JURISDICTION AND ACTIVITIES
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
111TH CONGRESS

January 2009

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TABLE OF CONTENTS

I. EXECUTIVE SUMMARY 1

II. UNITED STATES COAST GUARD 3
- A. BACKGROUND 3
- B. FUNDING 3
- C. COAST GUARD'S MOVE TO THE DEPARTMENT OF HOMELAND SECURITY 4
- D. INTEGRATED DEEPWATER SYSTEMS 5
- E. ACTIVITIES IN THE 110TH CONGRESS 6

III. MARITIME TRANSPORTATION 9
- A. MARITIME TRANSPORTATION SAFETY 9
  - 1. Fishing Vessel Safety 9
  - 2. Coast Guard Marine Safety Program 10
  - 3. Coast Guard and NTSB Casualty Investigation Program 10
  - 4. Activities in the 110th Congress 10
- B. MARINE ENVIRONMENTAL PROTECTION RELATED TO VESSEL OPERATIONS 11
  - 1. Ballast Water Management 11
  - 2. Oil Spills 12
  - 3. Activities in the 110th Congress 12
- C. PORT AND VESSEL SECURITY 13
  - 1. Overview 13
  - 2. Activities in the 110th Congress 13
- D. REGULATION OF OCEAN SHIPPING 14
  - 1. Federal Maritime Commission 14
  - 2. Activities in the 110th Congress 14
- E. MERCHANT MARINE 15
  - 1. Rebuilding of coastwise vessels in foreign shipyards 15
  - 2. Short Sea Shipping 16
  - 3. Crimes on cruise ships 16
  - 4. Mariner Education and the Work Force 16
  - 5. Activities in the 110th Congress 17

I. EXECUTIVE SUMMARY

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

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

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

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

Prior to the 109th Congress, the Subcommittee had sole jurisdiction over matters related to port security, including the Maritime Transportation Security Act of 2002 (Subtitle VI of Title 46, United States Code). The Subcommittee currently shares jurisdiction over port security matters with the Committee on Homeland Security, and continues to exercise jurisdiction and oversight responsibilities over the Coast Guard's security activities that impact the Service's operations (including vessel and facility vulnerability assessments and security plans, security incident response, maritime safety and security teams, foreign port assessments, maritime security advisory committees, and maritime domain awareness).

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

Maritime cabotage or coastwise trade also falls under the Subcommittee's jurisdiction. U.S. maritime cabotage laws govern shipping of goods and passengers by water between any two points in the United States. These laws are generally codified in Chapter 551 of title 46, United States

Code. Vessels engaged in the coastwise trade must be U.S.-flagged, U.S.-built, U.S.-crewed, and U.S.-owned. The Coast Guard documents vessels in Jones Act trade. The Customs Service enforces violations of these laws, and the Maritime Administration controls the sale or transfer of U.S.-documented vessels to foreign owners.

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

II. UNITED STATES COAST GUARD

A. Background

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

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

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

The Coast Guard is composed of approximately 41,000 active duty military personnel, 9,000 reservists, 6,400 civilian employees, and 32,000 volunteers of the Coast Guard Auxiliary. The Coast Guard has defended the nation in every war since 1790, including the conflict in the Persian Gulf. Coast Guard assets have been deployed to the Persian Gulf to assist in the Iraq war.

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

B. Funding

For FY 2009, Congress appropriated $9.1 billion for activities of the United States Coast Guard, which is an increase of approximately $722 million (or 8.6 percent), over the total amount appropriated for FY 2008.

The amount appropriated for Coast Guard Operating Expenses ("OE") in FY 2009 was approximately $6.2 billion, an increase of more than $300 million, or 5.1 percent, over the FY 2008 enacted level. The request included funding for 41,403 military and 6,857 civilian full time equivalent personnel.

The Congress appropriated nearly $1.5 billion to fund all Coast Guard capital acquisitions in FY 2009, an approximately $369 million (32.8 percent) increase from the FY 2008 appropriated level of $1.20 billion. These funds support the acquisition, construction, and improvement of vessels, aircraft, information management resources, shore facilities, and aids to navigation. Of the $1.5

billion request, the Congress appropriated $1.0 billion for the Deepwater program, the Coast Guard's integrated capital asset replacement program. This level of funding represents an approximately $250 million (32 percent) increase over the enacted funding for FY 2008 for Deepwater. The budget also includes $15 million for the Rescue Swimmer Training Facility and $97.6 million for a new headquarters for the Coast Guard and the Department of Homeland Security.

Congress appropriated $16 million for the Coast Guard's bridge alteration program, the same amount as appropriated for FY 2008. The Bridge Alteration program provides the Federal Government's share of the costs for altering or removing bridges determined to be obstructions to navigation. Under the Truman-Hobbs Act of 1940 (33 U.S.C. 511 et seq.), the Coast Guard shares, with the bridge owner, the cost of altering railroad and publicly-owned highway bridges which obstruct the free movement of vessel traffic.

The Subcommittee conducted oversight of the Administration's Fiscal Year 2008 and 2009 Coast Guard budget requests during the 110th Congress. The House also passed H.R. 2830, the Fiscal Year 2008 Coast Guard authorization bill.

In the 111th Congress, the Subcommittee will hold a hearing on the President's Fiscal Year 2010 and 2011 budget request and consider legislation to authorize the Coast Guard.

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

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

The Subcommittee continues to have concerns with the Coast Guard's move from the Department of Transportation to DHS and specifically over maintaining a balance, in terms of funding and focus, between the Coast Guard's homeland and its non-homeland security missions such as marine safety.

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

The Subcommittee has serious concerns about the resources and expertise of Coast Guard personnel assigned to carry out marine safety responsibilities. The purpose of these activities is to prevent marine accidents. If personnel do not have the continuity and expertise in this field, safety of the public is compromised.

D. Integrated Deepwater Systems

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

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

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

In 2002, the Department of Transportation awarded a $17 billion contract for Deepwater. The contract was valued at $11 billion for a fleet of new ships and aircraft, plus improved command and control systems, to elevate the Coast Guard's capability to perform their varied core safety missions and homeland security missions. In addition, the contract included another $6 billion for operating and maintaining this new system of assets. The contract was awarded to Integrated Coast Guard Systems ("ICGS"), a joint venture established by Lockheed Martin and Northrup Grumman. Although delivery of Deepwater assets is expected within 20 years, the ICGS contract may extend the contract up to 30 years to allow the contractor to continue implementing the program. The contract has a five-year base period with five additional five-year options. In Fiscal Year 2008, over $1 billion was appropriated for the Deepwater program. This amount was more than the Administration's request of $990 million.

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

The program is facing serious challenges related to schedule, budget, and engineering. The Coast Guard has experienced increasing maritime homeland security operational requirements, as well as maintenance and repair costs associated with rapidly deteriorating legacy assets. Declining operational capabilities of the assets responsible for protecting our maritime borders and carrying out other Coast Guard deepwater missions may dictate a need to bring Deepwater assets on line sooner than currently planned. Eight patrol boats that had been lengthened under the Deepwater program have been tied up indefinitely due to safety problems. A contract to build a new Fast Response Cutter (FRC) made of composite materials to replace these patrol boats has been halted due to problems that were identified when a model of the FRC was tank tested and the Coast Guard has awarded a new contract to build the FRC using a proven design. Structural engineering concerns have been identified on the National Security Cutter that could shorten its 30 year life or increase maintenance costs during that life. In addition, the Subcommittee is concerned about the level of competition for subcontractors and the escalating costs of the program. Two hearings during the 110th Congress highlighted these acquisition programs and resulted in House passage of H.R. 2722, the Integrated Deepwater Program Reform Act (see below).

In the 111th Congress, the Subcommittee will continue its oversight activities, and closely review the program and any changes to the program that may be necessary to ensure that the men and women of the Coast Guard that risk their lives for our nation have the best equipment possible and at a reasonable price.

E. Activities in the 110th Congress

In the 110th Congress, the Subcommittee developed and reported the following bills.

1. Coast Guard and Maritime Transportation Act of 2008 (H.R. 2830); Passed the House on April 24, 2008

H.R. 2830 authorizes $8.4 billion for the Coast Guard and authorizes an increase in the total number of military personnel to 47,000. The bill also supports a reorganization of the Coast Guard's senior leadership by eliminating the two Area Commands (Pacific and Atlantic) established by law and the Coast Guard Chief of Staff position and replacing these positions with four Vice Admirals: the Deputy Commandant for Mission Support; the Deputy Commandant for National Operations and Policy; the Commander, Force Readiness Command; and the Commander, Operations Command. Additionally, the bill promotes the Vice Commandant to a full 4-star Admiral.

H.R. 2830 includes measures to enhance the Coast Guard's Marine Safety Program by establishing an Assistant Commandant for Marine Safety and establishing minimum qualifications for marine safety personnel. H.R. 2830 also creates an Assistant Commandant for Port and Waterways Security, who will be a security specialist responsible for all regulations and policies regarding security in our nation's ports and waterways.

H.R. 2830 requires that as new liquefied natural gas (LNG) terminals are approved, all of the resources necessary to adequately secure these terminals are in place.

To ensure that the Coast Guard has the resources it needs to carry out its missions, the bill includes provisions to strengthen the service's management of its acquisitions programs, including the $24 billion, 25-year Deepwater procurements.

H.R. 2830 gives mariners the right to have cases involving the potential suspension or revocation of their professional credentials heard by the National Transportation Safety Board's Administrative Law Judge System. Further, the bill creates an ombudsman in each Coast Guard District to serve as a liaison between the Coast Guard and the port and maritime community.

In addition, to expand diversity at the Coast Guard Academy and throughout the service's officer corps, the bill requires applicants to the Academy to be nominated by Members of Congress or other authorities.

Title V of H.R. 2830, the Ballast Water Treatment Act of 2008, establishes mandatory ballast water treatment standards for all vessels entering U.S. ports from overseas. These standards are based on the "International Convention for the Control and Management of Ships Ballast Water & Sediments", but the bill increases the treatment standards, accelerates the phase-in schedule, and facilitates an increase in treatment standards at regular intervals based on the best available technology available at the time.

2. Integrated Deepwater Program Reform Act (H.R. 2722 AND H.R. 6999); Passed the House on July 31, 2007 and September 27, 2008 respectively.

The bills H.R. 2722 and H.R. 6999 make significant changes in the Coast Guard's management of its Deepwater acquisition programs, which constitute a series of procurements intended to replace or upgrade the Coast Guard's surface and aviation assets over a 25-year period at a cost of $24 billion.

These bills responds directly to specific failures that have occurred in the Deepwater program since its inception in 2002 and that were the subject of extensive hearings in both the Coast Guard and Maritime Transportation Subcommittee and the full Committee on Transportation and Infrastructure. These procurement failures included the expenditure of approximately $100 million to lengthen eight 110-foot patrol boats to 123 feet and upgrade their information technology suites; the lengthening resulted in hull deformations that eventually caused the boats to be removed from service. Under Deepwater, the Coast Guard also obligated more than $100 million to develop a vertical unmanned aerial vehicle – but the prototype crashed and the program was eventually suspended.

To prevent such failures in future procurements under Deepwater, H.R. 2722 and H.R. 6999 eliminate the use of a lead systems integrator, which are private firms hired by the Coast Guard to manage almost all aspects of the implementation of the Deepwater program, including managing the procurement of individual assets purchased under the program. The bills also require the use of full and open competition for all Deepwater procurements to help control costs and ensure the Coast Guard receives the best value for taxpayers' resources, and it requires third-party certification of assets to ensure that they meet all contractual and quality standards. Further, the bills require the appointment of a civilian as Chief Acquisitions Officer to bring to this critical position the

professional experience and expertise that is not currently cultivated among uniformed Coast Guard officers.

3. Integrated Deepwater Program Reform Act of 2008 (H.R. 6999); Passed the House on September 27, 2008

H.R. 6999 is a modified Deepwater reform bill based on H.R. 2722, which passed the House on July 31, 2007, and on S. 924, which passed the Senate on December 19, 2007. H.R. 6999 strengthens the Coast Guard's ability to manage its major acquisitions efforts, including those conducted under the 25-year, $25 billion Deepwater program.

H.R. 6999 requires the Coast Guard to eliminate the use of all private sector lead systems integrators by October 2011 – the same date on which their use is phased out in the Department of Defense. The legislation also requires the conduct of an alternatives analysis before the service procures an experimental, technically immature, or first-in-class major asset. Further, the bill requires the regular submission of acquisition program reviews to Congress – including notification of cost overruns and schedule delays – so that Congress is aware of emerging issues *before* they become crises.

This bill creates in statute the position of Chief Acquisitions Officer and requires that it be filled with a fully qualified individual who can, at the Commandant's choosing, be a civilian member of the senior executive service or a uniformed member of the Coast Guard but who must, in either case, have a Level III Acquisitions qualification and 10 years of experience managing acquisitions efforts. The bill requires independent, third-party certification of assets – and requires that appropriate testing be performed on asset designs so that problems can be identified before construction of an asset begins.

Additionally, H.R. 6999 makes it a crime to operate a submersible or semi-submersible vessel that is not registered in any country. Such vessels are often used to smuggle illegal drugs into the United States.

4. Maritime Pollution Prevention Act of 2008 (H.R. 802); (Public Law 110-280)

The International Convention for the Prevention of Pollution from Ships, known as MARPOL, is a treaty negotiated by the members of the United Nation's International Maritime Organization to limit various forms of pollution emitted by ocean-going vessels. Annex VI, which has been in force internationally since 2005, limits air pollution emitted by ships, including limiting emissions of nitrogen oxides and prohibiting the deliberate release of substances that deplete atmospheric ozone. This law institutes the legal changes needed to bring the United States into compliance with Annex VI. With these legal changes, the United States was able to deposit its instrument of ratification and thus to formally join Annex VI.

5. Drug Trafficking Vessel Interdiction Act of 2008 (S. 3598); (Public Law 110-407)

This law establishes criminal and civil penalties for operating a submersible or semisubmersible vessel without nationality on the high seas. These vessels are currently being used to smuggle large amounts of cocaine and other drugs into the United States.

6. Oregon Surplus Federal Land Act of 2008 (H. R. 6370); (Public Law 110-364)

This law transferred 24 acres of excess Federal property administered by the Coast Guard to the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians. The transfer will include the Cape Arago Light Station, in Coos County, Oregon, which will be transferred to the Secretary of the Interior and held in trust for the benefit of the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians. Under the terms provided in the law, the Light Station is to be made available to the general public for educational, park, recreational, cultural, and historic preservation purposes.

7. Energy Independence and Security Act of 2007 (H.R. 6); (Public Law 110-140)

Title XI of the Energy Independence and Security Act of 2007 required the Secretary of Transportation to establish a short sea transportation program in the Department of Transportation. This program is designed to help ease highway congestion through the promotion of the transportation of freight and passengers by water. The Secretary is required to identify short sea transportation routes, coordinate short sea transportation planning on a multi-state and regional basis, and conduct research and development regarding short sea shipping.

III. MARITIME TRANSPORTATION

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

A. Maritime Transportation Safety

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

1. Fishing Vessel Safety

Commercial fishing is the most hazardous occupation in the United States according to the Department of Labor's Bureau of Labor Statistics, which has found that the rate of death among

commercial fishermen is 118 per 100,000 workers. A study published by the Coast Guard in 2006 found that between 1994 and 2004, even as commercial fishing levels declined, 1,398 commercial fishing vessels were lost, resulting in 641 deaths. The industry appears to have such a high casualty rate because fishing vessels – unlike other commercial vessels – are not required to be built to standards specified by the Coast Guard, crewmembers are generally not required to be licensed or documented by the Coast Guard or to complete specific professional training courses, and compliance with existing regulations regarding life-saving equipment required to be carried on board a commercial fishing vessel and the conduct of required safety drills is not universal.

2. Coast Guard Marine Safety Program

The marine safety program is the program within the Coast Guard that regulates maritime transportation, including issuing official credentials to mariners, inspecting vessels for compliance with design and safety standards, and investigating accidents that occur in the marine environment (called marine casualties). After the Coast Guard assumed significant new homeland security missions (following the events of September 11, 2001), the service has lost expertise in these regulatory missions, particularly given the increasing complexity of the maritime industry.

3. Coast Guard and NTSB Casualty Investigation Program

The NTSB and the Coast Guard share responsibility for investigating marine casualties under a Memorandum of Understanding (MOU). In the 110th Congress, the Department of Homeland Security's Office of the Inspector General ("DHS IG") issued a report entitled "United States Coast Guard's Management of the Marine Casualty Investigation Program" (OIG-08-51, May 2008). In conjunction with the release of this report, the Subcommittee examined the existing responsibilities of the National Transportation Safety Board ("NTSB") and the Coast Guard, and which agency should exercise primacy in the conduct of marine casualty investigations.

4. Activities in the 110th Congress

In the 110th Congress, legislative provisions related to maritime transportation safety were included in the Coast Guard and Maritime Transportation Act of 2008 as passed by the House (H.R. 2830). These provisions include: penalties for the unsafe operation of vessels, withdrawing the approval of unsafe survival craft, requiring safety management systems for vessels carrying passengers, a study on recreational vessel operator training, establishing design and construction standards for new fishing vessels, and establishment of marine safety standards for the Coast Guard's marine safety program and its personnel.

In the 110th Congress the Subcommittee held hearings to examine: prospects for the development of short-sea shipping routes in the United States to help get more containerized cargoes onto ships along the coastlines of the United States; the safety of U.S. commercial fishing vessels and the extent to which the provisions of the *Commercial Fishing Industry Vessel Safety Act of 1988* (P.L. 100-424) have led to improved safety in the industry; the challenges facing the Coast Guard's Marine Safety Program; and the roles of the Coast Guard and the NTSB with respect to conducting marine casualty investigations. Oversight of maritime transportation safety will continue in the 111th Congress.

B. Marine Environmental Protection Related to Vessel Operations

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

1. Ballast Water Management

In the 110th Congress, the Committee developed legislation to implement international ballast water management standards. This program is based on the international ballast water management program that was agreed to by the International Maritime Organization ("IMO") in early 2004 and discussed reauthorizing the ballast water management provisions of the National Invasive Species Act.

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

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

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

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

2. Oil Spills

Oil spills in the San Francisco Bay in 2007 and in New Orleans, Louisiana in 2008 have led to heightened interest in the implementation of the Oil Pollution Act of 1990 ("OPA").

On November 7, 2007, 58,000 gallons of fuel oil spilled into San Francisco Bay that occurred when the M/V COSCO BUSAN allided with the San Francisco-Oakland Bay Bridge. The Coast Guard initially stated approximately 140 gallons had been released following the allision of the COSCO BUSAN with the Bay Bridge; it was nearly 9 hours later when the Coast Guard publicly announced that the size of the spill was actually on the order of 58,000 gallons. The Coast Guard indicated, however, that the delay in calculating the full size of the spill did not delay or affect the size of the response to the oil spill. The Coast Guard's preliminary investigation of the incident did not discover any vessel mechanical or system problems; human error was believed to be the most probable cause.

On July 23, 2008, 282,828 gallons of oil spilled into the Mississippi River near New Orleans, Louisiana when a barge being pushed by a towing vessel crossed in front of a tanker ship and was severely damaged by the tanker. The towing vessel involved in the casualty, the *Mel Oliver*, was not being operated at the time of the collision by a properly licensed master – and the firm operating the *Mel Oliver*, DRD Towing, had sunk another towing vessel two weeks before the New Orleans oil spill that was also operated by an improperly licensed individual.

3. Activities in the 110th Congress

In the 110th Congress, provisions related to marine environmental protection were included in the Coast Guard Authorization and Maritime Transportation Act (H.R. 2830) as passed by the House. These provisions include: establishing a national ballast water management program, requiring additional structural protection for fuel tanks of large commercial vessels and authorizing the Coast Guard to require ships pilots to carry and use portable electronic navigational devices.

The Committee also held hearings related to the COSCO BUSAN and *Mel Oliver* marine casualties.

The Department of Homeland Security's Office of the Inspector General (DHS IG) issued a report, completed pursuant to a request by Speaker of the House Nancy Pelosi and Subcommittee Chairman Elijah E. Cummings, entitled "Allision of the M/V COSCO BUSAN with the San Francisco-Oakland Bay Bridge" related to this spill.

In the 111th Congress, the Subcommittee will continue its oversight of the marine environmental laws and develop legislation to provide for the treatment of ballast water in ships before they enter the United States.

C. PORT AND VESSEL SECURITY

1. Overview

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

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

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

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

The Transportation Worker Identification Credential ("TWIC") program was established by the Maritime Transportation Security Act of 2002 to ensure that transportation workers who have access to secure areas of maritime facilities do not pose a terrorism security risk. The Security and Accountability for Every Port Act of 2006 (SAFE Port Act) required that individuals who had been found guilty of treason, espionage, sedition, or terrorism be prevented from getting a TWIC. Regulations identify other convictions that disqualify individuals from getting a TWIC as well as the duration of the disqualifications. Applicants who are initially denied a TWIC can appeal if they believe the decision was based on erroneous information. Applicants denied a TWIC based on prior convictions can appeal for a waiver; decisions pertaining to waiver requests are based on the circumstances of the convictions as well as restitution made by the individual for the conviction. Administrative issues have delayed the full implementation of the TWIC program for years

2. Activities in the 110th Congress

In the 110th Congress, the Subcommittee held hearings on the implementation of MTSA. Legislative provisions related to maritime transportation security were included in the H.R. 2830, the Coast Guard and Maritime Transportation Act of 2008, as passed by the House. These provisions

include: increasing waterside security for liquefied natural gas terminals in the United States, providing for seamen's, increasing the number of Coast Guard canine detection teams, establishing deployable rapid counterterrorism and law enforcement response units, and clarifying that TWIC cards are only required of mariners that require unescorted access to the secure areas of vessels.

The Committee also held hearings to examine the administrative issues that have delayed the implementation of this program, whether the appeal process for transportation realistically assesses the likelihood that the applicant poses a terrorism security risk, and the status of Coast Guard rules regarding the development of card readers needed to enable TWIC cards to be used to control access to secure locations.

In the 111th Congress, the Subcommittee expects to consider additional port security matters. The Subcommittee will continue its oversight of MTSA implementation, and maritime domain awareness.

D. Regulation of Ocean Shipping

1. Federal Maritime Commission

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

The agency also enforces chapters 421 and 423 of title 46, United States Code, (formerly referred to as the Foreign Shipping Practices Act and Section 19 of the Merchant Marine Act, 1920). Under these authorities, the FMC protects shippers and carriers from restrictive or unfair practices of foreign governments and foreign-flag carriers. The FMC also enforces the laws related to cruise vessel financial responsibility to ensure that cruise vessel operators have sufficient resources to pay judgments to passengers for personal injury or death or for nonperformance of a voyage.

The Administration requested $23.9 million for the operation of the Federal Maritime Commission for Fiscal Year 2009. However, under the Continuing Resolution the Commission was appropriated $9.5 million (43 percent of the FY 2008 appropriated amount).

2. Activities in the 110th Congress

The Committee conducted two hearings into the management of the Commission and the regulation of international shipping activities. In 2008, the FMC lacked a Chairman and the sitting Commissioners serving at the FMC were responsible for collectively exercising management of the Commission and for conducting its regulatory business. At that time, one Commissioner, Mr. Paul

Anderson, had been nominated by the President to serve as Chairman of the Commission, but his nomination had not been considered by the Senate.

Testimony revealed that in the months prior to the April 2008 hearing, the FMC was rarely holding public meetings. Testimony also suggested that the four Commissioners had limited visibility over the administration of the Commission. Responses provided by FMC employees to an earlier Federal Human Capital Survey revealed that the employees had deep concerns about the administration of the Commission, including concerns about the effectiveness of the management exercised by senior leadership, fairness in the resolution of disputes and complaints, and the ability of the Commission to recruit qualified personnel.

In the 111th Congress, the Subcommittee will continue its oversight of the regulation of ocean shipping and reauthorize appropriations for the Commission.

E. Merchant Marine

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

1. Rebuilding of coastwise vessels in foreign shipyards

The Committee has jurisdiction over the rebuilding of vessels under the Jones Act. Vessels that ply the coastal trade in the United States providing service between domestic destinations must comply with the requirements of the Jones Act, meaning that they must be built in a U.S. shipyard, owned by an American, and crewed by Americans. A provision added to the Jones Act in 1956 – and now known as the "Second Proviso" – requires that these vessels also be rebuilt in U.S. shipyards.

In 1996, the Coast Guard issued regulations intended to establish specific standards regarding what constitutes a "rebuild" that could be uniformly applied to all Jones Act vessels. During a Subcommittee hearing on this issue in the 110th Congress, witnesses testified that these regulations have not provided the clarity that is necessary to ensure fair and adequate enforcement of the Jones Act rebuild provisions. The Coast Guard also testified that its National Vessel Documentation Center does not verify whether an applicant is being completely truthful on the applications that are submitted for initial rebuild determinations or final rebuild decisions.

The application of the Jones Act rebuild regulations are now the subject of several pending court cases and final rulings are pending, which could have a significant effect on the implementation of the Jones Act rebuild provisions.

2. Short Sea Shipping

Short sea shipping is the waterborne movement of commercial freight between two ports in the United States or between ports in the United States and Canada.

At the present time, the most highly developed water freight transportation systems in the United States operate on the Mississippi River, the Great Lakes, and the St. Lawrence Seaway and often carry agricultural products and other raw materials. However, the Maritime Administration has found that these routes are carrying only about 13% of total freight tonnage in the United States. By comparison, nearly 70% of the freight tonnage transported in the United States is moved by trucks traveling across our nation's roadways.

The Subcommittee probed this issue at a hearing during the 110th Congress to identify the impediments that may be limiting the growth of short sea shipping.

3. Crimes on cruise ships

There are approximately 200 overnight ocean-going cruise ships worldwide, only three of which operate under the U.S. flag. Because of their foreign registration, cruise ships are not subject to the same laws with which land-based corporations or U.S.-flag vessels must comply. However, Section 7 of title 18 of the United States Code gives the United States Government extraterritorial jurisdiction over these vessels in limited circumstances when these vessels are operating under the "Special Maritime and Territorial Jurisdiction" of the United States ("SMTJ"). Even with this jurisdiction, however, the crimes over which the U.S. asserts jurisdiction are limited – and while crime appears to be rare on cruise ships, the unique circumstances of cruising can make it very difficult for U.S. authorities to investigate crimes on cruise ships in a timely manner or to prosecute those who commit crimes. The FBI indicated it opened only 50 to 60 case files each year for crimes on cruise ships.

Under the terms of Section 7 of title 18 of the United States Code, cruise lines are not legally required to report crimes to U.S. government officials unless they occur within the 12-mile territorial waters of the United States.

In March 2007, the Committee investigated the incidents of crime that occur on cruise ships and the extent to which Federal agencies have the information, legal authorities, and resources necessary to investigate and prosecute crimes that may occur on these ships. At the time of the hearing, many cruise lines had been voluntarily reporting alleged crimes to the FBI regardless of where they occurred. The cruise industry, the FBI, and the Coast Guard were developing a voluntary reporting scheme that would define the types of incidents to be reported to the FBI and the time frame within which they were to be reported.

4. Mariner Education and the Work Force

Growing workforce shortages will affect the maritime industry as trade continues to increase. Possible factors impacting workforce shortages include wage levels; lifestyle challenges associated with employment in the maritime industry; and training requirements imposed by the Standards of Training, Certification, and Watchkeeping (STCW) Convention.

In 2008, there were more than 130,000 unlicensed mariners with Merchant Mariner Documents and more than 212,500 licensed mariners in the United States. The average age of a merchant mariner with a Master's license was 51, while the average age of a Chief Engineer was 50. More than 28 percent of inland pilots and captains were over the age of 55 and are eligible to retire in the next seven years.

At a Subcommittee hearing on this issue, witnesses testified about the significant challenges they have recruiting and retaining vessel personnel; they also discussed the challenges mariners face moving from entry-level jobs on deck up to the wheelhouse to become Masters or from entry level position in the engine room to Chief Engineers. The Administrator of the United States Maritime Administration, Sean Connaughton, indicated that the maritime industry is experiencing a major recapitalization in practically every segment of the U.S. merchant fleet.

5. Activities in the 110th Congress

Legislative provisions related to the promotion of short sea transportation were included in H.R. 6, the Energy Independence and Security Act of 2007 (Public Law 110-140). Additional maritime transportation provisions were in H.R. 2830, the Coast Guard Authorization Act of 2008 including: clarifying that officers and members of the Coast Guard may enforce the coastwise trade laws, requiring cruise ship to report to the Coast Guard crimes that occur on a voyage to or from the United States, and a report on U.S. jobs lost as a result of rebuilding U.S.-flag vessels in foreign shipyards.

The Subcommittee also examined in hearings the rebuilding of vessels under the Jones Act, short sea shipping, crimes on cruise ships, and the state of the maritime workforce.

In the 111th Congress, the Subcommittee will continue its oversight of laws governing the merchant marine and examine what opportunities exist to increase the size of the U.S.-flag fleet.