in clause (vii) of this paragraph, shall be appointed by the Governor of the State of Alaska from a list of nominees provided by each of the following interests, with one representative appointed to represent each of the following interests, taking into consideration the need for regional balance on the Council:

(i) Local commercial fishing industry organizations, the members of which depend on the fisheries resources of the waters in the vicinity of the terminal facilities.

(ii) Aquaculture associations in the vicinity of the terminal facilities.

(iii) Alaska Native Corporations and other Alaska Native organizations the members of which reside in the vicinity of the terminal facilities.

(iv) Environmental organizations the members of which reside in the vicinity of the terminal facilities.

(v) Recreational organizations the members of which reside in or use the vicinity of the terminal facilities.

(vi) The Alaska State Chamber of Commerce, to represent the locally based tourist industry.

(vii)(I) For the Prince William Sound Terminal Facilities Council, one representative selected by each of the following municipalities: Cordova, Whittier, Seward, Valdez, Kodiak, the Kodiak Island Borough, and the Kenai Peninsula Borough.

(II) For the Cook Inlet Terminal Facilities Council, one representative selected by each of the following municipalities: Homer, Seldovia, Anchorage, Kenai, Kodiak, the Kodiak Island Borough, and the Kenai Peninsula Borough.

(B) NONVOTING MEMBERS.—One ex-officio, nonvoting representative shall be designated by, and represent, each of the following:

(i) The Environmental Protection Agency.

(ii) The Coast Guard.

(iii) The National Oceanic and Atmospheric Administration.

(iv) The United States Forest Service.

(v) The Bureau of Land Management.

(vi) The Alaska Department of Environmental Conservation.

(vii) The Alaska Department of Fish and Game.

(viii) The Alaska Department of Natural Resources.

(ix) The Division of Emergency Services, Alaska Department of Military and Veterans Affairs.

(3) TERMS.—

(A) DURATION OF COUNCILS.—The term of the Councils shall continue throughout the life of the operation of the Trans-Alaska Pipeline System and so long as oil is transported to or from Cook Inlet.

(B) THREE YEARS.—The voting members of each Council shall be appointed for a term of 3 years except as provided for in subparagraph (C).

(C) INITIAL APPOINTMENTS.—The terms of the first appointments shall be as follows:

(i) For the appointments by the Governor of the State of Alaska, one-third shall serve for 3 years, one-third shall serve for 2 years, and one-third shall serve for one year.

(ii) For the representatives of municipalities required by subsection (d)(2)(A)(vii), a drawing of lots among the appointees shall determine that one-third of that group serves for 3 years, one-third serves for 2 years, and the remainder serves for 1 year.

(4) SELF-GOVERNING.—Each Council shall elect its own chairperson, select its own staff, and make policies with regard to its internal operating procedures. After the initial organizational meeting called by the Secretary under subsection (i), each Council shall be self-governing.

(5) DUAL MEMBERSHIP AND CONFLICTS OF INTEREST PROHIBITED.—(A) No individual selected as a member of the Council shall serve on the Association.

(B) No individual selected as a voting member of the Council shall be engaged in any activity which might conflict with such individual carrying out his functions as a member thereof.

(6) DUTIES.—Each Council shall—

(A) provide advice and recommendations to the Association on policies, permits, and site-specific regulations relating to the operation and maintenance of terminal facilities and crude oil tankers which affect or may affect the environment in the vicinity of the terminal facilities;

(B) monitor through the committee established under subsection (e), the environmental impacts of the operation of the terminal facilities and crude oil tankers;

(C) monitor those aspects of terminal facilities' and crude oil tankers' operations and maintenance which affect or may affect the environment in the vicinity of the terminal facilities;

(D) review through the committee established under subsection (f), the adequacy of oil spill prevention and contingency plans for the terminal facilities and the adequacy of oil spill prevention and contingency plans for crude oil tankers, operating in Prince William Sound or in Cook Inlet;

(E) provide advice and recommendations to the Association on port operations, policies and practices;

(F) recommend to the Association—

(i) standards and stipulations for permits and site-specific regulations intended to minimize the impact of the terminal facilities' and crude oil tankers' operations in the vicinity of the terminal facilities;

(ii) modifications of terminal facility operations and maintenance intended to minimize the risk and mitigate the impact of terminal facilities, operations in the vicinity of the terminal facilities and to minimize the risk of oil spills;

(iii) modifications of crude oil tanker operations and maintenance in Prince William Sound and Cook Inlet intended to minimize the risk and mitigate the impact of oil spills; and

(iv) modifications to the oil spill prevention and contingency plans for terminal facilities and for crude oil tankers in Prince William Sound and Cook Inlet intended to enhance the ability to prevent and respond to an oil spill; and

(G) create additional committees of the Council as necessary to carry out the above functions, including a scientific and technical advisory committee to the Prince William Sound Council.

(7) NO ESTOPPEL.—No Council shall be held liable under State or Federal law for costs or damages as a result of rendering advice under this section. Nor shall any advice given by a voting member of a Council, or program representative or agent, be grounds for estopping the interests represented by

the voting Council members from seeking damages or other appropriate relief.

(8) SCIENTIFIC WORK.—In carrying out its research, development and monitoring functions, each Council is authorized to conduct its own scientific research and shall review the scientific work undertaken by or on behalf of the terminal operators or crude oil tanker operators as a result of a legal requirement to undertake that work. Each Council shall also review the relevant scientific work undertaken by or on behalf of any government entity relating to the terminal facilities or crude oil tankers. To the extent possible, to avoid unnecessary duplication, each Council shall coordinate its independent scientific work with the scientific work performed by or on behalf of the terminal operators and with the scientific work performed by or on behalf of the operators of the crude oil tankers.

(e) COMMITTEE FOR TERMINAL AND OIL TANKER OPERATIONS AND ENVIRONMENTAL MONITORING.—

(1) MONITORING COMMITTEE.—Each Council shall establish a standing Terminal and Oil Tanker Operations and Environmental Monitoring Committee (hereinafter in this section referred to as the “Monitoring Committee”) to devise and manage a comprehensive program of monitoring the environmental impacts of the operations of terminal facilities and of crude oil tankers while operating in Prince William Sound and Cook Inlet. The membership of the Monitoring Committee shall be made up of members of the Council, citizens, and recognized scientific experts selected by the Council.

(2) DUTIES.—In fulfilling its responsibilities, the Monitoring Committee shall—

(A) advise the Council on a monitoring strategy that will permit early detection of environmental impacts of terminal facility operations and crude oil tanker operations while in Prince William Sound and Cook Inlet;

(B) develop monitoring programs and make recommendations to the Council on the implementation of those programs;

(C) at its discretion, select and contract with universities and other scientific institutions to carry out specific monitoring projects authorized by the Council pursuant to an approved monitoring strategy;

(D) complete any other tasks assigned by the Council; and

(E) provide written reports to the Council which interpret and assess the results of all monitoring programs.

(f) COMMITTEE FOR OIL SPILL PREVENTION, SAFETY, AND EMERGENCY RESPONSE.—

(1) TECHNICAL OIL SPILL COMMITTEE.—Each Council shall establish a standing technical committee (hereinafter referred to as “Oil Spill Committee”) to review and assess measures designed to prevent oil spills and the planning and preparedness for responding to, containing, cleaning up, and mitigating impacts of oil spills. The membership of the Oil Spill Committee shall be made up of members of the Council, citizens, and recognized technical experts selected by the Council.

(2) DUTIES.—In fulfilling its responsibilities, the Oil Spill Committee shall—

(A) periodically review the respective oil spill prevention and contingency plans for the terminal facilities and for the crude oil tankers while in Prince William Sound or Cook Inlet, in light of new technological developments and changed circumstances;

(B) monitor periodic drills and testing of the oil spill contingency plans for the terminal facilities and for crude oil tankers while in Prince William Sound and Cook Inlet;

(C) study wind and water currents and other environmental factors in the vicinity of the terminal facilities which may affect the ability to prevent, respond to, contain, and clean up an oil spill;

(D) identify highly sensitive areas which may require specific protective measures in the event of a spill in Prince William Sound or Cook Inlet;

(E) monitor developments in oil spill prevention, containment, response, and cleanup technology;

(F) periodically review port organization, operations, incidents, and the adequacy and maintenance of vessel traffic service systems designed to assure safe transit of crude oil tankers pertinent to terminal operations;

(G) periodically review the standards for tankers bound for, loading at, exiting from, or otherwise using the terminal facilities;

(H) complete any other tasks assigned by the Council; and

(I) provide written reports to the Council outlining its findings and recommendations.

(g) AGENCY COOPERATION.—On and after the expiration of the 180-day period following the date of the enactment of this section, each Federal department, agency, or other instrumentality shall, with respect to all permits, site-specific regulations, and other matters governing the activities and actions of the terminal facilities which affect or may affect the vicinity of the terminal facilities, consult with the appropriate Council prior to taking substantive action with respect to the permit, site-specific regulation, or other matter. This consultation shall be carried out with a view to enabling the appropriate Association and Council to review the permit, site-specific regulation, or other matters and make appropriate recommendations regarding operations, policy or agency actions. Prior consultation shall not be required if an authorized Federal agency representative reasonably believes that an emergency exists requiring action without delay.

(h) RECOMMENDATIONS OF THE COUNCIL.—In the event that the Association does not adopt, or significantly modifies before adoption, any recommendation of the Council made pursuant to the authority granted to the Council in subsection (d), the Association shall provide to the Council, in writing, within 5 days of its decision, notice of its decision and a written statement of reasons for its rejection or significant modification of the recommendation.

(i) ADMINISTRATIVE ACTIONS.—Appointments, designations, and selections of individuals to serve as members of the Associations and Councils under this section shall be submitted to the Secretary

prior to the expiration of the 120-day period following the date of the enactment of this section. On or before the expiration of the 180-day period following that date of enactment of this section, the Secretary shall call an initial meeting of each Association and Council for organizational purposes.

(j) LOCATION AND COMPENSATION.—

(1) LOCATION.—Each Association and Council established by this section shall be located in the State of Alaska.

(2) COMPENSATION.—No member of an Association or Council shall be compensated for the member's services as a member of the Association or Council, but shall be allowed travel expenses, including per diem in lieu of subsistence, at a rate established by the Association or Council not to exceed the rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code. However, each Council may enter into contracts to provide compensation and expenses to members of the committees created under subsections (d), (e), and (f).

(k) FUNDING.—

(1) REQUIREMENT.—Approval of the contingency plans required of owners and operators of the Cook Inlet and Prince William Sound terminal facilities and crude oil tankers while operating in Alaskan waters in commerce with those terminal facilities shall be effective only so long as the respective Association and Council for a facility are funded pursuant to paragraph (2).

(2) PRINCE WILLIAM SOUND PROGRAM.—The owners or operators of terminal facilities or crude oil tankers operating in Prince William Sound shall provide, on an annual basis, an aggregate amount of not more than \$2,000,000, as determined by the Secretary. Such amount—

(A) shall provide for the establishment and operation on the environmental oversight and monitoring program in Prince William Sound;

(B) shall be adjusted annually by the Anchorage Consumer Price Index; and

(C) may be adjusted periodically upon the mutual consent of the owners or operators of terminal facilities or crude oil tankers operating in Prince William Sound and the Prince William Sound terminal facilities Council.

(3) COOK INLET PROGRAM.—The owners or operators of terminal facilities, offshore facilities, or crude oil tankers operating in Cook Inlet shall provide, on an annual basis, an aggregate amount of not less than \$1,400,000, as determined by the Secretary. Such amount—

(A) shall provide for the establishment and operation of the environmental oversight and monitoring program in Cook Inlet;

(B) shall be adjusted annually by the Anchorage Consumer Price Index; and

(C) may be adjusted periodically upon the mutual consent of the owners or operators of terminal facilities, offshore facilities, or crude oil tankers operating in Cook Inlet and the Cook Inlet Council.

(l) REPORTS.—

(1) ASSOCIATIONS AND COUNCILS.—Prior to the expiration of the 36-month period following the date of the enactment of this section, each Association and Council established by this section shall report to the President and the Congress concerning its activities under this section, together with its recommendations.

(2) GAO.—Prior to the expiration of the 36-month period following the date of the enactment of this section, the [General Accounting Office] *Government Accountability Office* shall report to the President and the Congress as to the handling of funds, including donated funds, by the entities carrying out the programs under this section, and the effectiveness of the demonstration programs carried out under this section, together with its recommendations.

(m) DEFINITIONS.—As used in this section, the term—

(1) “terminal facilities” means—

(A) in the case of the Prince William Sound Program, the entire oil terminal complex located in Valdez, Alaska, consisting of approximately 1,000 acres including all buildings, docks (except docks owned by the City of Valdez if those docks are not used for loading of crude oil), pipes, piping, roads, ponds, tanks, crude oil tankers only while at the terminal dock, tanker escorts owned or operated by the operator of the terminal, vehicles, and other facilities associated with, and necessary for, assisting tanker movement of crude oil into and out of the oil terminal complex; and

(B) in the case of the Cook Inlet Program, the entire oil terminal complex including all buildings, docks, pipes, piping, roads, ponds, tanks, vessels, vehicles, crude oil tankers only while at the terminal dock, tanker escorts owned or operated by the operator of the terminal, emergency spill response vessels owned or operated by the operator of the terminal, and other facilities associated with, and necessary for, assisting tanker movement of crude oil into and out of the oil terminal complex;

(2) “crude oil tanker” means a tanker (as that term is defined under section 2101 of title 46, United States Code)—

(A) in the case of the Prince William Sound Program, calling at the terminal facilities for the purpose of receiving and transporting oil to refineries, operating north of Middleston Island and bound for or exiting from Prince William Sound; and

(B) in the case of the Cook Inlet Program, calling at the terminal facilities for the purpose of receiving and transporting oil to refineries and operating in Cook Inlet and the Gulf of Alaska north of Amatuli Island, including tankers transiting to Cook Inlet from Prince William Sound;

(3) “vicinity of the terminal facilities” means that geographical area surrounding the environment of terminal facilities which is directly affected or may be directly affected by the operation of the terminal facilities; and

(4) “Secretary” means the Secretary of the department in which the Coast Guard is operating.

(n) SAVINGS CLAUSE.—

(1) REGULATORY AUTHORITY.—Nothing in this section shall be construed as modifying, repealing, superseding, or preempting any municipal, State or Federal law or regulation, or in any way affecting litigation arising from oil spills or the rights and responsibilities of the United States or the State of Alaska, or municipalities thereof, to preserve and protect the environment through regulation of land, air, and water uses, of safety, and of related development. The monitoring provided for by this section shall be designed to help assure compliance with applicable laws and regulations and shall only extend to activities—

(A) that would affect or have the potential to affect the vicinity of the terminal facilities and the area of crude oil tanker operations included in the Programs; and

(B) are subject to the United States or State of Alaska, or municipality thereof, law, regulation, or other legal requirement.

(2) RECOMMENDATIONS.—This subsection is not intended to prevent the Association or Council from recommending to appropriate authorities that existing legal requirements should be modified or that new legal requirements should be adopted.

(o) ALTERNATIVE VOLUNTARY ADVISORY GROUP IN LIEU OF COUNCIL.—The requirements of subsections (c) through (l), as such subsections apply respectively to the Prince William Sound Program and the Cook Inlet Program, are deemed to have been satisfied so long as the following conditions are met:

(1) PRINCE WILLIAM SOUND.—With respect to the Prince William Sound Program, the Alyeska Pipeline Service Company or any of its owner companies enters into a contract for the duration of the operation of the Trans-Alaska Pipeline System with the Alyeska Citizens Advisory Committee in existence on the date of enactment of this section, or a successor organization, to fund that Committee or organization on an annual basis in the amount provided for by subsection (k)(2)(A) and the President annually certifies that the Committee or organization fosters the general goals and purposes of this section and is broadly representative of the communities and interests in the vicinity of the terminal facilities and Prince William Sound.

(2) COOK INLET.—With respect to the Cook Inlet Program, the terminal facilities, offshore facilities, or crude oil tanker owners and operators enter into a contract with a voluntary advisory organization to fund that organization on an annual basis and the President annually certifies that the organization fosters the general goals and purposes of this section and is broadly representative of the communities and interests in the vicinity of the terminal facilities and Cook Inlet.

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ACT OF JUNE 15, 1917

TITLE —II.

VESSELS IN PORTS OF THE UNITED STATES.

SECTION 1. Whenever the President by proclamation or Executive order declares a national emergency to exist by reason of actual or threatened war, insurrection, or invasion, or disturbance or threatened disturbance of the international relations of the United States, or whenever the Attorney General determines that an actual or anticipated mass migration of aliens en route to, or arriving off the coast of, the United States presents urgent circumstances requiring an immediate Federal response, [the Secretary of the Treasury] *the Secretary of the department in which the Coast Guard is operating* may make, subject to the approval of the President, rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, may inspect such vessel at any time, place guards thereon, and, if necessary in his opinion in order to secure such vessels from damage or injury, or to prevent damage or injury to any harbor or waters of the United States, or to secure the observance of the rights and obligations of the United States, may take, by and with the consent of the President, for such purposes, full possession and control of such vessel and remove therefrom the officers and crew thereof and all other persons not specially authorized by him to go or remain on board thereof.

Whenever the President finds that the security of the United States is endangered by reason of actual or threatened war, or invasion, or insurrection, or subversive activity, or of disturbances or threatened disturbances of the international relations of the United States, the President is authorized to institute such measures and issue such rules and regulations—

(a) to govern the anchorage and movement of any foreign-flag vessels in the territorial waters of the United States, to inspect such vessels at any time, to place guards thereon, and, if necessary in his opinion in order to secure such vessels from damage or injury, or to prevent damage or injury to any harbor or waters of the United States, or to secure the observance of rights and obligations of the United States, may take for such purposes full possession and control of such vessels and remove therefrom the officers and crew thereof, and all other persons not especially authorized by him to go or remain on board thereof;

(b) to safeguard against destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of similar nature, vessels, harbors, ports, and waterfront facilities in the United States and all territory and water, continental or insular, subject to the jurisdiction of the United States.

The President may delegate the authority to issue such rules and regulations to the Secretary of the department in which the Coast Guard is operating. Any appropriation available to any of the Exec-

utive Departments shall be available to carry out the provisions of this title.

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ACT OF MARCH 23, 1906

(Public Law Chapter 1130)

AN ACT To regulate the construction of bridges over navigable waters.

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SEC. 5. (a) That any persons who shall willfully fail or refuse to comply with the lawful order of the Secretary of the department in which the Coast Guard is operating or the Chief of Engineers, made in accordance with the provisions of this Act, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished in any court of competent jurisdiction by a fine not exceeding five thousand dollars, and every month such persons shall remain in default shall be deemed a new offense and subject such persons to additional penalties therefor; and in addition to the penalties above described the Secretary of the department in which the Coast Guard is operating and the Chief of Engineers may, upon refusal of the persons owning or controlling any such bridge and accessory works to comply with any lawful order issued by the Secretary of the department in which the Coast Guard is operating or Chief of Engineers in regard thereto, cause the removal of such bridge and accessory works at the expense of the persons owning or controlling such bridge, and suit for such expense may be brought in the name of the United States against such persons, and recovery had for such expense in any court of competent jurisdiction; and the removal of any structures erected or maintained in violation of the provisions of this Act or the order or direction of the Secretary of the department in which the Coast Guard is operating or Chief of Engineers made in pursuance thereof may be enforced by injunction, mandamus, or other summary process, upon application to the circuit court in the district in which such structure may, in whole or in part, exist, and proper proceedings to this end may be instituted under the direction of the Attorney-General of the United States at the request of the Secretary of the department in which the Coast Guard is operating; and in case of any litigation arising from any obstruction or alleged obstruction to navigation created by the construction of any bridge under this Act, the cause or question arising may be tried before the circuit court of the United States in any district which any portion of said obstruction or bridge touches.

(b) Whoever violates any provision of this Act, or any order issued under this Act, shall be liable to a civil penalty of not more than **[\$5,000 for a violation occurring in 2004; \$10,000 for a violation occurring in 2005; \$15,000 for a violation occurring in 2006; \$20,000 for a violation occurring in 2007; and] \$25,000** for a violation occurring in 2008 and any year thereafter. Each day a violation continues shall be deemed a separate offense. No penalty may be assessed under this subsection until the person charged is given notice and an opportunity for a hearing on the charge. The Secretary of the department in which the Coast Guard is operating

may assess and collect any civil penalty incurred under this subsection and, in his discretion, may remit, mitigate, or compromise any penalty until the matter is referred to the Attorney General. If a person against whom a civil penalty is assessed under this subsection fails to pay that penalty, an action may be commenced in the district court of the United States for any district in which the violation occurs for such penalty.

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ACT TO PREVENT POLLUTION FROM SHIPS

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SEC. 5. (a) Except as provided in section 4(b)(1), the Secretary shall designate those persons authorized to issue on behalf of the United States the certificates required by the MARPOL Protocol. A certificate required by the MARPOL Protocol shall not be issued to a ship which is registered in or of the nationality of a country which is not a party to the MARPOL Protocol.

(b) A certificate issued by a country which is a party to the MARPOL Protocol has the same validity as a certificate issued by the Secretary or the Administrator under the authority of this Act.

(c) A ship required by the MARPOL Protocol to have a certificate—

(1) shall carry a valid certificate onboard in the manner prescribed by the authority issuing the certificate; and

(2) is subject to inspection while in a port or terminal under the jurisdiction of the United States.

(d) An inspection conducted under subsection (c)(2) of this section is limited to verifying whether or not a valid certificate is onboard, unless clear grounds exist which reasonably indicate that the condition of the ship or its equipment does not substantially agree with the particulars of its certificate. This section shall not limit the authority of any official or employee of the United States under any other treaty, law, or regulation to board and inspect a ship or its equipment.

(e) In addition to the penalties prescribed in section 9 of the Act, a ship required by the MARPOL Protocol to have a certificate—

(1) which does not have a valid certificate onboard; or

(2) whose condition or whose equipment's condition does not substantially agree with the particulars of the certificate onboard;

shall be detained by order of the Secretary at the port or terminal where the violation is discovered until, in the opinion of the Secretary, the ship can proceed to sea without presenting an unreasonable threat of harm to the marine environment or the public health and welfare. The detention order may authorize the ship to proceed to the nearest appropriate available shipyard rather than remaining at the place where the violation was discovered.

(f) If a ship is under a detention order under this section, the Secretary of the Treasury, upon the request of the Secretary, may refuse or revoke—

(1) the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91); or

【(2) a permit to proceed under section 4367 of the Revised Statutes of the United States (46 U.S.C. 313) or section 442 of the Tariff Act of 1930, as amended (19 U.S.C. 1443).】

(f) *SHIP CLEARANCE; REFUSAL OR REVOCATION.*—*If a ship is under a detention order under this section, the Secretary may refuse or revoke the clearance required by section 60105 of title 46, United States Code.*

(g) A person whose ship is subject to a detention order under this section may petition the Secretary, in the manner prescribed by regulation, to review the detention order. Upon receipt of a petition under this subsection, the Secretary shall affirm, modify, or withdraw the detention order within the time prescribed by regulation.

(h) A ship unreasonably detained or delayed by the Secretary acting under the authority of this Act is entitled to compensation for any loss or damage suffered thereby.

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