

**Calendar No. 300**

112TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
112-135 }

COAST GUARD AUTHORIZATION ACT FOR  
FISCAL YEARS 2012 AND 2013

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 1665



JANUARY 26, 2012.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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

### R E P O R T

[To accompany S. 1665]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1665) to authorize appropriations for the Coast Guard for fiscal years 2012 and 2013, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

The purpose of S. 1665, the Coast Guard Authorization Act for Fiscal Years 2012 and 2013, as amended, is two-fold. First, the bill would authorize amounts to be appropriated and set levels of military strength and training for the Coast Guard for each of fiscal years (FYs) 2012 and 2013. S. 1665 authorizes funding levels covering seven accounts: (1) operation and maintenance expenses (OE); (2) acquisition, construction, and improvement of facilities and equipment (AC&I); (3) research, development, testing, and evaluation (RDT&E); (4) retired pay; (5) alteration or removal of bridges; (6) environmental compliance and restoration (EC&R); and (7) the reserve program. Second, S. 1665 would make a number of refinements to the Coast Guard's statutory authorities in order to help ensure that the Service is able to maintain—and in certain cases augment—its current operational capabilities across its eleven statutory missions.

## BACKGROUND AND NEEDS

The Coast Guard is unique among Federal Government entities in that it not only constitutes a part of the military forces of the United States but also is authorized to enforce all applicable Federal laws on, under, and over the high seas subject to the jurisdiction of the United States. It is a military, multi-mission, maritime service with its genesis in the Revenue Cutter Service, which was established in 1790 by the First Congress at the recommendation of Treasury Secretary Alexander Hamilton. On February 27, 1914, the Senate Committee on Commerce reported favorably<sup>1</sup>, and on January 28, 1915, President Woodrow Wilson signed into law S. 2337, which formed the modern-day Coast Guard by combining the Revenue Cutter Service and the U.S. Lifesaving Service and established its operation within the Treasury Department in time of peace and as a part of the Navy in time of war or at the direction of the President.<sup>2</sup> In the 96 years since its creation, the Coast Guard's missions have grown and evolved. In the mid-twentieth century, the Service absorbed additional Federal Government entities of significant importance to maritime commerce and transportation—first the United States Lighthouse Service in 1939, then the Bureau of Marine Inspection and Navigation and its Steamboat Inspection Service in 1946. In 1967, the Coast Guard was transferred from the Department of the Treasury to the Department of Transportation (DOT).<sup>3</sup> With the enactment of the Homeland Security Act of 2002, the Coast Guard and a number of other Federal agencies were transferred to the Department of Homeland Security (DHS).<sup>4</sup>

Today, the Coast Guard consists of over 42,000 active duty personnel, 7,000 reservists, 7,800 civilian employees, and 30,000 auxiliary volunteers. It performs eleven statutory missions, namely:

- Aids to navigation;
- Defense readiness;
- Drug interdiction;
- Ice operations;
- Living marine resources (fisheries law enforcement);
- Marine environmental protection;
- Marine safety;
- Migrant interdiction;
- Ports, waterways, and coastal security;
- Other law enforcement; and
- Search and rescue.<sup>5</sup>

These diverse missions can be grouped broadly into three categories—safety, security, and stewardship. On average, each day the Coast Guard saves 13 lives, responds to 64 search and rescue cases, keeps 959 pounds of cocaine off the streets, prevents \$260,000 in property damage, interdicts ten undocumented migrants seeking to unlawfully enter the United States, services 49 buoys and other aids to navigation, ensures compliance of 15 fish-

<sup>1</sup> S. Rep. No. 63-300 (1914).

<sup>2</sup> Act of Jan. 28, 1915, ch. 20, 38 Stat. 800 (1915).

<sup>3</sup> Department of Transportation Act § 6(b)(1) Oct. 15, 1966, Pub. L. 89-670, 80 Stat. 931.

<sup>4</sup> 6 U.S.C. § 468(b) (2010).

<sup>5</sup> 6 U.S.C. § 468(a) (2010).

## Coast Guard Recapitalization

At the same time that the Coast Guard is adapting to the increased number, diversity, and complexity of missions it is being asked to perform, it also continues to pursue its critically important, long-term fleet recapitalization program for the replacement of its timeworn ships and aircraft. Currently, the fleet recapitalization plan contemplates replacing the Coast Guard's ten remaining 378-foot High Endurance Cutters (HECs), which were commissioned between 1967 and 1972, with eight 418-foot National Security Cutters (NSCs); 27 of its 210-foot and 270-foot Medium Endurance Cutters (MECs), which were commissioned between 1964 and 1991, with 25 Offshore Patrol Cutters (OPCs); 41 110-foot Patrol Boats, which were commissioned between 1985 and 1992, with 58 154-foot Fast Response Cutters (FRCs); and replacing its 10 HU-25 Guardian medium-range, fixed-wing aircraft with 36 HC-144A Medium-Range Surveillance aircraft.

The average age of the Coast Guard's HECs, which are widely regarded for their versatility and capability of performing a variety of missions, is over 40 years—25 years older than the average age of Navy ships.<sup>8</sup> Owing to their advanced age, the Coast Guard is only getting roughly 75 percent of the desired days out of the HECs because of breakdowns. Furthermore, the vessels are reaching an age where many of the parts and equipment onboard are no longer in production, and the Coast Guard must special-order custom-made replacements at significant expense. The HECs are by no means the lone example of the challenges associated with the Service's effort to maintain its aging fleet. Many other Coast Guard vessels and aircraft are struggling with major mission-debilitating casualties, resulting loss of operational days, and ever increasing maintenance costs.

As the Coast Guard has pursued its sorely needed recapitalization program, it has continued to grapple with steadily increasing total cost estimates and slipping timelines for completion. In 1998, the Coast Guard's initial estimated cost for the Deepwater recap-

<sup>6</sup> U.S. Coast Guard, Coast Guard 2010 Snapshot: A Summary of Facts and Figures about America's Coast Guard, [http://www.uscg.mil/top/about/doc/uscg\\_snapshot.pdf](http://www.uscg.mil/top/about/doc/uscg_snapshot.pdf).

<sup>7</sup> Admiral Robert J. Papp, Jr., U.S. Coast Guard, State of the Coast Guard Address, Feb. 10, 2011, [http://www.uscg.mil/seniorleadership/SPEECHES/2011-02-10\\_State\\_of\\_the\\_Coast\\_Guard.pdf](http://www.uscg.mil/seniorleadership/SPEECHES/2011-02-10_State_of_the_Coast_Guard.pdf).

<sup>8</sup> Admiral Thad Allen, U.S. Coast Guard, State of the Coast Guard Address, Feb. 12, 2010, <http://www.uscg.mil/history/allen/speeches/docs/SOTCG12Feb2010Transcript.pdf>.

talization program was \$17 billion, with an estimated delivery date for all new and retrofitted assets of 2018. In February 2005, following its move from DOT to DHS, the Coast Guard submitted a revised Deepwater implementation plan to Congress to address increased costs and account for new security capabilities and missions. Under this revised plan, which was approved by DHS in May 2007, the overall program cost increased to \$24.2 billion, with the final assets scheduled for delivery in 2027. In July of 2011, the latest in a series of Government Accountability Office (GAO) reports examining the recapitalization program estimated that the total acquisition cost could ultimately be as much as \$29.3 billion.<sup>9</sup> Furthermore, GAO warned that additional program cost growth is looming because the Coast Guard has yet to develop and submit revised baselines for every asset-type it will acquire—most notably the OPC, which GAO calls the largest cost driver in the entire program.<sup>10</sup> The Committee continues to be concerned that the current rate at which aging Coast Guard assets are being replaced cannot keep pace with the rate at which current ships and aircraft are reaching the end of their service lives. This situation, if left unaddressed, will force the Coast Guard to make operational trade-offs that have the potential to create gaps in mission readiness.

#### **Arctic & Ice Operations**

While the fleet recapitalization program does not currently include within its scope the Service's polar icebreaking facilities, these fleet assets also are at or near the end of their useful service lives. The Coast Guard is required by law to develop, maintain, and operate the Nation's icebreaking fleet in the polar regions, but with aging assets and sparse resources the Service faces serious challenges in executing tasks necessary to perform its statutory missions in the Arctic and Antarctic. These challenges come just as the evidence is now undeniable that drastic environmental changes are occurring in the polar regions, and particularly in the Arctic. Reduced extent of sea ice in the Arctic is leading to a significant increase in commercial and non-commercial activity in the Arctic waters. New shipping routes that were previously frozen solid and unnavigable are now being used by vessels of foreign nations to reduce transit times.

In recent years, as changes in the polar regions have become more readily apparent, U.S. attention to Arctic issues has increased significantly. On January 9, 2009, President Bush signed a presidential directive establishing a new U.S. policy for the Arctic region.<sup>11</sup> This policy directive was issued as National Security Presidential Directive 66/Homeland Security Presidential Directive 25 (NSPD 66/HSPD 25) and superseded a 1994 presidential directive on Arctic policy. The directive states that the United States is an Arctic nation and it is the policy of the United States to: meet national security and homeland security needs relevant to the Arctic region; protect the Arctic environment; ensure natural resource management and economic development in the region; strengthen institutions for

<sup>9</sup> U.S. Gov't Accountability Office, Coast Guard: Action Needed as Approved Deepwater Program Remains Unachievable 10 (2011).

<sup>10</sup> *Id.*

<sup>11</sup> National Security Presidential Directive 66/Homeland Security Presidential Directive 25 (Jan. 9, 2009).

cooperation among the eight Arctic nations; involve the Arctic's indigenous communities in decisions; and enhance scientific monitoring and research. In carrying out this policy as it relates to national security and homeland security interests in the Arctic, it directs the Secretaries of State, Defense, and Homeland Security, in coordination with the heads of other relevant executive departments and agencies, to:

- develop greater capabilities and capacity, as necessary, to protect U.S. air, land, and sea borders in the Arctic region;
- increase Arctic maritime domain awareness in order to protect maritime commerce, critical infrastructure, and key resources;
- preserve the global mobility of U.S. military and civilian vessels and aircraft throughout the Arctic region;
- project a sovereign U.S. maritime presence in the Arctic in support of essential U.S. interests; and
- encourage the peaceful resolution of disputes in the Arctic region.

In October 2009, the U.S. Navy released the U.S. Navy Arctic Roadmap, which is intended to guide the Navy on policy, strategy, and investments relating to the changing Arctic.<sup>12</sup> The roadmap contemplates a number of strategic drivers, including national policy guidance, the changing Arctic environment, the potential increase in natural resource extraction and inter- and intra-Arctic shipping, the activities and interests of other Arctic nations, past and present Navy experiences in the Arctic, and current fleet capabilities and limitations for Arctic operations. The goal of the roadmap is to ensure naval readiness and capability, and to promote maritime security in the Arctic region. Key elements of the plan include increasing operational experience, promoting cooperative partnerships, and improving environmental understanding. Recommendations from the roadmap include an assessment of Navy readiness for operating under harsh Arctic conditions, with a methodical review of current capabilities and gaps; the continuation of Arctic and sub-Arctic training exercises, including joint search and rescue, humanitarian assistance, and disaster relief exercises with the Coast Guard; and investments in sensors and platforms to expand Arctic maritime domain awareness, including more robust environmental sensors to support enhanced modeling that will lead to better predictive capabilities.

In May 2010, President Obama signed the National Security Strategy which lays out a strategic approach for advancing American interests, including the security of the American people, a growing U.S. economy, support for U.S. values, and an international plan to address future challenges. In this strategy, the President notes that the United States is an Arctic nation with broad and fundamental interests in the Arctic region, where we

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<sup>12</sup> U.S. Navy Arctic Roadmap 2009.

seek to meet our national security needs, protect the environment, responsibly manage resources, account for indigenous communities, support scientific research, and strengthen international cooperation on a wide range of issues.<sup>13</sup>

The Committee has long been, and continues to be, concerned that the Nation is in jeopardy of losing the fundamental polar operational capabilities necessary to successfully pursue these important strategy and policy goals.

Prior to 1965, icebreaking needs for our Nation were provided by the Navy. In 1965, the Navy permanently transferred responsibility for the operation of icebreakers and responsibility for mission requirements in the polar regions to the Coast Guard. The Navy has stated that the Arctic is critical to national defense, and that maintaining a continued presence in the region on the surface, subsurface, and in the air is required.<sup>14</sup>

Today, the Federal Government owns only three polar icebreakers—the Coast Guard Cutters HEALY (WAGB-20), POLAR SEA (WAGB-11), and POLAR STAR (WAGB-10). Currently, only the HEALY, a “medium” polar icebreaker is capable of operating in the Arctic, but not the Antarctic. The POLAR STAR, one of two “heavy” polar icebreakers capable of operating in either polar region, has been maintained in “caretaker” status since 2006. It is currently undergoing a service life extension in order to be reactivated, but it will not be operational until January 2013, at the earliest. This refurbishment will only extend its service life to 2020. The POLAR SEA, the other of the two heavy polar icebreakers, received a service life extension in the early 2000s which should have extended its useful service life through 2015. In the summer of 2010, possibly due to a modification to the original configuration of its diesel engines made during its service life extension, the POLAR SEA encountered accelerated engine wear which required it to enter emergency dockside repair. In February 2011, the President’s proposed budget for the Coast Guard for FY 2012 included plans to decommission the POLAR SEA.

With no heavy icebreaker and only one medium icebreaker, U.S. capabilities in the polar regions stand in stark contrast to the icebreaking capability of other nations in the Northern Hemisphere. Most notably, Russia has twenty-five icebreakers—eight of which are heavy icebreakers—and is using them to assert sovereign control over the Arctic region and its many valuable resources. Other Arctic countries with significant icebreaking capability include Finland, with seven icebreakers; Sweden, with seven; and Canada, with six. In this regard, it is worth noting that a May 21, 2008, letter to the Chairman of the Joint Chiefs of Staff, the Commander of the U.S. Northern Command, the Commander of the U.S. Transportation Command, and the Commander of the U.S. Pacific Command emphatically stated, “To assert our interests in these regions, the United States needs assured access with reliable icebreaking ships”.<sup>15</sup> This letter also stated that the icebreakers were essential instruments of the U.S. policy in the polar regions

<sup>13</sup> National Security Strategy (May, 2010), [http://www.whitehouse.gov/sites/default/files/rss\\_viewer/national\\_security\\_strategy.pdf](http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf).

<sup>14</sup> U.S. Navy Arctic Roadmap 6 (2009).

<sup>15</sup> Letter from General Victor E. Renuart, General Norton A. Schwartz, and Timothy J. Keating to General James E. Cartwright (May 21, 2008).



and included recommendations for the construction of new polar icebreakers for the Coast Guard and adequate funding to keep existing icebreakers ready and viable.

Since 2007, the Coast Guard has been studying the full range of capabilities needed for the Service to meet its statutory mission requirements and the requirements issued by the U.S. Navy in the polar regions, identifying gaps in mission capabilities in the regions and the number and types of assets—including polar icebreakers—needed to close the gaps. In 2007, the National Research Council of the National Academies (NRC) issued a report which concluded that “[n]ational interests in the polar regions require that the United States immediately program, budget, design, and construct two new polar icebreakers to be operated by the U.S. Coast Guard,” and that “[t]o provide continuity of U.S. icebreaking capabilities, the POLAR SEA should remain mission capable and the POLAR STAR should remain available for reactivation until the new polar icebreakers enter service.”<sup>16</sup>

Following the publication of the NRC report, in 2008 Congress directed the Coast Guard to undertake its own study of icebreaking and other capabilities needed to fulfill its statutory missions in the polar regions, known as the High Latitude Study (HLS). On July 20, 2011, the HLS was provided to Congress. It concludes that, in order to fulfill Coast Guard statutory missions in both polar regions, the Coast Guard requires three heavy and three medium icebreakers. Furthermore, the study concludes that, in order to fulfill its statutory missions in the polar regions *and* maintain the continuous presence requirements of the Navy’s Naval Operations Concept, the Coast Guard requires six heavy and four medium icebreakers.

On October 15, 2010, the President signed into law the Coast Guard Authorization Act of 2010 (CGAA). The CGAA included a mandate that the Coast Guard require a non-governmental, independent third party with extensive experience in the analysis of military procurements to conduct a comparative cost-benefit business case analysis (BCA) of rebuilding the existing fleet of polar icebreakers on the one hand, and constructing new polar icebreakers on the other.<sup>17</sup> Included in the scope of the required BCA was a comparative treatment of the costs and benefits associated with the operation of such assets by the Coast Guard versus their operation by the National Science Foundation.<sup>18</sup> The BCA, which was provided to the Committee on November 2, 2011, contains the following summary findings:

In order for the Nation to address its polar icebreaker shortfall, this analysis concludes:

- The polar icebreaker fleet should be recapitalized by constructing new heavy polar icebreakers for operation by the Coast Guard.

<sup>16</sup> Nat’l Research Council of the Nat’l Academies, *Polar Icebreakers in a Changing World* 100–101 (2007).

<sup>17</sup> Coast Guard Authorization Act of 2010, Pub. L. 111-281 § 307(f), 124 Stat. 2905, 2928 (2010).

<sup>18</sup> *Id.*

- The acquisition of heavy polar icebreakers within the existing Coast Guard budget would have significant adverse impact on all Coast Guard activities.
- Given the age of the Polar Star, and based on inspection records and ship visits, there is risk to assume Polar Star can remain fully operational until at least 2020 once it completes its revitalization.
- The design-build timetable for a new heavy icebreaker, even under an aggressive schedule, is at best eight years. It is paramount that planning and budgeting begin immediately.

The recapitalization of the polar icebreaker fleet cannot be funded within the Coast Guard budget. The requirement for full up-front funding places undue pressure on the acquisition of major assets. Even if such requirements can be waived; the Coast Guard budget does not have the tradespace for incremental funding of polar icebreakers.

... An approach that should be considered is that which was used for the icebreaker Healy. After the Administration identified the need for one additional Coast Guard icebreaker, \$329 million was appropriated for the “Coast Guard icebreaker ship program” in the FY 1990 Department of Defense (DOD) Budget (Pub. L. 101–165 of November 21, 1989). There is considerable strain on the DOD budget, thus a means to relieve that stress would be to provide relief from the requirement for full up-front funding such as used for the U.S. Navy’s Aircraft Carrier procurements which would reduce single year funding impacts.<sup>19</sup>

Notably, although not required by the congressional mandate, the BCA includes a treatment of the costs and benefits of leasing polar icebreakers. The BCA identifies a number of drawbacks to the leasing option, the most notable of which is the following:

Finally, the lack of a currently existing domestic commercial vessel capable of meeting requirements reduces available options to Purchase and Build-to-Lease. A theoretical Cost-Benefit Analysis comparison of Build-to-Lease versus Purchase suggests that the lease option may actually be more costly at reasonable profit rates (12 percent) over the expected 30-year life of the asset.<sup>20</sup>

The Committee wishes to express its agreement with the conclusions of the NRC report, the HLS, and the BCA. It is of critical importance to our present and future national interests to, at a bare minimum, maintain the Coast Guard’s current polar icebreaking fleet, thereby maintaining its operational capabilities in the polar

<sup>19</sup> ABS Consulting, U.S. Polar Icebreaker Recapitalization, A Comprehensive Analysis and Its Impacts on U.S. Coast Guard Activities VI–VII (2011).

<sup>20</sup> *Id.* L-1.

regions. Indeed, the Committee notes that this is required under current law. The Coast Guard is required by its organic statute to “develop, establish, maintain, and operate, with due regard to the requirements of national defense . . . ice-breaking facilities . . . for the promotion of safety on, under, and over the high seas and waters subject to the jurisdiction of the United States.”<sup>21</sup> The Homeland Security Act of 2002 reiterates this and related duties of the Coast Guard by specifying ice operations as one of the Service’s 11 statutory missions.<sup>22</sup> Furthermore, the Homeland Security Act clearly states that “the authorities, functions, and capabilities of the Coast Guard to perform its missions shall be maintained intact and without significant reduction after the transfer of the Coast Guard to the Department [of Homeland Security], except as specified in subsequent Acts,” and “[t]he Secretary may not substantially or significantly reduce the missions of the Coast Guard or the Coast Guard’s capability to perform those missions, except as specified in subsequent Acts.”<sup>23</sup> Far from specifying any reduction in the Coast Guard’s polar icebreaking assets, Congress has consistently supported maintaining the Service’s polar icebreakers.<sup>24</sup> As Coast Guard mission demands continue to evolve and increase concomitant with increased human activity in the changing polar regions, the importance of Coast Guard polar icebreaking capability adequate to meet those demands cannot be overstated. Without that capability, the Coast Guard cannot remove navigational hazards in order to maintain maritime mobility and safety of life and property at sea. It cannot assist or escort vessels in distress, or those beset or stranded in ice.

#### **Marine Environmental Protection**

Another critical mission of the Coast Guard is its statutory mission of marine environmental protection (MEP). The Coast Guard is designated by the President as the Federal On-Scene Coordinator (FOSC) for all oil spills other than inland spills, under the National Contingency Plan. To understand the importance of the MEP mission and the Coast Guard’s leadership role as the FOSC for coastal and marine spill response, one need look no further than the explosion of the mobile offshore drilling unit DEEPWATER HORIZON and resulting crude oil leak in the Gulf of Mexico in 2010.

On April 20, 2010, the DEEPWATER HORIZON suffered an explosion after capping an exploratory oil well 42 miles southeast of Venice, Louisiana. The explosion originated from a methane gas build-up within the well, which shot up and out of the drill column

<sup>21</sup> 14 U.S.C. § 2 (2010).

<sup>22</sup> 6 U.S.C. § 468(a) (2010).

<sup>23</sup> 6 U.S.C. § 468(c) & (e) (2010).

<sup>24</sup> See Coast Guard and Maritime Transportation Act of 2006, Pub. L. 109-241, § 210 (2006) (requiring, *inter alia*, that: (1) the Coast Guard formulate a plan for the operation and maintenance after fiscal year 2006 of the POLAR STAR, POLAR SEA, and HEALY, and for the long-term recapitalization of those assets; and (2) the Secretary of the department in which the Coast Guard is operating take all necessary measures to ensure that the Coast Guard maintains, at a minimum, its current vessel capacity for carrying out ice breaking in the Arctic and Antarctic, Great Lakes, and New England regions); H. COMM. ON APPROPRIATIONS, 110TH CONG., CONSOLIDATED SECURITY, DISASTER ASSISTANCE, AND CONTINUING APPROPRIATIONS ACT, 2009, at 646 (Comm. Print 2008) (appropriating \$30,300,000 for fiscal year 2009 to reactivate the POLAR STAR for an additional seven to ten years of service life); and H. REP. NO. 111-298, at 89 (2009) (Conf. Rep.) (providing an additional \$32,500,000 in fiscal year 2010 to complete the reactivation and service life extension of the POLAR STAR).

and ignited upon reaching the platform. Most of the rig's workers were able to evacuate the platform as it burned; however, 11 workers were never found. Following the sinking of the rig, it was discovered that oil was gushing from the unsecured well about 5,000 feet below the water's surface and a leak began to spread at the site. By July 15, when the gushing wellhead was finally capped—nearly three months after the spill began—approximately 4.9 million barrels (205,800,000 gallons) of crude oil had been released into the Gulf of Mexico in the largest accidental marine oil spill in history.

As the FOSC for the DEEPWATER HORIZON disaster, the Coast Guard was called upon to direct and coordinate an effective response, sustained over the course of several months, to a subsea crude oil leak of almost inconceivable proportions. While the Service appears to have met this challenge without any significant gaps in operational capabilities elsewhere, it is clear from the demands placed on it in responding to this catastrophic event that the Coast Guard must have the authorities and resources necessary to support the full range of Coast Guard capabilities in support of the MEP mission. Furthermore, it is crucial that the Coast Guard have the autonomy and flexibility to stage those resources as necessary to most effectively and efficiently employ them in a given MEP response operation. As an example, the ability to assign national response functions and staff throughout the Coast Guard, rather than maintaining a National Strike Force Coordination Center in one physical location, would promote increased flexibility, responsiveness, efficiency, and cost savings.

The DEEPWATER HORIZON oil spill has also highlighted the need for improved basic oceanographic research and the research and development of new oil spill response and removal technologies. Oceanographic and meteorological observations provide data that contribute to a greater understanding of ocean surface current flows. This, in turn, increases the accuracy of oil spill trajectory models, which are critical to the oil spill response effort. Acquiring this data over long time periods improves prediction accuracy, so resources can be mobilized in the right place at the right time. More innovative technologies, such as unmanned maritime vehicles (UMVs) and self-propelled ocean gliders improve the understanding of the ocean. The UMVs can collect ocean data over long distances while providing real-time data telemetry to undersea sensors. This information can include oxygen content, temperature, wave height, density and presence (or absence) of hydrocarbons and other sensors that can aid in accurate underwater plume mapping and the assessment of the health of underwater habitats. The Committee supports the use of UMVs and other cost-saving maritime technologies to complement and enhance the Coast Guard's MEP capabilities, especially such technologies which also have potential applications in other Coast Guard missions, such as search and rescue; ports, waterways, and coastal security; drug interdiction; and migrant interdiction.

#### SUMMARY OF PROVISIONS

S. 1665, as reported, would authorize appropriations for the Coast Guard accounts covered in the bill totaling approximately \$10.112 billion for each of FY 2012 and FY 2013, and would au-

thorize an end-of-year strength for active duty personnel of 47,000 for FY 2012 and 49,350 for FY 2013. The bill would mandate that all budget authority for the operation and maintenance of Coast Guard vessels, aircraft, systems, aids to navigation, infrastructure, and any other Coast Guard assets be allocated to the Coast Guard. The bill would make a number of refinements to Coast Guard authorities relating to its ice operations mission, the most important of which would be to make the Coast Guard the sole provider of polar icebreaking services to agencies of the Federal Government, and require the Secretary of Homeland Security to ensure that the Coast Guard continues to operate a minimum of one medium and two heavy polar icebreakers as part of its fleet. The bill would extend the current authority for expedited hiring of major acquisitions experts to work on the Coast Guard's ongoing fleet recapitalization efforts from the current 2012 deadline to 2015. The bill would also authorize the Coast Guard advance procurement funding authority for the purchase of new ship construction materials, parts, and components that have a long "lead time" for their manufacture or production.

#### LEGISLATIVE HISTORY

S. 1665 was introduced on October 6, 2011, by Senator Begich, and was referred to the Committee on Commerce, Science, and Transportation. Senator Rockefeller and Senator Snowe are original cosponsors of the legislation. On November 2, 2011, the Committee ordered that S. 1665 be reported with an amendment in the nature of a substitute.

#### ESTIMATED COSTS

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

JANUARY 13, 2012.

Hon. JOHN D. ROCKEFELLER IV,  
*Chairman, Committee on Commerce, Science, and Transportation,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1665, the Coast Guard Authorization Act for Fiscal Years 2012 and 2013.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*S. 1665—Coast Guard Authorization Act for Fiscal Years 2012 and 2013*

Summary: S. 1665 would amend various laws that govern the activities of the United States Coast Guard (USCG). The bill also would authorize appropriations totaling about \$19 billion, primarily for ongoing USCG operations during 2012 and 2013 (\$8.5 billion has already been appropriated for fiscal year 2012). As a result, CBO estimates that appropriating the additional amounts specifi-

cally authorized by the bill and additional amounts estimated to be necessary would cost about \$9.1 billion over the 2013–2017 period.

The bill also would increase the authority of the Coast Guard to receive direct appropriations from the Oil Spill Liability Trust Fund (OSLTF) in the event of a significant oil spill in United States waters. As a result, the bill would increase direct spending by \$3 million over the 2012–2021 period, CBO estimates; therefore, pay-as-you-go procedures apply.

Enacting the bill could result in the collection of additional criminal or civil penalties because it would establish new penalties for certain violators of environmental law. Penalties are recorded as revenues and deposited in the U.S. Treasury. However, based on the small number of cases involved, CBO estimates that such collections would be minimal and the effect on revenues would be insignificant.

S. 1665 contains intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would increase the costs of complying with existing mandates related to active-duty personnel in the Coast Guard. The bill would impose additional private-sector mandates on owners and operators of vessels. CBO estimates that the aggregate cost of complying with the mandates would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$73 million and \$146 million, respectively, in 2012, adjusted annually for inflation).

**Estimated cost to the Federal Government:** The estimated budgetary impact of S. 1665 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—						
	2012	2013	2014	2015	2016	2017	2012–2017
<b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION</b>							
United States Coast Guard Authorizations:							
Authorization Level <sup>a</sup> .....	119	8,645	0	0	0	0	8,764
Estimated Outlays .....	19	5,989	1,494	533	331	156	8,522
Polar Ice Breakers:							
Estimated Authorization Level .....	0	1,750	0	0	0	0	1,750
Estimated Outlays .....	0	50	100	100	100	200	550
Seafarers Fund:							
Authorization Level .....	2	2	2	0	0	0	5
Estimated Outlays .....	*	2	2	1	0	0	5
Total Changes:							
Estimated Authorization Level .....	121	10,397	2	0	0	0	10,520
Estimated Outlays .....	19	6,041	1,596	634	431	356	9,077
<b>CHANGES IN DIRECT SPENDING</b>							
Oil Spill Liability Trust Fund <sup>b</sup>							
Estimated Budget Authority .....	*	*	*	*	*	*	1
Estimated Outlays .....	*	*	*	*	*	*	1
<b>CHANGES IN REVENUES</b>							
Estimated Revenues .....	*	*	*	*	*	*	*

Note: \* = less than \$500,000.

<sup>a</sup> The level for 2012 is the additional amount necessary to reach the total authorization under the bill. To date, about \$8.5 billion has been appropriated for ongoing Coast Guard activities in 2012.

<sup>b</sup> CBO estimates that direct spending under S. 1665 would total \$3 million over the 2012–2022 period.

Basis of estimate:

*Spending Subject to Appropriation*

For this estimate, CBO assumes that S. 1665 will be enacted in fiscal year 2012 and that the amounts authorized by the bill will be appropriated for each year. Estimated outlays are based on historical spending patterns for authorized activities.

CBO estimates that appropriating the amounts authorized by the bill and estimated to be necessary would cost about \$9.1 billion over the 2012–2017 period. The cost estimate does not include \$90 million in spending by the USCG that would be derived from the OSLTF for operating and research expenses because that amount is already authorized under existing law.

USCG Authorizations. S. 1665 would authorize funding for ongoing USCG activities for 2012 and 2013. Specifically, the bill would authorize the appropriation of about \$17.3 billion for USCG operations (including about \$14 billion for operations and maintenance, \$2.8 billion for capital acquisitions, \$274 million for reserve training, \$40 million for research programs, \$34 million for environmental compliance, and \$32 million for construction on certain bridges). Those activities received appropriations totaling about \$8.5 billion in 2012. The bill would authorize \$8.6 billion for 2012, leaving a remaining authorization level for 2012 of \$119 million. The bill also would extend the Coast Guard's authority to expedite the hiring of certain personnel in areas where there are staffing shortages and would give the Coast Guard additional flexibility in procurement. Assuming appropriation of the amounts specified in the bill for 2013, CBO estimates that implementing those provisions of S. 1665 would cost \$8.5 billion over the 2012–2017 period.

The bill also would authorize the appropriation of about \$1.4 billion for Coast Guard retirement benefits in fiscal year 2012 and about \$1.5 billion for such benefits in fiscal year 2013, but those amounts are excluded from this estimate because such benefits are considered an entitlement under current law and are not subject to appropriation. Thus, authorizing the appropriation of those amounts would have no additional budgetary impact.

Polar Ice Breakers. Section 403 would require the USCG to acquire and maintain at least two vessels capable of breaking up heavy ice. Currently, the USCG has no such vessels in operation but is rehabilitating one vessel to provide such capabilities until 2020. The design and construction of a new icebreaker would take 8 to 10 years. As a result, the USCG would require appropriations to procure a vessel many years before that vessel is expected to be in service. Based on information from the USCG, building two polar icebreakers would cost about \$1.8 billion (\$875 million per vessel). CBO estimates that the Coast Guard would spend about a third of the construction funds (\$550 million) over the 2013–2017 period.

Seafarers Fund. Section 502 would authorize the appropriation of \$1.5 million per year over the 2012–2014 period to support certain seamen who are required to remain in the United States as witnesses in judicial proceedings and who are not financially supported by the owner of their vessel or who were abandoned by their vessel. Based on information from the Coast Guard, CBO estimates

that enacting the provisions of section 502 would cost about \$5 million over the 2012–2017 period.

#### *Direct Spending*

Section 602 of the bill would authorize certain administrative costs to process claims to be taken from the OSLTF in cases where the President declares a future oil-spill incident to be a “spill of national significance.” Under current law, the federal administrative costs to process claims are subject to appropriation. (In recent years, the USCG has received an appropriation of about \$25 million for such activities.) Since 1990, there have been two oil spills of national significance. While the frequency of major spills remains subject to a great deal of uncertainty, CBO estimates that there will be few major spills in future years. The probability of such a spill in any given year is small but not zero. As a result, CBO estimates that implementing this provision would not increase direct spending by significant amounts in any one year; over the 2012–2022 period, we estimate that such spending would total about \$3 million on an expected-value basis.

#### *Revenues*

Enacting the bill could result in the collection of additional civil or criminal penalties because it would establish new penalties for certain violators of environmental law. Those penalties would be deposited into the Seafarers Fund if the balances in that fund were below \$5 million. Penalties are recorded as revenues and deposited in the U.S. Treasury. However, based on the small number of cases involved, CBO estimates that such collections would be minimal and the effect on revenues would be insignificant.

**Pay-As-You-Go considerations:** The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 1665 AS ORDERED REPORTED BY THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION ON NOVEMBER 2, 2011

	By Fiscal Year, in Millions of Dollars													
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012–2017	2012–2022	
NET INCREASE OR DECREASE (–) IN THE DEFICIT														
Statutory Pay-As-You-Go Impact .....	0	0	0	0	0	0	0	0	0	0	0	1	3	

**Intergovernmental and private-sector impact:** S. 1665 contains intergovernmental and private-sector mandates as defined in UMRA because it would increase the costs of complying with existing mandates related to active-duty personnel in the Coast Guard. The bill would impose additional private-sector mandates on owners and operators of vessels. CBO estimates that the aggregate cost of complying with the mandates would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$73 million and \$146 million, respectively, in 2012, adjusted annually for inflation).



*Mandates that Apply to Both Public and Private Entities*

The bill would increase the costs of complying with existing intergovernmental and private-sector mandates by increasing the number of active-duty personnel in the Coast Guard. The additional personnel would be eligible for protections under the Servicemembers Civil Relief Act (SCRA). Under SCRA, servicemembers have the right to maintain a single state of residence for purposes of paying state and local personal income taxes. They also have the right to request a deferral in the payment of certain state and local taxes and fees. In addition, SCRA requires creditors to charge no more than 6 percent interest on servicemembers' obligations when such obligations predate active-duty service and allows courts to temporarily stay certain civil proceedings, such as evictions, foreclosures, and repossessions. Extending these existing protections to additional servicemembers would constitute mandates as defined in UMRA and could result in lost revenues to public and private entities.

The number of active-duty servicemembers covered by SCRA would increase by less than 1 percent, CBO estimates. Servicemembers' utilization of the various provisions of the SCRA depends on a number of uncertain factors, including how often and how long they are deployed. CBO expects, however, that relatively few of the added servicemembers would take advantage of the deferrals in certain state and local tax payments; thus, the lost revenues to those governments would be insignificant. Moreover, because the increase in the number of active-duty servicemembers covered by SCRA would be so small, CBO expects that the increased costs for private-sector entities also would be small.

*Mandates that Apply to Private Entities Only*

The bill would impose a mandate by accelerating requirements related to oil spill response in the Puget Sound. Current law requires the Coast Guard to initiate a rulemaking that would modify the definition of the "higher volume port area" to move the western boundary of the higher volume port area in the Strait of Juan de Fuca. Modifying the definition will expand the area covered by various federal oil spill response regulations. The bill would codify the modified definition and make any requirements related to oil spill response applicable on July 1, 2012. By doing so, the bill would probably require private entities to comply with the existing requirements related to oil spill responses in higher volume port areas earlier than currently anticipated. According to industry sources, much of the industry already complies with the requirements for higher volume ports and the additional cost to comply with those requirements sooner than under current law would be small.

The bill also would require ship owners to pay certain expenses of seamen who are abandoned under the conditions specified in the bill. The bill would require ship owners who do not pay those expenses to reimburse the Support of Seafarers Fund the total amount paid from the fund to support the seamen, plus a surcharge of 25 percent.

According to industry sources, situations in which ship owners would have to pay such expenses are rare, and payments would

probably be low. Therefore, CBO estimates that the cost to ship owners to comply with this mandate would be minimal.

Previous CBO estimate: On September 30, 2011, CBO transmitted a cost estimate for H.R. 2838, the Coast Guard and Maritime Transportation Act of 2011, as ordered reported by the House Committee on Transportation and Infrastructure. That bill also authorized programs operated by the Maritime Administration and the Federal Maritime Commission and would cost about \$24.4 billion over the 2012–2016 period, CBO estimates. The CBO cost estimates reflect the different provisions in those legislative proposals. In addition, CBO's estimate for H.R. 2838 was completed before appropriations for 2012 were enacted. This estimate (for S. 1665) reflects such appropriations.

Estimate prepared by: Federal Costs: Sarah Puro; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

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

##### NUMBER OF PERSONS COVERED

S. 1665 as reported by the Committee would authorize appropriations to continue existing Coast Guard programs and make a number of changes to current law. The bill would have little, if any, regulatory impact.

##### ECONOMIC IMPACT

S. 1665 would enhance existing Coast Guard statutory authorities and authorize funding and levels of military strength and training in support of Coast Guard operations and activities that positively impact the Nation's economy.

##### PRIVACY

The bill, as reported, is not expected to impact the personal privacy of individuals.

##### PAPERWORK

The reported bill is not expected to result in increased paperwork requirements for individuals or businesses.

#### CONGRESSIONALLY DIRECTED SPENDING

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

Section	Provision	Member
Sec. 603	Oil spill liability trust fund investment amount	Senator Begich

## SECTION-BY-SECTION ANALYSIS

### *Section 1. Short Title.*

This section would provide that the legislation may be cited as the “Coast Guard Authorization Act for Fiscal Years 2012 and 2013”.

## TITLE I—AUTHORIZATION

### *Section 101. Authorization of Appropriations.*

This section would authorize funds to be appropriated as follows for FYs 2012 and 2013: \$7.078 billion for operating expenses for each FY; \$1.421 billion for acquisition, construction, and improvements (AC&I) for each FY; \$19.8 million for research, development, test, and evaluation (RDT&E) for each FY; \$1.440 billion for retired pay for FY 2012 and such sums as are required for FY 2013; \$16 million for alteration or removal of bridges for each FY; \$16.7 million for environmental compliance and restoration for each FY; and \$136.8 million for the reserve program for each FY.

### *Section 102. Authorized Levels of Military Strength and Training.*

This section would authorize an end-of-year strength for active duty personnel of 47,000 for FY 2012 and 49,350 for FY 2013. This section also would authorize average military training student loads for FYs 2012 and 2013 as follows:

CHART 1

Training	FY 2012 Student years	FY 2013 Student years
Recruit/Special .....	2,500	2,625
Flight .....	165	173
Professional .....	350	368
Officer Acquisition .....	1,200	1,260

## TITLE II—ORGANIZATION

### *Section 201. Coast Guard Authority to Operate and Maintain Coast Guard Assets.*

This section would amend section 93 of title 14, United States Code, to mandate that all authority, including budget authority, for the operation and maintenance of Coast Guard vessels, aircraft, systems, aids to navigation, infrastructure, and any other Coast Guard assets shall be allocated to the Coast Guard and the department in which the Coast Guard is operating.

### *Section 202. Clarification of Coast Guard Ice Operations Mission.*

This section would amend chapter 5 of title 46, United States Code, to mandate that the Coast Guard be the sole supplier of icebreaking services, on an advancement or reimbursable basis, to each Federal agency that requires icebreaking services. In the

event the Coast Guard is unable to provide these services, a Federal agency would be permitted to acquire icebreaking services from another entity. This section also amends section 110 of the Arctic Research and Policy Act of 1984 (15 U.S.C. 4109), and section 312 of the Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 2441), to ensure that OMB and DHS consider all statutory missions of the Coast Guard when allocating funds for icebreaking operations.

### TITLE III—PERSONNEL

#### *Section 301. Acquisition Workforce Expedited Hiring Authority.*

This section would amend the acquisition workforce expedited hiring authority provided in section 404 of the Coast Guard Authorization Act of 2010 (124 Stat. 2950), to clarify the term “shortage category positions,” make a technical correction addressing the use of the term “paragraph” (vice “section”), and extend the authority until 2015, consistent with DOD authority.

#### *Section 302. Officers Recommended for Promotion.*

This section would make a technical correction to section 259 of title 14, United States Code, regarding the selection process for officers recommended for promotion. The current law requires boards to completely review and determine the status of all selected and non-selected officers on the promotion list before considering any for reordering, a cumbersome process that advantages no one and creates the potential for administrative or clerical errors. This section would permit selection boards to both select officers for promotion and “reorder” them on the selection list at the same time. Selection for promotion and reordering are complementary processes; doing them concurrently is more efficient than doing them sequentially. This section would also improve selection board efficiency and reduce the potential for administrative errors without compromising fairness for the considered population.

#### *Section 303. Original Appointment of Permanent Commissioned Officers.*

This section would define the term “original” to eliminate the need for Senate confirmation of an officer who leaves and returns to the Coast Guard under the Temporary Separation Program. When an officer returns to the Coast Guard under the Temporary Separation Program, the officer’s re-appointment does not involve a promotion, and is therefore not “original” in substance. Nonetheless, due to the fact that the term “original” is not defined in statute, the re-appointment is submitted for Senate confirmation. To address this issue within the other armed forces, Congress has defined the term “original” to mean the “most recent appointment . . . that is neither a promotion nor a demotion.” (10 U.S.C. 101(b)(10)). This section would adopt a substantively identical definition for the purposes of section 211 of title 14, United States Code. This section also would ensure that members of the Coast Guard are, for the purposes of disability determinations, treated in the same manner as members of the other armed forces.

*Section 304. Academy Pay, Allowances, and Emoluments.*

In the case of foreign nationals admitted to the U.S. Military Academy, the U.S. Naval Academy, or the U.S. Air Force Academy for instruction, the Academies are authorized to pay for medical expenses and to recover the cost from the foreign national's government (see 10 U.S.C. 4344(b), 6957(b), 9344(b)). The Coast Guard Academy, however, is not so authorized and thus, must require foreign nationals to be insured for health care costs. Currently, notwithstanding this requirement, some foreign nationals matriculate at the Academy without such insurance while others permit such insurance to lapse during the course of study. Often, the Academy is unable to resolve the issues satisfactorily before a cadet requires medical care. To address this disparity, this section would amend section 195 of title 14, United States Code, to permit the Coast Guard Academy, like the other military academies, to pay for medical costs of foreign nationals and recover the same from the foreign nationals' governments. Additionally, it would make minor conforming amendments to subsections (c) and (d) of section 195 of title 14, United States Code, to provide consistency in the use of the term "foreign national" throughout section 195 of title 14, United States Code.

*Section 305. Academy Policy on Sexual Harassment and Sexual Violence.*

This section would amend chapter 9 of title 14, United States Code, with respect to the Coast Guard Academy policy on sexual harassment and sexual violence to bring parity with the U.S. Military Academy, the U.S. Naval Academy, and the U.S. Air Force Academy. Sections 4361, 6980, and 9361 of title 10, United States Code, establish identical policy, survey, and reporting requirements for the U.S. Military Academy, the U.S. Naval Academy, and the U.S. Air Force Academy, respectively, with regard to Federal policy on sexual harassment and sexual violence applicable to personnel at the military academies. On the other hand, a repealed provision of law (National Defense Authorization Act for Fiscal Year 2004, P.L. 108–136, § 527, 117 Stat. 1392, 1468 (2003), repealed by John Warner National Defense Authorization Act for Fiscal Year 2007, P.L. 109–364, § 532(c), 120 Stat. 2205 (2006))—which established a like, but not identical, policy, survey, and reporting requirement for the U.S. Military Academy, the U.S. Naval Academy, and the U.S. Air Force Academy served as the basis for the current policy, survey, and reporting requirements for cadets and personnel of the Coast Guard Academy. The requirements of sections 4361, 6980, and 9361 of title 10, United States Code, and those of the repealed statute are not perfectly aligned. Moreover, the manner in which the repealed provision of law is made applicable creates ambiguities that frustrate the Coast Guard Academy's ability to participate in the DOD-executed survey process and harmonize the release of data. To address this incongruence, this section would codify language that is substantively identical to that of sections 4361, 6980, and 9361 of title 10, United States Code, as Federal policy on sexual harassment and sexual violence applicable to Coast Guard Academy personnel.

*Section 306. Coast Guard Auxiliarists Enrollment Eligibility.*

This section would amend section 823 of title 14, United States Code, to establish parity with active duty Coast Guard by permitting non-U.S. citizens who have been granted permanent resident status to become members of the Coast Guard Auxiliary. Currently, section 823 of title 14, United States Code, limits membership in the Coast Guard Auxiliary to citizens of the United States and its territories and possessions. Non-U.S. citizens who have been granted permanent resident status are, however, permitted to serve in the active duty Coast Guard.

TITLE IV—ADMINISTRATION

*Section 401. Advance Procurement Funding.*

This section would provide the Secretary of the department in which the Coast Guard is operating advance procurement funding authority in order to permit the acquisition of long lead time items for the construction of Coast Guard vessels. This would include: materials, parts, components, and effort for the vessel; the advance construction of parts or components for the vessel; the protection and storage of materials, parts, or components for the vessel; and production planning, design, and other related support services that reduce the overall procurement lead time of the vessel.

*Section 402. Multi-Year Procurement Authority for Coast Guard National Security Cutters.*

This section would provide the Secretary of the department in which the Coast Guard is operating authority to enter into a multi-year contract for the procurement of NSCs and Government-furnished equipment associated with the NSC program as long as the Secretary submits to Congress a certification that such a contract will result in substantial savings of total anticipated costs of carrying out the program through annual contracts.

*Section 403. Requirement to Maintain United States Polar Icebreaking Capability.*

This section would require the Secretary of the department in which the Coast Guard is operating to acquire not less than two polar icebreakers for the Coast Guard either through new construction or by rebuilding existing assets. It would authorize the appropriation of such sums as are necessary to acquire, maintain, and operate the polar icebreakers. This section would also prohibit the Commandant of the Coast Guard from transferring, relinquishing ownership of, or recycling the POLAR STAR or the POLAR SEA. Further, the Coast Guard would not be allowed to expend any funds associated with the decommissioning of either heavy icebreaker according to this section.

*Section 404. Forward Operating Facility.*

This section would permit the Secretary of the department in which the Coast Guard is operating to construct or lease a hangar, a berthing, and messing facilities in the Aleutian Island-Bering Sea operating area. The infrastructure in this region is very limited and forward operating facilities with the capabilities to support air-

craft maintenance and provide shelter for Coast Guard helicopters would help the Service perform its missions in these remote areas.

*Section 405. National Response Functions.*

Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), provides for the establishment of a National Response Unit (now commonly known as the National Strike Force Coordination Center) and expressly requires that this unit be located in Elizabeth City, North Carolina. The Coast Guard is seeking the opportunity to gain efficiencies and cost savings through distributing National Strike Force Coordination Center personnel and functions throughout other elements of the Coast Guard's Marine Environmental Response program. The limitations of section 311 of that Act, however, do not permit the Coast Guard to realize these efficiencies. This section would repeal both the statutory references to the Unit and limitations as to location while preserving the Secretary's related authority and mandates. It would permit the assignment of national response functions and staff to Marine Environmental Response program elements throughout the Coast Guard.

*Section 406. Conforming Amendment.*

This section would repeal a prior study on icebreakers, including a mandate on the operation and maintenance, reimbursement, and authorization of appropriations.

TITLE V—SHIPPING AND NAVIGATION

*Section 501. Designation of St. George Harbor as a Harbor of Refuge.*

This section would require the Commandant of the Coast Guard to consult with other appropriate Federal agencies, and with State and local interests, to determine improvements necessary to make the harbor at St. George, Alaska, a fully functional harbor of refuge throughout the year. The consultation would be required to be completed within one year of the date of enactment of the Act.

*Section 502. Protection and Fair Treatment of Seafarers.*

This section would create a legal and fiscal remedy for two intractable, often interrelated problems: humanitarian relief for seafarers abandoned in the United States and support of seafarers who are witnesses to maritime-related crimes. In both instances, this section would allow the Secretary of the department in which the Coast Guard operates to draw from a special fund to pay necessary support for abandoned seafarers, including seafarers who are witnesses in Coast Guard investigations and subsequent proceedings. Under current law, the Coast Guard has limited ability to assist abandoned seafarers, including those whose testimony is necessary for an investigation.

*Section 503. Delegation of Authority.*

This section would amend section 3316 of title 46, United States Code, to eliminate a loophole in the law that allows the foreign-based classification societies that represent the United States to also represent the governments of countries designated by the Sec-

retary of State as a State Sponsor of Terrorism. It would prohibit the Secretary of Homeland Security and U.S. Coast Guard from delegating vessel inspection and certification authority to a foreign-based classification society that also provides these services to or on behalf of the governments of countries designated by the Secretary of State as a State Sponsor of Terrorism.

*Section 504. Report on Establishment of Arctic Deep Water Port.*

This section would require the Coast Guard to conduct a study on the feasibility and potential of establishing a deep water sea port in the Arctic to protect and advance U.S. strategic interests within the Arctic region. The report of findings shall be submitted to Congress not later than one year after the date of enactment.

*Section 505. Risk Analysis of Transporting Canadian Tar Sands.*

This section would require the Commandant of the Coast Guard to assess the increased vessel traffic in the Salish Sea (including the Puget Sound, the Strait of Georgia, Haro Strait, Rosario Strait, and the Strait of Juan de Fuca) that may occur from the transport of Canadian tar sands oil. It would require that this assessment include, at a minimum, certain specific considerations, such as potential for increased tank barge and tank vessel traffic, spill response capability in shared water of the United States and Canada in the Salish Sea, vessel emergency response towing capability at the Entrance to the Strait of Juan de Fuca, tug escort requirements for laden tank vessels, and a risk assessment of the increasing tank vessel and tank barge traffic associated with Canadian tar sands development. In conducting the required analysis, the Commandant would be required to consult with affected State and tribal governments, and would also be strongly encouraged to consult with the Secretary of State. The Commandant would be required to submit recommendations based on the analysis to this Committee and the Committee on Transportation and Infrastructure of the House of Representatives not later than 180 days after the date of enactment of this Act, and to consider in those recommendations a full range of options to manage any increased maritime traffic and minimize any increased likelihood of an oil spill, including legislation, rulemaking, and cooperative agreements for shared funding of spill prevention and response systems.

TITLE VI—MISCELLANEOUS

*Section 601. Conveyance of Decommissioned Coast Guard Cutter STORIS.*

This section would authorize the conveyance of the decommissioned Coast Guard Cutter STORIS to the Storis Museum in Juneau, Alaska, provided: the museum agrees to use the vessel as a historic memorial; the cutter is made available to the public as a museum; the museum works cooperatively with other museums to provide education and memorialize the maritime heritage of the STORIS and other maritime activities in Alaska, the Pacific Northwest, the Arctic Ocean, and adjacent oceans and seas; the vessel is not used for commercial transportation purposes; the vessel is made available to the Federal Government if needed for use by the Commandant in time of war or national emergency; the museum



holds the Federal Government harmless for any claims arising from exposure to hazardous materials; and the museum agrees to any other conditions the Commandant considers appropriate.

*Section 602. Coast Guard Administrative Costs.*

Although the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), makes Oil Spill Liability Trust Fund (OSLTF) amounts available to pay claims for damages without further appropriation, the President's use of the OSLTF to process claims is subject to annual appropriations that do not contemplate surge requirements for major spills. Just as major spills, such as the DEEPWATER HORIZON spill of national significance, require extraordinary Federal oil removal efforts and costs to meet public expectations of an effective clean-up, such spills can generate similar public expectations of prompt and effective compensation by responsible parties or by the National Pollution Funds Center (NPFC) using the OSLTF. This section would close this funding gap by making the amounts available to pay the NPFC's administrative and personnel costs to process claims.

*Section 603. Oil Spill Liability Trust Fund Investment Amount.*

This section would increase the principal amount of funds that support the Oil Spill Recovery Institute (OSRI) by \$12.851 million to account for reduced funding in recent years as a result of low interest rates and inflation. The OSRI conducts research and develops technologies to prevent and mitigate the effects of oil spills, and has a unique capability to conduct such research in Arctic and sub-Arctic regions. As hydrocarbon resources are developed in these regions, new research will be needed to mitigate potential spills in extreme cold water and icy conditions.

*Section 604. Dry Dock Operation.*

This section would clarify that a vessel transported in Dry Dock #2 (if, during such transportation, such dock remains connected by a utility or other connecting line to shoreside connections in Ketchikan, Alaska) is not "merchandise" for the purposes of the coastwise trade requirements that apply to vessels generally.

*Section 605. Technical Amendments.*

This section would make technical corrections to section 290(a) and section 740(d) of title 14, United States Code.

*Section 606. Vessel Determinations.*

This section would provide that the documented U.S. vessels with official numbers 981472 and 988333 shall be deemed new vessels following the completion of their major shipyard reconstruction projects. The certificates of documentation showing the "new vessel" status for those vessels may not be issued until there are no encumbrances on record for those vessels with the Coast Guard National Vessel Documentation Center at the time of issuance. The vessels would retain their official numbers of 981472 and 988333, and this section would not change U.S. Coast Guard vessel safety and inspection requirements applicable to each vessel prior to the enactment of this section.

*Section 607. Alteration of Bridge Obstructing Navigation.*

This section would require the Commandant to certify to Congress that the Coast Guard has commenced the interagency administrative review of the pending proposal to alter the obstruction to navigation of the Bayonne Bridge no later than 15 days after enactment. This section would also require the Commandant to expedite this interagency administrative review making use of all resources offered to the Coast Guard by the bridge owner and be completed with this review no later than December 31, 2011.

*Section 608. Documentation of LNG Tankers.*

This section would allow the issuance of certificate of documentation with a coastwise endorsement to documented U.S. vessels with official numbers 595752, 595753, and 595755. The issuance of coastwise endorsement would be limited to carriage of natural gas only.

*Section 609. Notice of Arrival.*

This section would clarify that notice of arrival regulations promulgated pursuant to the Security and Accountability for Every Port Act of 2006 (120 Stat. 1884), only apply to vessels arriving from a foreign port.

*Section 610. Homeporting of FSV HENRY B. BIGELOW.*

This section would require the Administrator of the National Oceanic and Atmospheric Administration (NOAA) to make a final decision with respect to the homeport for the FSV HENRY B. BIGELOW not later than 180 days of the date of enactment of the Act. This section would direct the agency to give special consideration to specific factors as a part of its decision making process. It also would require the Administrator of NOAA to notify Congress of his/her proposed final decision, and the rationale upon which that proposed decision is based, no later than 45 days before implementing the final decision. Finally, this provision would require the Administrator of NOAA to submit a report to Congress on the progress in making the final decision no later than 30 days after the date of enactment.

*Section 611. Higher Volume Port Area Regulatory Definition Change.*

This section would amend subsection (a) of section 710 of the Coast Guard Authorization Act of 2010 (124 Stat. 2986), which changed the regulatory definition of “higher volume port area” for Puget Sound to establish its westerly boundary at the entrance to the Strait of Juan de Fuca, in order to expedite that definitional change. Under this section, the change in definition would take effect on July 1, 2012.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

### ARCTIC RESEARCH AND POLICY ACT OF 1984

#### SEC. 110. COORDINATION AND REVIEW OF BUDGET REQUESTS; OFFICE OF SCIENCE AND TECHNOLOGY POLICY; OFFICE OF MANAGEMENT AND BUDGET.

[15 U.S.C. 4109]

(a) The Office of Science and Technology Policy shall—

(1) review all agency and department budget requests related to the Arctic transmitted pursuant to section 108(a)(5), in accordance with the national Arctic research policy and the 5-year program under section 108(a)(2) and section 109, respectively; and

(2) consult closely with the Interagency Committee and the Commission to guide the Office of Science and Technology Policy's efforts.

(b)(1) The Office of Management and Budget shall consider all Federal agency requests for research related to the Arctic as one integrated, coherent, and multiagency request which shall be reviewed by the Office of Management and Budget prior to submission of the President's annual budget request for its adherence to the Plan. The Commission shall, after submission of the President's annual budget request, review the request and report to Congress on adherence to the Plan.

(2) The Office of Management and Budget shall seek to facilitate planning for the design, procurement, maintenance, deployment, and operations of icebreakers needed *to execute the statutory missions of the Coast Guard* and to provide a platform for Arctic research by allocating all funds necessary to support icebreaking operations, except for recurring incremental costs associated with specific projects, *and all budget authority related to such operations* to the Coast Guard.

### ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984

#### SEC. 312. FEDERAL AGENCY COOPERATION.

[16 U.S.C. 2441]

\* \* \* \* \*

(c) ICEBREAKING.—The Department of Homeland Security shall facilitate planning for the design, procurement, maintenance, deployment, and operation of icebreakers needed *to execute the statu-*

*tory missions of the Coast Guard and to provide a platform for Antarctic research. All funds necessary to support icebreaking operations, except for recurring incremental costs associated with specific projects, shall be allocated to the United States Coast Guard.*

#### COAST GUARD AUTHORIZATION ACT OF 2010

##### SEC. 404. ACQUISITION WORKFORCE EXPEDITED HIRING AUTHORITY.

[124 Stat. 2950]

(a) **IN GENERAL.**—For purposes of sections 3304, 5333, and 5753 of title 5, United States Code, the Commandant of the Coast Guard may—

(1) designate any category of acquisition positions within the Coast Guard *[as shortage category positions]* *as positions for which there is a shortage of candidates or a critical hiring need*; and

(2) use the authorities in such sections to recruit and appoint highly qualified persons directly to positions so designated.

(b) **LIMITATION.**—The Commandant may not appoint a person to a position of employment under this *[paragraph]* *section* after September 30, *[2012]* *2015*.

(c) **REPORTS.**—The Commandant shall include in reports under section 562(d) of title 14, United States Code, as added by this title, information described in that section regarding positions designated under this section.

##### SEC. 710. HIGHER VOLUME PORT AREA REGULATORY DEFINITION CHANGE.

[124 Stat. 2986]

**[(a) IN GENERAL.**—Within 1 year after the date of enactment of this Act, the Commandant shall initiate a rulemaking proceeding to modify the definition of the term “higher volume port area” in section 155.1020 of the Coast Guard regulations (33 C.F.R. 155.1020) by striking “Port Angeles, WA” in paragraph (13) of that section and inserting “Cape Flattery, WA”.**]**

(a) **HIGHER VOLUME PORTS.**—

(1) **IN GENERAL.**—*Notwithstanding any other provision of law, the requirements of subparts D, F, and G of part 155 of title 33, Code of Federal Regulations, that apply to the higher volume port area for the Strait of Juan de Fuca at Port Angeles, Washington (including any water area within 50 nautical miles seaward), to and including Puget Sound, shall be deemed to apply, in the same manner, and to the same extent, to the Strait of Juan de Fuca at Cape Flattery, Washington (including any water area within 50 nautical miles seaward), to and including Puget Sound.*

(2) **EFFECTIVE DATE.**—*This subsection shall take effect on July 1, 2012.*

(b) **VESSEL RESPONSE PLAN REVIEWS.**—Within 5 years after the date of enactment of this Act, the Coast Guard shall complete its review of any changes to vessel response plans under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) resulting from **[the modification of the higher volume port area definition required by subsection (a)]** *higher volume port requirements made applicable under subsection (a).*

## FEDERAL WATER POLLUTION CONTROL ACT

## SEC. 311. OIL AND HAZARDOUS SUBSTANCES LIABILITY.

[33 U.S.C. 1321]

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

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

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

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

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

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

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

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

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

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

(10) “onshore facility” means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located

in, on, or under, any land within the United States other than submerged land;

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

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

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

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

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

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

(17) “otherwise subject to the jurisdiction of the United States” means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party;

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

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

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

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

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

[(23) “National Response Unit” means the National Response Unit established under subsection (j);]

[(24)] (23) “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)] (24) “removal costs” means—

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

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

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

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

(B) is not a tank vessel;

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

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

\* \* \* \* \*

(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, NATIONAL RESPONSE FUNCTIONS.—*The Secretary of the department in which the Coast Guard is operating—*

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

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

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

- (D) may provide technical assistance in the preparation of Area Contingency Plans required under paragraph (4);
  - (E) shall administer Coast Guard strike teams established under the National Contingency Plan;
  - (F) shall maintain on file all Area Contingency Plans approved by the President under this subsection; and
  - (G) shall review each of those plans that affects its responsibilities under this subsection.
- (3) Coast Guard District Response Groups.
- (A) The Secretary of the department in which the Coast Guard is operating shall establish in each Coast Guard district a Coast Guard District Response Group.
  - (B) Each Coast Guard District Response Group shall consist of—
    - (i) the Coast Guard personnel and equipment, including firefighting equipment, of each port within the district;
    - (ii) additional prepositioned equipment; and
    - (iii) a district response advisory staff.
  - (C) Coast Guard district response groups—
    - (i) shall provide technical assistance, equipment, and other resources when required by a Federal On-Scene Coordinator;
    - (ii) shall maintain all Coast Guard response equipment within its district;
    - (iii) may provide technical assistance in the preparation of Area Contingency Plans required under paragraph (4); and
    - (iv) shall review each of those plans that affect its area of geographic responsibility.
- (4) AREA COMMITTEES AND AREA CONTINGENCY PLANS.—
- (A) There is established for each area designated by the President an Area Committee comprised of members appointed by the President from qualified personnel of Federal, State, and local agencies.
  - (B) Each Area Committee, under the direction of the Federal On-Scene Coordinator for its area, shall—
    - (i) prepare for its area the Area Contingency Plan required under subparagraph (C);
    - (ii) work with State and local officials to enhance the contingency planning of those officials and to assure preplanning of joint response efforts, including appropriate procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife; and
    - (iii) work with State and local officials to expedite decisions for the use of dispersants and other mitigating substances and devices.
  - (C) Each Area Committee shall prepare and submit to the President for approval an Area Contingency Plan for its area. The Area Contingency Plan shall—
    - (i) when implemented in conjunction with the National Contingency Plan, be adequate to remove a



worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area;

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

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

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

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

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

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

(viii) be updated periodically by the Area Committee.

(D) The President shall—

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

(ii) periodically review Area Contingency Plans so approved.

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

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

(ii) The President shall also issue regulations which require an owner or operator of a nontank vessel to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a

worst case discharge, and to a substantial threat of such a discharge, of oil.

(B) The Secretary of the Department in which the Coast Guard is operating may issue regulations which require an owner or operator of a tank vessel, a nontank vessel, or a facility described in subparagraph (C) that transfers noxious liquid substances in bulk to or from a vessel to 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.

## OIL POLLUTION ACT OF 1990

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### SEC. 1012. USES OF THE FUND.

[33 U.S.C. 2712]

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

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

(A) by Federal authorities; or

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

(2) the payment of costs incurred by Federal, State, or Indian tribe trustees in carrying out their functions under section 1006 for assessing natural resource damages and for developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of damaged resources determined by the President to be consistent with the National Contingency Plan;

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

(4) the payment of claims in accordance with section 1013 for uncompensated removal costs determined by the President to be inconsistent with the National Contingency Plan or uncompensated **[damages]** *damages, including the cost of commercial*

*claims processing, expert services, training, technical services, and other administrative and personnel costs to process claims;*

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

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

(B) not more than \$15,000,000 in each fiscal year shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred by, and activities related to, response and damage assessment capabilities of the National Oceanic and Atmospheric Administration;

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

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

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

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#### **SEC. 4202. NATIONAL PLANNING AND RESPONSE SYSTEM.**

[33 U.S.C. 1321 note]

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##### **(b) IMPLEMENTATION.—**

###### **(1) AREA COMMITTEES AND CONTINGENCY PLANS.—**

(A) Not later than 6 months after the date of the enactment of this Act, the President shall designate the areas for which Area Committees are established under section 311(j)(4) of the Federal Water Pollution Control Act, as amended by this Act. In designating such areas, the President shall ensure that all navigable waters, adjoining shorelines, and waters of the exclusive economic zone are subject to an Area Contingency Plan under that section.

(B) Not later than 18 months after the date of the enactment of this Act, each Area Committee established under that section shall submit to the President the Area Contingency Plan required under that section.

(C) Not later than 24 months after the date of the enactment of this Act, the President shall—

(i) promptly review each plan;

- (ii) require amendments to any plan that does not meet the requirements of section 311(j)(4) of the Federal Water Pollution Control Act; and
- (iii) approve each plan that meets the requirements of that section.

[(2) NATIONAL RESPONSE UNIT.—Not later than one year after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall establish a National Response Unit in accordance with section 311(j)(2) of the Federal Water Pollution Control Act, as amended by this Act.]

[(3)] (2) COAST GUARD DISTRICT RESPONSE GROUPS.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall establish Coast Guard District Response Groups in accordance with section 311(j)(3) of the Federal Water Pollution Control Act, as amended by this Act.

[(4)] (3) TANK VESSEL AND FACILITY RESPONSE PLANS; TRANSITION PROVISION; EFFECTIVE DATE OF PROHIBITION.—

(A) Not later than 24 months after the date of the enactment of this Act, the President shall issue regulations for tank vessel and facility response plans under section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act.

(B) During the period beginning 30 months after the date of the enactment of this paragraph and ending 36 months after that date of enactment, a tank vessel or facility for which a response plan is required to be prepared under section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act, may not handle, store, or transport oil unless the owner or operator thereof has submitted such a plan to the President.

(C) Subparagraph (E) of section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act, shall take effect 36 months after the date of the enactment of this Act.

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## COAST GUARD AND MARITIME TRANSPORTATION ACT OF 2006

### [SEC. 210. ICEBREAKERS.

[14 U.S.C. 93 note]

[(a) OPERATION AND MAINTENANCE PLAN.—Not later than 90 days after the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating 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 plan—

[(1) for operation and maintenance after fiscal year 2006 of the Coast Guard polar icebreakers POLAR STAR, POLAR SEA, and HEALY, that does not rely on the transfer of funds to the Coast Guard by any other Federal agency; and

[(2) for the long-term recapitalization of these assets.

[(b) NECESSARY MEASURES.—The Secretary shall take all necessary measures to ensure that the Coast Guard maintains, at a minimum, its current vessel capacity for carrying out ice breaking in the Arctic and Antarctic, Great Lakes, and New England regions, including the necessary funding for operation and maintenance of such vessels, until it has implemented the long-term recapitalization of the Coast Guard polar icebreakers POLAR STAR, POLAR SEA, and HEALY in accordance with the plan submitted under subsection (a).

[(c) REIMBURSEMENT.—Nothing in this section shall preclude the Secretary from seeking reimbursement for operation and maintenance costs of such polar icebreakers from other Federal agencies and entities, including foreign countries, that benefit from the use of the icebreakers.

[(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal year 2006 to the Secretary of the department in which the Coast Guard is operating \$100,000,000 to carry out this section with respect to the polar icebreakers referred to in subsection (a).]

## TITLE 14. COAST GUARD

### PART I. REGULAR COAST GUARD

#### CHAPTER 5. FUNCTIONS AND POWERS

#### **§ 87. *Provision of icebreaking services***

(a) *IN GENERAL.*—Notwithstanding any other provision of law, except as provided in subsection (b), the Coast Guard shall be the sole supplier of icebreaking services, on an advancement or reimbursable basis, to each Federal agency that requires icebreaking services.

(b) *EXCEPTION.*—In the event that a Federal agency requires icebreaking services and the Coast Guard is unable to provide the services, the Federal agency may acquire icebreaking services from another entity.

## TITLE 14. COAST GUARD

### PART I. REGULAR COAST GUARD

#### CHAPTER 5. FUNCTIONS AND POWERS

#### **§ 93. *Commandant; general powers***

\* \* \* \* \*

(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, aides to navigation, infrastructure, and any other Coast Guard assets or facilities, shall be allocated to and vested in the Coast Guard and the department in which the Coast Guard is operating.

## TITLE 14. COAST GUARD

## PART I. REGULAR COAST GUARD

## CHAPTER 9. COAST GUARD ACADEMY

**§ 195. Admission of foreign nationals for instruction; restrictions; conditions**

(a) A foreign national may not receive instruction at the Academy except as authorized by this section.

(b) The President may designate not more than 36 foreign nationals whom the Secretary may permit to receive instruction at the Academy.

(c) A [person] *foreign national* receiving instruction under this section is entitled to the same [pay and allowances] *pay, allowances, and emoluments*, to be paid from the same appropriations, as a cadet appointed pursuant to section 182 of this title. A [person] *foreign national* may receive instruction under this section only if his country agrees in advance to reimburse the United States, at a rate determined by the Secretary, for the cost of providing such instruction, including [pay and allowances] *pay, allowances, and emoluments*, unless a waiver therefrom has been granted to that country by the Secretary. Funds received by the Secretary for this purpose shall be credited to the appropriations bearing the cost thereof, and may be apportioned between fiscal years.

(d) A [person] *foreign national* receiving instruction under this section is—

(1) not entitled to any appointment in the Coast Guard by reason of his graduation from the Academy; and

(2) subject to those regulations applicable to the Academy governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation, except as may otherwise be prescribed by the Secretary.

\* \* \* \* \*

**§ 200. Policy on sexual harassment and sexual violence**

(a) *REQUIRED POLICY.*—The Commandant shall direct the Superintendent of the Academy to prescribe a policy on sexual harassment and sexual violence. The policy shall apply to each member of the Coast Guard Academy personnel. For purposes of this section, the term “Coast Guard Academy personnel” includes cadets.

(b) *POLICY SPECIFICATIONS.*—The policy under subsection (a) shall include—

(1) *programs to promote awareness of the incidence of rape, acquaintance rape, and other sexual offenses of a criminal nature on and off the Academy reservation;*

(2) *the procedure that a victim of sexual harassment or sexual violence on or off the Academy reservation shall follow if the victim chooses to report the sexual harassment or sexual violence, including—*

(A) *how to report the alleged sexual harassment or sexual violence, including—*

(i) *the name and contact information of each person that the victim must contact; and*



- (ii) *an option for confidential reporting;*
    - (B) *the name and contact information of each person that the victim can contact for assistance; and*
    - (C) *how to preserve evidence;*
  - (3) *the procedure for disciplinary action against a member of the Coast Guard Academy personnel who commits sexual harassment or sexual violence;*
  - (4) *any other authorized sanctions against a member of the Coast Guard Academy personnel who commits sexual harassment or sexual violence; and*
  - (5) *required training on the policy for each member of the Coast Guard Academy personnel, including a specific training requirement for each member of the Coast Guard Academy personnel who process allegations of sexual harassment or sexual violence.*
- (c) **ASSESSMENT.**—
- (1) **IN GENERAL.**—*The Commandant shall direct the Superintendent of the Academy to conduct an assessment during each Academy program year to determine the effectiveness of the policy under subsection (a).*
  - (2) **BIENNIAL SURVEY.**—*Each assessment under paragraph (1) that is conducted during an odd-numbered program year shall include a survey of Coast Guard Academy personnel. The survey shall—*
    - (A) *measure—*
      - (i) *the incidence, during that program year, of sexual harassment and sexual violence, on or off the Academy reservation, that were reported under subsection (b)(2); and*
      - (ii) *the incidence, during that program year, of sexual harassment and sexual violence, on or off the Academy reservation, that were not reported under subsection (b)(2); and*
    - (B) *assess the perceptions of Coast Guard Academy personnel regarding—*
      - (i) *the policy, training, and procedures on sexual harassment and sexual violence;*
      - (ii) *the enforcement of the policy;*
      - (iii) *the incidence of sexual harassment and sexual violence involving Coast Guard Academy personnel; and*
      - (iv) *any other issues relating to sexual harassment and sexual violence involving Coast Guard Academy personnel, that the Superintendent of the Academy considers relevant.*
- (d) **REPORT.**—
- (1) **IN GENERAL.**—*The Commandant shall direct the Superintendent of the Academy to submit a report to the Commandant each Academy program year on sexual harassment and sexual violence involving a member of the Coast Guard Academy personnel that year.*
  - (2) **REPORT SPECIFICATIONS.**—*A report under paragraph (1) shall include—*

(A) *the number of reported incidents of sexual violence, on or off the Academy reservation, involving a member of the Coast Guard Academy, categorized by the type of offence, such as rape and sexual assault;*

(B) *the number of reported incidents under subparagraph (A) that were substantiated;*

(C) *any updates to the policy, training, or procedures on sexual harassment and sexual violence under this section during the Academy program year; and*

(D) *a plan detailing the action that will be taken during the subsequent Academy program year to respond to and prevent sexual harassment and sexual violence, on or off the Academy reservation, involving a member of the Coast Guard Academy.*

(3) *BIENNIAL SURVEY.—Each report under paragraph (1) that is submitted during an odd-numbered program year shall include the results of the survey under subsection (c)(2).*

(4) *TRANSMISSION OF REPORT.—Not later than 90 days after the date of receipt of a report under paragraph (1), the Commandant shall transmit a copy of the report and the Commandant's comments on the report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.*

## TITLE 14. COAST GUARD

### PART I. REGULAR COAST GUARD

#### CHAPTER 11. PERSONNEL

##### OFFICERS

##### A. APPOINTMENTS

#### **§ 211. Original appointment of permanent commissioned officers**

(a) (1) The President may appoint permanent commissioned officers in the Regular Coast Guard in grades appropriate to their qualification, experience, and length of service, as the needs of the Coast Guard may require, from among the following categories:

(A) Graduates of the Coast Guard Academy.

(B) Commissioned warrant officers, warrant officers, and enlisted members of the Regular Coast Guard.

(C) Members of the Coast Guard Reserve who have served at least 2 years as such.

(D) Licensed officers of the United States merchant marine who have served 2 or more years aboard a vessel of the United States in the capacity of a licensed officer.

(2) Original appointments under this section in the grades of lieutenant commander and above shall be made by the President by and with the advice and consent of the Senate.

(3) Original appointments under this section in the grades of ensign through lieutenant shall be made by the President alone.

(b) No person shall be appointed a commissioned officer under this section until his mental, moral, physical, and professional fitness to perform the duties of a commissioned officer has been established under such regulations as the Secretary shall prescribe.

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

(d) *For purposes of this section, the term "original" with respect to the appointment of a member of the Coast Guard refers to the member's most recent appointment in the Coast Guard that is neither a promotion nor a demotion.*

## TITLE 14. COAST GUARD

### PART I. REGULAR COAST GUARD

#### CHAPTER 11. PERSONNEL

##### OFFICERS

##### B. SELECTION FOR PROMOTION

#### **§ 259. Officers to be recommended for promotion**

\* \* \* \* \*

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

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

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

## TITLE 14. COAST GUARD

## PART I. REGULAR COAST GUARD

## CHAPTER 11. PERSONNEL

## OFFICERS

## D. DISCHARGES; RETIREMENTS; REVOCATION OF COMMISSIONS

**§ 290. Rear admirals and real 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 for the time being or who have served [in the grade of vice admiral] *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 five officers serving in the grade of 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.

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## TITLE 14. COAST GUARD

## PART II. COAST GUARD RESERVE AND AUXILIARY

## CHAPTER 21. COAST GUARD RESERVE

## SUBCHAPTER B. COMMISSIONED OFFICERS

**§ 740. Failure of selection and removal from an active status**

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(d) For the purpose of this section, the total commissioned service of an officer who has served continuously in the Reserve following appointment in the grade of ensign shall be computed from the date on which [that appointment] *that Reserve appointment* was accepted. A Reserve officer initially appointed in a grade above ensign is considered to have the actual total commissioned service performed in a grade above commissioned warrant officer or the same total commissioned service as an officer of the Regular Coast Guard who has served continuously from an original appointment as ensign, who has not lost numbers or precedence, and who is, or was, junior to the Reserve officer, whichever is greater.

## TITLE 14. COAST GUARD

## PART II. COAST GUARD RESERVE AND AUXILIARY

## CHAPTER 23. COAST GUARD AUXILIARY

**§ 823. Eligibility, enrollments**

【The Auxiliary shall be composed of citizens of the United States and its territories and possessions, who are owners, sole or part, of motorboats, yachts, aircraft, or radio stations or who by reason of their special training or experience are deemed by the Commandant to be qualified for duty in the Auxiliary, and who may be enrolled therein pursuant to applicable regulations.】

**§ 823. Eligibility, enrollments**

*The Auxiliary shall be composed of citizens of the United States and its territories and possessions, and of aliens lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))—*

*(1) who are owners, sole or part, of motorboats, yachts, aircraft, or radio stations; or*

*(2) who by reason of their special training or experience are deemed by the Commandant to be qualified for duty in the Auxiliary, and who may be enrolled therein pursuant to applicable regulations.*

## TITLE 46. SHIPPING

## SUBTITLE II. VESSELS AND SEAMEN

## PART B. INSPECTION AND REGULATION OF VESSELS

## CHAPTER 33. INSPECTION GENERALLY

**§ 3316. Classification societies**

(a) Each department, agency, and instrumentality of the United States Government shall recognize the American Bureau of Shipping as its agent in classifying vessels owned by the Government and in matters related to classification, as long as the American Bureau of Shipping is maintained as an organization having no capital stock and paying no dividends. The Secretary and the Secretary of Transportation each shall appoint one representative (except when the Secretary is the Secretary of Transportation, in which case the Secretary shall appoint both representatives) who shall represent the Government on the executive committee of the American Bureau of Shipping. The American Bureau of Shipping shall agree that the representatives shall be accepted by it as active members of the committee. The representatives shall serve without compensation, except for necessary traveling expenses.

(b) (1) The Secretary may delegate to the American Bureau of Shipping or another classification society recognized by the Secretary as meeting acceptable standards for such a society, for a vessel documented or to be documented under chapter 121 of this title, the authority to—

(A) review and approve plans required for issuing a certificate of inspection required by this part;

- (B) conduct inspections and examinations; and
- (C) issue a certificate of inspection required by this part and other related documents.
- (2) The Secretary may make a delegation under paragraph (1) to a foreign classification society only—
  - (A) to the extent that the government of the foreign country in which the society is headquartered delegates authority and provides access to the American Bureau of Shipping to inspect, certify, and provide related services to vessels documented in that country; **[and]**
  - (B) if the foreign classification society has offices and maintains records in the United States~~...~~; *and*
  - (C) *if the Secretary of State determines that the foreign classification society does not provide comparable services in or for the government of a country designated by the Secretary of State as a State Sponsor of Terrorism.*
- (3) When an inspection or examination has been delegated under this subsection, the Secretary's delegate—
  - (A) shall maintain in the United States complete files of all information derived from or necessarily connected with the inspection or examination for at least 2 years after the vessel ceases to be certified; and
  - (B) shall permit access to those files at all reasonable times to any officer, employee, or member of the Coast Guard designated—
    - (i) as a marine inspector and serving in a position as a marine inspector; or
    - (ii) in writing by the Secretary to have access to those files.
- (c) (1) A classification society (including an employee or agent of that society) may not review, examine, survey, or certify the construction, repair, or alteration of a vessel in the United States unless the society has applied for approval under this subsection and the Secretary has reviewed and approved that society with respect to the conduct of that society under paragraph (2).
- (2) The Secretary may approve a person for purposes of paragraph (1) only if the Secretary determines that—
  - (A) the vessels surveyed by the person while acting as a classification society have an adequate safety record; and
  - (B) the person has an adequate program to—
    - (i) develop and implement safety standards for vessels surveyed by the person;
    - (ii) make the safety records of the person available to the Secretary in an electronic format;
    - (iii) provide the safety records of a vessel surveyed by the person to any other classification society that requests those records for the purpose of conducting a survey of the vessel; and
    - (iv) request the safety records of a vessel the person will survey from any classification society that previously surveyed the vessel.
- (d) (1) The Secretary may delegate to the American Bureau of Shipping or another classification society recognized by the Sec-

retary as meeting acceptable standards for such a society, for a United States offshore facility, the authority to—

(A) review and approve plans required for issuing a certificate of inspection, a certificate of compliance, or any other certification and related documents issued by the Coast Guard pursuant to regulations issued under section 30 of the Outer Continental Shelf Lands Act (43 U.S.C. 1356); **[and]**

(B) conduct inspections and examinations~~...~~; *and*

(C) *if the Secretary of State determines that the foreign classification society does not provide comparable services in or for the government of a country designated by the Secretary of State as a State Sponsor of Terrorism.*

(2) The Secretary may make a delegation under paragraph (1) to a foreign classification society only if—

(A) the foreign society has offices and maintains records in the United States; and

(B) (i) the government of the foreign country in which the foreign society is headquartered delegates that authority to the American Bureau of Shipping; or

(ii) the Secretary has entered into an agreement with the government of the foreign country in which the foreign society is headquartered that—

(I) ensures the government of the foreign country will accept plan review, inspections, or examinations conducted by the American Bureau of Shipping and provide equivalent access to inspect, certify, and provide related services to offshore facilities located in that country or operating under the authority of that country; and

(II) is in full accord with principles of reciprocity in regards to any delegation contemplated by the Secretary under paragraph (1).

(3) If an inspection or examination is conducted under authority delegated under this subsection, the person to which the authority was delegated—

(A) shall maintain in the United States complete files of all information derived from or necessarily connected with the inspection or examination for at least 2 years after the United States offshore facility ceases to be certified; and

(B) shall permit access to those files at all reasonable times to any officer, employee, or member of the Coast Guard designated—

(i) as a marine inspector and serving in a position as a marine inspector; or

(ii) in writing by the Secretary to have access to those files.

(4) For purposes of this subsection—

(A) the term “offshore facility” means any installation, structure, or other device (including any vessel not documented under chapter 121 of this title or the laws of another country), fixed or floating, that dynamically holds position or is temporarily or permanently attached to the seabed or subsoil under the sea; and

(B) the term “United States offshore facility” means any offshore facility, fixed or floating, that dynamically holds position or is temporarily or permanently attached to the seabed or subsoil under the territorial sea of the United States or the outer Continental Shelf (as that term is defined in section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331)), including any vessel, rig, platform, or other vehicle or structure subject to regulation under section 30 of the Outer Continental Shelf Lands Act (43 U.S.C. 1356).

(e) *The Secretary shall revoke an existing delegation made to a foreign classification society under subsection (b) or (d) if the Secretary of State determines that the foreign classification society provides comparable services in or for the government of a country designated by the Secretary of State as a State Sponsor of Terrorism.*

## TITLE 46. SHIPPING

### SUBTITLE II. VESSELS AND SEAMEN

#### PART G. MERCHANT SEAMEN PROTECTION AND RELIEF

##### CHAPTER 111. PROTECTION AND RELIEF

#### **§ 11113. Protection and fair treatment of seafarers**

(a) *PURPOSE.—The purpose of this section shall be to ensure the protection and fair treatment of seafarers.*

(b) *SPECIAL FUND.—*

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

(2) *USE OF AMOUNTS IN FUND.—The amounts deposited into the Fund shall be available to the Secretary, without fiscal year limitation, to—*

(A) *pay necessary support under subsection (c)(1); and*

(B) *reimburse a shipowner for necessary support under subsection (c)(2).*

(3) *AMOUNTS CREDITED TO FUND.—Notwithstanding any other provision of law, the Fund may receive—*

(A) *any moneys ordered to be paid to the Fund in the form of community service under section 8B1.3 of the United States Sentencing Guidelines Manual or to the extent permitted under paragraph (4); and*

(B) *amounts reimbursed or recovered under subsection (e).*

(4) *PREREQUISITE FOR COMMUNITY SERVICE CREDITS.—The Fund may receive credits under paragraph (3)(A) if the unobligated balance of the Fund is less than \$5,000,000.*

(5) *AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated, from the Fund, for each fiscal year such sums as may be necessary for the purposes set forth in paragraph (2).*

(6) *REPORT REQUIRED.—*

(A) *IN GENERAL.—The Secretary shall submit to Congress, concurrent with the President’s budget submission for a given fiscal year, a report that describes—*



- (i) the amounts credited to the Fund under paragraph (3) for the preceding fiscal year;
- (ii) in detail, the activities for which amounts were charged; and
- (iii) the projected level of expenditures from the Fund for the upcoming fiscal year, based on—
  - (I) on-going activities; and
  - (II) new cases, derived from historic data.

(B) *EXCEPTION.*—Subparagraph (A) shall not apply to obligations during the first fiscal year during which amounts are credited to the Fund.

(7) *FUND MANAGER.*—The Secretary shall designate a Fund manager. The Fund manager shall—

- (A) ensure the visibility and accountability of transactions utilizing the Fund;
- (B) prepare the report under paragraph (6);
- (C) monitor the unobligated balance of the Fund; and
- (D) provide notice to the Secretary and the Attorney General whenever the unobligated balance of the Fund is less than \$5,000,000.

(c) *AUTHORITY.*—The Secretary may—

(1) pay, from amounts appropriated from the Fund, necessary support of—

(A) a seafarer that—

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

(B) a seafarer that the Secretary determines was abandoned in the United States; and

(2) reimburse, from amounts appropriated from the Fund, a shipowner that has provided necessary support of a seafarer who has been paroled into the United States to facilitate an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard, for the costs of necessary support if the Secretary determines that reimbursement is necessary to avoid serious injustice.

(d) *LIMITATION.*—Nothing in this section shall be construed—

- (1) to create a right, benefit, or entitlement to necessary support; or
- (2) to compel the Secretary to pay or reimburse the cost of necessary support.

(e) *REIMBURSEMENT; RECOVERY.*—

(1) *IN GENERAL.*—A shipowner shall reimburse the Fund an amount equal to the total amount paid from the Fund for necessary support of a seafarer plus a surcharge of 25 percent of the total amount if—

(A) the shipowner—

- (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 receives a criminal penalty; or*

*(B) the shipowner, under any circumstance, abandons a seafarer in the United States, as determined by the Secretary.*

*(2) ENFORCEMENT.—If a shipowner fails to reimburse the Fund under paragraph (1), the Secretary may—*

*(A) proceed in rem against any vessel of the shipowner 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 of any vessel of the shipowner wherever the vessel is found.*

*(3) REMEDY.—A vessel may obtain clearance from the Secretary after it is withheld or revoked under paragraph (2)(B) if the shipowner reimburses the Fund the amount required under paragraph (1).*

*(f) BOND AND SURETY.—*

*(1) AUTHORITY.—The Secretary may require a bond or a surety satisfactory as an alternative to withholding or revoking clearance under subsection (e) if, in the opinion of the Secretary, the bond or surety satisfactory is necessary to facilitate an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard.*

*(2) SURETY CORPORATIONS.—A surety corporation may provide a bond or surety satisfactory under paragraph (1) if the surety corporation is authorized by the Secretary of the Treasury under section 9305 of title 31 to provide surety bonds under section 9304 of title 31.*

*(3) APPLICATION.—The authority to require a bond or surety satisfactory or to request the withholding or revocation of the clearance under subsection (e) applies to any investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard.*

*(g) DEFINITIONS.—In this section:*

*(1) ABANDONS; ABANDONED.—The term “abandons” or “abandoned” means—*

*(A) a shipowner’s unilateral severance of ties with a seafarer; or*

*(B) a shipowner’s failure to provide necessary support of a seafarer.*

*(2) BOND OR SURETY SATISFACTORY.—The term “bond or surety satisfactory” means a negotiated instrument, the terms of which may, at the discretion of the Secretary, include provisions that require a shipowner to—*

*(A) provide necessary support of a seafarer who has or may have information pertinent to an investigation, reporting, documentation, or adjudication of any matter that is*

*related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard;*

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

*(C) stipulate to certain incontrovertible facts, including the ownership or operation of the vessel, or the authenticity of documents and things from the vessel;*

*(D) facilitate service of correspondence and legal papers;*

*(E) enter an appearance in United States district court;*

*(F) comply with directions regarding payment of funds;*

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

*(H) stipulate in United States district court as to the authenticity of certain documents;*

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

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

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

*(3) FUND.—The term “Fund” means the Support of Seafarers Fund established under this section.*

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

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

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

*(7) VESSEL SUBJECT TO THE JURISDICTION OF THE UNITED STATES.—The term “vessel subject to the jurisdiction of the United States” has the meaning given the term in section 70502(c), except that it excludes—*

*(A) a vessel—*

*(i) that is owned by the United States, a State or political subdivision thereof, or a foreign nation; and*

*(ii) that is not engaged in commerce; and*

*(B) a bareboat—*

*(i) that is chartered and operated by the United States, a State or political subdivision thereof, or a foreign nation; and*

*(ii) that is not engaged in commerce.*

*(h) REGULATIONS.—The Secretary may prescribe regulations to implement this section.*

