



**TESTIMONY OF RADM KEVIN S. COOK  
DIRECTOR OF PREVENTION POLICY**

**ON THE  
ASSURING THE FREEDOM OF AMERICANS ON THE HIGH SEAS:  
THE UNITED STATES RESPONSE TO PIRACY**

**BEFORE THE  
HOUSE TRANSPORTATION & INFRASTRUCTURE SUBCOMMITTEE  
ON COAST GUARD & MARITIME TRANSPORTATION**

**MARCH 16, 2011**

Good Morning Mr. Chairman and distinguished members of the Committee. Thank you for calling a hearing on this important problem facing not only U.S. vessels and citizens, but all who navigate high-risk waters. As we've seen in recent days, piracy can yield tragic results and demands a response in order to prevent and deter this crime.

Piracy is a universal crime under international law because it places the lives of seafarers in jeopardy and affects the shared economic interests of all nations. A single incident of piracy affects the interests of numerous countries, including the flag state of the vessel, various states of nationality of the seafarers taken hostage, regional coastal states, vessel owners' states, and cargo shipment and transshipment states. In the case of Somalia-based piracy, increasingly brazen attacks across 2.5 million square miles of ocean from land-based enclaves along an under-governed and economically devastated 2,300 mile coast pose a threat to global shipping. Eliminating piracy and other transnational threats requires stronger law enforcement capacity and rule of law in Somalia.

Small vessels are the vessel of choice for pirates to conduct their attacks. Commonly, two or more small, high-speed "skiffs" are used in attacks often approaching from the vessel's quarter or stern. These vessels are fast, readily available, relatively inexpensive, and blend in well with other small vessels commonly operating in the area. Analysis of successful attacks indicates that low-speed and low-freeboard ships are exploited by the pirates. Pirate "mother ships" carrying personnel, equipment, and smaller assault craft have enabled successful attacks more than 800 nautical miles from the coast of Somalia. Currently, 30 vessels and as many as 623 mariners are being held captive by pirates in the Horn of Africa region where pirate attacks continue to be on the rise.

***Deterrence and Prevention Aboard Commercial Vessels***

Domestically, the Maritime Transportation Security Act (MTSA) of 2002 provides the legal authority for the Coast Guard to regulate safety and security in order to protect cargo, ships, and most importantly seafarers. Under this authority, the Coast Guard developed requirements for U.S. ship owners and operators to assess and plan for a wide range of security threats, including threats of piracy. This plan, known as a Vessel Security Plan, must be submitted to the Coast Guard for approval.

The regulatory requirements of MTSA apply to U.S.-flagged vessels engaged in commercial service but not to non-commercial or recreational vessels that are not engaged in commerce. In light of the recent events involving the U.S. sailing vessel QUEST, where four U.S. citizens were killed by pirates, the Coast Guard has updated its special notice to mariners strongly advising against all operations of U.S. yachts and sailing craft in areas at high risk for piracy. The hijacking and tragic killing of the four persons aboard the QUEST underscores the grave dangers of operating in these high-risk areas, especially by recreational vessels that are likely not equipped to thwart attacks from pirates.

The MTSA gives the Commandant of the Coast Guard the authority to issue Maritime Security (MARSEC) Directives addressing security issues. MARSEC Directives can be global or regional in scope. Consistent with this authority, the Commandant issued MARSEC Directive 104-6 on 10 February 2006. This Directive provides direction to Company Security Officers of U.S. commercial vessels that engage in international voyages to, or through, areas with a high risk for terrorism, piracy, or armed robbery against ships. Due to the dynamic nature of piracy, countermeasures in MARSEC Directive 104-6 are reviewed and validated continuously. There have been five revisions to MARSEC Directive 104-6 to date. Among other revisions, the Coast Guard, in consultation with other federal agencies and with industry, has increased the size of designated high-risk waters to extend farther off the coast of Somalia in response to the expanding threat of piracy in the Horn of Africa region.

Recognizing that the U.S. response to piracy is an issue of government-wide concern, the Coast Guard took the lead in forming a Piracy Action Team. The team consists of representatives from the Department of State, the Office of the Secretary of Defense, the Joint Chiefs of Staff, the Department of Transportation/Maritime Administration, the Office of Naval Intelligence, the Department of Commerce, the Department of Justice, the Military Sealift Command, the Office of Global Maritime Situational Awareness, the Overseas Security Advisory Council, the United States Agency for International Development, the Naval Criminal Investigative Service, U.S. Customs and Border Protection, the Transportation Security Administration, U.S. Africa Command, U.S. Central Command, U.S. Transportation Command, and the Coast Guard Atlantic Area.

The Coast Guard coordinates regular conference calls through which members keep each other informed of events affecting their agencies, discuss areas of mutual concern, and collaborate on guidance documents for U.S.-flagged ships, such as Port Security Advisories (PSAs). Numerous PSAs have been published on the Coast Guard Homeport website on topics including self-defense and the defense of others, carriage of weapons onboard vessels, minimum guidelines for security personnel, screening of security personnel, transport of weapons into foreign ports, and post-attack coordination. Each PSA was developed with the support of the interagency Piracy Action Team.

The Coast Guard has also conducted numerous outreach activities, or “roundtables,” over the past 20 months for the shipping industry and workers affected by U.S. government anti-piracy guidance. These activities – typically well attended by members of the interagency Piracy Action Team – ensure that the shipping industry and labor have the benefit of first-hand information exchange.

To comply with section 912 of the Coast Guard Authorization Act of 2010 (CGAA), the Coast Guard sought input (January 26 to March 1, 2011) from the public and representatives of industry and labor in order to determine if the current authorization in 33 U.S.C. 383, resistance of pirates by merchant vessels, and the guidance published by the Coast Guard in PSA 3-09<sup>1</sup>, provided an adequate framework for standard rules for the use of force for self-defense of U.S. vessels. Section 912 of the CGAA states

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<sup>1</sup> Port Security Advisory 3-09 provided “Guidance on Self-Defense or Defense of Others By U.S. Flagged Commercial Vessels Operating in High Risk Waters

that “an owner, operator, time charterer, master, mariner, or individual who uses force or authorizes the use of force to defend a vessel of the United States against an act of piracy shall not be liable for monetary damages for any injury or death caused by such force to any person engaging in an act of piracy if such force was in accordance with standard rules for the use of force in self-defense of vessels prescribed by the Secretary [of the department in which the Coast guard is operating].”

In December 2008, the National Security Council released the National Strategy for Countering Piracy off the Horn of Africa: Partnership and Action Plan. The Plan lays out operational objectives for responding to the threat of piracy in three lines of action: (1) prevent pirate attacks by reducing the vulnerability of the maritime domain to piracy; (2) interrupt and terminate acts of piracy consistent with international law and the rights and responsibilities of coastal and flag states; and (3) facilitate the prosecution of suspected pirates in a just forum to ensure that those who commit acts of piracy are held accountable for their actions. Accomplishing the objectives of this Plan requires a coordinated government approach that integrates military, law enforcement, judicial, diplomatic, and commercial interests in and beyond the affected region.

Several elements are critical to the effective and lawful implementation of a counter-piracy plan: (1) ensuring that affected states take the necessary steps to ensure their domestic jurisprudence allows for the exercise of jurisdiction under the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) if they are a party to that instrument, and if not, under the provisions set forth in Articles 100-107 of UNCLOS; (2) supporting and encouraging the use of other applicable international instruments, i.e., treaties and bi-lateral agreements, and customary international law; (3) securing agreements and arrangements with regional partners to formalize custody and prosecution arrangements for cases in which victim states cannot establish jurisdiction; and (4) enhancing capabilities of regional states to accept suspected pirates for prosecution, extradition, and incarceration in these limited cases. The Coast Guard is actively engaged with the federal interagency Piracy Action Team in ongoing efforts to support each of these elements.

To strengthen international coordination as called for by U.N. Security Council Resolution 1851 and to fulfill a key objective of the Plan, the United States created an international Contact Group on Piracy off the Coast of Somalia to coordinate international counter-piracy efforts. The participants agreed to establish four working groups (WG) to address the following focus areas: (1) activities related to military and operational coordination and information sharing (chaired by the United Kingdom); (2) judicial aspects of piracy (chaired by Denmark); (3) measures to strengthen shipping self-awareness and other capabilities (chaired by the United States, jointly by the Coast Guard and the Maritime Administration); and (4) improvement of diplomatic and public information efforts on all aspects of piracy (chaired by Egypt).

Through WG3 of the Contact Group, the Coast Guard, in coordination with the Maritime Administration, worked in concert with the shipping industry to develop preventive measures that reduce that industry’s vulnerability to attack through the creation, dissemination, and implementation of industry Best Management Practices (BMPs) for vessels operating in the Horn of Africa region. The WG3 participants have also been instrumental in developing guidelines for company security officers to prepare for attacks, and the development of guidance regarding the post-attack care of seafarers.

### ***Counter-piracy Enforcement and Prosecution***

Coast Guard forces (boarding teams) are currently operating in support of U.S. Central Command (CENTCOM) based on a formal Request For Forces. CENTCOM has operational control of these forces and has directed they conduct operations with Combined Task Force 151 (CTF 151).

CENTCOM established CTF 151 in January 2009 to conduct counter-piracy operations in response to the growing threat of piracy. CTF 151's mission is to "Deter, disrupt, and suppress piracy in order to support UN Security Council resolutions, protect global maritime commerce, prevent future attacks, enhance maritime security, and secure freedom of navigation for the benefit of all nations."

Coast Guard Law Enforcement Detachments (LEDETS) also currently operate in support of CTF 151. LEDETS augment Navy Visit Board Search and Seizure (VBSS) teams near the Horn of Africa and provide training in maritime laws, boarding policies and procedures, evidence collection and preparation, and tactical procedures. It is important to understand that both the Coast Guard and Navy have independent authority to conduct counter-piracy operations against any vessel engaged in piracy, including conducting boardings, searches, and seizures.

The integration of Coast Guard LEDETS personnel with Navy VBSS teams takes advantage of the unique competencies, capabilities, and authorities of our two services in a manner that offers a comprehensive boarding capability that is ready to address a broad spectrum of threats in the maritime domain. Coast Guard/Navy cooperation in counter-piracy operations is an example of how our work to ensure interoperability and operational readiness is an effective force addresses the international issue of piracy.

Consistent with international law, any vessel engaged in piracy may be subject to the jurisdiction of the United States regardless of whether the vessel is foreign flagged. Piracy is a felony offense under U.S. law. 18 U.S.C. §1651 provides that "whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life." This statute applies to any person in international waters. The U.S Department of Justice (DOJ) recently used this statute to prosecute five defendants in the case of US v. Hasan, et al. On November 24, 2010 all five defendants were found guilty on all 14 charged counts, including Count I, piracy under the law of nations. The five defendants were convicted of the crime of piracy under the law of nations (18 U.S.C. 1651), and other assault and firearms related charges, as a result of an attack on the USS NICHOLAS on April 1, 2010.

In addition to being the subject of domestic legal regimes, piracy is a crime of universal jurisdiction under conventional and customary international law. Accordingly, every nation has the legal authority to establish jurisdiction and punish the offenders, regardless of nationality of the perpetrator or the victims or of the vessels involved.<sup>2</sup> This has been a basic tenet of customary international law for centuries, and is also enshrined in treaties such as the 1958 Geneva Convention on the High Seas and the 1982 United Nations Convention on the Law of the Sea. United Nations Security Council Resolutions 1846 and 1851, issued in December 2008, have authorized certain states and international organizations - for which advance notification has been provided by the Somalia Transitional Federal Government to the United Nations Secretary-General - to enter Somali waters and territory to repress piracy.

Many nations do not have sufficient legal structures in place to adjudicate piracy charges and punish offenders. The Coast Guard has been actively engaged in supporting the development of legal

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<sup>2</sup> See 1982 United Nations Convention on the Law of the Sea, arts. 100-107

frameworks to facilitate the prosecution of suspected pirates. This work included facilitating development of the U.S./Kenya Memorandum of Understanding, the Djibouti Code (for regional cooperation), the Contact Group on Piracy off the Coast of Somalia mentioned earlier in this testimony, and a number of International Maritime Organization (IMO) initiatives.

The IMO is also engaged in efforts to combat the Somali piracy threat. By designation of the State Department, the Coast Guard serves as the Head of the United States Delegation for IMO meetings and activities. The IMO has passed resolutions establishing a framework for international cooperation, updated counter-piracy guidance to industry, and, perhaps most importantly, promoted prosecution so that pirates, once interdicted, face meaningful and just punishment under the rule of law. United Nations Security Council Resolution 1851 specifically encourages nations to employ the operative provisions of the SUA Convention, to which the United States is a party. All states within a 1,000 nautical mile radius of the Gulf of Aden are signatories to the Suppression of Unlawful Acts (SUA) Convention, with the notable exceptions of Somalia, Eritrea, and Ethiopia.

The threats that piracy pose to the United States, our international partners, and the industry and seafarers who make their living at sea are multi-faceted. The response to these threats requires a broad array of legal authorities, operational capabilities, skills and competencies, and the support and expertise of numerous U.S. government, international, and commercial entities. The Coast Guard has a unique role to play, and remains committed to working with our military, government, and industry partners to bring these criminals to justice and forge long-term solutions for regional maritime safety and security.

Thank you for the opportunity to address you today and for your attention. I look forward to your questions.