

**JURISDICTION AND ACTIVITIES  
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION  
110<sup>TH</sup> CONGRESS**

*January 2007*

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## I. EXECUTIVE SUMMARY

The Subcommittee on Coast Guard and Maritime Transportation has jurisdiction over the United States Coast Guard, including its duties, organization, functions and powers; Coast Guard personnel; the Coast Guard Academy; the Coast Guard Reserve; and the Coast Guard Auxiliary. These matters are codified in Title 14, Coast Guard, United States Code. The Armed Services Committee sets the number of Coast Guard reserve officers.

The Subcommittee also oversees maritime transportation safety activities. In addition to the Coast Guard's search and rescue responsibilities under Title 14, other maritime transportation safety activities are codified in Subtitle II, Vessels and Seaman, Title 46, Shipping, United States Code. Some maritime safety and security authorities are included in Title 50, War and National Defense, United States Code. The Subcommittee also has jurisdiction over navigation and port and waterway safety carried out by the Coast Guard that are codified in Title 33, Navigation, United States Code.

Maritime transportation regulatory activities include: regulation of vessels and merchant seaman, including inspection and regulation of commercial vessels, carriage of passengers, carriage of liquid bulk dangerous cargoes; regulation of uninspected vessels; regulation of recreational vessels; regulation of uninspected commercial fishing industry vessels; marine casualties; merchant seamen licensing; manning of vessels; pilotage; documentation and measurement of vessels; and state boating safety programs.

The Subcommittee also has jurisdiction over certain marine environmental protection activities that are carried out by the Coast Guard, and generally related to the operation of vessels, including oil pollution, air pollution, plastics pollution, aquatic nuisance species transported by vessels, and related international agreements.

Prior to the 109<sup>th</sup> Congress, the Subcommittee had sole jurisdiction over matters related to port security, including the Maritime Transportation Security Act of 2002 (Subtitle VI of Title 46, United States Code). In the 110<sup>th</sup> Congress, the Subcommittee will share jurisdiction over port security matters with the Committee on Homeland Security. The Committee continues to exercise jurisdiction over the Coast Guard (including vessel and facility vulnerability assessments and security plans, security incident response, maritime safety and security teams, foreign port assessments, maritime security advisory committees, and maritime domain awareness).

The Subcommittee also has authority over the regulation of ocean shipping (including international ocean shipping, cruise ship financial responsibility, and unfair foreign shipping practices). These laws are generally codified in Subtitle IV of title 46, United States Code. The Federal Maritime Commission (FMC) regulates ocean shipping. The Subcommittee also exercises jurisdiction over water common carriers engaged in the domestic offshore trades as well as matters involving maritime liability.

Maritime cabotage or coastwise trade also falls under the Subcommittee's jurisdiction. U.S. maritime cabotage laws govern shipping of goods and passengers by water between any two points in the United States. These laws are generally codified in Chapter 551 of title 46, United States Code. Vessels engaged in the coastwise trade must be U.S.-flagged, U.S.-built, U.S.-crewed, and U.S.-owned. The Coast Guard documents vessels in Jones Act trade. The Customs Service

enforces violations of these laws, and the Maritime Administration controls the sale or transfer of U.S.-documented vessels to foreign owners.

In addition, the Subcommittee has jurisdiction over the merchant marine, except as it relates to national security. The Maritime Administration administers various programs designed to promote and develop the domestic merchant marine industry. The Committee on Armed Services has jurisdiction over these programs to the extent that they are directly related to national defense, such as the Maritime Security Program. The Subcommittee also oversees other promotional programs for U.S.-flag vessels in the domestic and foreign trade, and various other promotional programs for the U.S.-flag fleet such as promotion of short sea shipping, U.S.-flag liquefied natural gas tankers, and regulation of the Federal cargo preference laws.

## II. UNITED STATES COAST GUARD

### A. Background

The United States Coast Guard was established on January 28, 1915, through the consolidation of the Revenue Cutter Service (established in 1790) and the Lifesaving Service (established in 1848). The Coast Guard later assumed the duties of three other agencies: the Lighthouse Service (established in 1789), the Steamboat Inspection Service (established in 1838), and the Bureau of Navigation (established in 1884).

The Coast Guard remained a part of the Department of the Treasury until 1967, when it was transferred to the newly created Department of Transportation. Under the Homeland Security Act of 2002, (P.L. 107-296), the Coast Guard was transferred to the Department of Homeland Security (DHS) on March 1, 2003. However, pursuant to the Act, the Coast Guard must be maintained within DHS as a distinct entity.

Under Section 2 of Title 14, United States Code, the Coast Guard has primary responsibility to enforce or assist in the enforcement of all applicable Federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States; to ensure safety of life and property at sea; to carry out domestic and international icebreaking activities; and, as the fifth armed force of the United States, to maintain defense readiness to operate as a specialized service in the Navy upon the declaration of war or when the President directs.

The Coast Guard is composed of approximately 37,000 active duty military personnel, 9,000 reservists, 6,400 civilian employees, and 32,000 volunteers of the Coast Guard Auxiliary. The Coast Guard has defended the nation in every war since 1790, including the conflict in the Persian Gulf. Coast Guard assets have been deployed to the Persian Gulf to assist in the Iraq war.

The Coast Guard is directed by a Commandant, who is appointed by the President with the advice and consent of the Senate for a four-year term. In 2006, President Bush appointed Admiral Thad W. Allen as Commandant of the Coast Guard.

### B. Funding

The President requested nearly \$8.2 billion in FY 2007 for activities of the United States Coast Guard, which is an increase of approximately \$127 million (or 1.58 percent), over the total amount appropriated for FY 2006, including FY 2006 supplemental appropriations and rescissions. However, the President's request includes \$30 million for increased fuel costs; \$53 million for increased personnel costs; and \$50 million to begin design of new headquarters. Therefore, the amount requested for actual Coast Guard operations would not maintain current services at the FY 2006 levels.

The President's budget request for Coast Guard Operating Expenses (OE) in FY 2007 was approximately \$5.5 billion, an increase of more than \$108 million, or two percent, over the FY 2006 enacted level including FY 2006 supplemental funds and rescissions. The FY 2006 level included more than \$132 million provided pursuant to the Emergency Hurricane Supplemental (Public Law

109-148). The Operating Expenses account comprises over two-thirds of the Coast Guard's budget and provides for the safety of the public and the Coast Guard's workforce, with an enhanced emphasis on the Service's maritime homeland security mission. The request included funding for 40,262 military and 6,022 civilian full time equivalent personnel.

The President requested nearly \$1.17 billion to fund all Coast Guard capital acquisitions in FY 2007, an approximately \$35.3 million (2.9 percent) decrease from the FY 2006 appropriated level of \$1.20 billion and an approximately \$64.3 million (5.1 percent) decrease from last year's budget request (over \$1.27 billion). These funds support the acquisition, construction, and improvement of vessels, aircraft, information management resources, shore facilities, and aids to navigation. Of the \$1.17 billion request, the President requested \$934.4 million for the Deepwater program, the Coast Guard's integrated capital asset replacement program. This level of funding represents an approximately \$10.7 million increase over the enacted funding for FY 2006 for Deepwater. The budget also requested \$39.6 million for Rescue 21, the Service's new "maritime 911" program. In FY 2006, \$40.6 million was appropriated for Rescue 21.

The Administration again proposed to zero-out the funding for the Coast Guard's Alteration of Bridges account. This is a reduction of \$14.9 million from the Coast Guard's budget from FY 2006 appropriated amounts. The Bridge Alteration program provides the Federal government's share of the costs for altering or removing bridges determined to be obstructions to navigation. Under the Truman-Hobbs Act of 1940 (33 U.S.C. 511 et seq.), the Coast Guard shares, with the bridge owner, the cost of altering railroad and publicly-owned highway bridges which obstruct the free movement of vessel traffic.

The Subcommittee conducted oversight of the Administration's Fiscal Year 2006 and 2007 Coast Guard budget requests during the 109<sup>th</sup> Congress. The House also passed H.R. 889, the Fiscal Year 2006 Coast Guard authorization bill, which became P.L. 109-241.

In the 110<sup>th</sup> Congress, the Subcommittee will hold a hearing on the President's Fiscal Year 2008 and 2009 budget request and consider legislation to authorize the Coast Guard.

### **C. Coast Guard's Move to the Department of Homeland Security**

The Subcommittee continues to have concerns with the Coast Guard's move from the Department of Transportation to DHS and specifically over maintaining a balance, in terms of funding and focus, between the Coast Guard's homeland and non-homeland security missions such as marine safety. The President's budget request for the Coast Guard for Fiscal Year 2007 proposed to decrease funding for search and rescue and maritime safety missions.

On November 25, 2002, the President signed into law the Homeland Security Act of 2002, P.L. 107-296, which created the new Department of Homeland Security. Under this legislation, the U. S. Coast Guard was transferred from the Department of Transportation to the new Department on March 1, 2003. Section 888 of the Homeland Security Act specifically requires that the Coast Guard be maintained as a distinct agency with the Commandant reporting directly to the Secretary of Homeland Security. Functions, authorities, and capabilities of the Coast Guard to perform its missions shall be maintained intact and without significant reductions.

The Coast Guard has integrated its new responsibilities as the lead Federal agency for protecting maritime security with the Service's many traditional services for our nation. The Coast Guard's responsibilities have been grouped into five fundamental roles: maritime safety, maritime security, protection of natural resources, maritime mobility, and national defense. Since September 11, 2001, the Coast Guard has placed increasing emphasis on the Service's homeland security efforts. These enhanced security efforts have had varying effects on levels of effort among all of its missions. Security-related missions such as ports, waterways, and coastal security and migrant interdiction have seen dramatic increases from pre-September 11, 2001 levels. Resources and man-hours devoted to missions such as search and rescue and aids to navigation have remained consistent with pre-September 11, 2001 levels. However, the levels of effort for other missions such as drug interdiction and fisheries law enforcement are well below pre-September 11, 2001 levels.

#### **D. Integrated Deepwater Systems**

The Integrated Deepwater Systems acquisition project ("Deepwater") is a multi-year program to modernize and replace the aging ships and aircraft of the United States Coast Guard and to improve the Service's command, control and logistic systems.

The Coast Guard's Deepwater program is intended to replace or modernize more than 90 ships and 200 aircraft used in the Coast Guard's deepwater missions, which generally occur more than 50 miles offshore. Coast Guard activities in this zone typically require extended on-scene presence, long transits to operating areas, and forward deployment of forces. The Coast Guard has identified 14 missions in this zone, including migrant interdiction operations, drug interdiction, and fisheries law enforcement. As the lead Federal agency responsible for maritime homeland security, it is critical that the Coast Guard be able to identify and intercept targets of interest as far from U.S. shores as possible.

The Coast Guard began planning for replacing assets in 1996 because deepwater-capable assets are nearing the end of their service lives, are technologically limited for performing deepwater missions effectively, and are expensive to operate because of relatively high crew requirements. Instead of proposing a traditional one-for-one asset-replacement program, the Coast Guard hired three industry teams to develop competing proposals for a single, integrated package of ships, aircraft, and associated systems that will optimize performance of deepwater missions while minimizing life-cycle costs.

In 2002, the Department of Transportation awarded a \$17 billion contract for Deepwater. The contract was valued at \$11 billion for a fleet of new ships and aircraft, plus improved command and control systems, to elevate the Coast Guard's capability to perform their varied core safety missions and homeland security missions. In addition, the contract included another \$6 billion for operating and maintaining this new system of assets. The contract was awarded to Integrated Coast Guard Systems (ICGS), a joint venture established by Lockheed Martin and Northrup Grumman. Although delivery of Deepwater assets is expected within 20 years, the ICGS contract may extend the contract up to 30 years to allow the contractor to continue implementing the program. The contract has a five-year base period with five additional five-year options. In Fiscal Year 2005, \$724 million was appropriated for the Deepwater program. This amount was more than the

Administration's request of \$678 million, but significantly less than the \$1.1 billion authorized by the Committee on Transportation and Infrastructure.

The Coast Guard's Deepwater build-out plan was based on a 20-year projected funding stream of \$500 million (in 1998 dollars) per year going to the prime contractor beginning in Fiscal Year 2003. In addition to the annual \$500 million acquisition cost, there is approximately \$25 million (in 1998 dollars) in government program fees required to administer a project of this magnitude on an annual recurring basis. The President's Budget requests have not adjusted to this indexed funding stream resulting in the project operating below planned funding levels since its inception.

The program is facing serious challenges related to schedule, budget, and engineering. The Coast Guard has experienced increasing maritime homeland security operational requirements, as well as maintenance and repair costs associated with rapidly deteriorating legacy assets. Declining operational capabilities of the assets responsible for protecting our maritime borders and carrying out other Coast Guard deepwater missions may dictate a need to bring Deepwater assets on line sooner than currently planned. Eight patrol boats that had been lengthened under the Deepwater program have been tied up indefinitely due to safety problems. Design and construction of a new Fast Response Cutter (FRC) made of composite materials to replace these patrol boats has been halted due to problems that were identified when a model of the FRC was tank tested. Structural engineering concerns have been identified on the National Security Cutter that could shorten its 30 year life or increase maintenance costs during that life. In addition, the Subcommittee is concerned about the level of competition for subcontractors and the escalating costs of the program.

In the 110<sup>th</sup> Congress, the Subcommittee will continue its oversight activities, and closely review the program and any changes to the program that may be necessary to ensure that the men and women of the Coast Guard that risk their lives for our nation have the best equipment possible and at a reasonable price.

#### **E. Activities in the 109<sup>th</sup> Congress**

In the 109<sup>th</sup> Congress, the Subcommittee developed and reported the following bills, most of which were eventually enacted into law.

1. Coast Guard and Maritime Transportation Act of 2006 (H.R. 889) (P.L. 109-241)

This legislation authorizes appropriations for the Coast Guard for Fiscal Year 2006 and makes technical corrections to various laws administered by the Coast Guard. The law also amends existing statutes to improve management of Coast Guard activities, navigation, and commercial shipping. The law also commends the Coast Guard for the service's heroic efforts in response to Hurricanes Katrina and Rita, amends current law to improve vessel safety procedures aboard United States ferries, and directs the Coast Guard to establish a long-range vessel tracking system to improve maritime domain awareness in offshore waters. The law also includes several provisions that were included in H.R. 1412, the Delaware River Protection Act of 2005, as passed in the House.

2. Sportfishing and Recreational Boating Safety Act of 2005



(Subtitle A of Title X of H.R. 3) (P.L. 109-59)

This law makes several amendments to create a simpler and more equitable formula for Federal sportfishing restoration and recreational boating safety funding. The law establishes the Sportfishing and Recreational Boating Safety Trust Fund and provides, in the Boating Safety Account of the Aquatic Resources Trust Fund, more than \$90 million to support State programs in future fiscal years. This Subtitle was enacted as part of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

3. Sportfishing and Recreational Boating Safety Amendments Act of 2005  
(H.R. 3649) (P.L. 109-74)

This law makes several technical and conforming amendments to the Sportfishing and Recreational Boating Safety Act of 2005 (Public Law 109-59) and provides funding for State sportfish conservation and recreational boating safety programs in Fiscal Year 2005.

4. Coast Guard Hurricane Relief Act of 2005 (H.R. 4508) (P.L. 109-141)

This law addresses several issues that arose in the Gulf Coast as a result of Hurricanes Katrina and Rita. H.R. 4508 recognizes and commends the heroic actions of the Coast Guard in response to Hurricane Katrina and preserves up to 90 days of accumulated leave that would otherwise be lost at the end of this calendar year for Coast Guardsmen who were detailed to operations in response to Hurricane Katrina. The legislation also authorizes the Coast Guard to temporarily extend the expiration of licenses and documents for mariners that were affected by Hurricane Katrina and certificates of inspection and compliance for vessels that are inspected by marine safety offices that are located in the Gulf region.

5. Coast Guard Authorization Act of 2006 (H.R. 5681)  
Passed the House on September 28, 2006

This bill authorizes approximately \$9.0 billion for Coast Guard programs and operations in Fiscal Year 2007, including approximately \$1.7 billion for the Coast Guard's Deepwater program which would accelerate the program's completion from the current projected timeline. The bill makes several amendments to current statutes related to the activities of the Coast Guard, navigation, and commercial shipping. The bill also includes a provision that would establish a civil penalty for individuals who possess personal use quantities of narcotics at maritime facilities or aboard vessels subject to the jurisdiction of the United States. The bill, as passed in the House, also includes H.R. 5811, the MARPOL Annex VI Implementation Act of 2006, as reported by the Committee on Transportation and Infrastructure.

6. Delaware River Protection Act of 2005 (H.R. 1412) (P.L. 109-241)

This legislation addresses several issues that were raised by an oil spill in the Delaware River in November 2004. The Act amends the Oil Pollution Act of 1990 to adjust oil spill liability limits to reflect increases in inflation since 1990. It requires individuals to report to the Coast Guard any release of an object from a vessel or a facility that could obstruct navigation in United States waters. The law also includes several provisions to improve future oil spill response actions in the Delaware River and nationwide. This bill was enacted into law as Title VI of Public Law 109-241, the Coast Guard and Maritime Transportation Act of 2006.

7. MARPOL Annex VI Implementation Act of 2006 (H.R. 5811)  
Reported by the Committee on September 19, 2006

H. R. 5811, the MARPOL Annex VI Implementation Act of 2006, would implement requirements under MARPOL Annex VI for purposes of United States law. The bill requires all vessels operating within the territorial sea (the belt of the oceans extending out to a distance of 12 miles from shore) and in special emission control areas to comply with air emission regulations. The regulations would require engines that are installed on covered vessels to meet standards under Annex VI regarding NO<sub>x</sub>, SO<sub>x</sub>, and other organic compounds. The regulations would also require ports and terminals to comply with requirements to provide receptacles or access to reception facilities for disposal of ozone depleting substances and other materials. This bill passed the House as Title V of H.R. 5681, the Coast Guard Authorization Act of 2006.

8. Maritime Terminal Security Enhancements Act of 2006 (H.R. 4880) (P.L. 109-347)

This Act makes several amendments to current law to improve the security of ports and port terminal facilities. The legislation requires a port terminal facility operator to resubmit a facility security plan for the Coast Guard's approval upon the transfer of ownership or operational control of that facility. The Act also requires each operator of a port terminal facility to designate a United States citizen as the Facility Security Officer under a facility security plan. Lastly, the bill establishes several deadlines for maritime security programs required under the Maritime Transportation Security Act of 2002 (P.L. 107-295). It was enacted into law as part of the SAFE Ports Act (P.L. 109-347).

9. Marine Debris Research, Prevention, and Reduction Act (S. 362) (P.L. 109-449)

The Marine Debris Research, Prevention, and Reduction Act establishes a marine debris prevention and removal program within the National Oceanic and Atmospheric Administration (NOAA); strengthens the Coast Guard's capabilities to improve and enforce compliance with laws and regulations regarding the disposal of plastics and other garbage from vessels; and reactivates the Interagency Marine Debris Coordinating Committee to coordinate marine debris research and activities throughout the Federal Government.

### **III. MARITIME TRANSPORTATION**

The U.S. Marine Transportation System (MTS) consists of waterways, ports and their intermodal connections, vessels, vehicles, and system users, as well as the federal maritime navigation systems that are scattered throughout 3.5 million square miles of ocean area and along 95,000 miles of coastline. Commercial shipping carries more than 95 percent by volume of the U.S. overseas trade through these waters and is critical to U.S. economic health. The System's objective is the safe, secure, and environmentally sound movement of goods, people, and military assets in the most efficient and economically effective manner possible. The Subcommittee oversees the federal environmental and economic regulation of maritime transportation as well as maritime transportation safety and security.

In the 110<sup>th</sup> Congress the Subcommittee will examine prospects for the development of short-sea shipping routes in the United States to help get more containerized cargoes onto ships along the coastlines of the United States. The Subcommittee will also examine the projected growth of U.S. trade and the ability of the U.S. marine transportation system and ports to accommodate that growth.

#### **A. Maritime Transportation Safety**

The Subcommittee has jurisdiction over maritime transportation safety activities carried out by the Coast Guard. In addition to the Service's search and rescue responsibilities under Title 14, other maritime transportation safety activities are generally codified in Subtitle II, Vessels and Seaman, Title 46, Shipping, United States Code. Some maritime safety and security authorities are included in Title 50, War and National Defense, United States Code. The Subcommittee also has jurisdiction over navigation and port and waterway safety carried out by the Coast Guard that are codified in Title 33, Navigation, United States Code.

##### **1. Staten Island Ferry Accident**

The Subcommittee monitored the investigation of the Staten Island Ferry accident that occurred on October 15, 2003. On Wednesday, October 15, 2003, at 3:20 p.m., the Staten Island Ferry, ANDREW J. BARBERI, carrying approximately 1,500 people, struck a concrete maintenance pier several hundred yards away from its St. George terminal dock on Staten Island. The accident resulted in the deaths of 10 passengers and injuries to at least 70 others aboard the vessel. At its maximum capacity, the 300-foot, 3,335 gross ton ferry can hold 6,000 passengers.

The Staten Island Ferry system provides 20 million people (70,000 passengers a day) with ferry service between St. George, Staten Island and Whitehall Street in Manhattan, a five-mile, 25-minute voyage each way. The ferry is the only non-vehicular mode of transportation between Staten Island and Manhattan. The New York City Department of Transportation (NYC DOT) operates and maintains the eight vessel fleet as well as the St. George Ferry Terminal in Staten Island, Whitehall Ferry Terminal in Manhattan, the City Island and Hart Island Facilities, the Battery Maritime Building, and all floating dock building equipment.

Since 1993, Congress has provided approximately \$50 million in Federal funds for the Staten Island Ferry system. On July 4, 1997, the fare for foot passengers on the Staten Island ferry was eliminated.

Several Federal government agencies including the National Transportation Safety Board (NTSB), Coast Guard, and Department of Justice investigated the accident. Additionally, the New York City Department of Transportation initiated a separate investigation. In accordance with joint NTSB and Coast Guard regulations on the investigation of marine casualties, contained in 46 CFR §4.40, and the September 12, 2002 Memorandum of Understanding between the NTSB and the Coast Guard, the NTSB lead the accident investigation due to the actual loss of 10 lives, the threatened high loss of life to other passengers and crew aboard the vessel, and the threat to the port facility. In 2005, the NTSB determined that the probable cause of the accident was the assistant captain's unexplained incapacitation and the failure of the NYC DOT to implement and oversee safe, effective operating procedures for its ferries.

## **2. Activities in the 109<sup>th</sup> Congress**

In the 109<sup>th</sup> Congress, legislative provisions related to maritime transportation safety were included in the Coast Guard and Maritime Transportation Act of 2006 (P.L.109-241). These provisions include: requiring safety inspections on ferries that do not charge passengers a fee for their transportation and requiring the Coast Guard to develop a cold water safety education program.

In addition, legislative provisions related to maritime transportation safety were also included in FY 2004 Coast Guard Authorization Act (P.L. 108-293). These provisions include: coverage of vessels that engage in so-called voyages to nowhere by the International Safety Management Code; increased penalties for the sale and distribution of faulty recreational vessels; and inspection of towing vessels.

Oversight of maritime transportation safety will continue in the 110<sup>th</sup> Congress. The Subcommittee will look at the Coast Guard's marine casualty investigation system to determine if the information gathered in those investigations can and are being used to improve transportation safety in the United States.

## **B. Marine Environmental Protection Related to Vessel Operations**

The Subcommittee has jurisdiction over certain marine environmental protection activities that are carried out by the Coast Guard, and generally related to the operation of vessels. These activities include oil pollution, air pollution, plastics pollution, aquatic nuisance species transported by vessels, and related international agreements.

## **1. Ballast Water Management**

In the 109<sup>th</sup> Congress, the Subcommittee closely monitored the proposal to implement international ballast water management standards that was agreed to by the International Maritime Organization (IMO) in early 2004 and discussed reauthorizing the ballast water management provisions of the National Invasive Species Act.

On February 13, 2004, the IMO agreed to the International Convention for the Control and Management of Ships' Ballast Water & Sediments. This Convention and its supporting Annex ("Convention") have not been ratified by any of IMO's Member nations as of January 2005. If the Convention is ratified by a sufficient number of nations and enters into force this would represent the first effort to use international law to minimize the spread of non-indigenous, aquatic organisms by requiring ballast water management. This Convention also would establish the first performance standards applicable to ballast water treatment. A delegation of U.S. officials, led by the Coast Guard, participated in the IMO's development of the Convention.

The United States has repeatedly taken action to minimize the introduction of aquatic nuisance species via ballast water since populations of zebra mussels were discovered in the Great Lakes in the 1980s. In 1990, Congress responded to this problem by enacting the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Title I of P.L. 101-646) ("1990 Act"). The 1990 Act established a program for preventing, researching, monitoring, and controlling infestations of nonindigenous aquatic species and required all vessels equipped with ballast water tanks entering the Great Lakes to undergo ballast water exchange.

In 1996, Congress amended the 1990 Act to address the potential introduction of aquatic nuisance species through ballast water in other U.S. waters. This law, the National Invasive Species Act of 1996 (P.L. 104-332), required the Coast Guard to issue voluntary guidelines to prevent the introduction and spread of nonindigenous species in all U.S. waters by vessels equipped with ballast water tanks that enter U.S. waters from beyond the U.S. Exclusive Economic Zone (200 miles), and to make those voluntary guidelines mandatory if the Coast Guard found lack of compliance or could not verify vessel compliance with the voluntary guidelines.

In June 2002, the Coast Guard determined that there was a significant lack of compliance and implemented on September 27, 2004 final rules that require all vessels equipped with ballast tanks and bound for U.S. ports to exchange their ballast water before entering U.S. waters. In 2004, to begin evaluation and approval of experimental ballast water treatment technologies, the Coast Guard initiated the Shipboard Technology Evaluation Program (STEP), a voluntary experimental technology approval program to encourage research and development of treatment systems. To date, no alternatives to ballast water exchange have been approved under the STEP program.

## **2. Oil Spills**

Oil spills in the Delaware River and the Bering Sea late in 2004 have led to heightened interest in the implementation of the Oil Pollution Act of 1990 (OPA).

## **3. Activities in the 109<sup>th</sup> Congress**

Legislative provisions related to marine environmental protection were included in the Delaware River Protection Act (Title VI of P.L. 109-241). These provisions include: a requirement to adjust oil spill liability limits to reflect increases in inflation since 1990; a mandate for individuals to report to the Coast Guard any release of an object from a vessel or a facility that could obstruct navigation in United States waters; and to improve future oil spill response actions in the Delaware River and nationwide.

In the 108<sup>th</sup> Congress, provisions related to marine environmental protection were included in Title VII of the Coast Guard Authorization Act (P.L. 108-293). These provisions include: requiring a report on the implementation of OPA; conforming oil spill liability to that of hazardous material spills; and requiring vessel response plans for vessels over 400 gross tons.

In the 110<sup>th</sup> Congress, the Subcommittee will continue its oversight of the marine environmental laws and develop legislation to provide for the treatment of ballast water in ships before they enter the United States.

## **C. Port and Vessel Security**

### **1. Overview**

Annually, the U.S. ports handle more than two billion tons of freight, three billion barrels of oil, more than 134 million ferry passengers, and more than seven million cruise ship passengers. Approximately 7,500 foreign ships, manned by 200,000 foreign sailors, enter U.S. ports every year to offload approximately six million truck-size cargo containers onto U.S. docks. Additionally, many of these seaports are critical military strategic sealift ports whose availability must be constantly assured.

Critical coastal facilities such as military installations, nuclear power plants, oil refineries, fuel tanks, pipelines, chemical plants, and vital bridges line American ports, waterways, and shores. These and many other national assets are critical to our economic and national security and vital for the free and seamless movement of passengers and goods throughout the country.

There are 361 public ports in the United States that handle more than 95 percent of U.S. overseas trade. The top 50 ports in the United States account for more than 90 percent of total cargo tonnage. Twenty-five U.S. ports account for over 98 percent of all container shipments. Cruise ships visiting foreign destinations embark from at least 16 U.S. ports. Generally, ports are often very open and exposed and are susceptible to large-scale acts of terrorism that could cause catastrophic loss of life and economic disruption.

In 2002, Congress enacted the Maritime Transportation Security Act in 2002 (MTSA). The measure establishes a comprehensive national maritime transportation security system; requires the Coast Guard to conduct vulnerability assessments of U.S. ports; requires the Coast Guard to develop national and regional area maritime transportation security plans; requires seaports, waterfront terminals, and certain types of vessels to develop security and incident response plans to the Coast Guard; and requires the Coast Guard to conduct an antiterrorism assessment of certain foreign ports. Vessel and facility plans went into effect on July 1, 2004.

## **2. Activities in the 109<sup>th</sup> Congress**

In the 109<sup>th</sup> Congress, the Subcommittee held hearings on the implementation of MTSA. Legislative provisions related to maritime transportation security were included in the FY 2006 Coast Guard Authorization Act (P.L.109-241). These provisions include the use of marine safety and security teams to enforce the laws of the United States; enhanced penalties for violations of MTSA; and a requirement that appeals of the denial of a transportation worker security card to be before an Administrative Law Judge. In addition, in the 108<sup>th</sup> Congress, Congress amended MTSA to assure the Act's effective implementation, and to assure that Congress receive adequate information regarding that implementation.

In the 110<sup>th</sup> Congress, the Subcommittee expects to consider additional port security matters. The Subcommittee will continue its oversight of MTSA implementation, and maritime domain awareness.

## **D. Regulation of Ocean Shipping**

### **1. Federal Maritime Commission**

The Subcommittee has jurisdiction over the regulation of ocean shipping (including international ocean shipping, cruise ship financial responsibility, and unfair foreign shipping practices). These laws are generally codified in Subtitle IV of title 46, United States Code. The Federal Maritime Commission (FMC) is responsible for the economic regulation of the waterborne foreign commerce; the protection of shippers, carriers, and others engaged in the foreign commerce of the U.S. from unfair practices of foreign governments or foreign-flag carriers that have an adverse effect on shipping in U.S. trades; and the issuance of passenger vessel certificates to passenger vessel operators who have evidence of financial responsibility to pay judgments for personal injury or death or to repay fares for the nonperformance of a voyage or cruise.

The agency also enforces the Foreign Shipping Practices Act and Section 19 of the Merchant Marine Act, 1920. Under these authorities, the FMC protects shippers and carriers from restrictive or unfair practices of foreign governments and foreign-flag carriers. The FMC also enforces the laws related to cruise vessel financial responsibility to ensure that cruise vessel operators have sufficient resources to pay judgments to passengers for personal injury or death or for nonperformance of a voyage.

The Administration requested \$21.5 million for the operation of the Federal Maritime Commission for Fiscal Year 2007. Approximately \$20.5 million was appropriated for FMC operations in Fiscal Year 2006.

## **2. Activities in the 109<sup>th</sup> Congress**

The Coast Guard and Maritime Transportation Act of 2004 (P.L. 108-293), authorized the Federal Maritime Commission through Fiscal Year 2008, and directed it to report on the ongoing information sharing efforts to assist law enforcement and anti-terrorism efforts. In the 109<sup>th</sup> Congress, the Subcommittee conducted oversight of the FMC's budget, and activities in administering the Shipping Act of 1984.

In the 110<sup>th</sup> Congress, the Subcommittee will continue its oversight of the regulation of ocean shipping.

### **E. Merchant Marine**

The Subcommittee has jurisdiction over the merchant marine, except as it relates to national security. This jurisdiction includes the regulation of vessels and seamen. The Maritime Administration administers various programs designed to promote and develop the domestic merchant marine industry. The Committee on Armed Services has jurisdiction over these programs to the extent that they are directly related to national defense, such as the Maritime Security Program. The Subcommittee oversees other promotional programs for U.S.-flag vessels in the domestic and foreign trade, and various other promotional programs for the U.S.-flag fleet such as promotion of short sea shipping, U.S.-flag liquefied natural gas tankers, and regulation of the Federal cargo preference laws.

#### **1. U.S.-flag Dredges**

The Act of May 28, 1906 (46 App. United States Code 292), informally referred to as the Dredging Act, establishes U.S.-construction or -documentation, -ownership and -control requirements for dredges engaged in dredging activities in U.S. navigable waters.

The Dredging Act was amended in 1992 by the inclusion of a provision that applies citizenship requirements not only to dredge ownership, but also to any entity that chartered a dredge engaged in dredging U.S. navigable waters. The 1992 amendment also included an exemption that waives citizenship requirements for one U.S.-built and flagged hopper dredge, and any certain chartered dredges affiliated with that vessel. The exemption expires on the earliest of 2022 or the date on which the STUYVESANT loses its U.S.-flag status.

In February 1998, and on two subsequent occasions, the U.S. Customs Service (now U. S. Customs and Border Protection) ruled that the chartered dredge exemptions in the 1992 amendment allowed U.S.-flag dredges to be used by a non-U.S. citizen company under the waiver. In October 2003, the U. S. Court of Claims overturned the Customs' interpretation in the case of *Norfolk Dredging Company Inc. v. the United States and Bean Stuyvesant LLC*. On July 7, 2004, the U. S. Court of Appeals overturned the lower court's decision and affirmed the interpretation of the U.S. Customs Service.

Section 609 of the House-passed version of H.R. 2443, the Coast Guard and Maritime Transportation Act of 2004, directed the Congressional Budget Office to study the impacts of



chartering by foreign citizens of dredges documented in the United States. The study was completed and submitted to the Committee on Transportation and Infrastructure.

The Subcommittee has reviewed interpretations of existing ownership and control requirements for U.S. flag dredges and conducted oversight activities.

## **2. Activities in the 109<sup>th</sup> Congress**

Legislative provisions related to the regulation of maritime transportation were included in P.L. 109-241. These provisions include: requiring the Secretary of Transportation to develop a promotional program for U.S.-flag liquefied natural gas (LNG) tankers; providing a priority for Deepwater Port license applications that include the use of U.S.-flag LNG tankers; and authorizing the Coast Guard to request information from mortgagees of U.S.-flag vessels to ensure that foreign vessel operators do not exercise control over U.S.-flag vessels engaged in the coastwise trade of the United States.

In addition, the Subcommittee included several waivers to U.S. documentation laws and changed the rules of lease financing of U.S. vessels by foreign entities in the Coast Guard and Maritime Transportation Act of 2004 (P.L. 108-293).

The Subcommittee will continue its oversight of U.S. cabotage laws, and laws governing the merchant marine, and examine what opportunities exist to increase the size of the U.S.-flag fleet.