

**Calendar No. 193**

111TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
111-95

COAST GUARD AUTHORIZATION ACT FOR  
FISCAL YEARS 2010 AND 2011

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 1194



OCTOBER 30, 2009.—Ordered to be printed

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COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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### COAST GUARD AUTHORIZATION ACT FOR FISCAL YEARS 2010 AND 2011

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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. 1194]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1194) to reauthorize the Coast Guard for fiscal years 2010 and 2011, 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

S. 1194, the Coast Guard Authorization Act for Fiscal Years 2010 and 2011, as amended, would make a number of changes to current law affecting the Coast Guard and its statutory missions, and would serve two very important purposes. First, it would authorize appropriations for the Coast Guard for fiscal year (FY) 2010 and FY 2011 covering six accounts: (1) operation and maintenance expenses; (2) acquisition, construction, and improvement of facilities and equipment (AC&I); (3) retired pay; (4) environmental compliance and restoration; (5) research, development, testing, and evaluation (RDT&E); and (6) the reserve program. Second, it would provide for comprehensive reform to the Coast Guard's major systems acquisition processes and procedures.

#### BACKGROUND AND NEEDS

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

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

The Coast Guard remained a part of the Department of the Treasury until 1967, when it was transferred to the newly created Department of Transportation. On March 1, 2003, pursuant to the Homeland Security Act of 2002 (Public Law 107–296), the Coast Guard was transferred to the newly constituted Department of Homeland Security. The Coast Guard provides many critical services for our Nation which can be grouped into five fundamental categories: maritime security; maritime safety; maritime mobility; protection of natural resources; and national defense.

The Coast Guard is the Federal government's principal maritime law-enforcement agency, and is also a branch of the United States armed forces. As such, the Coast Guard maintains defense readiness to operate as a specialized service in the Navy upon the declaration of war or when the President so directs. The Coast Guard has defended the nation in every war since 1790. During the recent combat operations in Iraq, the Coast Guard deployed two 378-foot high endurance cutters, one 225-foot ocean going buoy tender, and one Port Security Team. It continues to operate six 110-foot Island Class patrol boats in the Persian Gulf. This was the first deployment of Coast Guard cutters in support of a wartime contingency since the Vietnam War.

Under title 14, United States Code, the Coast Guard has primary responsibility for enforcing or assisting in the enforcement of all applicable Federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States; ensuring the safety of life and property at sea; protecting the marine environment; carrying out domestic and international icebreaking activities; and ensuring the safety and security of vessels, ports, waterways, and related facilities. In carrying out these responsibilities, the Coast Guard's activities include commercial and recreational vessel safety inspection, the rescue of lives and property at sea, enforcement of fisheries laws, marine environmental protection, and the interdiction of drug traffickers and smugglers of illegal migrants. Since September 11, 2001, the Coast Guard's security responsibilities have increased significantly, with new authorities provided under the Maritime Transportation Security Act of 2002 (MTSA, Public Law 107–295).

The Coast Guard is composed of 41,950 active duty military personnel, 7,500 reservists, 7,700 civilian employees, and 29,000 Coast Guard Auxiliary volunteers. In 2008, the Coast Guard responded to more than 24,000 calls for assistance, boarded 70,000 vessels, saved 4,000 lives, seized 370,000 pounds of cocaine, and stopped 5,000 illegal migrants from reaching our shores. The Coast Guard conducted also waterborne, aerial, and shore-side security patrols, including approximately 84,000 patrols of critical infrastructure and key assets. Additionally, the Coast Guard conducted more than 20,700 security zone patrols near critical infrastructure. The Coast Guard escorted approximately 5,900 naval vessels, vessels engaged in military outloads, vessels carrying certain dangerous cargoes in bulk, and high capacity passenger vessels, including cruise ships and ferry vessels. Coast Guard assets also patrolled to protect our

fisheries stocks and responded to 14,647 pollution incidents (4,474 from vessels and 10,173 from facilities and other sources).

Oil pollution from vessels continues to pose major environmental risks to our Nation. In 2007, the most recent year for which complete information is currently available from the Energy Information Administration, the United States had net imports of 12.2 million barrels of oil per day, more than twice as much as Japan (4.9 million barrels) and more than three times as much as China (3.7 million barrels), the world's next largest importers. The transport of crude oil into the United States occurs primarily by sea with ports throughout the United States receiving tens of thousands of shipments of oil each year. The Maritime Administration reported that the United States received over 8,400 shipments of crude oil via Tanker Vessels with at least 70,000 dead weight tons in 2007—a 33 percent increase from 2002. In addition, vessels not transporting oil, such as cargo and freight vessels, fishing vessels, and passenger ships, often carry tens of thousands of gallons of fuel oil to power their engines. According to Coast Guard data, while the number of oil spills from vessels has decreased notably since passage of the Oil Pollution Act of 1990 (OPA 90), the volume of oil spilled nationwide is still significant. The Government Accountability Office (GAO), in its September 2007 report entitled “Major Oil Spills Occur Infrequently, but Risks to the Federal Oil Spill Fund Remain” (GAO-07-1085), found that 51 spills with costs above \$1 million have occurred since 1990, costing a total of between \$860 million and \$1.1 billion.

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

Further improvements in the Coast Guard's authority will better enable it to achieve its environmental protection and response mission and other statutory missions. Improvements in the Coast Guard's authorizing statute are also needed to ensure it can successfully acquire the assets it needs to accomplish these missions. The Coast Guard is struggling right now to replace its rapidly aging fleet of ships, aircraft, and facilities. With current cost estimates ranging from \$24 billion to \$26 billion, the Integrated Deepwater System Program is the largest and most complex acquisition program in the Coast Guard's history. The primary purpose of the Deepwater program is to modernize its aging fleet of 90 cutters and 200 aircraft used for missions that occur beyond 50 miles from the shoreline through a mix of new acquisitions and retrofits to existing “legacy assets.”

In 2002, the Coast Guard selected Integrated Coast Guard Systems (ICGS), a joint venture between Lockheed Martin and Northrop Grumman, as its primary contractor, with ICGS using a lead systems integrator (LSI) approach intended to develop new assets

as an integrated “system of systems.” This LSI approach provided the contractor with significant decision-making and management authority over many aspects of the acquisition, including decisions on whether to “make or buy” assets to be delivered. The LSI approach also did not require competition for subcontracts.

In 1998, the Coast Guard’s initial estimated cost for the Deepwater project was \$17 billion, with an estimated delivery date for all new and retrofitted assets of 2018. The Coast Guard submitted a revised Deepwater implementation plan to Congress in February, 2005, to address increased costs, and to account for new security capabilities and the service’s new missions following its shift from the Department of Transportation to the Department of Homeland Security (DHS) subsequent to the events of September 11, 2001. Under this revised plan, the overall program cost increased to \$24 billion, with the final assets scheduled for delivery in 2027.

Problems with the Deepwater program, many of which have been documented in reports from the DHS Inspector General and the GAO, have raised serious concerns about specific acquisitions under the program, as well as more fundamental problems with the program as a whole. The GAO issued a report in March 2004 (GAO-04-380) citing significant risks with the use of the LSI contracting model and recommending changes to address three broad areas of concern: (1) improving program management; (2) strengthening contractor accountability; and (3) promoting cost control through greater competition among potential subcontractors. A GAO report (GAO-06-764) issued in June of 2006 detailed problems with the design of one of the three major new vessel assets to be acquired, the Fast Response Cutter (FRC), that led the Coast Guard to issue a stop-work order to ICGS. On November 30, 2006, the Coast Guard announced the decision to suspend all operations of the eight 110-foot patrol boats that had been converted to 123-foot patrol boats, due to structural damage and safety concerns. A report (OIG-07-23) of the DHS IG issued on January 23, 2007, found that the largest new vessel to be delivered under the contract, the National Security Cutter (NSC), would not meet the Coast Guard’s performance requirements and had design flaws that could result in significant additional costs. Another report (OIG-07-27) from the DHS IG dated February 9, 2007, found that ICGS failed to install low-smoke cable and other elements of the command, control, communications, computers, intelligence, surveillance, and reconnaissance (C4ISR) system on the converted 123-foot vessels, as required by the contract specifications.

The Defense Acquisition University, housed within the Department of Defense (DOD), released a study on February 5, 2007, which found problems with nearly every aspect of the Deepwater program, including the implementation of the “system-of-systems” approach; the LSI contractual arrangement; and Coast Guard management, workforce and organizational structure, financial management, and logistics. As problems with the Deepwater program continued to grow in 2007, the Coast Guard began to transition away from the system-of-systems approach and use of a private sector entity as an LSI, toward a more conventional approach focused on acquisitions at the asset level, with the Coast Guard serving as the systems integrator for each acquisition program. In the last two years, the Coast Guard has assumed the role of systems

integrator for the overall Deepwater program, reduced the work being performed under contract by ICGS, and has undertaken a reassessment of needs with regard to Deepwater asset capabilities and numbers. The Coast Guard also is applying more rigorous processes and procedures contained in its revised Major Systems Acquisition Manual, although it has bypassed these requirements in more than one instance.

On April 22, 2009, GAO provided testimony (GAO-09-620T) to Congress in which it estimated that the cost of the Deepwater program could increase by as much as \$2.1 billion, bringing the total cost of the program to an estimated \$26.3 billion. At that time GAO also noted that, as the Coast Guard continues to assume the role of systems integrator for the acquisition of various Deepwater assets and gains increased insight into what it is buying, further cost growth may be observed. More recently, on July 14, 2009, GAO released a report (GAO-09-682) which included a revised estimated Deepwater cost increase of \$2.7 billion, bringing the total cost to an estimated \$26.9 billion.

The Coast Guard has made, and continues to make, changes in its management of the Deepwater program and its major systems acquisition requirements more broadly in order to address Congressional concerns. However, evidence of departures from those new requirements, coupled with ever-growing cost projections and project timelines, continue to be significant sources of apprehension.

#### SUMMARY OF PROVISIONS

S. 1194, as reported, would authorize appropriations in Title I for the Coast Guard accounts covered in the bill totaling approximately \$9.4 billion for each of FY 2010 and FY 2011.

*Operating Expenses*—The Coast Guard uses over two-thirds of its total budget conducting operations in support of its primary mission areas: protecting public safety and the marine environment; safeguarding our ports, waterways, and coastal areas; enforcing laws and treaties, including preventing illegal drug trafficking, interdicting illegal aliens and enforcing fisheries laws; maintaining aids to navigation; and preserving defense readiness. For each of FY 2010 and FY 2011, S. 1194 would authorize \$6.556 billion for operating expenses, an increase of approximately \$326 million from the FY 2009 appropriated level. Of that amount, \$24.5 million would be transferred from the Oil Spill Liability Trust Fund to the Operating Expenses account.

*AC&I*—AC&I funds are used to pay for major capital improvements, including vessel and aircraft acquisition and rehabilitation, information management, and construction programs at selected facilities. Major AC&I projects include arming helicopters; recapitalizing the National Distress and Response System; implementing the vessel Automatic Identification System (AIS); aircraft sensor, avionics, and engine upgrades; the Integrated Deepwater System project; and various shore facility upgrades to those units in need. For each of FY 2010 and FY 2011, S. 1194 would authorize \$1.384 billion. The AC&I authorization directs that \$20 million would be transferred from the Oil Spill Liability Trust Fund to the AC&I account.

*Retired Pay*—Funds from this account are used for retired pay, annuities, and medical care for retired military personnel and former Lighthouse Service members, their dependents, and their survivors under chapter 55 of title 10, United States Code. S. 1194 would authorize \$1.361 billion for this account for each of FY 2010 and FY 2011.

*Environmental Compliance and Restoration*—This account provides resources to bring current and former Coast Guard facilities into compliance with national environmental standards. S. 1194 would authorize \$13.198 million for this account for each of FY 2010 and FY 2011.

*RDT&E*—Funds from this account are used for applied scientific research that aids in the development of hardware, procedures, and systems that directly contribute to increasing the productivity of Coast Guard operating and regulatory programs. S. 1194 would authorize \$19.745 million for this account.

*Reserve Program*—The Coast Guard Reserve Forces provide trained and qualified personnel available for active duty in time of war or national emergency and at such other times as the national security requires. Reserve personnel maintain their readiness through realistic coordinated mobilization exercises, formal military training and duty alongside regular Coast Guard members during routine and emergency operations. S. 1194 would authorize \$133.6 million to provide resources to fully train, support, and sustain a reserve force of approximately 8,100 members.

Title II of S. 1194, as reported, would authorize the Coast Guard to enter into beneficial public-private partnerships, address administrative needs of the Coast Guard, and increase the authorities of the Coast Guard with respect to maritime authorities and activities with foreign governments.

Title III of S. 1194, as reported, would improve the organizational flexibility of the Coast Guard.

Title IV of S. 1194, as reported, would authorize several significant changes in the way the Coast Guard utilizes its Reserve personnel, conducts officer promotions, and retains personnel leave.

Title V of S. 1194, as reported, contains provisions that would address the need for comprehensive reform of the Coast Guard's major systems acquisition processes and procedures. It would establish a leadership structure, direct accountability, and clear roles and responsibilities with regard to major acquisitions throughout the Coast Guard's chain of command by, among other things, creating a Chief Acquisition Officer at the Assistant Commandant level with mandatory acquisition and contracting qualifications and training. It would also prohibit the Coast Guard's continued use of a "lead systems integrator" throughout the entire Coast Guard on the date of enactment, except in limited instances in which the mechanism will instead be phased out by the end of 2012.

Title VI of S. 1194, as reported, includes several provisions that would aid in improving navigation of vessels and the authority of the Coast Guard to regulate shipping.

Title VII of S. 1194, as reported, would require that, when the Coast Guard is authorized by law to transfer ownership of a vessel to an eligible entity for use for educational, cultural, historical, charitable, recreational, or other public purposes, such a transfer must be conducted through the General Services Administration.



Title VIII of S. 1194, as reported, includes several provisions found in S. 684, the Oil Pollution Prevention and Response Act of 2009, that would provide the Coast Guard and the National Oceanic and Atmospheric Administration (NOAA) with additional authorities to deal with oil spills under OPA 90.

Title IX of S. 1194, as reported, includes several miscellaneous provisions that relate to the Coast Guard and Coast Guard missions.

#### LEGISLATIVE HISTORY

S. 1194 was introduced on June 4, 2009, by Senator Cantwell, Senator Snowe, Senator Rockefeller, and Senator Hutchison, and was referred to the Committee on Commerce, Science, and Transportation. An oversight hearing on Coast Guard issues was held on July 7, 2009. On July 8, 2009, the Committee ordered that S. 1194 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:

SEPTEMBER 24, 2009.

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. 1194, the Coast Guard Authorization Act for Fiscal Years 2010 and 2011.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

#### *S. 1194—Coast Guard Authorization Act for Fiscal Years 2010 and 2011*

Summary: S. 1194 would amend various laws that govern the activities of the U.S. Coast Guard (USCG). The bill also would authorize appropriations totaling nearly \$16.4 billion through fiscal year 2014, primarily for ongoing USCG operations during 2010 and 2011. CBO estimates that appropriating the amounts specifically authorized by the bill (or estimated to be necessary to carry out title V) would result in discretionary spending of about \$16 billion over the 2010–2014 period.

Implementing title V, which addresses the Coast Guard's acquisition practices, could result in future savings in discretionary spending, but CBO cannot estimate such savings or clearly identify how much of that savings should be attributed to the legislation rather than to reforms that the Coast Guard has already begun implementing under existing authority.

Enacting S. 1194 would increase direct spending by an estimated \$6 million over the 2010–2019 period. First, the bill would increase

certain annual payments made from the Oil Spill Liability Trust Fund (OSLTF) by \$4 million over the 2010–2019 period. The bill also would reduce offsetting receipts (a credit against direct spending) by directing the Coast Guard to donate—rather than sell—certain properties to local governments in Michigan. We estimate that the resulting loss of receipts would total about \$2 million over the 2010–2019 period. Enacting S. 1194 would not affect revenues.

S. 1194 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 also would impose additional intergovernmental mandates by preempting state laws. CBO estimates that the compliance costs for public entities would not exceed the annual threshold established in UMRA for intergovernmental mandates (\$69 million in 2009, adjusted annually for inflation). In addition, the bill would impose additional private-sector mandates on owners and operators of certain vessels and facilities. The cost of most of the mandates on private entities would be small; however, the costs of some mandates are uncertain and would depend on future regulations. Therefore, CBO cannot determine whether the aggregate cost of the mandates in the bill would exceed the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).

**Estimated cost to the Federal Government:** The estimated budgetary effects of S. 1194 are summarized in the following table. The costs of this legislation fall within budget functions 300 (natural resources and environment) and 400 (transportation).

**Basis of estimate:** For this estimate, CBO assumes that S. 1194 will be enacted early in fiscal year 2010 and that the amounts specifically authorized by the bill or estimated to be necessary will be appropriated for each year. Estimated outlays are based on historical spending patterns for the authorized activities.

*Spending subject to appropriation*

The proposed authorization levels shown in the table are those specified by S. 1194 for ongoing Coast Guard activities and for certain new or existing programs of the Department of Transportation (DOT) and the National Oceanic and Atmospheric Administration (NOAA). The table excludes \$24 million to be derived from the OSLTF for USCG operating expenses because that amount is already authorized under existing law.

|                                                     | By fiscal year, in millions of dollars— |       |       |      |      |           |           |
|-----------------------------------------------------|-----------------------------------------|-------|-------|------|------|-----------|-----------|
|                                                     | 2010                                    | 2011  | 2012  | 2013 | 2014 | 2010–2014 | 2010–2019 |
| <b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION</b> |                                         |       |       |      |      |           |           |
| <b>USCG authorizations:<sup>1</sup></b>             |                                         |       |       |      |      |           |           |
| Authorization level .....                           | 8,083                                   | 8,083 | 0     | 0    | 0    | 16,166    | 16,166    |
| Estimated outlays .....                             | 5,489                                   | 6,886 | 1,987 | 927  | 449  | 15,738    | 16,166    |
| <b>USCG acquisition reform:</b>                     |                                         |       |       |      |      |           |           |
| Estimated authorization level .....                 | 5                                       | 0     | 0     | 0    | 0    | 5         | 5         |
| Estimated outlays .....                             | 3                                       | 2     | 0     | 0    | 0    | 5         | 5         |
| <b>LORAN-C:</b>                                     |                                         |       |       |      |      |           |           |
| Authorization level .....                           | 37                                      | 37    | 0     | 0    | 0    | 74        | 74        |
| Estimated outlays .....                             | 29                                      | 35    | 7     | 2    | 1    | 74        | 74        |

|                                          | By fiscal year, in millions of dollars— |       |       |      |      |           |           |
|------------------------------------------|-----------------------------------------|-------|-------|------|------|-----------|-----------|
|                                          | 2010                                    | 2011  | 2012  | 2013 | 2014 | 2010–2014 | 2010–2019 |
| Grants to tribes for oil spill recovery: |                                         |       |       |      |      |           |           |
| Authorization level .....                | 1                                       | 1     | 1     | 1    | 1    | 3         | 3         |
| Estimated outlays .....                  | 1                                       | 1     | 1     | 1    | 1    | 3         | 3         |
| NOAA authorizations: <sup>2</sup>        |                                         |       |       |      |      |           |           |
| Authorization level .....                | 26                                      | 25    | 25    | 25   | 25   | 126       | 251       |
| Estimated outlays .....                  | 17                                      | 22    | 24    | 25   | 25   | 113       | 238       |
| Total proposed changes:                  |                                         |       |       |      |      |           |           |
| Estimated authorization level .....      | 8,152                                   | 8,146 | 26    | 26   | 26   | 16,374    | 16,499    |
| Estimated outlays .....                  | 5,539                                   | 6,946 | 2,019 | 955  | 476  | 15,933    | 16,486    |
| CHANGES IN DIRECT SPENDING               |                                         |       |       |      |      |           |           |
| Estimated budget authority .....         | 0                                       | *     | *     | *    | *    | 2         | 6         |
| Estimated outlays .....                  | 0                                       | *     | *     | *    | *    | 2         | 6         |

<sup>1</sup>The USCG received appropriations totaling over \$8.3 billion for fiscal year 2009, including \$240 million under the American Recovery and Reinvestment Act of 2009.

<sup>2</sup>NOAA authorizations and outlays of \$25 million a year would continue over the 2015–2019 period.

Notes: USCG = U.S. Coast Guard; NOAA = National Oceanic and Atmospheric Administration; LORAN-C = Long-Range Aid to Navigation; \* = less than \$500,000; numbers may not add up to totals because of rounding.

**USCG Authorizations.** Title I would reauthorize funding for ongoing USCG activities for 2010 and 2011. Specifically, for each of the two years, title I would authorize the appropriation of about \$6.7 billion for USCG operations (including \$134 million for reserve training and \$13 million for environmental compliance), about \$1.4 billion for capital acquisitions, and nearly \$20 million for research programs. Of the amounts authorized by title I for each year, \$44 million would be derived from the OSLTF.

CBO estimates that appropriating the amounts specified in title I for ongoing USCG activities would cost nearly \$5.5 billion in 2010 and by about \$15.7 billion over the 2010–2014 period.

Title I also would authorize the appropriation of about \$1.4 billion for Coast Guard retirement benefits in each of fiscal years 2010 and 2011, 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 those amounts would have no additional budgetary impact.

**USCG Acquisition Reform.** Title V addresses the contracting practices used by the Coast Guard to acquire capital assets such as vessels and aircraft. Assuming appropriation of the necessary amounts, CBO estimates that implementing title V would cost the USCG about \$5 million over the next two years, mostly to develop life-cycle cost estimates for current acquisition initiatives. We estimate that other administrative costs for additional testing and certification (and to develop life-cycle cost estimates for major acquisition initiatives in the future) would not significantly affect the agency's annual budget.

Title V would restrict the Coast Guard's reliance on private entities to manage major acquisitions and would require the agency to revise other procurement practices to rectify problems identified by the Department of Defense (DoD) and other federal agencies. It also would require that many future acquisitions be open to competition and be subject to specified testing, analysis, and certification requirements. Finally, the title would require the Coast Guard to hire additional contracting and management personnel and to produce various reports on its acquisition activities.

The contracting reforms required by S. 1194 could result in lower procurement expenditures in the future. Much of the long-term

savings, however, might occur even in the absence of the legislation because the Coast Guard is already implementing many of those reforms, including hiring additional contracting personnel. CBO cannot estimate the likely size of cost savings from improving procurement practices or clearly identify what proportion of such savings would be attributable to the legislation and what share would result from changes that the Coast Guard is already implementing.

Any savings realized by the Coast Guard as a result of the legislation would depend on future changes in the level of discretionary appropriations for capital acquisitions. Annual funding for Coast Guard acquisition has risen rapidly in recent years—from about \$640 million in fiscal year 2002 to nearly \$1.6 billion for 2009. (The 2009 figure includes nearly \$100 million provided by the American Recovery and Reinvestment Act of 2009.) Most of the increase over this period stems from new funding for the Integrated Deepwater Initiative, which will provide for the replacement of many of the agency's vessels, aircraft, and other assets at an estimated cost of between \$25 billion to \$30 billion over the next 25 years.

LORAN-C. Title VI would authorize the appropriation of \$37 million for each of fiscal years 2010 and 2011 to the Department of Transportation to reimburse the Coast Guard for operating the current system of long-range aids to navigation (known as LORAN-C). Appropriating the authorized amounts would cost \$74 million over the 2010–2014 period.

Grants to Tribes for Oil Spill Recovery. Title VII would authorize the appropriation of \$500,000 a year through 2014 for grants and other assistance to tribal governments. The funding would be used by the tribes to help respond to oil spills. Appropriating the authorized amounts would cost about \$3 million over the 2010–2014 period.

NOAA Authorizations. S. 1194 would authorize appropriations for certain programs carried out by NOAA. CBO estimates that appropriating those amounts would cost \$113 million over the 2010–2014 period. The authorizations for NOAA include:

- \$15 million a year from the OSLTF for oil-spill response and damage assessments;
- \$10 million a year through 2014 for a program to prevent oil spills from small vessels; and
- \$0.7 million in 2010 to conduct an emergency drill in the Olympic Coast National Marine Sanctuary.

#### *Changes in direct spending*

Enacting section 814 would increase the annual payment made from the Oil Spill Liability Trust Fund to OSRI (an Alaska-based research institute) by an estimated \$400,000, resulting in additional direct spending of about \$4 million over the 2010–2019 period.

Under current law, OSRI receives an annual payment from the OSLTF equal to the interest credited (in the previous year) on \$22.5 million of that fund's unspent balances. Such payments—about \$1 million a year—are not subject to appropriation action and are used by the institute to carry out research on oil spills.

Section 814 would increase the portion of the trust fund's principal that would be held on behalf of OSRI by about \$13 million, resulting in the increase in annual payments beginning in 2011.

Title IX would direct the USCG to donate certain real and personal property located in Michigan to local governments. CBO estimates that one of the affected assets—a 5.5-acre parcel of land in the city of Marquette—has significant market value. Based on local property values and on information provided by the General Services Administration regarding disposals of surplus USCG property, we estimate that donating the Marquette parcel to the city (rather than selling it under existing authority) would result in a loss of offsetting receipts of about \$2 million over the next 10 years. We expect that all of the other affected property would either be retained by the Coast Guard or eventually donated to local governments under current law; therefore, donating those assets would result in no loss of offsetting receipts.

**Intergovernmental and private-sector impact:** S. 1194 would impose mandates, as defined in UMRA, because it would increase the costs of complying with existing intergovernmental and private-sector mandates related to active-duty personnel in the Coast Guard. The bill also would impose additional intergovernmental mandates by preempting state laws. CBO estimates that the compliance costs for public entities would not exceed the annual threshold established in UMRA for intergovernmental mandates (\$69 million in 2009, adjusted annually for inflation).

The bill also would impose additional new safety requirements on private entities. The costs to private entities to comply with some of the mandates in the bill are uncertain and would depend, in part, on future regulations. Therefore, CBO cannot determine whether the aggregate cost of the mandates in the bill would exceed the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).

*Mandates that apply to both public and private entities*

**Increasing Authorized Coast Guard Personnel.** 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. SCRA also 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 government and private-sector 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; the lost revenues to those governments thus would be insignificant. Moreover, because the in-

crease 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 public entities only*

In addition to the mandates discussed above, the bill would preempt state and local authority governing vessels transferring oil. The bill also could preempt state authority by granting privately owned watercraft equal access to the Atlantic Intracoastal Waterway. Because preemptions limit the authority of state and local governments, they are considered intergovernmental mandates under UMRA, but CBO estimates that those preemptions would not impose significant additional costs on state, local, or tribal governments as regulators.

*Mandates that apply to private entities only*

Standards for Facilities and Vessels that Transfer Oil. S. 1194 would require certain facilities and vessels to meet new safety standards when transferring oil. The bill would direct the Coast Guard to issue regulations to reduce the risk of oil spills in such operations. In implementing the standards, the Secretary would have to consider updating equipment requirements and operational procedures in high-risk areas. The costs of those requirements are uncertain and would depend upon future actions of the Secretary.

Extension of Financial Responsibility Requirements. The bill would extend to tank vessels weighing more than 100 gross tons the current requirement that vessels establish and maintain evidence of financial responsibility sufficient to meet their liability in the event of an oil spill. According to the Coast Guard, such evidence is usually established through an insurance guarantee. In effect, this provision would require owners and operators to show proof of the insurance that they are already required to carry under current law. Consequently, CBO estimates that the cost to comply with this requirement would be small.

Inspection Requirements for Towing Vessels. The bill would require the Secretary of Homeland Security to issue a final rule for inspections of towing vessels within two years of the date of enactment. Current law requires the Secretary to issue regulations for the inspection of towing vessels and authorizes the Secretary to establish a safety management system. To the extent that the bill would accelerate the implementation of any of those requirements, the bill would impose a private-sector mandate. Based on information from the Coast Guard, CBO expects that the cost of the mandate, if imposed, would be relatively small.

Estimate prepared by: Federal Spending: Deborah Reis; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Amy Petz and Jacob Kuipers.

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. 1194 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. It would require changes to the contracting approach used by the Coast Guard in its current and future major systems acquisitions, and improvements to the Coast Guard's management of this program.

## ECONOMIC IMPACT

S. 1194 would enhance existing Coast Guard authorities and authorize funding for Coast Guard activities that have a positive impact on the U.S. economy by ensuring the safety and security of maritime commerce and enforcing our fisheries laws. For example, the provisions of title VIII would improve oil spill prevention and response capabilities that could assist in avoiding future incidents with a negative economic impact at the local, State, and Federal levels. The legislation also contains changes to the contracting approach used by the Coast Guard in its current and future major acquisitions, including requirements that will increase competition and improve contractor oversight, all of which are aimed at reducing unnecessary costs to taxpayers and the Federal government.

## PRIVACY

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

## PAPERWORK

The reported bill should not significantly increase paperwork requirements for individuals and 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. 805 | Olympic Coast National Marine Sanctuary          | Senator Cantwell |
| Sec. 814 | Oil spill liability trust fund investment amount | Senator Begich   |

## SECTION-BY-SECTION ANALYSIS

## TITLE I—AUTHORIZATION

*Section 101. Authorization of appropriations*

This section would authorize funds for each of fiscal years 2010 and 2011 at the following levels: \$6.556 billion for operating expenses; \$1.384 billion for AC&I; \$1.361 billion for retired pay; \$13.2 million for environmental compliance and restoration; \$91.7 million for RDT&E; and \$133.6 million for the reserve program.

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

This section would authorize a Coast Guard end-of-year strength of 49,954 active duty military personnel for fiscal year 2010 and 52,452 active duty military personnel for fiscal year 2011. The authorized strength does not include members of the Ready Reserve called to active duty for special or emergency augmentation of regular Coast Guard forces for periods of 180 days or less. This section also would authorize average military training student loads for fiscal year 2010 and 2011 as follows:

| Training            | FY 2010 Student Years | FY 2011 Student Years |
|---------------------|-----------------------|-----------------------|
| Recruit/Special     | 2,500                 | 2,625                 |
| Flight              | 170                   | 179                   |
| Professional        | 350                   | 368                   |
| Officer Acquisition | 1,300                 | 1,365                 |

## TITLE II—ADMINISTRATION

*Section 201. Authority to distribute funds through grants, cooperative agreements, and contracts to maritime authorities and organizations*

This section would give the Coast Guard limited authority to provide financial support (approx. \$100,000 per year) to international maritime authorities and organizations that collect and maintain databases in order to obtain information on foreign vessels and ports that is directly linked to maintaining and enhancing United States maritime safety and security. The provision requires the Commandant to consult with the Secretary of State when providing such support to international authorities and organizations. In order to access global safety and security information on foreign vessels, the U.S. entered into an agreement with six foreign maritime authorities to form EQUASIS, a global clearinghouse for Port State Control information from all countries. However, current statutory authority does not permit the Coast Guard to use appropriated funds to support, maintain, and expand these international Port State Control efforts of EQUASIS and other similar systems.

*Section 202. Assistance to foreign governments and maritime authorities*

Section 202 of the Coast Guard and Maritime Transportation Act of 2006 amended 14 U.S.C. 149, which authorizes the Coast Guard to provide technical assistance, including law enforcement and maritime safety and security training, to foreign maritime authorities in conjunction with regular Coast Guard operations. The Coast Guard may provide such technical assistance in coordination with the Secretary of State.

This section would clarify the Coast Guard's authority to expend funds to assist foreign governments and maritime authorities, including the detail of personnel, convening conferences and seminars, and distributing publications designed to develop the maritime capabilities of key partner nations, all of which might be considered outside the scope of traditional "technical assistance."



*Section 203. Cooperative agreements for industrial activities*

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

*Section 204. Defining Coast Guard vessels and aircraft*

This section would amend title 14, United States Code, by adding section 638a. The new section would define “Coast Guard vessels and aircraft” for the purposes of 14 U.S.C. 637 and 638. The new definition would include non-traditional vessels and aircraft from which Coast Guard personnel may conduct Coast Guard missions and exercise Coast Guard authority. This would expand the type of assets from which the Coast Guard may exercise its authority to enforce U.S. law, while ensuring that the men and women of the Coast Guard are given the appropriate statutory protections.

## TITLE III—ORGANIZATION

*Section 301. Vice commandant; vice admirals*

This section would increase the organizational flexibility of the current Coast Guard command structure as well as increase alignment with other armed forces.

Section 301(a) would change the vice commandant position from a 3-star position to a 4-star position, which will increase the Coast Guard’s alignment with other armed forces.

Section 301(b) would create a new structure for vice admirals. Section 50(a)(1) of title 14, United States Code, authorizes the President to appoint no more than four “positions of importance and responsibility.” This provision would not set a percentage distribution of commissioned officers on active duty in general officer or flag officer grades as in the other armed forces. Instead, the provision would parallel the command structure of the Marine Corps, fixing the number of vice admirals at no more than four.

Section 50(a)(2) of title 14, United States Code, would retain the existing scheme for the nomination, appointment and confirmation of officers. However, this provision contemplates the reappointment of officers and expressly provides for Senate confirmation prior to such reappointment.

Section 50(b)(1) of title 14, United States Code, would carry forward the language of 14 U.S.C. 50(b) and 50a(b) with regard to the effective and termination dates that the officer assumes and attaches from duty.

Section 50(b)(2) of title 14, United States Code, would provide the treatment of grade of officers who are transferred from one appointment, hospitalized, or awaiting retirement. Section 50(c) of title 14, United States Code, would adopt like treatment of permanency of grade and promotion afforded to such officers of the other armed forces. Section 50(d) of title 14, United States Code, would borrow the notification and recommendation concept of 10 U.S.C. 601(d)(2).

*Section 302. Number and distribution of commissioned officers on the Active Duty Promotion List*

This section would amend section 42 of title 14, United States Code, to permit the Secretary to continue the 6,700 Coast Guard commissioned officer cap beyond FY 2006, applicable only to the commissioned officers on the Coast Guard Active Duty Promotion List, and provide guidance for the management of these commissioned officers.

Subsection (a), in addition to continuing the 6,700 beyond FY 2006, would provide a temporary two percent (2%) increase, or buffer, to accommodate a recurrent and temporary, annual spike in the number of Coast Guard commissioned officers. Current officer management practice is to incorporate a buffer of approximately 200 into the officer cap to accommodate the number of commissioned officers the Coast Guard Academy graduates annually, thereby ensuring the statutory cap of 6,700 is not exceeded.

TITLE IV—PERSONNEL

*Section 401. Leave retention authority*

This section would give the Secretary, and all other service secretaries, the authority to allow service members to retain leave they would otherwise forfeit due to support of major disasters or other emergencies declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288, 42 U.S.C. 5121 et seq.).

In recent years, several major events such as the September 11, 2001, attacks and Hurricanes Katrina, Rita, and Wilma prevented many Coast Guard members from taking leave that they had accrued before the end of a fiscal year. Since only 60 days of leave may be carried over from one fiscal year to the next, this resulted in Coast Guard members losing leave they earned.

*Section 402. Legal assistance for Coast Guard reservists*

Currently, Coast Guard reservists are not covered under 10 U.S.C. 1044, which allows for legal assistance in connection with their personal civil affairs. This provision would amend 10 U.S.C. 1044(a)(4) to establish parity among all similarly situated reservists by making Coast Guard reservists who have served on active duty for more than 30 days under mobilization authority eligible for legal assistance upon release from active duty.

*Section 403. Reimbursement for certain medical related expenses*

This section would amend 10 U.S.C. 1074i to allow for the reimbursement of travel-related expenses when a service member is stationed on an INCONUS island and his/her family member is referred to a specialty care provider off-island that is less than 100 miles from the primary care provider. Currently, there is an authorization for the reimbursement of travel-related expenses incurred by the beneficiaries of active duty military personnel when their primary care physician refers such beneficiary to a specialty care provider who provides services more than 100 miles from the location in which the primary care physician provides services. Although the medical-related travel costs are covered for active duty members receiving treatment, such expenses incurred by family

members are currently not reimbursable because the travel distance is less than 100 miles.

*Section 404. Reserve commissioned warrant officer to lieutenant program*

Currently, the Coast Guard has more commissioned warrant officers (CWOs) than vacant billets on the Reserve Personnel Allowance List; inversely, there are fewer junior officers than authorized billets. Also, there is no presidential authority to appoint temporary commissioned officers in the Reserves (in a grade not above lieutenant) from among the Reserve CWOs.

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

*Section 405. Enhanced status quo officer promotion system*

This section would address a deficiency in the existing Coast Guard officer promotion system regarding the Coast Guard's ability to fulfill specialty needs of its officer corps which may arise from time to time. It would preserve the "best qualified" promotion system while affording the Commandant the flexibility, when needed, to furnish selection boards with specific direction to consider the specialty needs of the officer corps during the selection programs. Such specialty needs selections would be limited, as are "below promotion zone" selections.

*Section 406. Appointment of civilian Coast Guard judges*

This section would provide a limited authority to enable the Secretary to appoint civilian judges to the Coast Guard Court as vacancies occur. As part of our armed forces, the Coast Guard is required to operate an Appellate Court to hear appeals from courts-martial. In accordance with Article 66(a) of the Uniform Code of Military Justice, the judges on this court are a mixture of military and civilian personnel.

*Section 407. Coast Guard participation in the Armed Forces Retirement Home System*

This section would provide the Coast Guard parity with veterans of the other military services and allow Coast Guard enlisted and warrant officer personnel eligibility for admission into the Armed Forces Retirement Home (AFRH) system. The AFRH system is funded by a trust fund that receives revenues from small monthly contributions from all active duty enlisted and warrant officer personnel and a portion of all enlisted and warrant officer Uniform Code of Military Justice fines and forfeitures. Under current law (24 U.S.C. 401), only retirees from the Army, Navy, Air Force, and Marine Corps are eligible for admission into the AFRH. The Coast Guard is currently excluded, except when it operates as a service in the Navy.

*Section 408. Crew wages on passenger vessels*

This section would impose a three year limitation on class action suits that are the subject of violations of Section 10313 and Section 10504 of title 46, United States Code. Further, the provision permits the employer of a seaman to make payments to a seaman by direct deposit into a checking, savings or other such account of the seaman's choosing and with the seaman's explicit written authorization.

## TITLE V—ACQUISITION REFORM

*Section 501. Chief acquisition officer*

This section would authorize the establishment of a chief acquisition officer who has acquisition management as their primary duty, to ensure that the Coast Guard acquires and delivers assets and capabilities in the best interest of the federal government and increases the Agency's operational readiness and performance. This section would require, at minimum, that the Chief Acquisition Officer serve at the level of Assistant Commandant with a rank of Rear Admiral or be a career reserved civilian from the Senior Executive Service.

This section also would require that the Chief Acquisition Officer satisfy a list of qualifications, primary among them having the highest Department of Homeland Security Level III acquisition certification, with ten years of acquisition experience, four of which were spent as either the program executive officer, program or deputy program manager of a Level I or Level II project or program, or a combination of such positions. Further, this section would define the functions of the Chief Acquisition Officer. The Chief Acquisition Officer will serve as the component acquisition executive for the Coast Guard. The Chief Acquisition Officer should also perform the duties of the Component Acquisition Executive pursuant to Departmental policies and procedures.

*Section 502. Acquisitions*

This section would create a new chapter 15 in title 14 of the United States Code, with the following subchapters:

## SUBCHAPTER 1—GENERAL PROVISIONS

*Section 561. Acquisition directorate*

New section 561 of Title 14 would establish an acquisition directorate to provide oversight for the implementation and management of all Coast Guard acquisition processes, programs, and projects.

*Section 562. Senior acquisition leadership team*

New section 562 would mandate that the Commandant establish a leadership team to advise, inform, and support acquisition processes, programs, and projects that comprises the Vice Commandant, Deputy and Assistant Commandants, appropriate senior staff members, and any other Coast Guard officer or employee as designated by the Commandant.

*Section 563. Improvements in Coast Guard acquisition management*

New section 563 would define the roles and responsibilities of program and project managers, as well as specify the level of certification required in order to be assigned to manage a program or project. In addition, this section would mandate that the Commandant issue guidance for program and project managers on tenure and accountability. Further, this section would specify positions that require certain competencies and functions to ensure that the Agency has the relevant expertise and responsibilities to carry out acquisition program functions. Also, this section would establish management information capabilities to improve workforce management, and identifies specific career paths to enable effective procurement activities. The requirements are intended to leverage Department-wide initiatives to improve acquisition management, while allowing for additional tailored measures to meet specific needs of the Coast Guard.

*Sec. 564. Recognition of Coast Guard personnel for excellence in acquisition*

New section 564 would require the Commandant to implement a program to recognize individuals and teams that contribute to successful acquisition program performance. It would mandate the establishment of specific award categories, criteria, and eligibility, in addition to procedures for the award of cash bonuses for civilian career employees.

*Section 565. Prohibition on use of lead systems integrators*

New section 565 would prohibit the use of a Lead Systems Integrator on the date of enactment of the Act. It would require full and open competition for any acquisition contract in accordance with Federal Acquisition Regulations. In addition, this section would ensure that the Coast Guard can continue, through contract closeout, to use a Lead Systems Integrator only for delivery orders and task orders for National Security Cutters 2 and 3, the C4ISR projects directly related to the Integrated Deepwater Program, and for the completion of the National Distress and Response System Modernization Program if the Commandant certifies that in so doing, the execution of such task orders and delivery orders is in the best interest of the government and is in accordance with Federal Acquisition Regulations. These exceptions would only be permitted through September 30, 2012.

*Section 566. Required contract terms*

New section 566 would apply to all major system acquisition projects or programs. It would prohibit self certification by a contractor or subcontractor, and require that all capabilities or assets under contract have a third party certification or be certified directly by the Commandant. Further, this section would require that contractor and subcontractor performance be based on the status of all work performed. In addition, this section would require that all contracts for the acquisition of air, surface, or shore capabilities be in compliance with the air, surface, or shore standard used by the Department of the Navy. This section also would require that any contract awarded to acquire an Offshore Patrol Cutter includes provisions specifying the service life, fatigue life, maximum range and

speed, and days underway in general Atlantic and North Pacific sea conditions that the cutter will be built to achieve. Lastly, this section would require that the Commandant establish and maintain Integrated Product teams and Technical Authorities to establish, approve and maintain technical requirements.

*Section 567. Department of Defense consultation*

New section 567 would require the Commandant to arrange for the Department of Defense to have a supporting role of contracting and management of Coast Guard acquisition programs. This section would allow the Coast Guard to enter into a memorandum of understanding or agreement with the Secretary of the Navy to leverage and obtain their research, development, and acquisition resources. Arrangements made with the Secretary of Defense shall be made with the concurrence of the Secretary.

*Section 568. Undefined contractual actions*

New section 568 would prohibit the use of undefinitized contracts by the Coast Guard unless such a contract is directly approved by the Chief Acquisition Officer of the Coast Guard. If the Chief Acquisition Officer approves requests for undefinitized contracts, this section would require agreement upon contractual terms, specification, and price within 180 days after the submission of the request for approval. Further, this section would provide a limitation on the obligation of funds that exceed 50 percent of the negotiated overall ceiling price until the contractual terms, specification, and overall price are definitized for such contractual action. This section would allow the Commandant to waive the application of this section if such a contract is necessary to support a contingency operation, a transportation security incident, an operation in response to an unacceptable threat to human health or safety, or an operation in response to a natural, major or emergency disaster as designated by the President.

SUBCHAPTER 2—IMPROVED ACQUISITION PROCESS AND PROCEDURES

*Section 571. Identification of major systems acquisitions*

New section 571 would require the Commandant to develop and implement mechanisms to support operational requirements for major systems acquisition programs and projects. Further, this section would stipulate that the Commandant may not initiate a major systems acquisition program or project until the following requirements are met:

- A mission analysis to identify a clear mission need to address gaps in capability;
- A mission needs statement;
- An affordability assessment that includes an assessment of trade-offs;
- A concept-of-operations document;
- A capability development plan; and
- A resource funding proposal.

Also, this section would require the Commandant to develop staffing predictions, establish performance initiatives, and determine preliminary training needs.

*Section 572. Acquisition*

New section 572 would mandate that the Commandant complete the objectives listed below prior to establishing a major systems acquisition program or project:

- Establish clear operational requirements;
- Develop an acquisition program or project baseline;
- Conduct a life-cycle cost estimate; and
- Complete an alternatives analysis conducted by a third party.

In addition, this section would mandate the development and use of a Test and Evaluation Master Plan. This plan would require the establishment of a strategy to verify capability design and development, and require that adequate developmental and operational tests and evaluations are conducted. The Test and Evaluation Master Plan also would identify critical operational issues, operational test and evaluation phases, require early operational assessments, and would estimate the resources required for the test and evaluation activities. The Coast Guard may not move forward with a major systems acquisition program or project or award any production contract until the Test and Evaluation Master Plan is approved by the Chief Acquisition Officer. These procedures are consistent with the Department of Homeland Security's acquisition procedures.

Further, this section would mandate that, upon completion of the objectives above, and the development and approval of the Test and Evaluation Plan, a major systems acquisition program or project may not enter into the obtain phase until approval is granted by the Department of Homeland Security Acquisition Review Board or the Joint Review Board.

*Section 573. Preliminary development and demonstration*

New section 573 would require that all developmental and operational tests and evaluations are conducted in accordance with the master plan developed under section 572(c)(1), and would require the Commandant to ensure that during the preliminary development and demonstration phase major systems acquisition programs or projects demonstrate the following:

- The design, manufacturing, and production solution is based upon a stable and cost-effective design;
- The design is mature enough to commit to full scale production; and
- The product capabilities meet contract specifications, acceptable operational performance requirements, and system security requirements.

In addition, this section would require that the Coast Guard use third parties with expertise in testing and evaluating the capabilities or assets being acquired whenever the Coast Guard lacks the capability to do so. It would also mandate that communication con-

cerns identified during the development and demonstration phase be communicated no later than 30 days after completion of the test, evaluation, or both as the case may be, to the program or project manager and to the Chief Acquisition Officer.

This section also contains specific requirements that are to be met with regard to technical certification of major systems acquisition programs or projects. The Coast Guard would be mandated to certify major systems acquisition programs or projects through the Coast Guard's technical authority after review by an independent third party. This review would be satisfied by the test and evaluation requirements described in subsection (b). This review requirement is not intended to diminish, limit, or otherwise affect the authority or responsibility of the Coast Guard technical authority, nor is it intended to make the Coast Guard technical authority subordinate to an independent third party or to impose a review requirement when the Coast Guard possesses the capability to conduct the tests and evaluations required by a master plan. All electronics on any asset that requires TEMPEST certification would be tested and certified in accordance with the Master Plan standards by an independent third party authorized by the federal government.

Lastly, this section would mandate that all cutters acquired by the Coast Guard be classed by the American Bureau of Shipping before final acceptance, and that the Commandant may not proceed to full scale production, deployment, and support of a major systems acquisition program or project until approval is granted by the Department of Homeland Security Acquisition Review Board or the Joint Review Board.

*Section 574. Acquisition production, deployment, and support*

New section 574 would require the Commandant to conduct follow-on testing, monitor performance, and correct deficiencies for assets or systems acquired. In addition, the Commandant would be mandated to conduct acceptance tests and trials upon the delivery of each asset or system to ensure full operational capability is achieved.

In addition, this section makes clear that the Commandant would be required to execute the production contracts, make sure the delivered products meet cost and schedule requirements in accordance with the acquisition program baseline, validate manpower and training requirements to support the operation of the acquired product or system, and prepare transition plans for programmatic sustainment, operations, and support.

*Section 575. Acquisition program baseline breach*

New section 575 would direct the Commandant to submit a report to Congress not later than 30 days after the date the Chief Acquisition Officer of the Coast Guard becomes aware of a breach of an acquisition program baseline for any Level I or Level II acquisition program. The breach would be defined as a likely cost overrun greater than 15 percent of the acquisition program baseline, a delay of more than 180 days in the delivery schedule or an anticipated failure for any individual asset or class of assets to satisfy any key performance threshold or parameter under the Acquisition Program Baseline. If substantial variances of greater than a 25



percent cost overrun or a delay of more than one year are likely, additional information would be required from the Commandant.

#### SUBCHAPTER 3—DEFINITIONS

##### *Section 581. Definitions*

New section 581 would define key terms used in the new chapter created by Sec. 502 of the Act.

##### *Section 503. Report and regulations on excess pass-through charges*

This section would require a report from the Comptroller General not later than 180 days after the date of enactment of the Act on pass-through charges on contracts, subcontracts, delivery orders, and task orders that were executed by a Lead Systems Integrator to the Coast Guard during the 3 calendar years preceding the date of enactment of this Act. In addition, this section would require the Commandant to prescribe regulations to ensure that such pass-through charges are not excessive in relation to the cost of work performed, and set forth clear standards for determining when no value has been added to a contract by a contractor or subcontractor. Also the regulations would set forth procedures for preventing the payment by the government of excessive pass through charges, and identify any exceptions determined by the Commandant to be in the best interest of the Government.

#### TITLE VI—SHIPPING AND NAVIGATION

##### *Section 601. Technical amendments to Chapter 313 of title 46, United States Code*

This section would make two technical corrections to Chapter 313 of title 46, United States Code. The first correction would clean up the Chapter by replacing references to the Secretary of Transportation (SECDOT) with the Secretary of the Department of Homeland Security (SECDHS), as appropriate. Replacing SECDOT with SECDHS is necessary to avoid confusion since certain Chapter functions and responsibilities were transferred, along with the responsible agency (i.e., the U.S. Coast Guard), to the Department of Homeland Security. The second would involve the Chapter's penalty provision, section 31330, and its incorrect application of punishment for a mortgagor.

##### *Section 602. Clarification of rulemaking authority*

Section 102(a) of the Maritime Transportation Security Act of 2002 (P. L. No. 107–295), codified in Chapter 701 of title 46, United States Code, forms the framework for the port security regulations which are an integral component of the Nation's maritime security efforts. The authority necessary to implement Chapter 701 is found in section 102(d) of that Act, which would provide the Secretary with an interim final rule authority, as well as authority to "initiate" a rulemaking necessary to implement that Chapter. This subsection was not codified, most likely because its intended purpose was merely to expedite the Chapter 701 rulemaking process under extraordinary circumstances.

Since publication of the final rule, section 102(d) supplemented, rather than defined, the Secretary's regulatory authority to implement Chapter 701, while being unclear to the regulated public.

There is some potential to read Section 102(d) as limiting the Secretary's ability to implement Chapter 701 beyond one year, rather than to give the Secretary an APA waiver. This section would clarify that the Secretary may issue regulations to implement, as necessary, Chapter 701 at any time.

*Section 603. Coast Guard maintenance of LORAN-C navigation system*

This section would put in place certain requirements related to the LORAN-C navigation system. LORAN-C is a terrestrial navigation system maintained by the Coast Guard for use by general aviators, recreational boaters, commercial fishermen, and the military as a back-up to the satellite-based Global Positioning System (GPS). GPS has been shown to be vulnerable to jamming and other interference. The eLORAN system is already in use in other countries and is considered by many to be a logical choice to replace LORAN-C as a GPS back-up. Despite the vulnerabilities of GPS, the President's budget proposal for FY 2010 includes no funding request for the phasing out of LORAN-C or for the development and deployment of a next generation GPS back-up, such as eLORAN. Furthermore, the Coast Guard has indicated that after LORAN-C is terminated, it plans to sell the 24 LORAN-C station sites located throughout the United States, even though similar sites will be required to deploy a new terrestrial back-up to GPS like eLORAN.

This section would require the Secretary of the Department of Transportation to maintain the LORAN-C navigation system until the Secretary of the Department in which the Coast Guard is operating is authorized by statute to stop operations of LORAN-C but expedite modernization projects necessary for transition to eLORAN technology. It would authorize appropriations to the Secretary of the Department of Transportation in the amount of \$37 million for each of FY 2010 and 2011 for capital expenses related to the LORAN-C infrastructure, in addition to funds authorized to the Coast Guard under section 101 of this Act for continued operation of the LORAN-C system. Finally, it would require the Secretary of Transportation, in cooperation with the Secretary of the Department in which the Coast Guard is operating, to provide a report to Congress no later than six months after the date of enactment of the Act providing a detailed 5-year plan for transition from LORAN-C to eLORAN technology as a national back-up to GPS.

*Section 604. Icebreakers*

This section would require the Coast Guard to perform an analysis comparing the costs and benefits of rebuilding, renovating, or improving its existing polar icebreaker fleet with the costs and benefits of constructing a new polar icebreaker fleet. It would also require the Coast Guard to perform an analysis of the impact on mission capacity and US presence in the polar regions over the next 10 years if recapitalization of the polar icebreaker fleet is not fully funded. These analyses would be required to be based on the independent assessment of needs currently being undertaken as part of the High Latitude Study commissioned by the Coast Guard. Not later than one year after the date of enactment of this Act, the Commandant of the Coast Guard would be required to submit re-

ports to Congress containing the results of the analyses required under this section.

*Section 605. Vessel size limits*

Section 605 would amend vessel documentation law to provide flexibility for owners of fishing and fish processing vessels eligible under provisions of the American Fisheries Act (AFA) to participate in the rationalized Bering Sea/Aleutian Island Alaska pollock fishery to rebuild or replace AFA-eligible vessels without limits on vessel length, tonnage or horsepower. The provision would further provide that any catcher vessel delivering its catch to the onshore sector as defined in section 208(a) of the AFA can be removed from the fishery and that the catch history for any such vessel shall be assigned in the manner specified by the vessel owner to another vessel or vessels participating in the same fishery cooperative. The vessel, or vessels, to which the catch history is assigned would remain in the fishery cooperative for at least one year after the date on which the vessel being removed leaves the directed pollock fishery.

Section 605(a)(5) and section 605(a)(7)(B) state that any vessel that is replaced or removed under these amendments would be permanently ineligible for a fishery endorsement. These provisions would further provide, however, that a replaced or removed vessel can be designated to replace another AFA-eligible vessel. The Committee intends that the implementing regulations issued by the Coast Guard provide a reasonable time period for a replaced or removed vessel that forfeits its fishery endorsement to reclaim a fishery endorsement if that vessel is to serve as a replacement vessel under this provision.

*Section 606. Phaseout of vessels supporting oil and gas development*

This section would extend the current authorization of vessels to support oil and gas operations on the U.S. Outer Continental Shelf (OCS) in the Beaufort Sea and the Chukchi Sea and provide for a flexible transition to the use of U.S.-flag anchor handling vessels in certain exploration activities for a limited period of time. Specifically, the language provides that, if the Secretary of Transportation certifies that a U.S.-flag anchor handling vessel is not reasonably available and suitable for these operations, then a foreign-flag anchor handling vessel may be used until the end of 2012, by an OCS lessee that has entered into a binding agreement to use a suitable anchor handling vessel documented as a U.S.-flag vessel or to be so documented upon completion of construction of that vessel. Further, the provision states that, if a binding agreement to employ another U.S.-flag anchor handling vessel is signed by or on behalf of a lessee as of December 31, 2012, and there are insufficient U.S.-flag anchor handling vessels to support operations, then a foreign-flag anchor handling vessel can be used until the end of 2014.

TITLE VII—VESSEL CONVEYANCE

This Title would authorize the Coast Guard to transfer ownership of any vessel to an eligible entity for use for educational, cultural, historical, charitable, recreational, or other public purposes. The transfer of ownership would be conducted by the General Services Administration. In this title, the term “eligible entity” means

a State or local government, nonprofit corporation, educational agency, community development organization, or other entity that agrees to comply with the conditions established under this section.

TITLE VIII—OIL POLLUTION PREVENTION

*Section 801. Rulemakings*

This section would address the issue of certain Coast Guard rulemakings which are required by current law, but for which a final rule has yet to be issued. Subsection (a) would require the Coast Guard to provide a report to Congress on the status of all rulemakings required but not yet finalized under Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321). With respect to each such rulemaking, the report would include a detailed explanation of what steps have been completed, what areas remain to be addressed, the cause of any delays, and the date by which a final rule may reasonably be expected to be issued. Subsection (b) would require that, in the case of each rulemaking to which subsection (a) applies, a final rule must be issued as soon as practicable, but in no event later than 18 months after the date of enactment of this Act. Subsection (c) would require that, no later than one year after the date of enactment of this Act, the Secretary must issue a notice of proposed rulemaking regarding inspection requirements for towing vessels as described in section 3306(j) of title 46, United States Code. It also would require the Secretary to issue a final rule pursuant to that rulemaking no later than 2 years after the date of enactment of this Act.

*Section 802. Oil spill response capability*

This section would amend existing federal pilot requirements under 46 U.S.C. 8502 to address specific tank vessel pilotage issues related to Buzzards Bay, Massachusetts. Subsection (a) would require that in any area of Buzzards Bay, Massachusetts, where a single-hull tank vessel carrying 5,000 or more barrels of oil or other hazardous material is required to be under the direction and control of a federal pilot, the pilot may not be a member of the crew of that vessel, and must be a pilot licensed by the Commonwealth of Massachusetts who is operating under a federal license. Subsection (b) would require the Secretary to transmit an annual report to Congress on the extent to which tank vessels on Buzzards Bay are using routes recommended by the Coast Guard.

*Section 803. Oil transfers from vessels*

This section would direct the Coast Guard to promulgate regulations to reduce the incidence of oil spills in operations involving the transfer of oil from or to tank vessels. It would require the Coast Guard, in doing so, to take into account the safety of personnel and the effectiveness of available procedures and equipment—a process which should include consultation with relevant advisory bodies. For example, the Coast Guard should consult with the Towing Safety Advisory Committee to ensure any proposed oil transfer rules will maintain or enhance safety while also reflecting operational realities and limitations associated with the transfer of oil from or to a tank vessel.

*Section 804. Improvements to reduce human errors and near-miss incidents*

This section would require the Coast Guard to provide a report to Congress on the most frequent sources of human error that have led to oil spills from vessels, as well as on the most significant types of “near miss” incidents. It also would require the Coast Guard to make recommendations for reducing such incidents and to take appropriate action to reduce the risk of oil spills from human error. In order to encourage and facilitate voluntary disclosure of such information, this section includes important protections relating to the confidentiality and judicial discovery of voluntarily submitted information.

*Section 805. Olympic Coast National Marine Sanctuary*

This section would expand the application of the voluntary Area to Be Avoided (ATBA) encompassing the Olympic Coast National Marine Sanctuary so that it would apply to all non-tank vessels greater than 400 gross tons, other than fishing or research vessels engaged in fishing or research within the ATBA. This section also would authorize \$700,000 for the Coast Guard and the NOAA to conduct a “Safe Seas” oil spill drill in the Olympic Coast National Marine Sanctuary in fiscal year 2010. This drill would be coordinated with Federal agencies and State, local, and tribal governments and other appropriate entities.

*Section 806. Prevention of small oil spills*

This section would require the Under Secretary of Commerce for Oceans and Atmosphere, in consultation with the Secretary of the Department of Homeland Security, the Coast Guard, and other appropriate agencies, to establish an assessment, outreach, training, and voluntary compliance program to prevent oil spills from smaller boats such as fishing boats, pleasure craft, or small commercial vessels. The Under Secretary would be authorized to provide grants to Sea Grant Colleges, State and tribal governments, and other appropriate entities to carry out this program. The provision would authorize \$10,000,000 annually for each of fiscal years 2010 through 2012 to carry out this section.

*Section 807. Improved coordination with tribal governments*

This section would require the Coast Guard to improve its consultation and coordination process with Federally-recognized tribes with respect to oil spill prevention, preparedness, and response. It also would require the Coast Guard to include tribes whose natural and cultural resources are likely to be impacted by a spill as part of the incident response team for such spill, thus ensuring that the tribe would have an integral role in decision-making related to the response effort and be appropriately recognized as a major stakeholder alongside local, State, and Federal entities. It would authorize the Coast Guard to enter into cooperative agreements with tribes for oil spill prevention, preparedness, and response. This section would authorize \$500,000 for the establishment and implementation of such agreements for each of fiscal years 2010 through 2014.

*Section 808. Report on availability of technology to detect the loss of oil*

This section would require the Secretary to submit a report to Congress within one year after the date of enactment of this Act, on the availability, feasibility, and potential cost of technology that can detect the loss of oil carried as cargo or fuel on tank and non-tank vessels greater than 400 gross tons.

*Section 809. Use of oil spill liability trust fund*

This section would authorize the National Oceanic and Atmospheric Administration to directly access up to \$15 million annually from the Oil Spill Liability Trust Fund to carry out its functions relating to natural damage assessment and environmental restoration under OPA 90. Currently, NOAA must seek reimbursement from the Fund for expenses after the costs are incurred.

*Section 810. International efforts on enforcement*

This section would help ensure that the Coast Guard pursues stronger enforcement standards in the International Maritime Organization (IMO) relating to oil discharges, including joint enforcement operations, training, and stronger compliance mechanisms.

*Section 811. Higher volume port area regulatory definition change*

Section 811 would change the definition of “higher volume port area” for Puget Sound to make the westerly boundary begin at Cape Flattery, WA, the entry to the Strait of Juan de Fuca, given the volume of vessel traffic and the risk of oil spills throughout the entire length of the Strait of Juan de Fuca. It also would require the Coast Guard to complete its review of any changes to emergency response plans resulting from the definition change, within five years after the date of enactment.

*Section 812. Tug escorts for laden oil tankers*

This section would address several important issues relating to the need for adequate tug escorts for oil tankers in high traffic or high risk waterways. Subsection (a) would direct the Secretary of State, in consultation with the Commandant of the Coast Guard, to enter into negotiations with the Government of Canada to ensure that tug escorts are required for tank ships greater than 40,000 dead weight tons transiting the Strait of Juan de Fuca, Strait of Georgia, and Haro Strait. Vancouver, British Columbia, is Canada’s largest port, with more than 2,600 vessel calls annually, and the traffic separation scheme in the region places much of this in-bound traffic in U.S. waters. The Commandant would be required to consult with the State of Washington and affected tribal governments during negotiations with Canada. Subsection (b) would require a report to Congress within one year of the date of enactment of this Act on the costs and benefits to require escort by at least two towing vessels, for vessels over 5,000 gross tons transporting oil in bulk in Rosario Strait and Puget Sound, Washington, including those portions of the Strait of Juan de Fuca east of Port Angeles, Haro Strait, and the Strait of Georgia which are subject to United States jurisdiction.

*Section 813. Extension of financial responsibility*

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

*Section 814. Oil spill liability trust fund investment amount*

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

*Section 815. Liability for use of single-hull vessels*

This section would include in the definition of “responsible party” under section 1001(32) of OPA 90 (33 U.S.C. 2701(32)) the owner of oil products being transported by a single-hull tank vessel (other than certain vessels described in 3703a(b)(3) of title 46, United States Code).

## TITLE IX—MISCELLANEOUS PROVISIONS

*Section 901. Homeporting of the BIGELOW*

This section would require the Administrator of the National Oceanic and Atmospheric Administration to submit a report to Congress within 90 days of enactment of the Act regarding the agency’s progress in determination of a homeport for the FSV HENRY B BIGELOW, and 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 to notify Congress of its proposed final decision, and the rationale upon which that proposed decision is based, at least 45 days before a final decision is implemented. The agency would be required to make a final decision on the homeport for the BIGELOW no later than December 31, 2009.

*Section 902. Vessel Determination*

This section would provide that the documented United States 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 903. Conveyance of the Presque Isle Light Station Fresnel Lens to Presque Isle Township, Michigan*

This section would authorize the Commandant of the Coast Guard to convey ownership of the fresnel lens from the historic Presque Isle Light Station Lighthouse, Michigan, to the Township of Presque Isle, Michigan, for operation as an aid to navigation.

*Section 904. Land Conveyance, Coast Guard Property in Marquette County, Michigan, to the City of Marquette, Michigan*

This section would authorize the Commandant of the Coast Guard to convey approximately 5.5 acres of real property and any improvements thereon, located in Marquette County, Michigan, and commonly referred to as Coast Guard Station Marquette and Lighthouse Point, to the City of Marquette, Michigan.

*Section 905. Large offshore supply vessels*

This section would require the Commandant of the Coast Guard to submit a report to Congress within one year after the date of enactment of the Act on the design, inspection, certification, manning, operation, and credentialing requirements for offshore supply vessels greater than 500 gross tons or an alternate tonnage as measured under specific sections of title 46, United States Code. In developing the required report to Congress, the Commandant would have the discretion to request the participation of senior representatives of any other Federal department or agency, as appropriate, and would be required to consider all applicable provisions of U.S. law and international conventions and agreements.

*Section 906. Conveyance of Decommissioned Coast Guard Cutters STORIS, IRIS, and PLANETREE*

This section would authorize the conveyance, without consideration, of the Coast Guard Cutters STORIS, IRIS, and PLANETREE to certain nonprofit entities upon being decommissioned. Specifically, the Commandant of the Coast Guard would be authorized to convey the STORIS to the Storis Museum in Juneau, Alaska, provided the museum agrees to use the vessel as a historic memorial, to make the cutter available to the public as a museum, and to work cooperatively with other museums to provide education and memorialize the maritime heritage of the STORIS and other maritime activities in Alaska, the Pacific Northwest, the Arctic Ocean, and adjacent oceans and seas. Similarly, the Commandant would be authorized to convey the IRIS and PLANETREE to the Anchor Program in Richmond, California, provided the Anchor Program agrees to use the vessels as job training sites, primarily in the San Francisco Bay and Puget Sound, leading to employment in the merchant marine and associated shore-side occupations. Certain other provisions would apply in the case of each conveyance authorized by this section, including: that the vessels not be used for commercial transportation purposes; and that the vessels be made available to the U.S. Government if needed in time of war or national emergency. The Commandant would also be authorized to convey to the recipient of a vessel under this section any excess equipment or parts from other decommissioned Coast Guard vessels for use to enhance the vessel's operability and function for purposes of a public museum and historical display.



*Section 907. Access for Personal Watercraft*

This section would require that personal watercraft have access to the Atlantic Intracoastal Waterway equal to all other vessels and rafts permitted on the Waterway. The access requirement would take effect 150 days after the date of enactment of the Act, and would remain in effect unless and until the Commandant of the Coast Guard, after a public hearing, concludes that personal watercraft have an environmental impact on the Atlantic Intracoastal Waterway that is more disparate than all other vessels and rafts permitted in the Waterway. The Commandant would be required to complete an environmental assessment regarding the impact of personal watercraft within 150 after the date of enactment of the Act. This section would also establish a working group consisting of representatives from the Coast Guard, the National Park Service, and other authorities and stakeholders with an interest in the Waterway access issue, for the purpose of developing recommendations concerning reasonable requirements for access to the Waterway. It also includes language preserving the authority of the Coast Guard to enforce safety regulations, and of the National Park Service and the Department of the Interior to ensure that watercraft observe all boating safety and marine mammal protections.

## 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):

## HOMELAND SECURITY ACT OF 2002

**SEC. 875. MISCELLANEOUS AUTHORITIES.**

[6 U.S.C. 455]

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

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

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

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

## TITLE 10. ARMED FORCES

## SUBTITLE A. GENERAL MILITARY LAW

## PART II. PERSONNEL

## CHAPTER 40. LEAVE

**§ 701. Entitlement and accumulation**

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

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

(4) leave required to be taken under section 876a of this title. Full-time training, or other full-time duty for a period of more than 29 days, performed under section 316, 502, 503, 504, or 505 of title 32 by a member of the Army National Guard of the United States or the Air National Guard of the United States in his status as a member of the National Guard, and for which he is entitled to pay, is active service for the purposes of this section.

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

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

(d) Notwithstanding subsection (b), during the period beginning on October 1, 2008, through December 31, 2010, a member may accumulate up to 75 days of leave.

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

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

(B) This subsection applies to a member who—

- (i) serves on active duty for a continuous period of at least 120 days in an area in which the member is entitled to special pay under section 310(a) of title 37;
- (ii) is assigned to a deployable ship or mobile unit or to other duty designated for the purpose of this section; or
- (iii) on or after August 29, 2005, performs duty designated by the Secretary of Defense as qualifying duty for purposes of this subsection.

(C) Except as provided in paragraph (2), leave in excess of the days of leave authorized to be accumulated under subsection (b) or (d) that are accumulated under this paragraph is lost unless it is used by the member before the end of the third fiscal year (or

fourth fiscal year, if accumulated while subsection (d) is in effect after the fiscal year in which the continuous period of service referred to in subparagraph (B) terminated.

(2) Under the uniform regulations referred to in paragraph (1), a member of an armed force who serves on active duty in a duty assignment in support of a contingency operation or a declaration of a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288, 42 U.S.C. 5121 et seq.) during a fiscal year and who, except for this paragraph, would lose at the end of that fiscal year any accumulated leave in excess of the number of days of leave authorized to be accumulated under subsection (b) or (d), shall be permitted to retain such leave until the end of the second fiscal year after the fiscal year in which such service on active duty is terminated.

\* \* \* \* \*

#### CHAPTER 53. MISCELLANEOUS RIGHTS AND BENEFITS

##### § 1044. Legal Assistance

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

- (1) Members of the armed forces who are on active duty.
- (2) Members and former members entitled to retired or re-  
tainer pay or equivalent pay.
- (3) Officers of the commissioned corps of the Public Health Service who are on active duty or entitled to retired or equivalent pay.
- (4) Members of reserve components not covered by paragraph (1) or (2) following release from active duty under a call or order to active duty for more than 30 days issued under a mobilization authority [(as determined by the Secretary of Defense),] *(as determined by the Secretary of Defense and the Secretary of the department in which the Coast Guard is operating, with respect to the Coast Guard when it is not operating as a service of the Navy)*, for a period of time, [prescribed by the Secretary of Defense,] *prescribed by the Secretary of Defense and the Secretary of the department in which the Coast Guard is operating, with respect to the Coast Guard when it is not operating as a service of the Navy*, that begins on the date of the release and is not less than twice the length of the period served on active duty under that call or order to active duty.
- (5) Dependents of members and former members described in paragraphs (1), (2), (3), and (4).
- (6) Survivors of a deceased member or former member described in paragraphs (1), (2), (3), and (4) who were dependents of the member or former member at the time of the death of the member or former member, except that the eligibility of such survivors shall be determined pursuant to regulations prescribed by the Secretary concerned.
- (7) Civilian employees of the Federal Government serving in locations where legal assistance from non-military legal assistance providers is not reasonably available, except that the eli-

gibility of civilian employees shall be determined pursuant to regulations prescribed by the Secretary concerned.

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

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

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

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

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

(A) legal assistance provided under this section; and

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

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

#### CHAPTER 55. MEDICAL AND DENTAL CARE

##### § 1074i. Reimbursement for certain travel expenses

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

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

(b) OUTREACH PROGRAM AND TRAVEL REIMBURSEMENT FOR FOLLOW-ON SPECIALTY CARE AND RELATED SERVICES.—The Secretary concerned shall ensure that an outreach program is implemented for each member of the uniformed services who incurred a combat-

related disability and is entitled to retired or retainer pay, or equivalent pay, so that—

(1) the progress of the member is closely monitored; and

(2) the member receives the travel reimbursement authorized by subsection (a) whenever the member requires follow-on specialty care, services, or supplies.

(c) DEFINITIONS.—In this section:

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

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

(3) The term “combat-related disability” has the meaning given that term in section 1413a of this title.

#### PART IV. SERVICE, SUPPLY, AND PROCUREMENT

##### CHAPTER 165. ACCOUNTABILITY AND RESPONSIBILITY

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

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

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

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

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

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

#### TITLE 14. COAST GUARD

##### PART I. REGULAR COAST GUARD

##### CHAPTER 3. COMPOSITION AND ORGANIZATION

#### **【§ 42. Number and distribution of commissioned officers】**

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

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

[(c) The Secretary shall, at least once each year, make a computation to determine the number of officers on the active duty promotion list authorized to be serving in each grade. The number in each grade shall be computed by applying the applicable percentage to the total number of such officers serving on active duty on the date the computation is made. In making computations under this section the nearest whole number shall be regarded as the authorized number in any case where there is a fraction in the final result.]

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

(a) *The total number of Coast Guard commissioned officers on the active duty promotion list, excluding warrant officers, shall not exceed 7,200. This total number may be temporarily increased up to 2 percent for no more than the 60 days that follow the commissioning of a Coast Guard Academy class.*

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

- (1) *0.375 percent for rear admiral.*
- (2) *0.375 percent for rear admiral (lower half).*
- (3) *6.0 percent for captain.*
- (4) *15.0 percent for commander.*
- (5) *22.0 percent for lieutenant commander.*

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

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

(d) *The numbers resulting from such computations shall be for all purposes the authorized number in each grade, except that the authorized number for a grade is temporarily increased during the*

period between one computation and the next by the number of officers originally appointed in that grade during that period and the number of officers of that grade for whom vacancies exist in the next higher grade but whose promotion has been delayed for any reason.

[(e) Officers who are not included in the active duty promotion list, officers serving as extra numbers in grade under sections 432 and 433 of this title , and officers serving with other departments or agencies on a reimbursable basis or excluded under the provisions of section 324(d) of title 49, shall not be counted in determining authorized strengths under subsection (c) and shall not count against those strengths. The number of officers authorized to be serving on active duty in each grade of the permanent commissioned teaching staff of the Coast Guard Academy and of the Reserve serving in connection with organizing, administering, recruiting, instructing, or training the reserve components shall be prescribed by the Secretary.]

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

#### **§ 47. Vice Commandant; assignment**

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

#### **§ 50. Area commanders**

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

[(b) An area commander shall, while so serving, have the grade of vice admiral with pay and allowances of that grade. The appointment and grade of an area commander shall be effective on the date the officer assumes that duty, and shall terminate on the date

the officer is detached from that duty, except as provided in subsection 51(d) of this title.】

**§ 50. Vice admirals**

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

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

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

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

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

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

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

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

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

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

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

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

**【§ 50a. Chief of Staff**

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

【(b) The Chief of Staff shall have the grade of vice admiral with the pay and allowances of that grade. The appointment and grade



of the Chief of Staff shall be effective on the date the officer assumes that duty, and shall terminate on the date the officer is detached from that duty, except as provided in section 51(d) of this title.]

### § 51. Retirement

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

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

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

*(a) An officer, other than the Commandant, who, while serving in the grade of admiral or vice admiral, is retired for physical disability shall be placed on the retired list with the highest grade in which that officer served.*

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

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

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

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

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

\* \* \* \* \*

### § 55. Chief Acquisition Officer

*(a) IN GENERAL.—There shall be in the Coast Guard a Chief Acquisition Officer selected by the Commandant who shall be a Rear Admiral or civilian from the Senior Executive Service (career reserved). The Chief Acquisition Officer shall serve at the Assistant Commandant level and have acquisition management as that individual's primary duty.*

*(b) QUALIFICATIONS.—The Chief Acquisition Officer shall be an acquisition professional with a Level III certification and must have at least 10 years experience in an acquisition position, of which at least 4 years were spent as—*

- (1) *the program executive officer;*
- (2) *the program manager of a Level 1 or Level 2 acquisition project or program;*
- (3) *the deputy program manager of a Level 1 or Level 2 acquisition; or*
- (4) *a combination of such positions.*

(c) *FUNCTIONS OF THE CHIEF ACQUISITION OFFICER.—The functions of the Chief Acquisition Officer include—*

(1) *monitoring the performance of programs and projects on the basis of applicable performance measurements and advising the Commandant, through the chain of command, regarding the appropriate business strategy to achieve the missions of the Coast Guard;*

(2) *maximizing the use of full and open competition at the prime contract and subcontract levels in the acquisition of property, capabilities, and services by the Coast Guard by establishing policies, procedures, and practices that ensure that the Coast Guard receives a sufficient number of competitive proposals from responsible sources to fulfill the Government's requirements, including performance and delivery schedules, at the lowest cost or best value considering the nature of the property or service procured;*

(3) *making acquisition decisions in concurrence with the technical authority, or technical authorities, as appropriate, of the Coast Guard, as designated by the Commandant, consistent with all other applicable laws and decisions establishing procedures within the Coast Guard;*

(4) *ensuring the use of detailed performance specifications in instances in which performance based contracting is used;*

(5) *managing the direction of acquisition policy for the Coast Guard, including implementation of the unique acquisition policies, regulations, and standards of the Coast Guard;*

(6) *developing and maintaining an acquisition career management program in the Coast Guard to ensure that there is an adequate acquisition workforce;*

(7) *assessing the requirements established for Coast Guard personnel regarding knowledge and skill in acquisition resources and management and the adequacy of such requirements for facilitating the achievement of the performance goals established for acquisition management;*

(8) *developing strategies and specific plans for hiring, training, and professional development; and*

(9) *reporting to the Commandant, through the chain of command, on the progress made in improving acquisition management capability.*

\* \* \* \* \*

CHAPTER 7. COOPERATION WITH OTHER AGENCIES

**§ 149. Assistance to foreign governments and maritime authorities**

(a) *DETAIL OF MEMBERS TO ASSIST FOREIGN GOVERNMENTS.—*The President may upon application from the foreign governments concerned, and whenever in his discretion the public interests render such a course advisable, detail members of the Coast Guard to as-

sist foreign governments in matters concerning which the Coast Guard may be of assistance. Members so detailed may accept, from the government to which detailed, offices and such compensation and emoluments thereunder appertaining as may be first approved by the Secretary. While so detailed such members shall receive, in addition to the compensation and emoluments allowed by such governments, the pay and allowances to which they are entitled in the Coast Guard and shall be allowed the same credit for longevity, retirement, and for all other purposes that they would receive if they were serving with the Coast Guard.

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

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

(d) **AUTHORIZED ACTIVITIES.**—

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

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

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

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

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

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

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

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

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

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

CHAPTER 11. PERSONNEL

**§ 214. Appointment of temporary officers**

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

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

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

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

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

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

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

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

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

(b) Each officer eligible for consideration by a selection board convened under section 251 of this title may send a communication

through official channels to the board, to arrive not later than the date the board convenes, inviting attention to any matter of record in the armed forces concerning himself. A communication sent under this section may not criticize any officer or reflect upon the character, conduct, or motive of any officer.

**§ 258. Selection boards; information to be furnished boards**

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

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

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

*(1) specific direction relating to the needs of the service for officers having particular skills, including direction relating to the need for a minimum number of officers with particular skills within a specialty; and*

*(2) such other guidance that the Secretary believes may be necessary to enable the board to properly perform its functions. Selections made based on the direction and guidance provided under this subsection shall not exceed the maximum percentage of officers who may be selected from below the announced promotion zone at any given selection board convened under section 251 of this title.*

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

(a) A selection board convened to recommend officers for promotion shall recommend those eligible officers whom the [board] board, *giving due consideration to the needs of the service for officers with particular skills so noted in the specific direction furnished pursuant to section 258 of this title*, considers best qualified of the officers under consideration for promotion. No officer may be recommended for promotion unless he receives the recommendation of at least a majority of the members of a board composed of five members, or at least two-thirds of the members of a board composed of more than five members.

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

- (1) 5 percent of the total number of officers that the board is authorized to recommend for promotion to the grade of lieutenant or lieutenant commander;
- (2) 7½ percent of the total number of officers that the board is authorized to recommend for promotion to the grade of commander; and
- (3) 10 percent of the total number of officers that the board is authorized to recommend for promotion to the grade of captain;

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

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

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

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

#### **§ 260. Selection boards; reports**

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

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

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## **CHAPTER 15. ACQUISITIONS**

### **SUBCHAPTER 1—GENERAL PROVISIONS**

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563. *Improvements in Coast Guard acquisition management*

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## SUBCHAPTER 2—IMPROVED ACQUISITION PROCESS AND PROCEDURES

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## SUBCHAPTER 1—GENERAL PROVISIONS

**§ 561. Acquisition directorate**

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

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

- (1) to acquire and deliver assets and systems that increase operational readiness, enhance mission performance, and create a safe working environment; and
- (2) to assist in the development of a workforce that is trained and qualified to further the Coast Guard's missions and deliver the best value products and services to the Nation.

**§ 562. Senior acquisition leadership team**

(a) *ESTABLISHMENT.*—The Commandant shall establish a senior acquisition leadership team within the Coast Guard comprised of—

- (1) the Vice Commandant;
- (2) the Deputy and Assistant Commandants;
- (3) appropriate senior staff members of each Coast Guard directorate;
- (4) appropriate senior staff members for each assigned field activity or command; and
- (5) any other Coast Guard officer or employee designated by the Commandant.

(b) *FUNCTION.*—The senior acquisition leadership team shall—

- (1) meet at the call of the Commandant at such places and such times as the Commandant may require;
- (2) provide advice and information on operational and performance requirements of the Coast Guard;
- (3) identify gaps and vulnerabilities in the operational readiness of the Coast Guard;
- (4) make recommendations to the Commandant and the Chief Acquisition Officer to remedy the identified gaps and vulnerabilities in the operational readiness of the Coast Guard; and
- (5) contribute to the development of a professional, experienced acquisition workforce by providing acquisition-experience tours of duty and educational development for officers and employees of the Coast Guard.

**§ 563. Improvements in Coast Guard acquisition management**

(a) *PROJECT AND PROGRAM MANAGERS.*—

(1) *PROJECT OR PROGRAM MANAGER DEFINED.*—*In this section, the term “project or program manager” means an individual designated—*

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

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

(2) *LEVEL 1 PROJECTS.*—*An individual may not be assigned as the project or program manager for a Level 1 acquisition unless the individual holds a Level III acquisition certification as a program manager.*

(3) *LEVEL 2 PROJECTS.*—*An individual may not be assigned as the project or program manager for a Level 2 acquisition unless the individual holds a Level II acquisition certification as a program manager.*

(b) *GUIDANCE ON TENURE AND ACCOUNTABILITY OF PROGRAM AND PROJECT MANAGERS.*—*Not later than one year after the date of enactment of the Coast Guard Authorization Act for Fiscal years 2010 and 2011, the Commandant shall issue guidance to address the qualifications, resources, responsibilities, tenure, and accountability of program and project managers for the management of acquisition programs and projects. The guidance shall address, at a minimum—*

*(1) the qualifications required for project or program managers, including the number of years of acquisition experience and the professional training levels to be required of those appointed to project or program management positions; and*

*(2) authorities available to project or program managers, including, to the extent appropriate, the authority to object to the addition of new program requirements that would be inconsistent with the parameters established for an acquisition program.*

(c) *ACQUISITION WORKFORCE.*—

(1) *IN GENERAL.*—*The Commandant shall designate a sufficient number of positions to be in the Coast Guard’s acquisition workforce to perform acquisition-related functions at Coast Guard headquarters and field activities.*

(2) *REQUIRED POSITIONS.*—*The Commandant shall ensure that members of the acquisition workforce have expertise, education, and training in at least 1 of the following acquisition career fields:*

*(A) Acquisition logistics.*

*(B) Auditing.*

*(C) Business, cost estimating, and financial management.*

*(D) Contracting.*

*(E) Facilities engineering.*

*(F) Industrial or contract property management.*

*(G) Information technology.*

*(H) Manufacturing, production, and quality assurance.*

*(I) Program management.*

*(J) Purchasing.*

*(K) Science and technology.*

*(L) Systems planning, research, development, and engineering.*

*(M) Test and evaluation.*



(3) *ACQUISITION WORKFORCE EXPEDITED HIRING AUTHORITY.*—(A) *IN GENERAL.*—For purposes of sections 3304, 5333, and 5753 of title 5, the Commandant may—

(i) designate any category of acquisition positions within the Coast Guard as shortage category positions; and

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

(B) *LIMITATION.*—The Commandant may not appoint a person to a position of employment under this paragraph after September 30, 2012.(d) *MANAGEMENT INFORMATION SYSTEM.*—(1) *IN GENERAL.*—The Commandant shall establish a management information system capability to improve acquisition workforce management and reporting.(2) *INFORMATION MAINTAINED.*—Information maintained with such capability shall include the following standardized information on individuals assigned to positions in the workforce:

(A) Qualifications, assignment history, and tenure of those individuals assigned to positions in the acquisition workforce or holding acquisition-related certifications.

(B) Promotion rates for officers and members of the Coast Guard in the acquisition workforce.

(e) *CAREER PATHS.*—To establish acquisition management as a core competency of the Coast Guard, the Commandant shall—

(1) ensure that career paths for officers, members, and employees of the Coast Guard who wish to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression of those officers, members, and employees to the most senior positions in the acquisition workforce; and

(2) publish information on such career paths.

**§ 564. Recognition of Coast Guard personnel for excellence in acquisition**(a) *IN GENERAL.*—Not later than 180 days after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011, the Commandant shall commence implementation of a program to recognize excellent performance by individuals and teams comprised of officers, members, and employees of the Coast Guard that contributed to the long-term success of a Coast Guard acquisition project or program.(b) *ELEMENTS.*—The program shall include—

(1) specific award categories, criteria, and eligibility and manners of recognition;

(2) procedures for the nomination by personnel of the Coast Guard of individuals and teams comprised of officers, members, and employees of the Coast Guard for recognition under the program; and

(3) procedures for the evaluation of nominations for recognition under the program by one or more panels of individuals from the Government, academia, and the private sector who have such expertise and are appointed in such manner as the Commandant shall establish for the purposes of this program.

(c) *AWARD OF CASH BONUSES.*—As part of the program required by subsection (a), the Commandant, subject to the availability of appropriations, may award to any civilian employee recognized pursuant to the program a cash bonus to the extent that the performance of such individual so recognized warrants the award of such bonus.

**§ 565. Prohibition on use of lead systems integrators**

(a) *IN GENERAL.*—

(1) *USE OF LEAD SYSTEMS INTEGRATOR.*—Except as provided in subsection (b), the Commandant may not use a private sector entity as a lead systems integrator for an acquisition contract awarded or delivery order or task order issued after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011.

(2) *FULL AND OPEN COMPETITION.*—The Commandant and any lead systems integrator engaged by the Coast Guard, pursuant to the exceptions described in subsection (b), shall use full and open competition for any acquisition contract awarded after the date of enactment of that Act, unless otherwise excepted in accordance with the Competition in Contracting Act of 1984 (41 U.S.C. 251 note), the amendments made by that Act, and the Federal Acquisition Regulations.

(3) *NO EFFECT ON SMALL BUSINESS ACT.*—Nothing in this subsection shall be construed to supersede or otherwise affect the authorities provided by and under the Small Business Act (15 U.S.C. 631 et seq.).

(b) *EXCEPTIONS.*—

(1) *NATIONAL DISTRESS AND RESPONSE SYSTEM MODERNIZATION PROGRAM; NATIONAL SECURITY CUTTERS 2 AND 3.*—Notwithstanding subsection (a), the Commandant may use a private sector entity as a lead systems integrator for the Coast Guard to complete the National Distress and Response System Modernization Program, the C4ISR projects directly related to the Integrated Deepwater Program, and National Security Cutters 2 and 3 if the Secretary of Homeland Security certifies that—

(A) the acquisition is in accordance with the Competition in Contracting Act of 1984 (41 U.S.C. 251 note), the amendments made by that Act, and the Federal Acquisition Regulations; and

(B) the acquisition and the use of a private sector entity as a lead systems integrator for the acquisition is in the best interest of the Federal Government.

(2) *TERMINATION DATE FOR EXCEPTIONS.*—Except for the modification of delivery or task orders pursuant to Parts 4 and 42 of the Federal Acquisition Regulations, the Commandant may not use a private sector entity as a lead systems integrator after the earlier of—

(A) September 30, 2012; or

(B) the date on which the Commandant certifies in writing to the appropriate congressional committees that the Coast Guard has available and can retain sufficient contracting personnel and expertise within the Coast Guard, through an arrangement with other Federal agencies, or through contracts or other arrangements with private sector

*entities, to perform the functions and responsibilities of the lead system integrator in an efficient and cost-effective manner.*

**§ 566. Required contract terms**

*(a) IN GENERAL.—The Commandant shall ensure that a contract awarded or a delivery order or task order issued for an acquisition of a capability or an asset with an expected service life of 10 years and with a total acquisition cost that is equal to or exceeds \$10,000,000 awarded or issued by the Coast Guard after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011—*

*(1) provides that all certifications for an end-state capability or asset under such contract, delivery order, or task order, respectively, will be conducted by the Commandant or an independent third party, and that self-certification by a contractor or subcontractor is not allowed;*

*(2) requires that the Commandant shall maintain the authority to establish, approve, and maintain technical requirements;*

*(3) requires that any measurement of contractor and subcontractor performance be based on the status of all work performed, including the extent to which the work performed met all performance, cost, and schedule requirements;*

*(4) specifies that, for the acquisition or upgrade of air, surface, or shore capabilities and assets for which compliance with TEMPEST certification is a requirement, the standard for determining such compliance will be the air, surface, or shore standard then used by the Department of the Navy for that type of capability or asset; and*

*(5) for any contract awarded to acquire an Offshore Patrol Cutter, includes provisions specifying the service life, fatigue life, and days underway in general Atlantic and North Pacific Sea conditions, maximum range, and maximum speed the cutter will be built to achieve.*

*(b) PROHIBITED CONTRACT PROVISIONS.—The Commandant shall ensure that any contract awarded or delivery order or task order issued by the Coast Guard after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 does not include any provision allowing for equitable adjustment that is not consistent with the Federal Acquisition Regulations.*

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

*(d) DEEPWATER TECHNICAL AUTHORITIES.—The Commandant shall maintain or designate the technical authorities to establish, approve, and maintain technical requirements. Any such designation shall be made in writing and may not be delegated to the authority of the Chief Acquisition Officer established by section 55 of this title.*

**§ 567. Department of Defense consultation**

*(a) IN GENERAL.—The Commandant shall make arrangements as appropriate with the Secretary of Defense for support in contracting and management of Coast Guard acquisition programs. The Commandant shall also seek opportunities to make use of Department*

of Defense contracts, and contracts of other appropriate agencies, to obtain the best possible price for assets acquired for the Coast Guard.

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

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

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

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

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

#### **§ 568. Undefinitized contractual actions**

(a) *IN GENERAL.*—The Coast Guard may not enter into an undefinitized contractual action unless such action is directly approved by the Head of Contracting Activity of the Coast Guard.

(b) *REQUESTS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.*—Any request to the Head of Contracting Activity for approval of an undefinitized contractual action shall include a description of the anticipated effect on requirements of the Coast Guard if a delay is incurred for the purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

(c) *REQUIREMENTS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.*—

(1) *DEADLINE FOR AGREEMENT ON TERMS, SPECIFICATIONS, AND PRICE.*—A contracting officer of the Coast Guard may not enter into an undefinitized contractual action unless the contractual action provides for agreement upon contractual terms, specification, and price by the earlier of—

(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

(B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

(2) *LIMITATION ON OBLIGATIONS.*—

(A) *IN GENERAL.*—Except as provided in subparagraph (B), the contracting officer for an undefinitized contractual action may not obligate under such contractual action an amount that exceeds 50 percent of the negotiated overall

ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(B) *EXCEPTION.*—Notwithstanding subparagraph (A), if a contractor submits a qualifying proposal to definitize an undefinitized contractual action before an amount that exceeds 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that exceeds 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(3) *WAIVER.*—The Commandant may waive the application of this subsection with respect to a contract if the Commandant determines that the waiver is necessary to support—

(A) a contingency operation (as that term is defined in section 101(a)(13) of title 10);

(B) operations to prevent or respond to a transportation security incident (as defined in section 70101(6) of title 46);

(C) an operation in response to an emergency that poses an unacceptable threat to human health or safety or to the marine environment; or

(D) an operation in response to a natural disaster or major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(4) *LIMITATION ON APPLICATION.*—This subsection does not apply to an undefinitized contractual action for the purchase of initial spares.

(d) *INCLUSION OF NONURGENT REQUIREMENTS.*—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefinitized contractual action by the Coast Guard for spare parts and support equipment that are needed on an urgent basis unless the Commandant approves such inclusion as being—

(1) good business practice; and

(2) in the best interests of the United States.

(e) *MODIFICATION OF SCOPE.*—The scope of an undefinitized contractual action under which performance has begun may not be modified unless the Commandant approves such modification as being—

(1) good business practice; and

(2) in the best interests of the United States.

(f) *ALLOWABLE PROFIT.*—The Commandant shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

(1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

(g) *DEFINITIONS.*—In this section:

(1) *UNDEFINITIZED CONTRACTUAL ACTION.*—

(A) *IN GENERAL.*—Except as provided in subparagraph (B), the term “undefinitized contractual action” means a new procurement action entered into by the Coast Guard for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action.

(B) *EXCLUSION.*—The term “undefinitized contractual action” does not include contractual actions with respect to—

(i) foreign military sales;

(ii) purchases in an amount not in excess of the amount of the simplified acquisition threshold; or

(iii) special access programs.

(2) *QUALIFYING PROPOSAL.*—The term “qualifying proposal” means a proposal that contains sufficient information to enable complete and meaningful audits of the information contained in the proposal as determined by the contracting officer.

#### **SUBCHAPTER 2—IMPROVED ACQUISITION PROCESS AND PROCEDURES**

#### **§ 571. Identification of major system acquisitions**

(a) *IN GENERAL.*—

(1) *SUPPORT MECHANISMS.*—The Commandant shall develop and implement mechanisms to support the establishment of mature and stable operational requirements for acquisitions under this subchapter.

(2) *MISSION ANALYSIS; AFFORDABILITY ASSESSMENT.*—The Commandant may not initiate a Level 1 or Level 2 acquisition project or program until the Commandant—

(A) completes a mission analysis that—

(i) identifies any gaps in capability; and

(ii) develops a clear mission need; and

(B) prepares a preliminary affordability assessment for the project or program.

(b) *ELEMENTS.*—

(1) *REQUIREMENTS.*—The mechanisms required by subsection (a) shall ensure the implementation of a formal process for the development of a mission-needs statement, concept-of-operations document, capability development plan, and resource proposal for the initial project or program funding, and shall ensure the project or program is included in the Coast Guard Capital Investment Plan.

(2) *ASSESSMENT OF TRADE-OFFS.*—In conducting an affordability assessment under subsection (a)(2)(B), the Commandant shall develop and implement mechanisms to ensure that trade-offs among cost, schedule, and performance are considered in the establishment of preliminary operational requirements for development and production of new assets and capabilities for Level 1 and Level 2 acquisitions projects and programs.

(c) *HUMAN RESOURCE CAPITAL PLANNING.*—The Commandant shall develop staffing predictions, define human capital performance initiatives, and identify preliminary training needs for any such project or program.

(d) *DHS ACQUISITION APPROVAL.*—A Level 1 or Level 2 acquisition project or program may not be implemented unless it is ap-

*proved by the Department of Homeland Security Acquisition Review Board or the Joint Review Board.*

**§ 572. Acquisition**

*(a) IN GENERAL.—The Commandant may not establish a Level 1 or Level 2 acquisition project or program approved under section 571(d) until the Commandant—*

- (1) clearly defines the operational requirements for the project or program;*
- (2) establishes the feasibility of alternatives;*
- (3) develops an acquisition project or program baseline;*
- (4) produces a life-cycle cost estimate; and*
- (5) assesses the relative merits of alternatives to determine a preferred solution in accordance with the requirements of this section.*

*(b) ANALYSIS OF ALTERNATIVES.—*

*(1) IN GENERAL.—The Commandant shall conduct an analysis of alternatives for the asset or capability to be acquired in an analyze and select phase of the acquisition process.*

*(2) REQUIREMENTS.—The analysis of alternatives shall be conducted by a federally funded research and development center, a qualified entity of the Department of Defense, or a similar independent third party entity that has appropriate acquisition expertise and has no substantial financial interest in any part of the acquisition project or program that is the subject of the analysis. At a minimum, the analysis of alternatives shall include—*

*(A) an assessment of the technical maturity, and technical and other risks;*

*(B) an examination of capability, interoperability, and other disadvantages;*

*(C) an evaluation of whether different combinations or quantities of specific assets or capabilities could meet the Coast Guard's overall performance needs;*

*(D) a discussion of key assumptions and variables, and sensitivity to change in such assumptions and variables;*

*(E) when an alternative is an existing asset or prototype, an evaluation of relevant safety and performance records and costs;*

*(F) a calculation of life-cycle costs including—*

*(i) an examination of likely research and development costs and the levels of uncertainty associated with such estimated costs;*

*(ii) an examination of likely production and deployment costs and levels of uncertainty associated with such estimated costs;*

*(iii) an examination of likely operating and support costs and the levels of uncertainty associated with such estimated costs;*

*(iv) if they are likely to be significant, an examination of likely disposal costs and the levels of uncertainty associated with such estimated costs; and*

*(v) such additional measures as the Commandant or the Secretary of Homeland Security determines to be necessary for appropriate evaluation of the asset; and*

(G) *the business case for each viable alternative.*

(c) **TEST AND EVALUATION MASTER PLAN.**—

(1) **IN GENERAL.**—*For any Level 1 or Level 2 acquisition project or program the Chief Acquisition Officer shall approve a test and evaluation master plan specific to the acquisition project or program for the capability, asset, or subsystems of the capability or asset and intended to minimize technical, cost, and schedule risk as early as practicable in the development of the project or program.*

(2) **TEST AND EVALUATION STRATEGY.**—*The master plan shall—*

(A) *set forth an integrated test and evaluation strategy that will verify that capability-level or asset-level and subsystem-level design and development, including performance and supportability, have been sufficiently proven before the capability, asset, or subsystem of the capability or asset is approved for production; and*

(B) *require that adequate developmental tests and evaluations and operational tests and evaluations established under subparagraph (A) are performed to inform production decisions.*

(3) **OTHER COMPONENTS OF THE MASTER PLAN.**—*At a minimum, the master plan shall identify—*

(A) *the key performance parameters to be resolved through the integrated test and evaluation strategy;*

(B) *critical operational issues to be assessed in addition to the key performance parameters;*

(C) *specific development test and evaluation phases and the scope of each phase;*

(D) *modeling and simulation activities to be performed, if any, and the scope of such activities;*

(E) *early operational assessments to be performed, if any, and the scope of such assessments;*

(F) *operational test and evaluation phases;*

(G) *an estimate of the resources, including funds, that will be required for all test, evaluation, assessment, modeling, and simulation activities; and*

(H) *the Government entity or independent entity that will perform the test, evaluation, assessment, modeling, and simulation activities.*

(4) **UPDATE.**—*The Chief Acquisition Officer shall approve an updated master plan whenever there is a revision to project or program test and evaluation strategy, scope, or phasing.*

(5) **LIMITATION.**—*The Coast Guard may not—*

(A) *proceed beyond that phase of the acquisition process that entails approving the supporting acquisition of a capability or asset before the master plan is approved by the Chief Acquisition Officer; or*

(B) *award any production contract for a capability, asset, or subsystem for which a master plan is required under this subsection before the master plan is approved by the Chief Acquisition Officer.*

(d) **LIFE-CYCLE COST ESTIMATES.**—

(1) **IN GENERAL.**—*The Commandant shall implement mechanisms to ensure the development and regular updating of life-*



cycle cost estimates for each Level 1 or Level 2 acquisition to ensure that these estimates are considered in decisions to develop or produce new or enhanced capabilities and assets.

(2) *TYPES OF ESTIMATES.*—In addition to life-cycle cost estimates that may be developed by acquisition program offices, the Commandant shall require that an independent life-cycle cost estimate be developed for each Level 1 or Level 2 acquisition project or program.

(3) *REQUIRED UPDATES.*—For each Level 1 or Level 2 acquisition project or program the Commandant shall require that life-cycle cost estimates shall be updated before each milestone decision is concluded and the project or program enters a new acquisition phase.

(e) *DHS ACQUISITION APPROVAL.*—A project or program may not enter the obtain phase under section 573 unless the Department of Homeland Security Acquisition Review Board or the Joint Review Board (or other entity to which such responsibility is delegated by the Secretary of Homeland Security) has approved the analysis of alternatives for the project. The Joint Review Board may also approve the low rates initial production quantity for the project or program if such an initial production quantity is planned by the acquisition project or program and deemed appropriate by the Joint Review Board.

### **§ 573. Preliminary development and demonstration**

(a) *IN GENERAL.*—The Commandant shall ensure that developmental test and evaluation, operational test and evaluation, life cycle cost estimates, and the development and demonstration requirements are met to confirm that the projects or programs meet the requirements described in the mission-needs statement and the operational-requirements document and the following development and demonstration objectives:

(1) To demonstrate that the most promising design, manufacturing, and production solution is based upon a stable, producible, and cost-effective product design.

(2) To ensure that the product capabilities meet contract specifications, acceptable operational performance requirements, and system security requirements.

(3) To ensure that the product design is mature enough to commit to full production and deployment.

(b) *TESTS AND EVALUATIONS.*—

(1) *IN GENERAL.*—The Commandant shall ensure that the Coast Guard conducts developmental tests and evaluations and operational tests and evaluations of a capability or asset and the subsystems of the capability or asset for which a master plan has been prepared under section 572(c)(1).

(2) *USE OF THIRD PARTIES.*—The Commandant shall ensure that the Coast Guard uses independent third parties with expertise in testing and evaluating the capabilities or assets and the subsystems of the capabilities or assets being acquired to conduct developmental tests and evaluations and operational tests and evaluations whenever the Coast Guard lacks the capability to conduct the tests and evaluations required by a master plan.

(3) *COMMUNICATION OF SAFETY CONCERNS.*—The Commandant shall require that safety concerns identified during

*developmental or operational tests and evaluations or through independent or Government-conducted design assessments of capabilities or assets and subsystems of capabilities or assets to be acquired by the Coast Guard shall be communicated as soon as practicable, but not later than 30 days after the completion of the test or assessment event or activity that identified the safety concern, to the program manager for the capability or asset and the subsystems concerned and to the Chief Acquisition Officer.*

*(4) ASSET ALREADY IN LOW, INITIAL, OR FULL-RATE PRODUCTION.—If operational test and evaluation on a capability or asset already in low, initial, or full-rate production identifies a safety concern with the capability or asset or any subsystems of the capability or asset not previously identified during developmental or operational test and evaluation, the Commandant shall—*

*(A) notify the program manager and the Chief Acquisition Officer of the safety concern as soon as practicable, but not later than 30 days after the completion of the test and evaluation event or activity that identified the safety concern; and*

*(B) notify the Chief Acquisition Officer and include in such notification—*

*(i) an explanation of the actions that will be taken to correct or mitigate the safety concern in all capabilities or assets and subsystems of the capabilities or assets yet to be produced, and the date by which those actions will be taken;*

*(ii) an explanation of the actions that will be taken to correct or mitigate the safety concern in previously produced capabilities or assets and subsystems of the capabilities or assets, and the date by which those actions will be taken; and*

*(iii) an assessment of the adequacy of current funding to correct or mitigate the safety concern in capabilities or assets and subsystems of the capabilities or assets and in previously produced capabilities or assets and subsystems.*

*(c) TECHNICAL CERTIFICATION.—*

*(1) IN GENERAL.—The Commandant shall—ensure that any Level 1 or Level 2 acquisition project or program is certified by the technical authority of the Coast Guard after review by an independent third party with capabilities in the mission area, asset, or particular asset component.*

*(2) TEMPEST TESTING.—The Commandant shall—*

*(A) cause all electronics on all aircraft, surface, and shore assets that require TEMPEST certification and that are delivered after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 to be tested in accordance with master plan standards and communications security standards by an independent third party that is authorized by the Federal Government to perform such testing; and*

*(B) certify that the assets meet all applicable TEMPEST requirements.*

(3) *VESSEL CLASSIFICATION.*—*The Commandant shall cause each cutter, other than the National Security Cutter, acquired by the Coast Guard and delivered after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 is to be classed by the American Bureau of Shipping before final acceptance.*

(d) *ACQUISITION DECISION.*—*The Commandant may not proceed to full scale production, deployment, and support of a Level 1 or Level 2 acquisition project or program unless the Department of Homeland Security Acquisition Review Board has verified that the delivered asset or system meets the project or program performance and cost goals.*

**§ 574. Acquisition, production, deployment, and support**

(a) *IN GENERAL.*—*The Commandant shall—*

- (1) *ensure there is a stable and efficient production and support capability to develop an asset or system;*
- (2) *conduct follow on testing to confirm and monitor performance and correct deficiencies; and*
- (3) *conduct acceptance tests and trails upon the delivery of each asset or system to ensure the delivered asset or system achieves full operational capability.*

(b) *ELEMENTS.*—*The Commandant shall—*

- (1) *execute the productions contracts;*
- (2) *ensure the delivered products meet operational cost and schedules requirements established in the acquisition program baseline;*
- (3) *validate manpower and training requirements to meet system needs to operate, maintain, support, and instruct the system; and*
- (4) *prepare a project or program transition plan to enter into programmatic sustainment, operations, and support.*

**§ 575. Acquisition program baseline breach**

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

- (1) *a likely cost overrun greater than 15 percent of the acquisition program baseline for that individual capability or asset or a class of capabilities or assets;*
- (2) *a likely delay of more than 180 days in the delivery schedule for any individual capability or asset or class of capabilities or assets; or*
- (3) *an anticipated failure for any individual capability or asset or class of capabilities or assets to satisfy any key performance threshold or parameter under the acquisition program baseline.*

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

- (1) *a detailed description of the breach and an explanation of its cause;*
- (2) *the projected impact to performance, cost, and schedule;*

(3) an updated acquisition program baseline and the complete history of changes to the original acquisition program baseline;

(4) the updated acquisition schedule and the complete history of changes to the original schedule;

(5) a full life-cycle cost analysis for the capability or asset or class of capabilities or assets;

(6) a remediation plan identifying corrective actions and any resulting issues or risks; and

(7) a description of how progress in the remediation plan will be measured and monitored.

(c) **SUBSTANTIAL VARIANCES IN COSTS OR SCHEDULE.**—If a likely cost overrun is greater than 25 percent or a likely delay is greater than 12 months from the costs and schedule described in the acquisition program baseline for any Level 1 or Level 2 acquisition project or program of the Coast Guard, the Commandant shall include in the report a written certification, with a supporting explanation, that—

(1) the capability or asset or capability or asset class to be acquired under the project or program is essential to the accomplishment of Coast Guard missions;

(2) there are no alternatives to such capability or asset or capability or asset class which will provide equal or greater capability in both a more cost-effective and timely manner;

(3) the new acquisition schedule and estimates for total acquisition cost are reasonable; and

(4) the management structure for the acquisition program is adequate to manage and control performance, cost, and schedule.

### SUBCHAPTER 3—DEFINITIONS

#### § 581. Definitions

In this chapter:

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

(2) **CHIEF ACQUISITION OFFICER.**—The term “Chief Acquisition Officer” means the officer appointed under section 55 of this title.

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

(4) **JOINT REVIEW BOARD.**—The term “Joint Review Board” means the Department of Homeland Security’s Investment Review Board, Joint Requirements Council, or other entity within the Department designated by the Secretary as the Joint Review Board for purposes of this chapter.

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

(A) an acquisition by the Coast Guard—

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

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

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

(i) due to—

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

(II) the technological complexity of the asset;

(III) the commitment of resources; or

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

(ii) because such acquisition is a joint acquisition.

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

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

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

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

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

\* \* \* \* \*

#### CHAPTER 17. ADMINISTRATION

#### **§ 638a. Coast Guard vessels and aircraft defined**

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

(1) any vessel or aircraft owned, leased, transferred to, or operated by the Coast Guard and under the command of a Coast Guard member; or

(2) any other vessel or aircraft under the tactical control of the Coast Guard on which one or more members of the Coast Guard are assigned and conducting Coast Guard missions.

#### ARMED FORCES RETIREMENT HOME ACT OF 1991

#### **SEC. 1502. DEFINITIONS.**

[24 U.S.C. 401]

For purposes of this title:

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

(A) The Armed Forces Retirement Home—Washington.

(B) The Armed Forces Retirement Home—Gulfport.

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

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

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

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

(A) the Deputy Chief of Staff for Personnel of the Army;

(B) the Chief of Naval Personnel;

(C) the Deputy Chief of Staff for Personnel of the Air Force; [and]

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

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

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

(A) The Sergeant Major of the Army.

(B) The Master Chief Petty Officer of the Navy.

(C) The Chief Master Sergeant of the Air Force.

(D) The Sergeant Major of the Marine Corps.

(E) *The Master Chief Petty Officer of the Coast Guard.*

## OIL POLLUTION ACT OF 1990

### SEC. 1001. DEFINITIONS

[33 U.S.C. 2701]

For the purposes of this Act, the term—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) “lessee” means a person holding a leasehold interest in an oil or gas lease on lands beneath navigable waters (as that term is defined in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301(a))) or on submerged lands of the Outer Continental Shelf, granted or maintained under applicable State law or the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.);

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

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

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

(20) “natural resources” includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, ap-

pertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone), any State or local government or Indian tribe, or any foreign government;

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

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

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

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

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

(26) “owner or operator”—

(A) means—

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

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

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

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

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

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



- (II) bankruptcy;
- (III) tax delinquency;
- (IV) abandonment; or

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

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

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

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

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

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

(B) does not include—

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

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

(II) bankruptcy;

(III) tax delinquency;

(IV) abandonment; or

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

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

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

(I) forecloses on the vessel or facility; and

(II) after foreclosure, sells, re-leases (in the case of a lease finance transaction), or liquidates the vessel or facility, maintains business activities, winds up operations, undertakes a removal action under section 311(c) of the Federal Water Pollu-

tion Control Act (33 U.S.C. 1321(c)) or under the direction of an on-scene coordinator appointed under the National Contingency Plan, with respect to the vessel or facility, or takes any other measure to preserve, protect, or prepare the vessel or facility prior to sale or disposition, if the person seeks to sell, re-lease (in the case of a lease finance transaction), or otherwise divest the person of the vessel or facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements;

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

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

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

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

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

(32) “responsible party” means the following:

(A) VESSELS.—In the case of a vessel, any person owning, operating, or demise chartering the vessel. *In the case of a vessel, the term “responsible party” also includes the owner of oil being transported in a tank vessel with a single hull after December 31, 2010 (other than a vessel described in section 3703a(b)(3) of title 46, United States Code).*

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

(C) OFFSHORE FACILITIES.—In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer

Continental Shelf Lands Act (43 U.S.C. 1301–1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

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

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

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

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

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

(A) is a vessel of the United States;

(B) operates on the navigable waters; or

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

(35) “territorial seas” means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of 3 miles;

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

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

(38) “participate in management”—

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

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

(B) does not include—

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

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

(iii) including in the terms of an extension of credit, or in a contract or security agreement relating to the

extension, a covenant, warranty, or other term or condition that relates to environmental compliance;

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

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

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

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

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

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

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

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

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

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

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

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

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

**SEC. 1012. USES OF THE FUND.**

[33 U.S.C. 2712]

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

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

(A) by Federal authorities; or

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

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

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

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

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

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

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

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

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

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

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

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

(d) ACCESS TO FUND BY STATE OFFICIALS.—

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

(2) AGREEMENTS.—

(A) IN GENERAL.—The President shall enter into an agreement with the Governor of any interested State to establish procedures under which the Governor or a designated State official may receive payments from the Fund for removal costs pursuant to paragraph (1).

(B) TERMS.—Agreements under this paragraph—

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

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

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

(e) REGULATIONS.—The President shall—

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

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

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

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

(g) AUDITS.—

(1) *IN GENERAL.*—The Comptroller General of the United States shall conduct an audit, including a detailed accounting of each disbursement from the Fund in excess of \$500,000 that is—

(A) *disbursed by the National Pollution Fund Center; and*

(B) *administered and managed by the receiving Federal agencies, including final payments made to agencies and contractors and, to the extent possible, subcontractors.*

(2) *FREQUENCY.*—The audits shall be conducted—

(A) *at least once every 3 years after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 until 2016; and*

(B) *at least once every 5 years after the last audit conducted under subparagraph (A).*

(3) *SUBMISSION OF RESULTS.*—The Comptroller shall submit the results of each audit conducted under paragraph (1) to—

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

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

(C) *the Secretary or Administrator of each agency referred to in paragraph (1)(B).*

(h) *REPORTS.*—

(1) *IN GENERAL.*—Within one year after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011, and annually thereafter, the President, through the Secretary of the Department in which the Coast Guard is operating, shall—

(A) *provide a report on disbursements for the preceding fiscal year from the Fund, regardless of whether those disbursements were subject to annual appropriations, to—*

(i) *the Senate Committee on Commerce, Science, and Transportation; and*

(ii) *the House of Representatives Committee on Transportation and Infrastructure; and*

(B) *make the report available to the public on the National Pollution Funds Center Internet website.*

(2) *CONTENTS.*—The report shall include—

(A) *a list of each disbursement of \$250,000 or more from the Fund during the preceding fiscal year; and*

(B) *a description of how each such use of the Fund meets the requirements of subsection (a).*

(3) *AGENCY RECORDKEEPING.*—Each Federal agency that receives amounts from the Fund shall maintain records describing the purposes for which such funds were obligated or expended in such detail as the Secretary may require for purposes of the report required under paragraph (1).

(i) *AUTHORIZATIONS.*—There are authorized to be appropriated such sums as may be necessary to carry out subsections (g) and (h).

[(h)] (j) *PERIOD OF LIMITATIONS FOR CLAIMS.*—

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

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

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

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

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

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

[(j)] (l) OBLIGATION IN ACCORDANCE WITH PLAN.—

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

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

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

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

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

#### SEC. 1016. FINANCIAL RESPONSIBILITY.

[33 U.S.C. 2716]

(a) REQUIREMENT.—The responsible party for—

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

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

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



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

(b) SANCTIONS.—

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

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

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

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

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

(c) OFFSHORE FACILITIES.—

(1) IN GENERAL.—

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

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

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

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

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

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

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

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

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

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

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

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

(d) [Not enacted]

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

(f) CLAIMS AGAINST GUARANTOR.—

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

- (A) all rights and defenses which would be available to the responsible party under this Act;
- (B) any defense authorized under subsection (e); and
- (C) the defense that the incident was caused by the willful misconduct of the responsible party.

The guarantor may not invoke any other defense that might be available in proceedings brought by the responsible party against the guarantor.

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

- (A) the responsible party for whom evidence of financial responsibility has been provided has denied or failed to pay a claim under this Act on the basis of being insolvent, as defined under section 101(32) of title 11, United States Code, and applying generally accepted accounting principles;
- (B) the responsible party for whom evidence of financial responsibility has been provided has filed a petition for bankruptcy under title 11, United States Code; or
- (C) the claim is asserted by the United States for removal costs and damages or for compensation paid by the Fund under this Act, including costs incurred by the Fund for processing compensation claims.

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

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

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

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

## TITLE 37. PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

### CHAPTER 19. ADMINISTRATION

#### § 1007. Deductions from pay

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## TITLE 46. SHIPPING

## SUBTITLE II. VESSELS AND SEAMEN

## PART G. MERCHANT SEAMEN PROTECTION AND RELIEF

## CHAPTER 103. FOREIGN AND INTERCOASTAL VOYAGES

## CHAPTER 105. COASTWISE VOYAGES

## PART H. IDENTIFICATION OF VESSELS

## CHAPTER 121. DOCUMENTATION OF VESSELS

## SUBCHAPTER II. ENDORSEMENTS AND SPECIAL DOCUMENTATION

**§ 12113. Fishery endorsement**

(a) REQUIREMENTS.—A fishery endorsement may be issued for a vessel that—

- (1) satisfies the requirements of section 12103 of this title and, if owned by an entity, the entity satisfies the ownership requirements in subsection (c);
- (2) was built in the United States;
- (3) if rebuilt, was rebuilt in the United States;
- (4) was not forfeited to the United States Government after July 1, 2001, for a breach of the laws of the United States; and
- (5) otherwise qualifies under the laws of the United States to engage in the fisheries.

(b) AUTHORIZED ACTIVITY.—

(1) IN GENERAL.—Subject to the laws of the United States regulating the fisheries, a vessel for which a fishery endorsement is issued may engage in the fisheries.

(2) USE BY PROHIBITED PERSONS.—A fishery endorsement is invalid immediately if the vessel for which it is issued is used as a fishing vessel while it is chartered or leased to an individual who is not a citizen of the United States or to an entity that is not eligible to own a vessel with a fishery endorsement.

(c) OWNERSHIP REQUIREMENTS FOR ENTITIES.—

(1) IN GENERAL.—A vessel owned by an entity is eligible for a fishery endorsement only if at least 75 percent of the interest in the entity, at each tier of ownership and in the aggregate, is owned and controlled by citizens of the United States.

(2) DETERMINING 75 PERCENT INTEREST.—In determining whether at least 75 percent of the interest in the entity is owned and controlled by citizens of the United States under paragraph (1), the Secretary shall apply section 50501(d) of this title, except that for this purpose the terms “control” or “controlled”—

(A) include the right to—

- (i) direct the business of the entity;
- (ii) limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity; or
- (iii) direct the transfer, operation, or manning of a vessel with a fishery endorsement; but

(B) do not include the right to simply participate in the activities under subparagraph (A), or the exercise of rights

under loan or mortgage covenants by a mortgagee eligible to be a preferred mortgagee under section 31322(a) of this title, except that a mortgagee not eligible to own a vessel with a fishery endorsement may only operate such a vessel to the extent necessary for the immediate safety of the vessel or for repairs, drydocking, or berthing changes.

(3) EXCEPTIONS.—This subsection does not apply to a vessel when it is engaged in the fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council established under section 302(a)(1)(H) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(H)) or to a purse seine vessel when it is engaged in tuna fishing in the Pacific Ocean outside the exclusive economic zone or pursuant to the South Pacific Regional Fisheries Treaty, provided that the owner of the vessel continues to comply with the eligibility requirements for a fishery endorsement under the Federal law that was in effect on October 1, 1998. A fishery endorsement issued pursuant to this paragraph is valid for engaging only in the activities described in this paragraph.

(d) REQUIREMENTS BASED ON LENGTH, TONNAGE, OR HORSEPOWER.—

(1) APPLICATION.—This subsection applies to a vessel that—

(A) is greater than 165 feet in registered length;

(B) is more than 750 gross registered tons as measured under chapter 145 of this title or 1,900 gross registered tons as measured under chapter 143 of this title; or

(C) has an engine or engines capable of producing a total of more than 3,000 shaft horsepower.

(2) REQUIREMENTS.—A vessel subject to this subsection is not eligible for a fishery endorsement unless—

(A)(i) a certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997; *and*

(ii) the vessel is not placed under foreign registry after October 21, 1998; **[and]**

**[(iii) if the fishery endorsement is invalidated after October 21, 1998, application is made for a new fishery endorsement within 15 business days of the invalidation; or]**

(B) the owner of the vessel demonstrates to the Secretary that the regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)) has recommended after October 21, 1998, and the Secretary of Commerce has approved, conservation and management measures in accordance with the American Fisheries Act (Public Law 105–277, div. C, title II) (16 U.S.C. 1851 note) to allow the vessel to be used in fisheries under the council's **[authority.]** *authority; or*

*(C) the vessel is either a rebuilt vessel or a replacement vessel under section 208(g) of the American Fisheries Act (title II of division C of Public Law 105–277; 112 Stat. 2681–627) and is eligible for a fishery endorsement under this section.*

## (e) VESSELS MEASURING 100 FEET OR GREATER.—

(1) IN GENERAL.—The Administrator of the Maritime Administration shall administer subsections (c) and (d) with respect to vessels 100 feet or greater in registered length. The owner of each such vessel shall file a statement of citizenship setting forth all relevant facts regarding vessel ownership and control with the Administrator on an annual basis to demonstrate compliance with those provisions.

(2) REGULATIONS.—Regulations to implement this subsection shall conform to the extent practicable with the regulations establishing the form of citizenship affidavit set forth in part 355 of title 46, Code of Federal Regulations, as in effect on September 25, 1997, except that the form of the statement shall be written in a manner to allow the owner of the vessel to satisfy any annual renewal requirements for a certificate of documentation for the vessel and to comply with this subsection and subsections (c) and (d), and shall not be required to be notarized.

(3) TRANSFER OF OWNERSHIP.—Transfers of ownership and control of vessels subject to subsection (c) or (d), which are 100 feet or greater in registered length, shall be rigorously scrutinized for violations of those provisions, with particular attention given to—

(A) leases, charters, mortgages, financing, and similar arrangements;

(B) the control of persons not eligible to own a vessel with a fishery endorsement under subsection (c) or (d), over the management, sales, financing, or other operations of an entity; and

(C) contracts involving the purchase over extended periods of time of all, or substantially all, of the living marine resources harvested by a fishing vessel.

(f) VESSELS MEASURING LESS THAN 100 FEET.—The Secretary shall establish reasonable and necessary requirements to demonstrate compliance with subsections (c) and (d), with respect to vessels measuring less than 100 feet in registered length, and shall seek to minimize the administrative burden on individuals who own and operate those vessels.

(g) VESSELS PURCHASED THROUGH FISHING CAPACITY REDUCTION PROGRAM.—A vessel purchased by the Secretary of Commerce through a fishing capacity reduction program under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) or section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107) is not eligible for a fishery endorsement, and any fishery endorsement issued for that vessel is invalid.

(h) REVOCATION OF ENDORSEMENTS.—The Secretary shall revoke the fishery endorsement of any vessel subject to subsection (c) or (d) whose owner does not comply with those provisions.

(i) REGULATIONS.—Regulations to implement subsections (c) and (d) and sections 12151(c) and 31322(b) of this title shall prohibit impermissible transfers of ownership or control, specify any transactions that require prior approval of an implementing agency, identify transactions that do not require prior agency approval, and to the extent practicable, minimize disruptions to the commercial



fishing industry, to the traditional financing arrangements of that industry, and to the opportunity to form fishery cooperatives.

SUBTITLE III. MARITIME LIABILITY

CHAPTER 313. COMMERCIAL INSTRUMENTS AND MARITIME LIENS

SUBCHAPTER I. GENERAL

§ 31301. Definitions

In this chapter—

- (1) “acknowledge” means making—
  - (A) an acknowledgment or notarization before a notary public or other official authorized by a law of the United States or a State to take acknowledgments of deeds; or
  - (B) a certificate issued under the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 1961;
- (2) “district court” means—
  - (A) a district court of the United States (as defined in section 451 of title 28);
  - (B) the District Court of Guam;
  - (C) the District Court of the Virgin Islands;
  - (D) the District Court for the Northern Mariana Islands;
  - (E) the High Court of American Samoa; and
  - (F) any other court of original jurisdiction of a territory or possession of the United States;
- (3) “mortgagee” means—
  - (A) a person to whom property is mortgaged; or
  - (B) when a mortgage on a vessel involves a trust, the trustee that is designated in the trust agreement;
- (4) “necessaries” includes repairs, supplies, towage, and the use of a dry dock or marine railway;
- (5) “preferred maritime lien” means a maritime lien on a vessel—
  - (A) arising before a preferred mortgage was filed under section 31321 of this title;
  - (B) for damage arising out of maritime tort;
  - (C) for wages of a stevedore when employed directly by a person listed in section 31341 of this title;
  - (D) for wages of the crew of the vessel;
  - (E) for general average; or
  - (F) for salvage, including contract salvage; **[and]**
- (6) “preferred mortgage”—
  - (A) means a mortgage that is a preferred mortgage under section 31322 of this title; and
  - (B) also means in sections 31325 and 31326 of this title, a mortgage, hypothecation, or similar charge that is established as a security on a foreign vessel if the mortgage, hypothecation, or similar charge was executed under the laws of the foreign country under whose laws the ownership of the vessel is documented and has been registered under those laws in a public register at the port of registry of the vessel or at a central **[office.] office; and**
- (7) “Secretary” means the Secretary of the Department of Homeland Security, unless otherwise noted.”.

**§ 31302. Availability of instruments, copies, and information**

The Secretary [of Transportation] shall—

- (1) make any instrument filed or recorded with the Secretary under this chapter available for public inspection;
- (2) on request, provide a copy, including a certified copy, of any instrument made available for public inspection under this chapter; and
- (3) on request, provide a certificate containing information included in an instrument filed or recorded under this chapter.

TITLE 46. SHIPPING

SUBTITLE III. MARITIME LIABILITY

CHAPTER 313. COMMERCIAL INSTRUMENTS AND MARITIME LIENS

SUBCHAPTER I. GENERAL

[46 U.S.C. 31306]

**§ 31306. Declaration of citizenship**

(a) Except as provided by the Secretary [of Transportation], when an instrument transferring an interest in a vessel is presented to the Secretary of Transportation for filing or recording, the transferee shall file with the instrument a declaration, in the form the Secretary may prescribe by regulation, stating information about citizenship and other information the Secretary may require to show the transaction involved does not violate section 56102 or 56103 of this title.

(b) A declaration under this section filed by a corporation must be signed by its president, secretary, treasurer, or other official authorized by the corporation to execute the declaration.

(c) Except as provided by the Secretary, an instrument transferring an interest in a vessel is not valid against any person until the declaration required by this section has been filed.

(d) A person knowingly making a false statement of a material fact in a declaration filed under this section shall be fined under title 18, imprisoned for not more than 5 years, or both. § 31308. Secretary of Commerce or Transportation as mortgagee

[When the Secretary of Commerce or Transportation is a mortgagee under this chapter, the Secretary] *The Secretary of Commerce or Transportation, as a mortgagee under this chapter*, may foreclose on a lien arising from a right established under a mortgage under chapter 537 of this title, subject to section 362(b) of title 11.

SUBCHAPTER II. COMMERCIAL INSTRUMENTS

**§ 31321. Filing, recording, and discharge**

(a)(1) A bill of sale, conveyance, mortgage, assignment, or related instrument, whenever made, that includes any part of a documented vessel or a vessel for which an application for documentation is filed, must be filed with the Secretary [of Transportation] to be valid, to the extent the vessel is involved, against any person except—

- (A) the grantor, mortgagor, or assignor;

(B) the heir or devisee of the grantor, mortgagor, or assignor; and

(C) a person having actual notice of the sale, conveyance, mortgage, assignment, or related instrument.

(2) Each bill of sale, conveyance, mortgage, assignment, or related instrument that is filed in substantial compliance with this section is valid against any person from the time it is filed with the Secretary.

(3) The parties to an instrument or an application for documentation shall use diligence to ensure that the parts of the instrument or application for which they are responsible are in substantial compliance with the filing and documentation requirements.

(4) A bill of sale, conveyance, mortgage, assignment, or related instrument may be filed electronically under regulations prescribed by the Secretary.

(b) To be filed, a bill of sale, conveyance, mortgage, assignment, or related instrument must—

(1) identify the vessel;

(2) state the name and address of each party to the instrument;

(3) state, if a mortgage, the amount of the direct or contingent obligations (in one or more units of account as agreed to by the parties) that is or may become secured by the mortgage, excluding interest, expenses, and fees;

(4) state the interest of the grantor, mortgagor, or assignor in the vessel;

(5) state the interest sold, conveyed, mortgaged, or assigned; and

(6) be signed and acknowledged.

(c) If a bill of sale, conveyance, mortgage, assignment, or related document is filed that involves a vessel for which an application for documentation is filed, and the Secretary decides that the vessel cannot be documented by an applicant—

(1) the Secretary shall send notice of the Secretary's decision, including reasons for the decision, to each interested party to the instrument filed for recording; and

(2) 90 days after sending the notice as provided under clause

(1) of this subsection, the Secretary—

(A) may terminate the filing; and

(B) may return the instrument filed without recording it under subsection (e) of this section.

(d) A person may withdraw an application for documentation of a vessel for which a mortgage has been filed under this section only if the mortgagee consents.

(e) The Secretary shall—

(1) record the bills of sale, conveyances, mortgages, assignments, and related instruments of a documented vessel complying with subsection (b) of this section in the order they are filed; and

(2) maintain appropriate indexes, for use by the public, of instruments filed or recorded, or both.

(f) On full and final discharge of the indebtedness under a mortgage recorded under subsection (e)(1) of this section, a mortgagee, on request of the Secretary or mortgagor, shall provide the Secretary with an acknowledged certificate of discharge of the indebt-

edness in a form prescribed by the Secretary. The Secretary shall record the certificate.

(g) The mortgage or related instrument of a vessel covered by a preferred mortgage under section 31322(d) of this title, that is later filed under this section at the time an application for documentation is filed, is valid under this section from the time the mortgage or instrument representing financing became a preferred mortgage under section 31322(d).

(h) On full and final discharge of the indebtedness under a mortgage deemed to be a preferred mortgage under section 31322(d) of this title, a mortgagee, on request of the Secretary, a State, or mortgagor, shall provide the Secretary or the State, as appropriate, with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary or the State, as applicable. If filed with the Secretary, the Secretary shall enter that information in the vessel identification system under chapter 125 of this title.

#### **§ 31329. Court sales of documented vessels**

(a) A documented vessel may be sold by order of a district court only to—

- (1) a person eligible to own a documented vessel under section 12103 of this title; or
- (2) a mortgagee of that vessel.

(b) When a vessel is sold to a mortgagee not eligible to own a documented vessel—

- (1) the vessel must be held by the mortgagee for resale;
- (2) the vessel held by the mortgagee is subject to chapter 563 of this title; and
- (3) the sale of the vessel to the mortgagee is not a sale to a person not a citizen of the United States under section 12132 of this title.

(c) Unless waived by the Secretary of Transportation, a person purchasing a vessel by court order under subsection (a)(1) of this section or from a mortgagee under subsection (a)(2) of this section must document the vessel under chapter 121 of this title.

(d) The vessel may be operated by the mortgagee not eligible to own a documented vessel only with the approval of the **【Secretary.】** *Secretary of Transportation.*

(e) A sale of a vessel contrary to this section is void.

(f) This section does not apply to a documented vessel that has been operated only for pleasure.

#### **§ 31330. Penalties**

(a)(1) A mortgagor shall be fined under title 18, imprisoned for not more than 2 years, or both, if the mortgagor—

- (A) with intent to defraud, does not disclose an obligation on a vessel as required by section 31323(a) of this title;
- (B) with intent to defraud, incurs a contractual obligation in violation of section 31323(b) of this title; *or*
- (C) with intent to hinder or defraud an existing or future creditor of the mortgagor or a lienor of the vessel, files a mortgage with the **【Secretary; or】** *Secretary.*

**【(D) with intent to defraud, does not comply with section 31321(h) of this title.】**

(2) A mortgagor is liable to the United States Government for a civil penalty of not more than \$10,000 if the mortgagor—

(A) does not disclose an obligation on a vessel as required by section 31323(a) of this title;

(B) incurs a contractual obligation in violation of section 31323(b) of this title; *or*

(C) files with the Secretary a mortgage made not in good [faith; or] *faith*.

[(D) does not comply with section 31321(h) of this title.]

(b) (1) A person that knowingly violates section 31329 of this title shall be fined under title 18, imprisoned for not more than 3 years, or both.

(2) A person violating section 31329 of this title is liable to the Government for a civil penalty of not more than \$25,000.

(3) A vessel involved in a violation under section 31329 of this title and its equipment may be seized by, and forfeited to, the Government.

(c) If a person not an individual violates this section, the president or chief executive of the person also is subject to any penalty provided under this section.

#### SUBCHAPTER III. MARITIME LIENS

### **§ 31343. Recording and discharging notices of claim of maritime lien**

(a) Except as provided under subsection (d) of this section, a person claiming a lien on a vessel documented, or for which an application for documentation has been filed, under chapter 121 may record with the Secretary [of Transportation] a notice of that person's lien claim on the vessel. To be recordable, the notice must—

(1) state the nature of the lien;

(2) state the date the lien was established;

(3) state the amount of the lien;

(4) state the name and address of the person; and

(5) be signed and acknowledged.

(b)(1) The Secretary shall record a notice complying with subsection (a) of this section if, when the notice is presented to the Secretary for recording, the person having the claim files with the notice a declaration stating the following:

(A) The information in the notice is true and correct to the best of the knowledge, information, and belief of the individual who signed it.

(B) A copy of the notice, as presented for recordation, has been sent to each of the following:

(i) The owner of the vessel.

(ii) Each person that recorded under subsection (a) of this section an unexpired notice of a claim of an undischarged lien on the vessel.

(iii) The mortgagee of each mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel.

(2) A declaration under this subsection filed by a person that is not an individual must be signed by the president, member, partner, trustee, or other individual authorized to execute the declaration on behalf of the person.

(c)(1) On full and final discharge of the indebtedness that is the basis for a notice of claim of lien recorded under subsection (b) of this section, the person having the claim shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness. The Secretary shall record the certificate.

(2) The district courts of the United States shall have jurisdiction over a civil action in Admiralty to declare that a vessel is not subject to a lien claimed under subsection (b) of this section, or that the vessel is not subject to the notice of claim of lien, or both, regardless of the amount in controversy or the citizenship of the parties. Venue in such an action shall be in the district where the vessel is found or where the claimant resides or where the notice of claim of lien is recorded. The court may award costs and attorneys fees to the prevailing party, unless the court finds that the position of the other party was substantially justified or other circumstances make an award of costs and attorneys fees unjust. The Secretary shall record any such declaratory order.

(d) A person claiming a lien on a vessel covered by a preferred mortgage under section 31322(d) of this title must record and discharge the lien as provided by the law of the State in which the vessel is titled.

(e) A notice of claim of lien recorded under subsection (b) of this section shall expire 3 years after the date the lien was established, as such date is stated in the notice under subsection (a) of this section.

(f) This section does not alter in any respect the law pertaining to the establishment of a maritime lien, the remedy provided by such a lien, or the defenses thereto, including any defense under the doctrine of laches.

#### SUBTITLE VII. SECURITY AND DRUG ENFORCEMENT

##### CHAPTER 701. PORT SECURITY

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### **§ 70122. Regulations**

*Unless otherwise provided, the Secretary may issue regulations necessary to implement this chapter.*

#### AMERICAN FISHERIES ACT

##### **SEC. 203. ENFORCEMENT OF STANDARD.**

[46 U.S.C. 12102 note]

(a) **EFFECTIVE DATE.**—The amendments made by section 202 shall take effect on October 1, 2001.

(b) **REGULATIONS.**—Final regulations to implement this subtitle shall be published in the Federal Register by April 1, 2000. Letter rulings and other interim interpretations about the effect of this subtitle and amendments made by this subtitle on specific vessels may not be issued prior to the publication of such final regulations. The regulations to implement this subtitle shall prohibit impermissible transfers of ownership or control, specify any transactions which require prior approval of an implementing agency, identify transactions which do not require prior agency approval, and to the extent practicable, minimize disruptions to the commercial fishing

industry, to the traditional financing arrangements of such industry, and to the opportunity to form fishery cooperatives.

(c) **VESSELS MEASURING 100 FEET AND GREATER.**—(1) The Administrator of the Maritime Administration shall administer section 12102(c) of title 46, United States Code, as amended by this subtitle, with respect to vessels 100 feet or greater in registered length. The owner of each such vessel shall file a statement of citizenship setting forth all relevant facts regarding vessel ownership and control with the Administrator of the Maritime Administration on an annual basis to demonstrate compliance with such section. Regulations to implement this subsection shall conform to the extent practicable with the regulations establishing the form of citizenship affidavit set forth in part 355 of title 46, Code of Federal Regulations, as in effect on September 25, 1997, except that the form of the statement under this paragraph shall be written in a manner to allow the owner of each such vessel to satisfy any annual renewal requirements for a certificate of documentation for such vessel and to comply with this subsection and section 12102(c) of title 46, United States Code, as amended by this Act, and shall not be required to be notarized.

(2) After October 1, 2001, transfers of ownership and control of vessels subject to section 12102(c) of title 46, United States Code, as amended by this Act, which are 100 feet or greater in registered length, shall be rigorously scrutinized for violations of such section, with particular attention given to leases, charters, mortgages, financing, and similar arrangements, to the control of persons not eligible to own a vessel with a fishery endorsement under section 12102(c) of title 46, United States Code, as amended by this Act, over the management, sales, financing, or other operations of an entity, and to contracts involving the purchase over extended periods of time of all, or substantially all, of the living marine resources harvested by a fishing vessel.

(d) **VESSELS MEASURING LESS THAN 100 FEET.**—The Secretary of Transportation shall establish such requirements as are reasonable and necessary to demonstrate compliance with section 12102(c) of title 46, United States Code, as amended by this Act, with respect to vessels measuring less than 100 feet in registered length, and shall seek to minimize the administrative burden on individuals who own and operate such vessels.

(e) **ENDORSEMENTS REVOKED.**—The Secretary of Transportation shall revoke the fishery endorsement of any vessel subject to section 12102(c) of title 46, United States Code, as amended by this Act, whose owner does not comply with such section.

(f) [Executed]

(g) **CERTAIN VESSELS.**—The vessels EXCELLENCE (United States official number 967502), GOLDEN ALASKA (United States official number 651041) and , OCEAN PHOENIX (United States official number 296779), [NORTHERN TRAVELER (United States official number 635986), and NORTHERN VOYAGER (United States official number 637398) (or a replacement vessel for the NORTHERN VOYAGER that complies with paragraphs (2), (5), and (6) of section 208(g) of this Act)] shall be exempt from section 12102(c), as amended by this Act, until such time after October 1, 2001 as more than 50 percent of the interest owned and controlled in the vessel changes, provided that the vessel maintains eligibility

for a fishery endorsement under the federal law that was in effect the day before the date of the enactment of this Act, and unless [ in the case of the NORTHERN TRAVELER or the NORTHERN VOYAGER (or such replacement), the vessel is used in any fishery under the authority of a regional fishery management council other than the New England Fishery Management Council or Mid-Atlantic Fishery Management Council established, respectively, under subparagraphs (A) and (B) of section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(A) and (B)), or in the case of the EXCELLENCE, GOLDEN ALASKA, or OCEAN PHOENIX, ] the vessel is used to harvest any fish.

**SEC. 208. ELIGIBLE VESSELS AND PROCESSORS.**

[112 Stat. 2681-624]

(a) **CATCHER VESSELS ONSHORE.**—Effective January 1, 2000, only catcher vessels which are—

(1) determined by the Secretary—

(A) to have delivered at least 250 metric tons of pollock;

or

(B) to be less than 60 feet in length overall and to have delivered at least 40 metric tons of pollock,

for processing by the inshore component in the directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998 and September 1, 1998;

(2) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary; and

(3) not listed in subsection (b),

shall be eligible to harvest the directed fishing allowance under section 206(b)(1) pursuant to a federal fishing permit.

(b) **CATCHER VESSELS TO CATCHER/PROCESSORS.**—Effective January 1, 1999, only the following catcher vessels shall be eligible to harvest the directed fishing allowance under section 206(b)(2) pursuant to a federal fishing permit:

(1) AMERICAN CHALLENGER (United States official number 615085);

(2) FORUM STAR (United States official number 925863);

(3) MUIR MILACH (United States official number 611524);

(4) NEAHKAHNIE (United States official number 599534);

(5) OCEAN HARVESTER (United States official number 549892);

(6) SEA STORM (United States official number 628959);

(7) TRACY ANNE (United States official number 904859);

and

(8) any catcher vessel—

(A) determined by the Secretary to have delivered at least 250 metric tons and at least 75 percent of the pollock it harvested in the directed pollock fishery in 1997 to catcher/processors for processing by the offshore component; and

(B) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary.

(c) **CATCHER VESSELS TO MOTHERSHIPS.**—Effective January 1, 2000, only the following catcher vessels shall be eligible to harvest



the directed fishing allowance under section 206(b)(3) pursuant to a federal fishing permit:

- (1) ALEUTIAN CHALLENGER (United States official number 603820);
- (2) ALYESKA (United States official number 560237);
- (3) AMBER DAWN (United States official number 529425);
- (4) AMERICAN BEAUTY (United States official number 613847);
- (5) CALIFORNIA HORIZON (United States official number 590758);
- (6) MAR-GUN (United States official number 525608);
- (7) MARGARET LYN (United States official number 615563);
- (8) MARK I (United States official number 509552);
- (9) MISTY DAWN (United States official number 926647);
- (10) NORDIC FURY (United States official number 542651);
- (11) OCEAN LEADER (United States official number 561518);
- (12) OCEANIC (United States official number 602279);
- (13) PACIFIC ALLIANCE (United States official number 612084);
- (14) PACIFIC CHALLENGER (United States official number 518937);
- (15) PACIFIC FURY (United States official number 561934);
- (16) PAPADO II (United States official number 536161);
- (17) TRAVELER (United States official number 929356);
- (18) VESTERAALEN (United States official number 611642);
- (19) WESTERN DAWN (United States official number 524423); and
- (20) any vessel—
  - (A) determined by the Secretary to have delivered at least 250 metric tons of pollock for processing by motherships in the offshore component of the directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998 and September 1, 1998;
  - (B) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary; and
  - (C) not listed in subsection (b).

(d) MOTHERSHIPS.—Effective January 1, 2000, only the following motherships shall be eligible to process the directed fishing allowance under section 206(b)(3) pursuant to a Federal fishing permit:

- (1) EXCELLENCE (United States official number 967502);
- (2) GOLDEN ALASKA (United States official number 651041); and
- (3) OCEAN PHOENIX (United States official number 296779).

(e) CATCHER/PROCESSORS.—Effective January 1, 1999, only the following catcher/processors shall be eligible to harvest the directed fishing allowance under section 206(b)(2) pursuant to a Federal fishing permit:

- (1) AMERICAN DYNASTY (United States official number 951307);
- (2) KATIE ANN (United States official number 518441);

(3) AMERICAN TRIUMPH (United States official number 646737);

(4) NORTHERN EAGLE (United States official number 506694);

(5) NORTHERN HAWK (United States official number 643771);

(6) NORTHERN JAEGER (United States official number 521069);

(7) OCEAN ROVER (United States official number 552100);

(8) ALASKA OCEAN (United States official number 637856);

(9) ENDURANCE (United States official number 592206);

(10) AMERICAN ENTERPRISE (United States official number 594803);

(11) ISLAND ENTERPRISE (United States official number 610290);

(12) KODIAK ENTERPRISE (United States official number 579450);

(13) SEATTLE ENTERPRISE (United States official number 904767);

(14) US ENTERPRISE (United States official number 921112);

(15) ARCTIC STORM (United States official number 903511);

(16) ARCTIC FJORD (United States official number 940866);

(17) NORTHERN GLACIER (United States official number 663457);

(18) PACIFIC GLACIER (United States official number 933627);

(19) HIGHLAND LIGHT (United States official number 577044);

(20) STARBOUND (United States official number 944658);  
and

(21) any catcher/processor not listed in this subsection and determined by the Secretary to have harvested more than 2,000 metric tons of the pollock in the 1997 directed pollock fishery and determined to be eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary, except that catcher/processors eligible under this paragraph shall be prohibited from harvesting in the aggregate a total of more than one-half (0.5) of a percent of the pollock apportioned for the directed pollock fishery under section 206(b)(2). Notwithstanding section 213(a), failure to satisfy the requirements of section 4(a) of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Public Law 100-239; 46 U.S.C. 12108 note) shall not make a catcher/processor listed under this subsection ineligible for a fishery endorsement.

(f) SHORESIDE PROCESSORS.—(1) Effective January 1, 2000 and except as provided in paragraph (2), the catcher vessels eligible under subsection (a) may deliver pollock harvested from the directed fishing allowance under section 206(b)(1) only to—

(A) shoreside processors (including vessels in a single geographic location in Alaska State waters) determined by the Secretary to have processed more than 2,000 metric tons

round-weight of pollock in the inshore component of the directed pollock fishery during each of 1996 and 1997; and

(B) shoreside processors determined by the Secretary to have processed pollock in the inshore component of the directed pollock fishery in 1996 or 1997, but to have processed less than 2,000 metric tons round-weight of such pollock in each year, except that effective January 1, 2000, each such shoreside processor may not process more than 2,000 metric tons round-weight from such directed fishing allowance in any year.

(2) Upon recommendation by the North Pacific Council, the Secretary may approve measures to allow catcher vessels eligible under subsection (a) to deliver pollock harvested from the directed fishing allowance under section 206(b)(1) to shoreside processors not eligible under paragraph (1) if the total allowable catch for pollock in the Bering Sea and Aleutian Islands Management Area increases by more than 10 percent above the total allowable catch in such fishery in 1997, or in the event of the actual total loss or constructive total loss of a shoreside processor eligible under paragraph (1)(A).

[(g) REPLACEMENT VESSELS.—In the event of the actual total loss or constructive total loss of a vessel eligible under subsections (a), (b), (c), (d), or (e), the owner of such vessel may replace such vessel with a vessel which shall be eligible in the same manner under that subsection as the eligible vessel, provided that—

[(1) such loss was caused by an act of God, an act of war, a collision, an act or omission of a party other than the owner or agent of the vessel, or any other event not caused by the willful misconduct of the owner or agent;

[(2) the replacement vessel was built in the United States and if ever rebuilt, was rebuilt in the United States;

[(3) the fishery endorsement for the replacement vessel is issued within 36 months of the end of the last year in which the eligible vessel harvested or processed pollock in the directed pollock fishery;

[(4) if the eligible vessel is greater than 165 feet in registered length, of more than 750 gross registered tons, or has engines capable of producing more than 3,000 shaft horsepower, the replacement vessel is of the same or lesser registered length, gross registered tons, and shaft horsepower;

[(5) if the eligible vessel is less than 165 feet in registered length, of fewer than 750 gross registered tons, and has engines incapable of producing less than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the eligible vessel; and

[(6) the replacement vessel otherwise qualifies under federal law for a fishery endorsement, including under section 12102(c) of title 46, United States Code, as amended by this Act.]

(g) VESSEL REBUILDING AND REPLACEMENT.—

(1) IN GENERAL.—

(A) REBUILD OR REPLACE.—*Notwithstanding any limitation to the contrary on replacing, rebuilding, or lengthening vessels or transferring permits or licenses to a replacement vessel contained in sections 679.2 and 679.4 of title 50,*

*Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 and except as provided in paragraph (4), the owner of a vessel eligible under subsection (a), (b), (c), (d), or (e) (other than paragraph (21)), in order to improve vessel safety and operational efficiencies (including fuel efficiency), may rebuild or replace that vessel (including fuel efficiency) with a vessel documented with a fishery endorsement under section 12113 of title 46, United States Code.*

*(B) SAME REQUIREMENTS.—The rebuilt or replacement vessel shall be eligible in the same manner and subject to the same restrictions and limitations under such subsection as the vessel being rebuilt or replaced.*

*(C) TRANSFER OF PERMITS AND LICENSES.—Each fishing permit and license held by the owner of a vessel or vessels to be rebuilt or replaced under subparagraph (A) shall be transferred to the rebuilt or replacement vessel.*

*(2) RECOMMENDATIONS OF NORTH PACIFIC COUNCIL.—The North Pacific Council may recommend for approval by the Secretary such conservation and management measures, including size limits and measures to control fishing capacity, in accordance with the Magnuson-Stevens Act as it considers necessary to ensure that this subsection does not diminish the effectiveness of fishery management plans of the Bering Sea and Aleutian Islands Management Area or the Gulf of Alaska.*

*(3) SPECIAL RULE FOR REPLACEMENT OF CERTAIN VESSELS.—*

*(A) IN GENERAL.—Notwithstanding the requirements of subsections (b)(2), (c)(1), and (c)(2) of section 12113 of title 46, United States Code, a vessel that is eligible under subsection (a), (b), (c), (d), or (e) (other than paragraph (21)) and that qualifies to be documented with a fishery endorsement pursuant to section 203(g) or 213(g) may be replaced with a replacement vessel under paragraph (1) if the vessel that is replaced is validly documented with a fishery endorsement pursuant to section 203(g) or 213(g) before the replacement vessel is documented with a fishery endorsement under section 12113 of title 46, United States Code.*

*(B) APPLICABILITY.—A replacement vessel under subparagraph (A) and its owner and mortgagee are subject to the same limitations under section 203(g) or 213(g) that are applicable to the vessel that has been replaced and its owner and mortgagee.*

*(4) SPECIAL RULES FOR CERTAIN CATCHER VESSELS.—*

*(A) IN GENERAL.—A replacement for a covered vessel described in subparagraph (B) is prohibited from harvesting fish in any fishery (except for the Pacific whiting fishery) managed under the authority of any regional fishery management council (other than the North Pacific Council) established under section 302(a) of the Magnuson-Stevens Act.*

*(B) COVERED VESSELS.—A covered vessel referred to in subparagraph (A) is—*

*(i) a vessel eligible under subsection (a), (b), or (c) that is replaced under paragraph (1); or*

(ii) a vessel eligible under subsection (a), (b), or (c) that is rebuilt to increase its registered length, gross tonnage, or shaft horsepower.

(5) *LIMITATION ON FISHERY ENDORSEMENTS.*—Any vessel that is replaced under this subsection shall thereafter not be eligible for a fishery endorsement under section 12113 of title 46, United States Code, unless that vessel is also a replacement vessel described in paragraph (1).

(6) *GULF OF ALASKA LIMITATION.*—Notwithstanding paragraph (1), the Secretary shall prohibit from participation in the groundfish fisheries of the Gulf of Alaska any vessel that is rebuilt or replaced under this subsection and that exceeds the maximum length overall specified on the license that authorizes fishing for groundfish pursuant to the license limitation program under part 679 of title 50, Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011.

(7) *AUTHORITY OF PACIFIC COUNCIL.*—Nothing in this section shall be construed to diminish or otherwise affect the authority of the Pacific Council to recommend to the Secretary conservation and management measures to protect fisheries under its jurisdiction (including the Pacific whiting fishery) and participants in such fisheries from adverse impacts caused by this Act.

(h) *ELIGIBILITY DURING IMPLEMENTATION.*—In the event the Secretary is unable to make a final determination about the eligibility of a vessel under subsection (b)(8) or subsection (e)(21) before January 1, 1999, or a vessel or shoreside processor under subsection (a), subsection (c)(21), or subsection (f) before January 1, 2000, such vessel or shoreside processor, upon the filing of an application for eligibility, shall be eligible to participate in the directed pollock fishery pending final determination by the Secretary with respect to such vessel or shoreside processor.

(i) *ELIGIBILITY NOT A RIGHT.*—Eligibility under this section shall not be construed—

(1) to confer any right of compensation, monetary or otherwise, to the owner of any catcher vessel, catcher/processor, mothership, or shoreside processor if such eligibility is revoked or limited in any way, including through the revocation or limitation of a fishery endorsement or any federal permit or license;

(2) to create any right, title, or interest in or to any fish in any fishery; or

(3) to waive any provision of law otherwise applicable to such catcher vessel, catcher/processor, mothership, or shoreside processor.

#### **SEC. 210. FISHERY COOPERATIVE LIMITATIONS.**

[112 Stat. 2681–628]

(a) *PUBLIC NOTICE.*—(1) Any contract implementing a fishery cooperative under section 1 of the Act of June 25, 1934 (15 U.S.C. 521) in the directed pollock fishery and any material modifications to any such contract shall be filed not less than 30 days prior to the start of fishing under the contract with the North Pacific Council and with the Secretary, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any re-

sponse to such request. Notwithstanding section 402 of the Magnuson-Stevens Act (16 U.S.C. 1881a) or any other provision of law, but taking into account the interest of parties to any such contract in protecting the confidentiality of proprietary information, the North Pacific Council and Secretary shall—

(A) make available to the public such information about the contract, contract modifications, or fishery cooperative the North Pacific Council and Secretary deem appropriate, which at a minimum shall include a list of the parties to the contract, a list of the vessels involved, and the amount of pollock and other fish to be harvested by each party to such contract; and

(B) make available to the public in such manner as the North Pacific Council and Secretary deem appropriate information about the harvest by vessels under a fishery cooperative of all species (including bycatch) in the directed pollock fishery on a vessel-by-vessel basis.

(b) CATCHER VESSELS ONSHORE.—

(1) CATCHER VESSEL COOPERATIVES.—Effective January 1, 2000, upon the filing of a contract implementing a fishery cooperative under subsection (a) which—

(A) is signed by the owners of 80 percent or more of the qualified catcher vessels that delivered pollock for processing by a shoreside processor in the directed pollock fishery in the year prior to the year in which the fishery cooperative will be in effect; and

(B) specifies, except as provided in paragraph (6), that such catcher vessels will deliver pollock in the directed pollock fishery only to such shoreside processor during the year in which the fishery cooperative will be in effect and that such shoreside processor has agreed to process such pollock,

the Secretary shall allow only such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) to harvest the aggregate percentage of the directed fishing allowance under section 206(b)(1) in the year in which the fishery cooperative will be in effect that is equivalent to the aggregate total amount of pollock harvested by such catcher vessels (and by such catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) in the directed pollock fishery for processing by the inshore component during 1995, 1996, and 1997 relative to the aggregate total amount of pollock harvested in the directed pollock fishery for processing by the inshore component during such years and shall prevent such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) from harvesting in aggregate in excess of such percentage of such directed fishing allowance.

(2) VOLUNTARY PARTICIPATION.—Any contract implementing a fishery cooperative under paragraph (1) must allow the owners of other qualified catcher vessels to enter into such contract after it is filed and before the calendar year in which fishing will begin under the same terms and conditions as the owners of the qualified catcher vessels who entered into such contract upon filing.

(3) QUALIFIED CATCHER VESSEL.—For the purposes of this subsection, a catcher vessel shall be considered a “qualified

catcher vessel” if, during the year prior to the year in which the fishery cooperative will be in effect, it delivered more pollock to the shoreside processor to which it will deliver pollock under the fishery cooperative in paragraph (1) than to any other shoreside processor.

(4) CONSIDERATION OF CERTAIN VESSELS.—Any contract implementing a fishery cooperative under paragraph (1) which has been entered into by the owner of a qualified catcher vessel eligible under section 208(a) that harvested pollock for processing by catcher/processors or motherships in the directed pollock fishery during 1995, 1996, and 1997 shall, to the extent practicable, provide fair and equitable terms and conditions for the owner of such qualified catcher vessel.

(5) OPEN ACCESS.—A catcher vessel eligible under section 208(a) the catch history of which has not been attributed to a fishery cooperative under paragraph (1) may be used to deliver pollock harvested by such vessel from the directed fishing allowance under section 206(b)(1) (other than pollock reserved under paragraph (1) for a fishery cooperative) to any of the shoreside processors eligible under section 208(f). A catcher vessel eligible under section 208(a) the catch history of which has been attributed to a fishery cooperative under paragraph (1) during any calendar year may not harvest any pollock apportioned under section 206(b)(1) in such calendar year other than the pollock reserved under paragraph (1) for such fishery cooperative.

(6) TRANSFER OF COOPERATIVE HARVEST.—A contract implementing a fishery cooperative under paragraph (1) may, notwithstanding the other provisions of this subsection, provide for up to 10 percent of the pollock harvested under such cooperative to be processed by a shoreside processor eligible under section 208(f) other than the shoreside processor to which pollock will be delivered under paragraph (1).

(7) FISHERY COOPERATIVE EXIT PROVISIONS.—

(A) FISHING ALLOWANCE DETERMINATION.—*For purposes of determining the aggregate percentage of directed fishing allowances under paragraph (1), when a catcher vessel is removed from the directed pollock fishery, the fishery allowance for pollock for the vessel being removed—*

*(i) shall be based on the catch history determination for the vessel made pursuant to section 679.62 of title 50, Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act of 2008; and*

*(ii) shall be assigned, for all purposes under this title, in the manner specified by the owner of the vessel being removed to any other catcher vessel or among other catcher vessels participating in the fishery cooperative if such vessel or vessels remain in the fishery cooperative for at least one year after the date on which the vessel being removed leaves the directed pollock fishery.*

(B) ELIGIBILITY FOR FISHERY ENDORSEMENT.—*Except as provided in subparagraph (C), a vessel that is removed pursuant to this paragraph shall be permanently ineligible*

*for a fishery endorsement, and any claim (including relating to catch history) associated with such vessel that could qualify any owner of such vessel for any permit to participate in any fishery within the exclusive economic zone of the United States shall be extinguished, unless such removed vessel is thereafter designated to replace a vessel to be removed pursuant to this paragraph.*

(C) *LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this paragraph shall be construed—*

*(i) to make the vessels AJ (United States official number 905625), DONA MARTITA (United States official number 651751), NORDIC EXPLORER (United States official number 678234), and PROVIDIAN (United States official number 1062183) ineligible for a fishery endorsement or any permit necessary to participate in any fishery under the authority of the New England Fishery Management Council or the Mid-Atlantic Fishery Management Council established, respectively, under subparagraphs (A) and (B) of section 302(a)(1) of the Magnuson-Stevens Act; or*

*(ii) to allow the vessels referred to in clause (i) to participate in any fishery under the authority of the Councils referred to in clause (i) in any manner that is not consistent with the fishery management plan for the fishery developed by the Councils under section 303 of the Magnuson-Stevens Act.*

(c) **CATCHER VESSELS TO CATCHER/PROCESSORS.**—Effective January 1, 1999, not less than 8.5 percent of the directed fishing allowance under section 206(b)(2) shall be available for harvest only by the catcher vessels eligible under section 208(b). The owners of such catcher vessels may participate in a fishery cooperative with the owners of the catcher/processors eligible under paragraphs (1) through (20) of the section 208(e). The owners of such catcher vessels may participate in a fishery cooperative that will be in effect during 1999 only if the contract implementing such cooperative establishes penalties to prevent such vessels from exceeding in 1999 the traditional levels harvested by such vessels in all other fisheries in the exclusive economic zone of the United States.

(d) **CATCHER VESSELS TO MOTHERSHIPS.**—

(1) **PROCESSING.**—Effective January 1, 2000, the authority in section 1 of the Act of June 25, 1934 (48 Stat. 1213 and 1214; 15 U.S.C. 521 et seq.) shall extend to processing by motherships eligible under section 208(d) solely for the purposes of forming or participating in a fishery cooperative in the directed pollock fishery upon the filing of a contract to implement a fishery cooperative under subsection (a) which has been entered into by the owners of 80 percent or more of the catcher vessels eligible under section 208(c) for the duration of such contract, provided that such owners agree to the terms of the fishery cooperative involving processing by the motherships.

(2) **VOLUNTARY PARTICIPATION.**—Any contract implementing a fishery cooperative described in paragraph (1) must allow the owners of any other catcher vessels eligible under section 208(c) to enter such contract after it is filed and before the calendar year in which fishing will begin under the same terms



and conditions as the owners of the catcher vessels who entered into such contract upon filing.

(e) EXCESSIVE SHARES.—

(1) HARVESTING.—No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.

(2) PROCESSING.—Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery. In the event the North Pacific Council recommends and the Secretary approves an excessive processing share that is lower than 17.5 percent, any individual or entity that previously processed a percentage greater than such share shall be allowed to continue to process such percentage, except that their percentage may not exceed 17.5 percent (excluding pollock processed by catcher/processors that was harvested in the directed pollock fishery by catcher vessels eligible under 208(b)) and shall be reduced if their percentage decreases, until their percentage is below such share. In recommending the excessive processing share, the North Pacific Council shall consider the need of catcher vessels in the directed pollock fishery to have competitive buyers for the pollock harvested by such vessels.

(3) REVIEW BY MARITIME ADMINISTRATION.—At the request of the North Pacific Council or the Secretary, any individual or entity believed by such Council or the Secretary to have exceeded the percentage in either paragraph (1) or (2) shall submit such information to the Administrator of the Maritime Administration as the Administrator deems appropriate to allow the Administrator to determine whether such individual or entity has exceeded either such percentage. The Administrator shall make a finding as soon as practicable upon such request and shall submit such finding to the North Pacific Council and the Secretary. For the purposes of this subsection, any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.

(f) LANDING TAX JURISDICTION.—Any contract filed under subsection (a) shall include a contract clause under which the parties to the contract agree to make payments to the State of Alaska for any pollock harvested in the directed pollock fishery which is not landed in the State of Alaska, in amounts which would otherwise accrue had the pollock been landed in the State of Alaska subject to any landing taxes established under Alaska law. Failure to include such a contract clause or for such amounts to be paid shall result in a revocation of the authority to form fishery cooperatives under section 1 of the Act of June 25, 1934 (15 U.S.C. 521 et seq.).

(g) PENALTIES.—The violation of any of the requirements of this section or section 211 shall be considered the commission of an act prohibited by section 307 of the Magnuson-Stevens Act (16 U.S.C. 1857). In addition to the civil penalties and permit sanctions appli-

cable to prohibited acts under section 308 of such Act (16 U.S.C. 1858), any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have violated a requirement of this section shall be subject to the forfeiture to the Secretary of Commerce of any fish harvested or processed during the commission of such act.

