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COAST GUARD AND MARITIME TRANSPORTATION AUTHORIZATION ISSUES

(113–39)

HEARING

BEFORE THE

SUBCOMMITTEE ON
COAST GUARD AND MARITIME TRANSPORTATION

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

OCTOBER 29, 2013

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† Hon. Paul N. Jaenichen, Acting Maritime Administrator, Maritime Administration, was invited to testify at the hearing but was unable to attend. He submitted a prepared statement, and it is included.

Committee on Transportation and Infrastructure
U.S. House of Representatives

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Washington, DC 20515

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October 24, 2013

SUMMARY OF SUBJECT MATTER

TO:	Members, Subcommittee on Coast Guard and Maritime Transportation
FROM:	Staff, Subcommittee on Coast Guard and Maritime Transportation
RE:	Hearing on "Coast Guard and Maritime Transportation Authorization Issues."

PURPOSE

The Subcommittee on Coast Guard and Maritime Transportation will meet on Tuesday, October 29, 2013, at 10:30 a.m., in 2167 of the Rayburn House Office Building to examine issues impacting the maritime transportation sector that may be addressed in legislation. The Subcommittee will hear from the United States Coast Guard, the Environmental Protection Agency (EPA), the Maritime Administration (MARAD), the Federal Maritime Commission (FMC), and the National Transportation Safety Board (NTSB).

BACKGROUND

In the 112th Congress, the Committee on Transportation and Infrastructure (Committee) reported and the Congress enacted the Coast Guard and Maritime Transportation Act of 2012 (CG&MTA, P.L. 112-213) which reauthorized the funding and activities of the Coast Guard, as well as made several changes to laws governing shipping and navigation. As it begins the process of drafting similar legislation in the 113th Congress, the Subcommittee expects to consider appropriate funding levels and changes to authorities for the Coast Guard, MARAD, and FMC, as well several issues of interest to the maritime transportation sector. Below is a summary of these issues.

Coast Guard Issues

Authorization Levels

The CG&MTA authorized the activities of the Coast Guard for fiscal years 2013 and 2014 at the following funding levels:

Coast Guard Account	FY 2013 Enacted Authorization (P.L. 112-213)	FY 2014 Enacted Authorization (P.L. 112-213)	FY 2014 President's Budget Request
Operating Expenses	$6,882,645,000	$6,981,036,000	$6,755,383,000
Environmental Compliance & Restoration	$16,699,000	$16,701,000	$13,187,000
Reserve Training	$138,111,000	$140,016,000	$109,543,000
Acquisition, Construction & Improvements	$1,545,312,000	$1,546,448,000	$909,116,000
Alteration of Bridges	$16,000,000	$16,000,000	$0
Research, Development, Test & Evaluation	$19,848,000	$19,890,000	$19,856,000
Total	**$8,618,615,000**	**$8,720,091,000**	**$7,807,085,000**

Funding authorized for fiscal year 2014 was based on the fiscal year 2013 level with the addition of a projected 1.9 percent increase in military pay. When the President submitted the fiscal year 2014 budget to Congress in April 2013, it included a request for a 1 percent increase in military pay.

Personnel

The Coast Guard has had an authorized active duty end-of-year (end) strength of 47,000 servicemembers since 2010. In subsequent fiscal years, the Coast Guard has never approached that level of end strength. The actual end strength of the Coast Guard for fiscal year 2013 is 42,080. The President's budget request for fiscal year 2014 provides funding for an end strength of 40,939. Unlike the other armed services, the Coast Guard does not submit to Congress a formal request for an end strength on an annual basis.

Under section 42(a) of title 14, United States Code, the number of active duty officers in the Coast Guard is subject to a cap. The current cap of 7,200 officers was set in the Coast Guard Authorization Act of 2010 (CGAA, P.L. 111-281). As of September 1, 2013, there were 6,576 officers in the Coast Guard. The President's budget request for fiscal year 2014 provides funding for 6,612 officers.

Acquisition

The Coast Guard is 11 years into a planned 20 to 25 year, $24 billion acquisition program to recapitalize its aircraft, vessels, and associated communications equipment that operate more than 50 miles from shore. In 1996, the Coast Guard developed a Mission Need Statement (MNS) to identify how the acquisition program would fill capability gaps in its missions and establish a baseline for the numbers, types, and capabilities of new and recapitalized assets that would be needed to meet the Service's mission requirements. In 2005, the Coast Guard revised the 1996 MNS to accommodate additional capabilities needed to meet post-September 11 mission requirements. The MNS has not been updated since 2005.

In July 2011, the GAO found that funding requested by current and past administrations has not been sufficient to meet acquisition timelines in the MNS, and the Service has not conducted a comprehensive reanalysis of the current acquisition program to examine tradeoffs between budget constraints, timelines, capabilities, and asset quantities (GAO-11-743). As a result, the GAO estimated it could take an additional 10 years to complete the current acquisition program and the cost could increase by at least $5 billion.

The GAO identified the pending acquisition of the Offshore Patrol Cutter (OPC) as the largest contributor to anticipated cost escalation and delays in the acquisition program. The OPC is currently in preliminary design and will eventually be acquired to replace the 210-foot and 270-foot Medium Endurance Cutters (MEC), which first entered service nearly 50 years ago. Both the GAO and the Congressional Research Service have noted that under current funding levels, the MECs will no longer be operational several years before the OPC acquisition is complete, creating a gap in offshore capability (CRS R42567). The Coast Guard is beginning to consider ways to extend the life of the MECs and reduce the costs associated with the OPC acquisition.

Administration

The Coast Guard determines whether it has jurisdiction to operate and enforce laws on U.S. waters through a decentralized, internal process that does not provide for input from the public or a consideration of the impact on Coast Guard resources. For instance, in 2010, the Coast Guard Eighth District in New Orleans, LA determined that Mille Lacs Lake in Northern Minnesota was a waterway subject to Coast Guard jurisdiction based on historical use and would be regulated by the Service for the first time in our nations' history. Residents and businesses on the Lake were not notified, nor given opportunity to comment on the determination. The Coast Guard did not conduct an analysis to determine whether it had the resources necessary to inspect vessels and regulate the operation of mariners on a Lake in an area where it had no presence.

In 1912, after the sinking of the TITANIC, the United States entered into an international treaty that became incorporated into the International Convention of the Safety of Life at Sea to establish an International Ice Patrol (IIP) in the North Atlantic off the coast of Newfoundland, Canada. Under the treaty, the Coast Guard currently sends aircraft to the area from February through August to identify icebergs, track iceberg movements, and notify mariners of iceberg locations. Under the treaty, the United States is to be reimbursed for the Coast Guard's costs by foreign flag states whose vessels transit the area. The United States has not received reimbursement for the Coast Guard's costs since at least 2000. Over the last five fiscal years, the Coast Guard has spent $41 million and 1,779 flight hours on its IIP treaty obligations.

The Coast Guard currently lacks a centralized inventory to account for all of its real property. The Service could not provide the Subcommittee with the locations of submerged and tidelands it owns. It also recently had to rely on an independent third party to complete an inventory and assessment of its servicemember housing. Under section 685 of title 14, United States Code, the Coast Guard can retain the proceeds from the divestiture of its real property to offset the cost of acquiring or improving servicemember housing. Under section 93(a)(13) of title 14, United States Code, the Commandant of the Coast Guard can lease out certain real property,

but only for a period of five years. The proceeds from such leases cannot be retained by the Coast Guard.

MARAD Issues

Authorization and Administration

MARAD's mission is to "foster, promote, and develop the merchant maritime industry of the United States" (49 U.S.C. 109(a)). The Subcommittee has held three hearings since 2010 to examine MARAD's programs and efforts to increase the number of U.S. flagged vessels and expand job opportunities in the maritime industry. MARAD has not yet undergone a strategic planning process to review the effectiveness of its programs in achieving its mission goals.

Section 55305 of title 46, United States Code, requires that at least 50 percent of certain cargoes procured or financed by the federal government be transported on U.S. flagged vessels. Section 3511 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (P.L. 110-417) amended section 55305 to require the Secretary of Transportation to conduct an annual review of cargoes shipped by other federal agencies to ensure compliance with the 50 percent requirement. It also authorized the Secretary to take various actions to rectify violations. The fiscal year 2009 NDAA became law on October 14, 2008. MARAD has yet to begin a rulemaking process to implement section 3511.

The authorization for the Assistance to Small Shipyards Program expired at the end of fiscal year 2013. The program provides capital grants to small privately owned shipyards to expand shipbuilding capacity, efficiency, and competitiveness. The program has awarded 160 grants since fiscal year 2008. The program was appropriated $10 million in FY 2013.

FMC Issues

Authorization and Administration

The FMC is an independent federal agency responsible for regulating the commercial activities of the U.S. international transportation system. The activities of the FMC have not been an authorized since fiscal year 2008. The FMC was funded at a level of $22.8 million in fiscal year 2013. The President's budget for fiscal year 2014 requests $25 million for the FMC.

FMC commissioners currently serve five year terms. Once a commissioner's term expires, the law allows the commissioner to continue to serve until a replacement is confirmed by the Senate. A commissioner recently served four years after his term expired because the President failed to nominate a successor. There is also no limit on the number of terms FMC commissioners may serve.

Other Maritime Transportation Issues

Discharges Incidental to the Normal Operation of a Vessel

Pursuant to a federal court order, in December 2008, the EPA promulgated final regulations establishing a Vessel General Permit (VGP) under the Clean Water Act's National Pollution Discharge Elimination System program to govern discharges incidental to the normal operation of vessels. The VGP requires vessel operators to be in compliance with best management practices covering 26 types of discharges incidental to normal vessel operations, including deck runoff, air conditioner condensate, bilge water, graywater, and cooling system discharges. The VGP also incorporates local water quality regulatory requirements added by 26 states, two Indian tribes, and one territory that vessel operators must comply with while transiting those jurisdictions. As a result, to transit U.S. waters, vessel operators must ensure they are in compliance with EPA regulations, as well as over two dozen state, territory, or tribal regulations governing 26 discharges. Approximately 45,000 vessels currently operate under the VGP.

On November 30, 2011, the EPA released a draft Small Vessel General Permit (sVGP) to cover commercial fishing vessels and commercial vessels less than 79 feet in length that are currently subject to a moratorium from compliance with the VGP (EPA-HQ-OW-2011-0150). The moratorium was extended in the CG&MTA and will expire on December 18, 2014. The draft sVGP requires these vessels to comply with best management practices for the same 26 incidental discharges as the VGP and adds ice slurry from fish holds on commercial fishing vessels. The EPA estimates that approximately 138,000 vessels will need to comply with the draft sVGP at a cost of up to $12 million annually (this estimate does not include the cost of additional regulatory requirements which may be added by states). The EPA could not calculate monetized benefits as a result of the implementation of the draft sVGP, but it stated the permit would have two qualitative benefits: (1) reduced risk of invasive species; and (2) enhanced water quality. A final sVGP is currently in agency review.

Survival Craft

Coast Guard regulations (46 CFR 160.027) in place since 1996 allow certain vessels operating in warm waters not more than 3 miles from shore or in rivers to carry survival craft that allow for part of an individual to be immersed in water. In 2005, the Coast Guard studied whether to change the regulations to require such vessels to carry out-of-water survival craft that ensure no part of an individual can be immersed in water. The Coast Guard determined that its regulations were "effective in reducing the risk of hypothermia…, and increasing the likelihood of survival of persons who may be in the water…" (*United States Coast Guard Report to Congress: Small Passenger Vessel Safety*, March 2005) and did not undertake a rulemaking to change the 1996 regulations.

Section 609 of the CGAA requires all vessels to carry out-of-water survival craft by January 1, 2015. Concerned that this mandate was put in place without an updated review of the matter by the Coast Guard, Congress delayed the mandate in the CG&MTA. The CG&MTA delayed the mandate until 30 months after the date on which the Coast Guard submitted a report to the Committee that reviewed casualty statistics since 1991, as well as the impact the mandate would have on passenger safety, vessel

stability, and costs on small business. On August 26, 2013, the Coast Guard submitted its report to the Committee. The Coast Guard reported that –

- "Carriage of out-of-water survival craft… is not anticipated to have a significant effect on vessel safety";
- "It could not be determined conclusively if out-of-water flotation devises would have prevented any of the 452 personnel casualties" that occurred from 1992 to 2011; and
- The "10-year cost was determined to be $350.2 million. The potential benefits over 10 years was [sic] determined to be $151 million. The costs exceed the anticipated benefits by almost $200 million."

The NTSB has recommended the use of out-of-water survival craft for the past 40 years. The NTSB maintains that the carriage requirement will enhance the survivability of passengers forced to abandon ship.

Distant Water Tuna Fleet

Section 8103(a) of title 46, United States Code, prohibits non-U.S. citizens from serving as the master, chief engineer, and other licensed officer positions on U.S. flagged vessels. The U.S. flagged distant water tuna fleet (DWTF) fishes for tuna in the Western Pacific pursuant to an international treaty. Section 421 of the Coast Guard and Maritime Transportation Act of 2006 (P.L. 109-241) provided a limited waiver of section 8103(a) for DWTF vessels to employ non-U.S. citizens for licensed officer positions, except for the position of master. To qualify for the exemption, DWTF vessel operators must –

- provide timely notice to U.S. citizens of a vacancy before employing a non-citizen;
- ensure the mariner credential held by the non-citizen is equivalent to a credential issued by the Coast Guard to a U.S. citizen "with respect to the requirements, for training, experience, and other qualifications";
- unlike all other commercial fishing operators, ensure their vessels pass a Coast Guard administered vessel safety examination each year; and
- unlike all other commercial fishing operators, ensure their vessels call on certain U.S. ports at least once each year.

Maritime Liens on Fishing Permits

A maritime lien is a lien on a vessel that secures the claim of a creditor who has provided goods or services to the vessel or who has suffered an injury caused by the vessel's operation. In the event of a default, the maritime lien enables the creditor to seize and sell the vessel and its appurtenances to collect on the debt. Appurtenances are equipment onboard the vessel that is essential to the operational purpose of the vessel (e.g. sails on a sailboat or nets on a fishing boat). In 2001, the U.S. Court of Appeals for the First Circuit ruled that a fishing permit issued by the federal or state government may be an appurtenance to a vessel and sold in the enforcement of a maritime lien (*Gowen, Inc. v. F/V Quality One).*

Among other ramifications, the Court's decision could be interpreted as turning a fishing permit or fisheries quota, such as an Individual Transferable Quota (ITQ) into a property right by

assigning it a value and enabling it to be sold by the creditor. This could impact the ability of federal and state government to properly manage our fisheries. To regulate fisheries, NOAA and the states regularly issue, revoke, and place limitations on fishing permits and ITQs. Consequently, if a permit or quota holder claimed a property right in a permit or ITQ, it could mean that any revocation, suspension, or limitation placed on the permit or ITQ could constitute a "taking" and could require the government to pay the permit or quota holder for any losses.

WITNESSES

Rear Admiral Frederick J. Kenney
Judge Advocate General
United States Coast Guard

The Honorable Mario Cordero
Chairman
Federal Maritime Commission

The Honorable Paul "Chip" Jaenichen (invited)
Acting Administrator
Maritime Administration

The Honorable Michael Shapiro
Principal Deputy Assistant Administrator
Office of Water
Environmental Protection Agency

The Honorable Mark R. Rosekind
Board Member
National Transportation Safety Board

COAST GUARD AND MARITIME TRANSPORTATION AUTHORIZATION ISSUES

TUESDAY, OCTOBER 29, 2013

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COAST GUARD AND
MARITIME TRANSPORTATION,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:35 a.m. in Room 2167, Rayburn House Office Building, Hon. Duncan Hunter (Chairman of the subcommittee) presiding.

Mr. HUNTER. The subcommittee will come to order. The subcommittee is meeting today to examine issues impacting the maritime transportation sector that the subcommittee may need to address in legislation.

The subcommittee has already held several hearings this year to review the budgets and programs of the Coast Guard, the Federal Maritime Commission, and the Maritime Administration.

We have also heard from nearly 20 experts from industry, labor and academia with innovative ideas to improve these programs, reduce regulatory burdens, and grow jobs in the maritime sector.

I look forward to combining these ideas with information presented by our witnesses today to form the basis of bipartisan legislation to reauthorize the Coast Guard and FMC and make improvements to the maritime transportation system.

I have several goals for this legislation. Number one, reauthorize the activities of the Coast Guard and the FMC in a fiscally responsible manner that reflects the current budget environment while ensuring these agencies have the resources they need to successfully conduct their missions.

Number two, improve the effectiveness of the Coast Guard missions by reducing inefficient operations and enhancing oversight.

Three, place the Coast Guard's major systems acquisition program on a sustainable track that will ensure the delivery of critically needed assets in a timely and cost effective manner.

Fourth, encourage job growth in the maritime sector by cutting regulatory burdens on job creation and improving Federal programs intended to promote and develop a strong maritime industry in the United States.

I look forward to writing legislation and working with Ranking Member Garamendi and other members of the subcommittee on that effort.

With that, I yield to Ranking Member Garamendi.

Mr. GARAMENDI. Thank you, Chairman Hunter. Thank you for this hearing and for the witnesses, thank you for appearing and testifying. I will submit my opening statement for the record and try to make it a little shorter.

The maritime industry is rather important. In fact, it is extremely important. We need to take cognizance of that and use this opportunity to write a comprehensive maritime policy for this Nation. Obviously, the Coast Guard is a big piece of it.

As we move into that area, all that you talked about, Chairman Hunter, we should be doing, and probably a little more.

With regard to the other parts of the authorization, we are going to have our hands full.

I think if we can maybe get started and maybe complete—although I doubt we can do it this reauthorization—we need a comprehensive re-look at the entire maritime industry, and we need to write a comprehensive policy. We also need to make it clear how important this is to the Nation and get about doing that, and that is everything from shipbuilding to the ports and obviously to MarAd and the FMC.

With that, I will yield back and submit this for the record.

Mr. HUNTER. I thank the ranking member.

On our first panel today, we have the Honorable Andy Barr, representing Kentucky's Sixth District in the House of Representatives.

Congressman Barr, you are recognized for your statement, and it is good to see you.

TESTIMONY OF HON. ANDY BARR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KENTUCKY

Mr. BARR. It is good to see you, Chairman. Thank you for your leadership. Good morning. I would like to thank Chairman Hunter, Ranking Member Garamendi, and the Subcommittee on Coast Guard and Maritime Transportation for holding this hearing.

I greatly appreciate the opportunity to appear before you and to offer testimony on how the committee can provide a commonsense and practical remedy to an unnecessary hardship in my district.

I offer these comments for the record in order to encourage the subcommittee to include language within the Coast Guard and maritime transportation authorization legislation or similar legislation that would transfer the licensing authority for the Valley View Ferry from Federal operating licensing to a State-based operating license.

In 1785, the Virginia legislature granted John Craig, a revolutionary war soldier, a perpetual franchise to operate the ferry located in what is now Valley View, Kentucky. In operations since that time, the Valley View Ferry is currently the oldest, continuous operated ferry west of the Appalachian Mountains, and is the third oldest ferry in the United States.

Federal regulations changed in 2006 to establish a new requirement, that the Valley View Ferry must comply with all U.S. Coast Guard inspection and licensing regulations.

These licensing regulations are threatening the closure of this historic ferry, because the Valley View Ferry is now required to

employ operators who hold merchant mariner licenses, which is the highest level of operator licensing issued by the U.S. Coast Guard.

This new licensing requirement is unnecessary and does not properly represent the unique operation of the Valley View Ferry. This toll free ferry does not have steering capabilities. Instead, it is attached to two overhead cables that guide the boat onto landings each side of the river, the Kentucky River, which is only approximately 500 feet apart.

As you can see, there is obviously a huge difference between the Valley View Ferry and the towboats that operate on the Ohio and Mississippi Rivers or vessels that operate in the open seas.

Yet, due to current Federal regulation, a person seeking to become an operator of the Valley View Ferry must have the same licensing requirements as someone who wants to operate the Staten Island Ferry in New York City, a towboat on the Mississippi, or the *Belle of Louisville* on the Ohio River.

As a result of the Federal Government changing how the ferry is regulated and because of the overbroad nature of this particular regulation, the Valley View Ferry Authority which manages this historic ferry, has been forced to reduce operating hours and search all over the country to find a properly certified operator willing to work for less than half of the normal wages demanded by operators who similarly possess a merchant mariner's license.

While the Valley View Ferry is currently able to operate, albeit in a diminished capacity and with tremendous hardship, there is no guarantee that the ferry's managers will continue to be able to find a viable operator in the future.

Rather than rely on the current temporary fix, what the Valley View Ferry truly needs is the permanent solution that can be provided by this committee's members.

The current regulation imposes an unnecessary burden on the local economy as well. The Valley View Ferry supports jobs and commerce in central Kentucky. Every day the Valley View Ferry is not in operation, it causes economic disruption for nearby businesses and tremendous hardship for merchants and workers who need to use the ferry to commute to and from work.

With your help, I seek to remedy this one-size-fits-all regulation by transferring the licensing authority for the Valley View Ferry from Federal operating licensing to a State-based operating license.

My bill, H.R. 2570, the Valley View Preservation Act of 2013, is designed to act in conjunction with Kentucky State law, and therefore will not take effect until the Commonwealth of Kentucky establishes a safety and licensing program tailored to the Valley View Ferry.

While my bill is designed to prevent any lapse in Federal or State regulations, I would be open to working with members of this committee to make any changes your Members might deem appropriate to remedy this hardship.

In conclusion, the situation with the Valley View Ferry is a classic example of overbroad regulation, impeding the ability of State and local governments to operate, and impeding the local economy.

I am confident there is a simple and practical fix to this problem, and I would again like to thank Chairman Hunter, Ranking Mem-

ber Garamendi, and committee members for affording me this brief opportunity to speak this morning.

I ask for your consideration and support on this very important issue to central Kentucky. Thank you very much.

Mr. HUNTER. I'd like to thank Congressman Barr for his testimony. This is just one of those things that really shows this is going back to the 1700s, and you should not need the highest classification license to drive a cable ferry.

We thank you for your testimony. Thank you, Congressman Barr. If no Members have questions, you are dismissed, and we will take a break while we seat our second panel.

Mr. BARR. Thank you, Mr. Chairman.

[Recess.]

Mr. HUNTER. Thank you, gentlemen.

On our second panel of witnesses today are Rear Admiral Frederick Kenney, Judge Advocate General of the United States Coast Guard; the Honorable Mario Cordero, Chairman of the Federal Maritime Commission; the Honorable Michael Shapiro, Principal Deputy Assistant Administrator of the Office of Water at the Environmental Protection Agency; and the Honorable Mark Rosekind, Board Member of the National Transportation Safety Board.

Rear Admiral Kenney, you are recognized for your statement, sir.

TESTIMONY OF REAR ADMIRAL FREDERICK J. KENNEY, JUDGE ADVOCATE GENERAL, UNITED STATES COAST GUARD; HON. MARIO CORDERO, CHAIRMAN, FEDERAL MARITIME COMMISSION; HON. MICHAEL H. SHAPIRO, PRINCIPAL DEPUTY ASSISTANT ADMINISTRATOR, OFFICE OF WATER, ENVIRONMENTAL PROTECTION AGENCY; AND HON. MARK R. ROSEKIND, PH.D., BOARD MEMBER, NATIONAL TRANSPORTATION SAFETY BOARD

Admiral KENNEY. Thank you, Mr. Chairman. Good morning, Chairman Hunter, Ranking Member Garamendi, and distinguished members of the subcommittee.

As the officer responsible for the Coast Guard's legislative development program, I am pleased to appear before you today to discuss the Coast Guard's legislative proposals.

Mr. Chairman, I ask that my written statement be included in the subcommittee's record.

The Coast Guard has transmitted 12 legislative proposals for the subcommittee's consideration. I refer to my written statement for extended remarks on four specific proposals, but wish to highlight the following:

First, the Coast Guard proposal to authorize the Secretary to order Coast Guard reservists to active duty for a continuous period of not more than 120 days in the event of a disaster, emergency or spill of national significance, to align Coast Guard response authorities with those of the Department of Defense.

The proposal mirrors the authority that Congress has vested in the Secretary of Defense except that it would cover spills of national significance such as the *Deepwater Horizon* water spill, as well as disasters and emergencies.

Simply altering the existing current law limitations would not address the impacts that would flow from sustained or multiple ac-

tivations that occur within a 12- to 18-month period. The Coast Guard proposal would address this effect.

Next I turn your attention to the Coast Guard proposal to require agency heads to release the drug testing results from mariner applicants in the same way agency heads must report drug testing results for mariner employees.

Closing the existing gap in current law may not address a secondary issue, whether or not an agency head may release results without the prior consent of a mariner applicant or mariner employee.

Some agencies have claimed the current law to be ambiguous on this point. The Coast Guard's proposal would settle this issue, and I recommend the subcommittee consider adopting this comprehensive approach.

Next, the Coast Guard proposal to reauthorize the Sport Fish Restoration and Boating Trust Fund, and ensure that monies derived from the Fund are administered by the Coast Guard and the Fish and Wildlife Service in a like manner.

The Service had offered up elements of this proposal during the 111th and 112th Congresses and again now.

I urge the subcommittee to take up this measure, and the Coast Guard stands ready to assist.

Mr. Chairman, I take this opportunity to highlight one other Coast Guard legislative proposal, protection and fair treatment of seafarers. The enforcement and prosecution of environmental crimes under the Act to prevent pollution from ships has been widely successful.

Yet, some vessel owners and operators have aggressively employed litigation tactics as a means of frustrating the Government's prosecution of these crimes, chiefly the threat to abandon a seafarer witness whose testimony is essential to the Government's case.

When the vessel owner or operator resists paying or refuses to pay the seafarer witness's support, the United States is often left then to acquiesce to unsatisfactory conditions or to abandon an investigation altogether.

Since 2007, the Coast Guard has advocated the establishment of a fund to pay for the necessary support of the seafarer witness as a means of neutralizing this litigation tactic.

A significant feature of the Coast Guard proposal is that monies for such support would be derived from reimbursements paid by the vessel owner or operator who fails to provide the necessary support, not the taxpayer.

I would appreciate the subcommittee's further consideration of this proposal.

As a final matter, I draw the subcommittee's attention to 18 U.S.C. section 39(a), which establishes the criminal prohibition against knowingly aiming a laser pointer at an aircraft, yet allows an individual to use a laser emergency signaling device to send an emergency distress signal.

The physical properties of lasers can cause temporary blindness, also known as flash blindness, retinal bruising, and in extreme cases, permanent blindness, if the beam strikes the eyes of rescue personnel.

For the Coast Guard, the consequences could not be more disastrous. The use of such a signaling device could temporarily disrupt a search and rescue mission, and possibly cause the loss of equipment and death of our personnel employed to effectuate the rescue.

In fiscal year 2013, there were 54 lasing incidents involving Coast Guard aircraft and vessels, including one just 10 days ago. The number of these incidents has increased every year since fiscal year 2007. More often than not, the incidents occurred with aircraft at dangerously low altitudes and overwhelmingly involved green laser light which most severely affects human vision.

In light of the limited utility of lasers as an emergency signaling device and the grave harm such devices could cause, I recommend that the subcommittee reconsider this exception to the general prohibition.

Thank you for the opportunity to testify today and for your continued support of the United States Coast Guard. I look forward to answering any questions you may have.

Mr. HUNTER. Thank you, Admiral.

Mr. Cordero is recognized.

Mr. CORDERO. Good morning, Chairman Hunter, Ranking Member Garamendi, and members of the subcommittee. Thank you for the opportunity to address matters related to the Commission's authorization.

The Commission carries out important statutorily mandated programs aimed at maintaining an efficient and competitive international ocean transportation system; protecting the public from unlawful, unfair, and deceptive ocean transportation practices; and resolving shipping disputes.

These key FMC initiatives allow the Commission to resolve issues that have an impact on importers and exporters, as well as support one of the Commission's primary objectives—to increase exports and further the interests of the greater shipping community.

A fair, efficient and adequate ocean transportation system depends on the FMC's ability to evaluate carrier and terminal agreements for anticompetitive impact, license ocean transportation intermediaries to protect the shipping public, and facilitate international trade.

U.S.-foreign oceanborne commerce valued at $930 billion moves through our Nation's ports annually, over 99 percent of our trade is done on the water.

Make no mistake—maritime policy is linked directly to freight policy.

The public-private partnerships the Panel on 21st-Century Freight Transportation heard about at the hearing on October 10 regarding the operations at the Port of Norfolk in Virginia and the Port of Baltimore in Maryland may not have been possible without the Shipping Act. The Commission oversees similar marine terminal operator agreements from nearly every port that moves containerized cargo; Tampa, New Orleans, Miami, New York, Los Angeles, Long Beach, Oakland, Houston, Philadelphia, Seattle, Portland, Mobile, and others.

The President's fiscal year 2014 budget request of $25 million represented the minimum necessary for the Commission to fulfill its statutory mandate.

Continuing the Commission at fiscal year 2013 post-sequestration funding amounts is unsustainable, after the many years of severely restricted funding levels the Commission has borne in the recent past.

We considered all options, but in fiscal year 2013, we were forced to impose 6 days of furlough across the entire agency.

Our strategic plan sets forth two goals: One, to maintain an efficient and competitive international ocean transportation system; and two, to protect the public from unfair, unlawful and deceptive ocean transportation practices, and resolving shipping disputes.

We recognize the need to accomplish these goals through high-performance leadership and efficient stewardship of resources.

In addition, the Commission has been closely following the ocean carriers' business model of providing chassis to U.S. shippers, and has given related agreements filings close review to ensure that the transition does not cause disruption or anticompetitive harm to shippers.

The fiscal year 2013 post-sequestration funding level will have severe impacts on the shipping public, and just to name a few:

Consumers may be harmed due to the Commission's lack of ability to monitor fully the impacts of agreements of marine terminal operators and liner operators, leading potentially to higher transportation costs, and reduced transportation services.

Cruise passengers, individuals moving their household goods abroad, and small importers and exporters will not have access to the Commission's services.

Shippers, carriers, port officials and consumers in the Houston region will not have the ability to contact a local FMC representative, as this position remains unfilled.

Applicants for ocean freight forwarder and nonvessel operating common carrier licenses, typically small businesses, will encounter significant backlogs and waiting times.

U.S. importers and exporters could no longer be assured that the ocean carriers and the NVOCCs serving their needs would have unrestricted access to international oceanborne trades, given that the Commission would no longer be able to carry out its statutory mandate to address the restrictive practices of foreign governments.

Increasingly large global vessel alliances, such as the proposed P3 alliance, and their effects on costs and services to the U.S. importers, exporters, and shipping community would go unmonitored.

Public studies and analysis, such as the Commission studies of the repeal of the European block exemption and possible freight diversion from the U.S. to Mexican and Canadian ports would cease.

As in fiscal year 2013, prior to instituting agencywide furloughs, costs for the following, nonsalary/benefits and nonlease expenditures would be examined and reduced:

Travel: Domestic and international travel associated with investigations, enforcement, litigation and necessary interaction with the industry and the public would be severely limited to bare levels.

Training: Except for statutorily mandated training—equal employment officer, inspector general, ethics officer—training would be completely eliminated.

Commercial data used to monitor, enforce and analyze industry impact would be severely cut, thereby eliminating the Commission's ability to analyze properly competitive conditions in foreign oceanborne trades, which may in turn harm consumers and create disadvantages for U.S. importers and exporters.

Information technology services: Cuts would impact the maintenance of existing IT systems to a level that would put these systems at risk of catastrophic failure and create security concerns.

The Commission is pursuing several information technology initiatives to comply with governing IT statutes and regulations, as well as examining the FMC's business functions that require or benefit from integration with existing data, technology and systems to increase the efficiency, productivity, and communication with the public, particularly in the licensing process.

We believe enhanced information systems are essential to efficient identification and licensing of regulated entities and for information sharing with our counterparts at CBP and other Federal agencies.

These IT systems would also enable our Area Representatives, Bureau of Enforcement and CADRS staff to have timely and comprehensive access to data needed to address practices that abuse or defraud the shipping public.

Because technology is so essential to running the FMC, the Commission proposes to implement new IT solutions that will streamline business processes and facilitate better coordination and communication between the public and the agency.

In fiscal year 2011, the agency, in response to governmentwide transformation initiatives, identified a new business productivity infrastructure and application platform that would be incorporated into its business processes model.

The scope and speed of these technology investments will depend on availability of funds. These investments will lead to greater productivity, efficiency and transparency.

Also due to funding constraints, our succession planning program has been delayed; while the FMC staff are dedicated and hard working, a serious drain on experience has occurred and our efforts to maintain a talented and knowledgeable staff have been derailed.

If our funding continues at the current fiscal year 2013 sequester level of $22.8 million or less, it will continue to significantly impede the Commission's ability to carry out our statutory duties and dispute resolution functions, which have grown increasingly important to the success of both the U.S. importers and exporters.

The requested funds for fiscal year 2014 have a direct impact on the underpinnings of the economic recovery of our Nation's international ocean commerce transportation system.

The Commission has carefully scrutinized its operating costs and will continue to use its limited resources wisely.

The fiscal year 2014 budget request represents one of the lowest funding increase requests by the FMC in over a decade. It will not restore the Commission to previous capabilities but will allow the

Commission to meet the responsibilities Congress has entrusted to the agency.

We respectfully urge Congress to approve our full fiscal year 2014 $25 million budget request.

Thank you so much.

Mr. HUNTER. Thank you, Mr. Cordero.

Mr. Shapiro is recognized for 5 minutes.

Mr. SHAPIRO. Thank you. Good morning, Chairman Hunter, Ranking Member Garamendi, and distinguished members of the subcommittee. Thank you for the opportunity to discuss EPA's regulation of vessel discharges, including ballast water, under the Clean Water Act.

My testimony will provide an update on our regulation of vessel discharges under the 2013 Vessel General Permit or VGP that was finalized in March of this year and which will become effective on December 19 of this year.

I will also provide background and an overview of the draft Small Vessel General Permit, the sVGP, which was published for comment in December of 2011 and on which the Agency has not yet taken final action.

My full testimony has been submitted for the record and I will summarize it here.

The Vessel General Permit regulates discharges incidental to the normal operation of vessels operating in a capacity as a means of transportation. The VGP includes general effluent limits applicable to a number of specific discharge streams, narrative water quality-based effluent limits, inspection, monitoring, recordkeeping and reporting requirements, and additional requirements applicable to certain vessel types.

The effluent limits are primarily in the form of best management practices or BMPs, which were developed based on standard industry practices that were already being performed on vessels.

The original 2008 Vessel General Permit expires on December 19, 2013, at which time the 2013 VGP will become effective. The 2013 VGP covers the same universe of approximately 70,000 vessels as the current permit. We finalized the new permit in March of this year so that vessel owners and operators would have time to plan for and implement any new permit conditions.

In developing the permit, we focused on increasing environmental protections based on sound science, ensuring vessel safety, and minimizing the burden for permittees with commonsense and easy to implement provisions.

In developing ballast water limits for the VGP, we considered limits based on both the technology available to treat pollutants and limits that are protective of water quality as required under the Clean Water Act.

The EPA used the results of studies conducted by the EPA's Science Advisory Board and the National Academy of Sciences to inform the ballast water discharge limits in the VGP.

The limits are generally consistent with those contained in both the International Maritime Organizations Ballast Water Management Convention and the final Coast Guard ballast water rule.

As EPA begins to implement the VGP, we will continue to work closely with Rear Admiral Kenney and his colleagues in the Coast Guard.

In addition, the EPA has finalized in the VGP a requirement to continue existing ballast water exchange practices as water quality-based effluent limits for certain vessels entering the Great Lakes. The purpose of this requirement, which is not included in the Coast Guard's final rule, is to add another measure of protection against potential new invasive fresh water species that are transported via ballast tanks to the fresh water environment of the Great Lakes.

Public Law 110–299 enacted in 2008 provides a 2-year moratorium on clean water permitting requirements for incidental discharges from commercial vessels less than 79 feet and commercial fishing vessels regardless of size, except for their ballast water discharges.

This moratorium was subsequently extended by Congress to December 18, 2013, and again to December 18, 2014. The EPA proposed the Small Vessel General Permit, or sVGP, to provide the Clean Water Act authorization for commercial vessels less than 79 feet in length if and when the moratorium expires.

Recognizing that these small commercial vessels are substantially different in how they operate, the draft Small Vessel General Permit is shorter and simpler than the permit for large vessels. The draft permit specifies BMPs for several broad discharge management categories that contain commonsense practices to reduce environmental impacts from these discharges, including measures to reduce risk of spreading invasive species.

We are currently in the process of considering public comments received which will inform our development of a final sVGP.

Once again, Chairman Hunter, Ranking Member Garamendi, and members of the subcommittee, thank you for the opportunity to discuss the EPA's vessel permits. I look forward to answering any questions that you may have.

Mr. HUNTER. Thank you, Mr. Shapiro.

Mr. Rosekind is recognized.

Dr. ROSEKIND. Chairman Hunter, Ranking Member Garamendi, and members of the subcommittee, thank you for the opportunity to testify today on behalf of the National Transportation Safety Board.

Working together, the U.S. Coast Guard and the NTSB evaluate accidents that meet the threshold of a major marine casualty as set forth in our joint regulations. The NTSB investigates all major marine casualties, usually about 30 to 35 per year.

Just recently, the U.S. Coast Guard's Commandant and NTSB Chairman at their annual meeting in June 2013, acknowledged the ongoing cooperation between our agencies and the effectiveness of collaboration involving each other's investigative expertise.

The NTSB plays a critical role in transportation safety by providing independent and unbiased investigations that lead to determining the probable cause and issuing safety recommendations to prevent future accidents.

Throughout its history, the NTSB has investigated hundreds of marine accidents involving a broad array of safety risks. As a re-

sult, it has issued 2,400 recommendations to the U.S. Coast Guard and other entities to improve marine safety.

Although there are several topics pertinent to the subcommittee included in my written statement, today, I would like to highlight a longstanding and important issue to the NTSB, the safety benefits of out-of-water survival craft, particularly for passengers and crewmembers aboard small passenger vessels.

This issue is certainly not new to our agency. Over 40 years ago in its first safety recommendation on this subject, the NTSB called for out-of-water flotation survival craft aboard passenger vessels to save lives and prevent injuries.

Humans are not designed for prolonged water immersion, even in relatively warm water such as the Gulf of Mexico. Our body temperatures begin to decrease with sustained exposure. The NTSB saw this in its investigation of the gulf-based *Trinity II* liftboat stationed only 15 miles from shore. Ten crewmembers abandoned the vessel and four died after extended water immersion.

The NTSB's most recent recommendation in this area is from its 2008 investigation of the *Queen of the West* engine room fire. Nearly 200 people were on board the vessel and many were elderly. If the fire had spread, the only option available to keep passengers out of the 40 degree water was a single six-person rescue boat.

The recipients of NTSB's recommendations often cite difficulty and cost as barriers to implementing critical safety improvements. There are real challenges that must be addressed to make transportation safer, but the bottom line is if operators fail to make needed changes, more people will die or suffer life-altering injuries.

Today, there are so many commonsense safety improvements like seat belts and air bags, yet few people remember the initial arguments over their effectiveness or cost.

Safety requirements have also stimulated innovation, where creative thinking has produced new approaches to address longstanding safety risks. For example, in aviation, technology innovations led to the invention of traffic collision avoidance systems and enhance ground proximity warning systems. These changes were hotly debated at first, but now are standard safety equipment in today's modern aircraft.

It is ironic that commercial aircraft, not designed to be in the water but fly over it, are required to carry out-of-water survival craft when small passenger marine vessels are not.

Just as passenger planes with extended over-water operations must have out-of-water survival craft and other survival equipment for the rare safety risk associated with a water accident, so should all passenger vessels that traverse the Nation's waterways every day. This is simply common sense.

Ranking Member Garamendi and Congressman Cummings recently asked the NTSB for its perspective on the U.S. Coast Guard's 2013 report, "Survival Craft Safety," regarding out-of-water survival craft.

Last week, the NTSB provided specific comments on this report with our views and raised a number of important issues worthy of your consideration. I encourage you to read it.

Although it is generally safe to travel aboard a passenger vessel, when something goes wrong it can be deadly. Maintaining the full

requirement for out-of-water survival craft to keep people from prolonged water immersion is critical for saving lives and preventing injuries.

Thank you for the opportunity to appear today. The NTSB is ready to work with Congress on these and other transportation safety issues. I am available to answer your questions.

Mr. HUNTER. Thank you, Mr. Rosekind. I am going to now recognize Members for questions. I am going to defer my questions and pass it on to Mr. LoBiondo, the former subcommittee chairman of this subcommittee.

Mr. LOBIONDO. Thank you, Mr. Chairman. I thank the panel for being here today. I have the honor of representing the second largest commercial seaport on the east coast by value of catch, but the commercial fishermen in my district are barely making ends meet. I think it is a story we have heard repeatedly.

One of the problems they have in addition to just being able to catch the fish they need, the regulations by NOAA limiting catch limits and new operating rules by the Coast Guard are taking a huge toll on the industry that is already reeling from a very tough recession.

The EPA is coming in to impose regulations to govern the discharge of such things as rain water run off from the decks and condensation from cabin air conditioners.

It is really hard for me to understand, but even the amount of vegetable oil used to cook dinner for the crew and type of dish soap used to clean the frying pan will be regulated.

I think this is really going over the top. We are going to put people out of business, and if that is the intention, that is exactly what we are going to do.

Vessel owners that do not receive a permit from the EPA or maintain a log book for these discharges are subject to very harsh Clean Water Act criminal and civil penalties of more than $32,000 per day for violations, $32,000 per day.

On the incidental rain water run off, I wonder, do you measure by the raindrop? How do you do that? We have been fighting this for a couple of years now. I hope my colleagues will join with me in legislation I plan to offer to address that situation.

Mr. Shapiro, the current moratorium expires in 13 months. Unless Congress takes actions, over 135,000 vessels will need to comply with the EPA's permit, and when will the EPA release a final Small Vessel General Permit so these vessel owners can adequately prepare for this huge, new, damaging regulatory burden that is facing them?

Mr. SHAPIRO. As I mentioned in my testimony, we are working on that Small Vessel General Permit. We intend to issue it early in 2014. Again, as is the case with the Vessel General Permit, our plan is to do that well in advance of the date the moratorium expires, should it not be renewed.

Mr. LOBIONDO. Excuse me for not having a lot of confidence in the bureaucracy to meet its deadlines, but these are real hard working small business people. If they knew what they were facing now, they would have a difficult time piecing this together.

I am going to ask the chairman of the subcommittee and the chairman of the full committee to track this, because this has a real impact.

Can you tell us what are the estimated costs of compliance with these VGPs and does this include compliance costs associated with the additional requirements added by the States that submitted Section 401 certifications?

Mr. SHAPIRO. Clarification. Are you talking about the full VGP or small VGP?

Mr. LOBIONDO. The full.

Mr. SHAPIRO. In the case of the full VGP, the costs range. Obviously, there is a huge range in size of vessels and the kinds of requirements, the per vessel cost in our evaluation ranged from about $51 to $7,000 per vessel annually. Again, there is about 70,000 vessels in total coverage. There is a broad range of vessel types and sizes, and therefore, requirements that apply.

Mr. LOBIONDO. What about the small?

Mr. SHAPIRO. In the case of the small, our estimate was in a range of $17 to $98 per vessel per year. Actually, to complete the question you had, these estimates do not include the costs associated with any specific State 401 certification requirements, to the extent they are not consistent with EPA's requirements.

Mr. LOBIONDO. Can vessel owners or operators face citizen suits for failure to comply with 401 certifications?

Mr. SHAPIRO. The short answer to that is yes, they can.

Mr. LOBIONDO. Mr. Chairman, I am really at a loss here. You are going to regulate rain water wash off from decks of ships. This is the stuff that Jay Leno and the late night shows would have real fun with, if it wouldn't be so consequential and so damaging.

I do not know how we can be so far out of tune with the real world, and while all these people want to do the right thing for our environment, Mr. Chairman, I have to believe this is a terrible direction. I would hope we can find some way to correct this. I yield back.

Mr. HUNTER. I thank the gentleman from New Jersey. Mr. Garamendi is recognized for 5 minutes.

Mr. GARAMENDI. Thank you. My first question goes to Admiral Kenney. In your testimony, you raised, I think, six issues that are of importance, but you did not discuss in any way the overall authorization.

Is there anything in the current authorization, besides these six issues, that the Coast Guard would want to change?

Admiral KENNEY. Thank you for that question, Mr. Garamendi. Of course, we received the subcommittee's draft authorization bill just last Tuesday, and it is quite complex and multifaceted. There are various items that we would like to discuss further with the subcommittee. There are items that we fully support, that we think are welcome additions to the Coast Guard's cache of authorities and responsibilities.

We look forward to continuing the conversation with respect to certain aspects. I can get into particulars. If you have any specific questions, I am happy to answer them.

Mr. GARAMENDI. I have many, many questions, sir. I think it is frankly the responsibility of the Coast Guard to provide that infor-

mation in an open public hearing such as this, recognizing that you may not have had much time, but there may have been ideas and thoughts, proposals, that the Coast Guard had before receiving the draft legislation.

Do you have any comments on those kinds of issues? For example, the level of funding, that is the authorized level of funding for various programs?

Admiral KENNEY. Yes, sir. When we look at both the authorized levels of funding and the authorized level of personnel strength, it is clear that the dynamics between the President's budget, the numbers in the 2010 and 2012 Coast Guard Authorization Acts, and the committee's bill are very complex and require careful consideration by the Coast Guard in consultation with the administration.

If I could take that for the record, I would be happy to provide you with our views on that issue. As I said, we have already begun the process of consulting with the administration. We are looking very closely at the numbers that are contained in the draft bill. We will have views for you, sir.

[The information follows:]

> With regard to authorizations of appropriations for fiscal year (FY) 2014, the authorization level corresponding with the President's Fiscal Year (FY) 2014 Budget request would be $7,807,085,000 [Operating Expenses (OE) $6,755,383,000; Acquisition, Construction, and Improvement (AC&I) $909,116,000; Reserve Training (RT), $109,543,000; Environmental Compliance and Restoration (EC&R), $13,187,000; and Research, Development, Test, and Evaluation (RDT&E) $19,856,000]. Were Congress to pass a FY14 appropriation based on the President's request, the corresponding authorization level, including funding for Overseas Contingency Operations, and excluding proposed rescissions, would be $8,076,085,000 [OE $6,982,383,000; AC&I $951,116,000; RT $109,543,000; EC&R $13,187,000; RDT&E $19,856,000].
>
> On the other hand, given that the Coast Guard is currently operating under a continuing resolution that is based on FY13 levels, the corresponding authorization for the aforementioned appropriations would be $8,394,251,740 [OE $6,863,640,917; AC&I $1,367,045,276; RT $131,440,686; EC&R $12,460,845; RDT&E $19,664,016].
>
> Were Congress to pass a FY14 appropriation based on the FY14 House Appropriations Committee/Senate Appropriations Committee marks, the corresponding authorization level, assuming the higher of the two marks for each appropriation, including funding for Overseas Contingency Operations, and excluding proposed rescissions, would be $8,451,537,000 [OE $7,066,416,000; AC&I $1,229,684,000; RT $122,491,000; EC&R $13,165,000; RDT&E $19,781,000].

> The Coast Guard currently estimates FY14 end strength to be 40,865. However, this number could increase unexpectedly due to reductions in attrition.
>
> With regard to authorizations of appropriations and personnel end strength for FY 2015, as well as the authorized levels of military strength for that period, the Coast Guard notes that the President is presently formulating his annual request.
>
> To make any recommendation independent of, and prior to, the release of the President's annual request would be inappropriate. The Service will be in a position to make recommendations with regard to fiscal year 2015 after the President transmits his request.
>
> With regard to the authorization of appropriations and personnel end strength for fiscal year 2016, as well as the authorized levels of military strength for that period, the Coast Guard notes that any recommendation that the Service might make today cannot fully anticipate the budgetary realities that the President and Congress will face two years hence. The efficacy of such recommendations too would be extremely limited.

Mr. GARAMENDI. Thank you for that. Several times the Coast Guard administrators, various folks have requested my assistance in obtaining 14 C–27s for the Coast Guard. Do you want authorization for those?

Admiral KENNEY. Well, sir, as you know, we have been in extensive consultations with the Department of Defense, with the Forest Service, and internally with the Department of Homeland Security regarding the potential acquisition of C–27s. The Coast Guard is supportive. We view this as an important addition to our mid-range patrol aircraft capabilities.

Mr. GARAMENDI. You almost sounded like you're a politician running for office. I think I'm not going to get a clear answer. We're in the business of writing law here, and we're in the business of authorizing what the Coast Guard can and cannot do. If you want the C–27s, it seems to me that this committee may very well want to write into your authorizations the authority to get them, countering the sentence that was added in some obscure piece of legislation by some senator, that the Forest Service would get them. So work with us if you want them.

Let me ask a question about the survival craft. This would be to Mr. Rosekind. Has the NTSB commented on the Coast Guard's review of the survival craft, the report that the Coast Guard put out?

Dr. ROSEKIND. Yes, we sent a letter to you and Congressman Cummings, reviewing the report that came out. It was not a full evaluation, but it does highlight eight specific areas that need to be addressed that question the findings from that report.

Mr. GARAMENDI. Basically you thought that it was inadequate. Is that correct?

Dr. ROSEKIND. We highlight it is inadequate in that there's insufficient data to address the questions that were posed.

Mr. GARAMENDI. OK. For the Coast Guard, what vessels—what kind of vessels are covered by the proposed out-of-water survival craft issue?

Admiral KENNEY. Mr. Garamendi, it would cover a wide range of passenger vessels, pretty much every inspected passenger vessel. Of course, we've taken a close look at the NTSB's recommendations over time, and as you just alluded to, the report that we submitted in August of 2013 we believe was a comprehensive evaluation of the efficacy of out-of-water survival craft-based on data.

As our report notes, the number of casualties that we can attribute to a lack of out-of-water survival craft is actually quite low, and while certainly we work very closely with the NTSB on a daily basis and we are both committed to improving safety, with the Coast Guard's additional responsibilities, to consider costs and benefits in terms of any particular regulatory program we might initiate to improve safety——

Mr. GARAMENDI. So if I were to get on a chartered fishing boat in San Francisco Bay to fish for salmon outside the Golden Gate, would that charter boat that holds 10 to 20 customers have out-of-water survival craft under the current regulations?

Admiral KENNEY. Under the current regulations, I'd have to get back to you on that, sir. I would imagine it would have to have some capability. But with respect to the voyage that you describe, the Coast Guard believes that with the current suite of authorities that we have to regulate inspected vessels—and the vessel you just described coming out of San Francisco Bay would be an inspected vessel, it would be a T-boat——

Mr. GARAMENDI. So the answer is going to be for the record?

Admiral KENNEY. No, sir.

Mr. GARAMENDI. The answer to my question will be for the record?

Admiral KENNEY. No, sir. I can continue. With the authorities that we have, the officer in charge of marine inspection has the ability to make a determination based on the vessel itself, based on the route, and based on the particular voyage that it's taking. The OCMI has the flexibility to require the addition of out-of-water survival craft. I would think—I don't know what the answer is for that particular voyage, but if I were the sector commander, I would expect that we would ask for out-of-water survival craft in the cold waters of northern California.

Mr. GARAMENDI. Could you please give me a specific answer to my question. If I've been offered a charter ride outside the Golden Gate to go for salmon fishing, given the water temperature, et cetera, would that vessel have an out-of-water survival craft on April 1st of next year?

Admiral KENNEY. I would imagine that it would, sir.

Mr. GARAMENDI. I'd like to know.

Admiral KENNEY. I——

Mr. GARAMENDI. OK? The proposed regulations, what you're basically saying is there's a considerable flexibility in the proposal for out-of-water safety craft. Is that correct?

Admiral KENNEY. What I'm saying, sir, is our current authorities, regardless of the current proposal with respect to mandating out-of-water survival craft, our current suite of authorities con-

tained in 46 U.S. Code, Subtitle 2 give us the flexibility to require out-of-water survival craft where the officer in charge of marine inspection feels it's appropriate.

Mr. GARAMENDI. So you can do it?

Admiral KENNEY. Yes, sir.

[Additional information follows:]

Currently, the following types of vessels are required to carry out-of-water survival craft under all circumstances:

(a) For small passenger vessels certificated under 46 CFR Subchapter T, all vessels without subdivision operating in cold water on Oceans routes; all wood-hulled vessels without subdivision operating in cold water on Coastwise and Limited Coastwise routes more than 3 miles from shore; and all wood-hulled vessels on Great Lakes routes more than 1 mile from shore.

(b) For small passenger vessels certificated under 46 CFR Subchapter K (i.e., with more than 150 passengers, or with overnight accommodations for more than 49 passengers), all vessels on cold water Oceans routes (must carry inflatable liferafts); all vessels with overnight accommodations on warm water Oceans routes, Coastwise or Limited Coastwise routes more than 3 miles from shore; all vessels on Great Lakes or Lakes, Bays and Sounds routes more than 1 mile from shore; and all vessels without overnight accommodations on cold water Coastwise routes more than 3 miles from shore.

All vessels not specifically listed above could be affected by the new requirement to carry out-of-water survival craft, depending on what they currently actually carry.

The second question relates to survival craft on a charter vessel with 10–20 passengers fishing for salmon outside the Golden Gate on 1 April 2014. Such a vessel presumably would be under 100 gross tons, and as such inspected and certificated under 46 CFR Subchapter T (Small Passenger Vessels).

The water in the Pacific outside the Golden Gate is cold all year with the exception of September (per Coast Guard Navigation and Vessel Inspection Circular (NVIC) 7–91), so the "cold water" requirements in 46 CFR 180.200(c) apply.

Within 20 miles of shore, the vessel would be required to carry out-of-water survival craft (inflatable buoyant apparatus) if it is a wooden vessel without subdivision. Other vessels can carry 100 percent life floats.

If the vessel goes beyond 20 miles (i.e., Oceans route), it would be required to carry out-of-water survival craft (inflatable buoyant apparatus) if it is without subdivision. Otherwise it can carry 100 percent life floats.

Notwithstanding the above minimum requirements, the Officer in Charge, Marine Inspection may require any ves-

sel to carry additional lifesaving equipment if the OCMI determines that the conditions of the voyage render the requirements in the regulations inadequate.

Mr. GARAMENDI. Under the current law. And you do listen to the NTSB or at least take their counsel into consideration?

Admiral KENNEY. Always, sir.

Mr. GARAMENDI. Always. One more question if I might, Mr. Chairman, and this has to do with the—I guess Mr. Cordero. What's this about the major shipping lines—Maersk, CMA–CGM, and the Mediterranean Shipping Company—forming some sort of pact?

Mr. CORDERO. Yes, thank you, Congressman.

Mr. GARAMENDI. And what effect does that have on shipping, the cost of shipping, et cetera?

Mr. CORDERO. What you've alluded to is an alliance known as the P3 alliance. And that alliance essentially is a vessel sharing agreement. Given that, that's within the specific purview of the FMC.

As to the question, what is involved and its impacts, I will represent to the subcommittee at this point that we will thoroughly report on that, and the reason is because that agreement has just been filed at the FMC, and our staff is, as we're speaking, currently reviewing that agreement and addressing the questions with regard to potential anticompetitive impacts or costs that may be impacted, including with regard to port of coverage and how it impacts terminal operators, port authorities. Essentially, they're going to be asking all the appropriate questions on review of the agreement.

Mr. GARAMENDI. So if you have the budget, you're going to have a summit on this?

Mr. CORDERO. With regard to the summit, Congressman, I think there is a question with regard to this particular alliance. It is not unprecedented in terms of an alliance by carriers for a vessel sharing agreement. What is unprecedented about this particular alliance is the large scope—the three largest carriers in the world coming together in this proposed vessel sharing agreement. In relation to the summit——

Mr. GARAMENDI. Do you know the details of the agreement? Would you have the authority to find out the details of the agreement?

Mr. CORDERO. We will know the details. The agreement has just been filed, Congressman, Thursday, I believe, of last week, and again, our staff right now, as we're speaking, they're reviewing that agreement, and they will be reporting to the Commission as to their findings and observation, and we will, of course, have further details as to the agreement itself.

Mr. GARAMENDI. Would it be fair to say that you have concerns about the competitiveness or the anticompetitiveness of the agreement?

Mr. CORDERO. Well, I would definitely represent to the subcommittee that we're going to look to those concerns. There's a number of stakeholders that already have indicated their concerns

in the shipping community, so of course the FMC and our staff will be looking to address those concerns.

Mr. GARAMENDI. I thank you. Mr. Chairman, thank you very much. I yield back.

Mr. HUNTER. Thank the ranking member.

Admiral, I've got a quick question for you. Current law gives the Service Secretary—in the case of the Coast Guard, the Secretary of the Department of Homeland Security—the authority to determine the fitness to serve of members of that Secretary's Service. However, current law limits that authority with respect to flag officers.

Current law prohibits the service—the Secretary from retiring a flag officer for disability without a review of that flag officer's case by medical personnel and approval by the Sec Def. Does the Flag Officer Corps of the Coast Guard vesting final authority for flag officer disability requirement decisions with the Secretary of Homeland when the Coast Guard is operating in the Department of Homeland Security?

Admiral KENNEY. Mr. Chairman, thank you for that question, and thank you for highlighting what is somewhat of a unique issue for the Coast Guard in that the authority of the Service Secretary and the Cabinet Secretary is vested in one person, namely the Secretary of Homeland Security.

What you're asking us, I believe, is to make a choice between having an additional layer of appeal that is enjoyed over in DOD where it would go to the Service Secretary and then the Sec Def, as opposed to potentially streamlining the process that the Coast Guard currently has where it goes to the Secretary of Homeland Security and then to the Secretary of Defense.

And after evaluating the two different systems and look—balancing the need for someone to potentially have an appeal right as opposed to streamlining the process, it's the Coast Guard Flag Corps' preference that we have the final decision authority rest with the Secretary of Homeland Security for timeliness and efficiency.

The incidents of aggrieved flag officers, we're unable to find any in recent history, and we don't feel that that appeal ability is outweighed by the desire to have the system move more effectively and efficiently. Thank you, sir.

Mr. HUNTER. Thanks, Admiral.

Mr. Cordero, when it comes to IT systems—you talked about that a little bit—I think what we're going to do here is have a little bit of permanent oversight on anybody getting any new IT systems, because whether it's DOD or Homeland Security, it seems like those always go over budget, they always go over time, and you end up getting an inferior product for your money.

So we encourage you to do that. We just want to do it the right way, and that's because you can't make up for it in the long run. I was looking at your testimony, too. You said—a lot of trouble with your employees in 2013—fiscal year 2013 due to sequester and due—you had a—you said you had 6 furlough days for all the employees?

Mr. CORDERO. That's correct, Chairman.

Mr. HUNTER. And I think we're authorizing at the sequester number, which is about, what, $3 or $4 million less than your—than the $25 million authorized by the President?

Mr. CORDERO. As I understand that number, the proposed authorization is $23 million, but in terms of what we're operating now is $22.8 million, and what I've referenced in my statement is $25 million. And that's just to keep us at a sustainable level.

Mr. HUNTER. Thank you, Mr. Cordero.

Gentlemen—Mr. Shapiro and Mr. Rosekind, it seems like you guys are out of things to do, so you need to pile on more and more stuff and try to find ways that you can be relevant. If you're looking at Florida where the water is 80 degrees or in the South Pacific where the water is 80 degrees and you're talking about, in this case, Mr. Rosekind specifically, the out-of-water survival crafts, why not let the Coast Guard determine what types of ships have to have what where?

Dr. ROSEKIND. Using the Coast Guard's own report to determine how they would apply those kinds of rules shows that they don't have the data to determine that.

Mr. HUNTER. They have the data that says how cold the water is, and if the water's not very cold, then you can be in it longer, and if it's cold, then you can't.

Dr. ROSEKIND. The Coast Guard has a risk management approach to deal with many of the different variables, including vessel structure, the temperature of the ocean, et cetera. The problem is there are no specific formulas or data that show that those are effective. NTSB investigations have found that the requirement for all passenger vessels to have out-of-water survival craft will save lives and prevent injuries.

Mr. HUNTER. I would go back to the ranking member's question. I would guess if you're in San Francisco, then you should have an out-of-water survival craft, because it's cold, and you have great white sharks there, too. It's not as much fun to surf there as in San Diego. But if you're in San Diego, you probably don't need the same level of survival crafts.

What I don't understand is why isn't the Coast Guard considered the preeminent expert on what they need when they're the ones that are out there doing it every day. They're the ones that see the bodies, see the people, and they do, I think, have the numbers on how many people they rescue, how long those people were in the water for, and how they were able to stay alive, right?

Dr. ROSEKIND. The NTSB has investigated accidents in which those holes, those vulnerabilities, have become apparent. For example, the report does not adequately address the vulnerabilities of disabled and elderly passengers.

Mr. HUNTER. So here's my question, though. You have records of people getting hypothermia in 85-degree water?

Dr. ROSEKIND. Not to my knowledge in 85-degree water.

Mr. HUNTER. OK. So if you're operating in 85-degree water, you probably don't need an out-of-water survival craft, right?

Dr. ROSEKIND. Survivability depends on more than just the water temperature. Determining which vessels need out-of-water survival craft using risk management requires data. The Coast Guard's

records and its report do not have sufficient data to repeal the statutory requirement for out-of-water survival craft.

Mr. HUNTER. Thank you.

Ms. Hahn recognized, if you're ready.

Ms. HAHN. I was born ready. Thank you, Mr. Chairman.

This is—I'm going to direct this to the Honorable Cordero, and you and I have talked a lot about this, but sequestration certainly has had a drastic impact on all of our Government agencies, and smaller agencies are much more sensitive to any funding reductions since, really, every dollar counts.

So the President has requested that the FMC receive $25 million next year, but there have been some suggestions that the Commission could continue to still operate effectively even if it was funded to levels as low as $22 or $23 million, potentially putting even larger strain on your agency and inhibiting the Commission's mission of regulating the U.S. international maritime transportation system.

It seems easy around here sometimes to defund agencies like yours, because, frankly, I think a lot of folks aren't exactly clear on what FMC's mission really is as opposed to, for instance, the Coast Guard. But why don't you tell this committee how the current sequestration levels have impacted the allocated 126 employees.

For an agency of only 119 people presently, what would funding at $23 million for the next 4 years mean to your agency? How would this affect your ability to achieve your mission? You might want to retell us what exactly your mission is, and how would it impact the current IT infrastructure?

And maybe even staff morale, I think, is something that we should pay attention to, because during this time, I think all of staff in all of our agencies and departments certainly have felt less than appreciated probably during some of these budget cuts. So I don't know if you got all those four questions.

Mr. CORDERO. Yes, Congresswoman.

Ms. HAHN. OK.

Mr. CORDERO. I appreciate your questions, and you've covered a lot of areas and I'm glad to have the opportunity to address those questions. And let me just say that in my statement I referenced that the maritime industry is part of a freight policy.

I will say the work of this subcommittee and Chairman Shuster in the Transportation and Infrastructure Committee, one thing that the industry has admired, maritime is no longer seen as a stepchild when it comes to the important aspect of the industry, be it the FMC, be it MarAd, or the Coast Guard.

So with that context in mind, for me, it's challenging for a small, independent agency, and I'm thinking of the current 119 people we have in this agency, the authorized requests in terms of the FTE is 126, but because of retirements and people who had left the agency, we're down to 119. We haven't been able to backfill. And I will represent to this subcommittee that as I answer this question, I'm thinking of the 119 people who are there right now. They are dedicated and work hard.

And I think if you inquire of our staff, from what I hear, they're a little concerned about the Chairman, who is asking the line,

rank-and-file staff to go beyond their expectations. And that's just my point, we are very lean, and on the other hand, we are part of that $930 billion of ocean transportation commerce. Congresswoman, your district includes the largest port complex coverage in the Nation and has represented your district in an excellent fashion, and you recognize the growth of containerization.

Last month, the President's Export Council, Secretary of Commerce reported that since 2009 to the present there has been a 30,000 increase in small businesses in the import-export industry. Secretary Vilsack, Agriculture Secretary reported that in the last 5 years, the growth in agriculture exports has far exceeded numbers beyond any time in our history. Coming from California, it's fair to say that California has a great interest in agricultural exports.

So in that context, the challenges and mandate of the FMC pursuant to the Shipping Act, post-OSRA, has been extremely challenging. Now, I will say, lastly, I thoroughly respect the subcommittee in terms of the funding levels and the challenges that you have, but I'm here and would be remiss not to continue to give the message of the great job this agency does with a limited staff, and emphasize the $25 million is just to survive. There's no fat in that budget.

Ms. HAHN. Thank you. Could I just have a couple more seconds, Mr. Chairman? Thanks.

I just—when I slipped away briefly here, I just went upstairs where the Panel on 21st-Century Freight Transportation, which I'm one of 11 Members of Congress that has been on for the last 6 months, and we just presented our recommendations for a national freight policy, first time that we've actually ever said we should have a national freight policy, and these were our recommendations. Honorable Cordero, if your agency was to suffer more reductions, how would that impact your ability to oversee or make sure that the freight industry in this country was operating properly?

Mr. CORDERO. Well, for one, there's been a couple of good questions presented to me in some of those areas. For example, the filing and the monitoring of agreements like the P3 alliance, an agreement that many people in the industry see it as a game changer.

Ms. HAHN. Which was one of our recommendations, by the way, that we have more public-private partnerships.

Mr. CORDERO. Right, see it as a game changer, and thus is paramount that this agency continue to do the job that, in fact, it was mandated to do when formed in 1961. And when you look from that perspective of what the FMC was about in 1961, let us reorganize—in 1961 containerization as we know it today was nonexistent.

Today in the 21st century, the challenges that the FMC has before it given containerization, to address the cargo demands, the services—in the case of Long Beach, Los Angeles, I spoke last week—2 weeks ago at the WESCCON Conference. And I was really taken by the number of positive commentary I had from people, from the OTI industry that I spoke before who acknowledge the great service that the FMC has given by way of our area represent-

atives at the major port complexes, be it New York, be it Florida, be it Long Beach, Los Angeles.

As I mentioned in my testimony, right now we don't have anybody in Houston, one of our Nation's great bulk ports. And we don't have one right now because we are unable to backfill that position given the concern about the pending budget.

Ms. HAHN. Thank you very much for the extra time, and I know—I just want to go on the record saying at a time when the maritime industry—we're finally getting it in terms of what that means to this country's economic development, to job creation. I for one would not be in favor of cutting this agency from what the President has asked, which is still sort of bare bones, but thank you for the extra time.

Mr. HUNTER. Thank the gentle lady. I think the contrast here, too, Mr. Cordero—and if Mr. Jaenichen was here from the Maritime Administration, you would have three folks, including the admiral whose job it is to try encourage the maritime industry, encourage maritime strategy, encourage trade, encourage best practices on ships.

And then Mr. Shapiro and Mr. Rosekind, I guess your job is to make it as onerous as possible on these gentlemen sitting over here. And that's what it looks like to me, and you just take the Clean Water Act for example, it went about 30 years not referring to boats, right? The Clean Water Act until, what, just this last decade did not refer to ships at all. It was about having a plant by a river or something like that.

And then all of a sudden, it seems like the EPA ran out of things to do and regulate and so it's now going to refer to ships, and like Mr. LoBiondo was talking about, you're going to regulate the rain runoff on small fishing vessels. It just seems a little bit crazy to me.

Mr. SHAPIRO. Could I respond, Mr. Chairman?

Mr. HUNTER. Yes, sir.

Mr. SHAPIRO. Well, the history of this particular permit is such that EPA initially determined not to hold vessels subject to permitting requirements under the Clean Water Act. That decision was challenged and ultimately through a court process it was decided that given the language of the Clean Water Act, discharges from vessels had to be subject for permitting under the Clean Water Act absent a moratorium such as Congress passed or an extension or some other act.

So we were bound at that point to issue permits to cover vessels, to address any environmental concerns, but most importantly, without an applicable permit, discharges from the vessel would not be permitted, would be a violation of the Clean Water Act. So in crafting our Vessel General Permit and our proposed Small Vessel General Permit, we had to be fairly comprehensive and inclusive in order to allow vessels to operate legally under the requirements of the Clean Water Act.

Any individual discharge you might identify air conditioning condensate or rainwater as specific examples, but the broader implication of the court's decision and being subject to the Clean Water Act and its permitting requirements is that all discharges had to

be covered by a permit in order to permit the vessels to operate legally without threat of penalty or citizen suit.

So I just want to make it clear in response to your comment as well as Congressman LoBiondo's comments that although you could select individual discharges and say why is EPA regulating this, I think the broader answer is it's part of a comprehensive scheme under the Clean Water Act that requires us to have permit applicability for all discharges whether it's a wastewater treatment plant or an industrial facility or now because of the court decisions, vessels that operate in U.S. waters, you have to have a permit that covers those discharges.

In crafting our requirements, though, we have tried to be very sensitive to the nature of the discharges, the nature of the vessels, especially in the case of small vessels. If you look at what the requirements actually are, they're really good housekeeping practices for the most part that says: Don't make it easy for stuff to get washed off the deck; check for leaks of oil; where applicable, use biodegradable or otherwise nontoxic lubricants.

So they're things we think are good practices that are, as cost estimates earlier indicated, are not inordinate to apply and that do, based on our analyses, provide environmental protection. So there are clearly benefits of this regulatory scheme in our view, and water quality is protected.

Mr. HUNTER. So give me an example, Mr. Shapiro. Just one last—so give me an example. Say that the Coast Guard pulls my boat over, what are they looking for? Say it's raining. That's what—an actual example. So it's raining. What is the Coast Guard look for in order to allow me to not get penalized?

Mr. SHAPIRO. Well, what the Coast Guard would be looking for—and I'll allow Rear Admiral Kenney, obviously, to weigh in here—but whether the requirements are in place. So in the case of a small vessel, should that be the situation, really they would be checking to see whether you or whoever is operationally in charge of the vessel conducted checks periodically—four times over the course of the year—and certified that those examinations——

Mr. HUNTER. So is that paperwork? They would look to see if I had checked off and done the inspections?

Mr. SHAPIRO. Yes. This is actually the form that would be on the vessel. It would not have to be submitted to EPA separately. It would be something that would be maintained on——

Mr. HUNTER. But say that again. I would submit to the EPA——

Mr. SHAPIRO. No, you would not have to submit that to EPA. Under the proposed Small Vessel General Permit, this would be something that you would keep on the vessel that would be available should the Coast Guard be on your vessel, and it would essentially say you've checked for these commonsense procedures to make sure they're in place, and to the extent that you've identified some problems or issues, you've addressed them on the vessel.

Mr. HUNTER. Thank you very much for your clarification, and thank all of you, too, for your service and for doing what you do.

Ms. Frankel is recognized.

Ms. FRANKEL. Thank you very much, and thank you for your service. My father was a member of the Coast Guard. So I have a little different area I want to cover. I have a constituent who called

my office and came to see me that was a very proud recruit, who was a recruit for the Coast Guard. And during her period of recruit—of boot camp, she began to be sexually harassed by her commander. Because she feared reporting it, she didn't know she could be transferred away, she quit. She later learned that another recruit actually was sexually assaulted by the same commander. He was eventually prosecuted.

So that's a real life story. Some of this issue of sexual assault and harassment has come up in all branches of the Service. And incidentally my son was a Marine, too, so I have the highest respect for the people in the Service. I want to make that clear.

But there was—in 2011, the Congress enacted an important change in the Department of Defense sexual assault policy when it gave victims of sexual assault the ability to place an expedited request for transfer away from the location of his or her attacker. This was a good change. Because the Coast Guard has—under the Department of Homeland Security and not the Department of Defense, there was some confusion as to whether or not this change applied to the Coast Guard.

The Coast Guard commandant, to his credit, in March issued and ordered that the provision would apply, but there are some folks who are concerned that that order could be repealed, and we'd rather have a statute in law that binds future Coast Guard commandants. There is a bipartisan bill by Representative Mike Turner and Niki Tsongas called the Coast Guard STRONG Act, which would require the Coast Guard to grant victims of sexual assault the ability to place an expedited request to be transferred away from the location of his or her attacker.

I guess I'm going to come to Admiral Kenney and just ask whether or not that particular provision—how you would feel about that being added to a reauthorization act here.

Admiral KENNEY. Thank you, Congresswoman Frankel and thank you for your service and for your father and your son as well. You've raised a very important issue, and as the Coast Guard is really committed to eliminating sexual assault and sexual harassment from our ranks, it is—quite frankly, it is a cancer on our Service that we need to eliminate; not just control, but eliminate. And when I hear stories of—like those of your constituent—and I am familiar with that case and Cape May, and that company commander was brought to justice through the Uniform Code of Military Justice in a court martial prosecution.

But there is just no place for sexual assault and sexual harassment in our Service. Not only does it destroy the victims, as you alluded to in your statement, but it also has a tremendous impact on mission readiness. Coast Guard men and women put their lives on the line every day, and in order to conduct the missions that we conduct and do it safely and effectively, you have to trust the people that you're with, and sexual assault and sexual harassment destroy those bonds of trust and mutual respect that are so critical to supporting our people and effectively executing our missions.

As you mentioned, ma'am, the Coast Guard has taken onboard the STRONG Act as it was passed in the National Defense Authorization Act, and we have implemented it. Thus, we would have no objection to the STRONG Act being enacted. We're doing it now.

We intend to continue doing it. Of course, we leave the option of whether or not the victim desires to be transferred. Oftentimes, the victim's support network is with the unit. We may want to have the perpetrator—the alleged perpetrator be transferred in order to get that separation. But to short-answer your question, ma'am, there's no objection.

Ms. FRANKEL. Thanks. Mr. Chairman, I have 30 more seconds to—thank you.

First of all, thank you for your answer. I think it's a very good answer.

And Mr. Chairman, I would request that as this committee considers this reauthorization bill, that we put a provision adopting some of this language in that bill because I think we can all agree that no person who signs up to risk their life, their well-being for our freedom should be subject to any type of sexual harassment or assault, and I hope we could all work together on this particular issue. And I thank you.

Thank you, Mr. Chair, for the extra time.

Mr. HUNTER. Thank the gentle lady. I know she has a great idea, and we applaud you for taking it on voluntarily after passing it for the four military services out of the Armed Services Committee. So good on you, Admiral, and the Coast Guard, and we ought to make it statutory. And if you're doing it anyway, we ought to just make it legal.

All right. Well, if there are no more questions—we do have some more, so Mr. Garamendi is recognized.

Mr. GARAMENDI. A couple of unanimous consent requests. The first one dealing with a letter into the record from Deborah Hersman, Chairman of the National Transportation Safety Board to myself and Mr. Cummings. And a second letter from Earthjustice, the American Association for Justice, and others, that lists concerns with expanding responder immunity under the oil pollution act. I would like those two letters entered into the record.

Mr. HUNTER. Without objection.

[The requested letters follow:]

National Transportation Safety Board
Washington, DC 20594

Office of the Chairman

October 25, 2013

The Honorable John Garamendi
US House of Representatives
2438 Rayburn House Office Bldg.
Washington, DC 20515

The Honorable Elijah Cummings
US House of Representatives
2235 Rayburn House Office Bldg.
Washington, DC 20515

Dear Congressman Garamendi and Congressman Cummings,

Thank you for your September 19, 2013, letter about the US Coast Guard's report on survival craft and the use of out-of-water flotation devices (survival craft that ensures no part of an individual is immersed in water). The National Transportation Safety Board (NTSB) did not have an opportunity to provide comments on this report before it was released, but we are happy to provide those to you now.

The NTSB has a 40-year history of recommendations supporting the use of out-of-water survival craft. We know that these devices save lives. Given our history of accident investigations, we also know that they reduce the likelihood of passenger vessel casualties, including, in particular, fatalities and injuries to passengers requiring more assistance, such as children and elderly or disabled persons.

Our most recent safety recommendation on this topic was issued as a result of our investigation of the *Queen of the West* engine room fire, which occurred on the Columbia River in Oregon on April 8, 2008, and was issued to the US Coast Guard in 2009.

M-09-17

> Require that out-of-water survival craft for all passengers and crew be provided on board small passenger vessels on all routes.

The *Queen of the West* was a passenger vessel with 177 persons onboard when fire broke out. The fire was detected and contained by the suppression systems and crew actions; however, had the fire grown to the extent that required the Captain to order the evacuation of the vessel, 124 passengers (mostly elderly senior citizens) and 53 crewmembers would have abandoned ship using one rescue boat with a capacity for 6: 4 passengers and 2 crewmembers. Had the vessel fire spread more quickly, the passengers and crew would have had to evacuate into the 44°F water

wearing only lifejackets for flotation. With the nearest assistance about 2 hours away, the effects of hypothermia would have quickly set in and the passengers and crew would have had a high risk of injury and death.

Our investigation of the September 8, 2011, *Trinity II* liftboat accident in the Bay of Campeche, Gulf of Mexico, revealed that the crew were partially submerged in the warm water of the Gulf of Mexico after abandoning their ship in a storm, but the length of exposure had slowly lowered the body temperatures of the crew until four died as a result of hypothermia, drowning, or complications from prolonged exposure. Had the crew been able to remain out of the water, we believe that all of them likely would have survived.

As you know, NTSB investigations are very thorough. We collect a great deal of information that not all investigative agencies collect. In reviewing the Coast Guard's report on out-of-water survival craft, we found that the report raised several questions and points for consideration:

- Given the demographic trend of an increasingly elderly population, it is reasonable to expect an increase in the percentage of elderly passengers on small passenger vessels. The report does not examine how the safety needs of this segment of the population should be addressed in an emergency.

- The data does not accurately evaluate the issue of survivability in water for persons with disabilities, the elderly, and children using out-of-water survival craft. Specifically, how would a physically challenged person hold on to a life float or other buoyant apparatus in the water?

- The report concludes, "Based on analysis of the 205 vessel casualties discussed above, it cannot be conclusively determined if out-of-water survival craft would have prevented any of the 452 personnel casualties." Without the availability of a comprehensive accident report, the determination of whether an out-of-water survival craft would have saved lives is subjective. These accident reports lack the depth of investigation and analysis of safety that is needed to make objective determinations.

- The report dismisses a number of the personnel casualties because the individuals had not entered the water wearing a lifejacket or personal flotation device (PFD). We are unsure about why these casualties would be omitted from consideration because an out-of-water survival craft would have provided these persons a better chance for survival.

- The report analyzes only accidents that resulted in fatalities or missing persons. It excludes accidents involving other significant personal injury associated with water immersion. We believe that out-of-water flotation would minimize not only fatalities but also injuries and that, as a result, accidents involving other significant personal injuries should be considered, as well.

- In letters from the Coast Guard to the NTSB, the Coast Guard has stated, "casualty statistics do not suggest the need for out-of-water survival craft on vessels operating on

all routes"; "The Coast Guard does not believe that out of water survival craft is justified for all vessels equipped with life floats and buoyant apparatus"; and "An analysis of all available reports of casualties involving water exposure during the period from 1996 to the present found no cases where investigation determined the survival craft requirements to be a relevant factor in the outcome."[1] Given this documentation against out-of-water survival craft, how was an unbiased and independent assessment ensured?

- We commend the Coast Guard for its efforts in advancing the state-of-art in PFDs and primary lifesaving appliances required on international voyages as a result of efforts at the International Maritime Organization. However, based on our investigations, we believe that same effort needs to be made for domestic vessel operations.

- The report does not address the potential for innovative or viable alternatives to the current designs of inflatable life raft which provide out-of-water protection. The NTSB believes that a flexible and modern approach to out-of-water survival craft should be studied.

The NTSB is charged with improving the safety of the traveling public without consideration for the cost of the safety recommendations we make. In light of this, we are unable to effectively evaluate the cost benefit analysis contained in the Coast Guard's report. However, although we are aware that there are costs that must be considered, we are also aware that there are possible, less costly alternatives to the out-of-water survival craft evaluated in the report. In fact, the international Safety of Life at Sea (SOLAS) regulations allow for novel designs that provide equivalent or higher standards of safety and that encourage more functional and potentially cost-effective equipment. The report also did not evaluate the economies of scale resulting from a broader requirement of out-of-water survival craft.

We were pleased to see Congress incorporate the NTSB's safety recommendation resulting from its investigation of the *Queen of the West* engine room fire in section 609 of the Coast Guard Authorization Act of 2010 (P.L. 111-281). We believe that numerous studies have already been conducted on this topic, and it is time to implement this recommendation. I appreciate the opportunity to provide our input on out-of-water survival craft, which will save lives with their increased use. I urge you and your Committee members to support Section 609 of the 2010 Coast Guard Reauthorization Act.

If you need additional information, please do not hesitate to contact me. Your staff should feel free to contact Ms. Jane Terry, Director of Government Affairs, at (202) 314-6218 or jane.terry@ntsb.gov.

Sincerely,

Deborah A.P. Hersman
Chairman
Approved for Electronic Transmission
No Hard Copy Will Follow

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[1] Letters from the US Coast Guard to the NTSB, dated January 4, 1995; June 6, 1996; and February 22, 2010, respectively.

ALLIANCE FOR JUSTICE ▫ AMERICAN ASSOCIATION FOR JUSTICE
CENTER FOR JUSTICE & DEMOCRACY AT NEW YORK LAW SCHOOL
EARTHJUSTICE ▫ ENVIRONMENT AMERICA ▫ GULF RESTORATION NETWORK
NATIONAL AUDUBON SOCIETY ▫ NATURAL RESOURCES DEFENSE COUNCIL
PUBLIC CITIZEN ▫ SIERRA CLUB

October 25, 2013

The Honorable John Garamendi, Ranking Member
Subcommittee on Coast Guard and Maritime Transportation
Committee on Transportation and Infrastructure
2438 Rayburn House Office Building
Washington, D.C. 20515

Re: The Importance of Preserving Responder Liability for Wrongful Deaths and Injuries Resulting from Oil-Spill Removal Actions

Dear Ranking Member Garamendi:

We have been informed by Dave Jansen, Staff Director for the Committee on Transportation and Infrastructure's Subcommittee on Coast Guard and Maritime Transportation, that the Coast Guard Reauthorization Act of 2013 may include a provision to further limit responder liability under the Oil Pollution Act of 1990. Given the importance of protecting workers and the public during removal actions, we would oppose any efforts to expand immunity under the Oil Pollution Act.

On April 20, 2010, an explosion aboard the *Deepwater Horizon* unleashed one of the worst environmental disasters in the history of the United States. It also spurred one of the nation's largest remediation efforts. By "July 15, 2010—the day the well stopped flowing—the response [had] involved approximately 47,000 responders, ... 17,500 National Guard troops from Gulf Coast states, ... and untold hours of work by federal, state, and local officials, employees or contractors of [BP], and private citizens" (On Scene Coordinator Report: *Deepwater Horizon* Oil Spill (Sept. 2011) at 2, *available at* http://www.uscg.mil/foia/docs/dwh/fosc_dwh_report.pdf). The human scale of this endeavor offered a critical reminder. In order to prevent oil spills from compounding into even greater tragedies, we must assure the safety of all who rise in response.

With the Oil Pollution Act of 1990, Congress established a legal framework that protects remediation workers and the public while ensuring that "the substantial financial risks and

liability exposures associated with spill response" do not "deter vessel operators, cleanup contractors, and cleanup cooperatives from prompt, aggressive response" (H.R. Conf. Rep. 101-653 (1990) at 146, *reprinted in* 1990 U.S.C.C.A.N. 779, 825). Under the statute's "limited immunity" scheme, operators, contractors, and cooperatives are generally "not liable for removal costs or damages which result from actions taken" in connection with a federally directed operation (H.R. Conf. Rep. 101-653 (1990) at 146; 33 U.S.C. § 1321(c)(4)(A)). In cases of "personal injury," "wrongful death," "willful misconduct," or gross negligence, however, the statute allows victims to obtain redress from the responder at fault (33 U.S.C. § 1321(c)(4)(B)).

The Oil Pollution Act's longstanding limitations on responder immunity are essential to the safety of removal operations. Immunity risks carelessness. By allowing responders to be held accountable for misconduct, negligence, injury, and death, the statute deters them from engaging in unsafe action. Cleanups, moreover, require many hands. By providing the possibility of redress for workers injured in removal operations, the statute ensures that they are not deterred from participating in such crucial tasks.

We urge you to oppose any proposals aimed at expanding immunity under the Oil Pollution Act and weakening the law's protections.

Sincerely,

Martin Hayden
Vice President, Policy and Legislation
Earthjustice

Michelle D. Schwartz
Director of Justice Programs
Alliance for Justice

John Bowman
Director of Federal and State Relations
American Association for Justice
Formerly known as the Association of Trial Lawyers of America

Joanne Doroshow
Executive Director
Center for Justice & Democracy at New York Law School

Anna Aurilio
Director, Washington D.C. Office
Environment America

Cynthia Sarthou
Executive Director
Gulf Restoration Network

Mike Daulton
Vice President, Government Relations &
Director of National Programs
National Audubon Society

Sarah Chasis
Director, Ocean Initiative
Natural Resources Defense Council

Christine Hines
Consumer and Civil Justice Counsel
Public Citizen

Athan Manuel
Director, Lands Protection Program
Sierra Club

Mr. GARAMENDI. And just—this will open up another series of questions, which I don't think we have time to get to right now, but this has to do with the—Mr. Rosekind, your expertise on sleep deprivation as it relates to the worthiness of the committee to address issues beyond 1 hour and 30 minutes.

On a more serious note, however, there is an ongoing issue of how we ought to deal with sleep deprivation, six on, six off; eight on, eight off. You have some testimony in your written proposal. I would appreciate additional testimony, additional writing and—on that debate back and forth. So if you could provide that, I'd like to have that into the record at sometime in the near future. Thank you.

Mr. HUNTER. There are no more further questions. I thank the witnesses for their testimony. And the letters are entered with no objection, something I said. The subcommittee stands adjourned.

[Whereupon, at 11:55 a.m., the subcommittee was adjourned.]

Statement of the Honorable John Garamendi
Subcommittee on Coast Guard and Maritime Transportation
Hearing on Coast Guard and Maritime Transportation Authorization Issues
Tuesday, October 29, 2013

Thank you Chairman Hunter, and good morning to our witnesses gathered here this morning. I look forward to hearing your respective views concerning the issues and priorities that the subcommittee should consider as we move forward to write a new Coast Guard and Maritime Transportation Authorization bill this Congress.

At the offset I want to say that I am optimistic that Chairman Hunter and I will be able to produce a bipartisan bill that will attract broad support in the committee and in the House. I also believe that there are two key considerations we should keep in mind to achieve this outcome.

Foremost, and similar to surgeons operating on a patient, we should seek first to do no harm.

As the members of this subcommittee know and appreciate, the U.S. maritime economy is vital to our national economic well-being and the livelihoods of millions of Americans. For example, U.S. maritime trade is projected to grow in value from $1.8 trillion in 2008 to $10.5 trillion in 2038. Furthermore, the U.S. maritime economy generates 1.3 million trade dependent maritime transportation jobs.

As our economy continues to recover from the worst economic downturn since the Great Depression, our focus should remain on promoting policies to grow and strengthen our maritime economy, to stimulate maritime job creation, and to modernize our merchant marine so that it can be more efficient and competitive in the 21st Century.

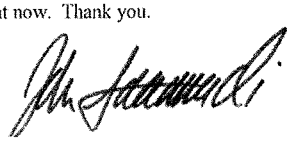
Second, we should use this reauthorization as the first step in developing a new National Maritime Policy to chart our long-term course.

Despite the enduring importance of the U.S maritime industry to our national economy and U.S. international trade, the sad reality remains that our U.S.-flag fleet and U.S. shipbuilding industry are mere remnants of the industrial colossus that was built in the 1940s to win World War II.

Some aspects of our existing maritime policy, such as the Jones Act and cargo preference requirements, have been and remain effective in sustaining what remains of our domestic and ocean-going fleets.

But at present, the absence of a thoughtful, far-reaching National Maritime Policy that defines the future role and capabilities of the U.S. merchant marine and U.S. shipbuilding industry is a liability that better serves the interests of our international competitors than our own carriers, mariners and shipbuilders.

The U.S. has been, and remains, a maritime nation. It is high time that we develop a new National Maritime Policy, and I urge that we begin that discussion right now. Thank you.



Oct 28, 2013

Congressman Andy Barr Statement for the Coast Guard and Maritime Transportation Subcommittee Record

Good Morning. I would like to thank Chairman Hunter, Ranking Member Garamendi, and the Subcommittee on Coast Guard and Maritime Transportation for holding this hearing. I greatly appreciate the opportunity to appear before you and to offer testimony on how the Committee can provide a commonsense and practical remedy to an unnecessary hardship in my district. I offer these comments for the record in order to encourage this subcommittee to include language within Coast Guard and maritime transportation authorization legislation or similar legislation that will transfer the licensing authority for the Valley View Ferry from federal operating licensing to a state-based operating license.

In 1785, the Virginia legislature granted John Craig, a Revolutionary War soldier, a perpetual franchise to operate the ferry located in what is now Valley View, Kentucky. In operation since that time, the Valley View Ferry is currently the oldest continuously-operated ferry west of the Appalachian Mountains and is the third oldest ferry in the United States.

Federal regulations changed in 2006 to establish a new requirement that the Valley View Ferry must comply with all U.S. Coast Guard inspection and licensing regulations. These licensing regulations are threating the closure of this historic ferry because the Valley View Ferry is now required to employ operators who hold a Merchant Mariners License, which is the highest level of operator licensing issued by the U.S. Coast Guard. This new licensing requirement is unnecessary and does not properly represent the unique operation of the Valley View Ferry.

This toll-free ferry does not have steering capabilities; instead, it is attached to two overhead cables that guide the boat onto landings on each side of the river, approximately 500 feet apart. As you can see, there is obviously a huge difference between the Valley View Ferry and the towboats that operate on the Ohio and Mississippi Rivers or vessels that operate on the open seas. Yet, due to current federal regulation, a person seeking to become an operator of the Valley View Ferry must have the same licensing requirements as someone who wants to operate the Staten Island ferry in New York City, a towboat on the Mississippi or the Belle of Louisville on the Ohio River.

As a result of the federal government changing how the ferry is regulated, the Valley View Ferry Authority, which manages the ferry, has been forced to reduce operating hours and search all over the county to find a properly certified operator willing work for less than half of the normal wages demanded by operators who similarly possess a Merchant Mariners License. So, while the Valley View Ferry is

currently able to operate – albeit, in a diminished capacity and with tremendous hardship – there is no guarantee that the ferry's managers will continue to be able to find a viable operator in the future. Rather than rely on the current, temporary fix, what the Valley View Ferry truly needs is the permanent solution that can be provided by this committee's members.

The bottom line is that the Valley View Ferry supports jobs and commerce in central Kentucky. Every day the Valley View Ferry is not in operation, it causes economic disruption for nearby businesses and tremendous hardship for the merchants and workers who need to use the ferry to commute efficiently to and from work.

With your help, I seek to remedy this senseless federal regulatory overreach by transferring the licensing authority for the Valley View Ferry from federal operating licensing to a state-based operating license. My bill, H.R. 2570, the Valley View Preservation Act of 2013 is designed to act in conjunction with Kentucky state law, and therefore will not take effect, until the Commonwealth of Kentucky establishes a safety and licensing program tailored to the Valley View Ferry.

While my bill is designed to prevent any lapse in federal or state regulations, I would be open to working with committee members to make any changes that your members might deem appropriate to remedy this hardship.

The situation with the Valley View Ferry is a classic example of an overbroad federal regulation impeding the ability of state and local governments to operate. I am confident that there is a simple and practical fix to this problem and I would, again, like to thank Chairman Hunter, Ranking Member Garamendi, and committee members for affording me the time to speak this morning. I ask for your consideration and support on this very important issue to central Kentucky. Thank you.

U. S. Department of Homeland Security

United States Coast Guard

Commandant
United States Coast Guard

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Washington, DC 20593-7213
Staff Symbol: CG-094
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TESTIMONY OF
REAR ADMIRAL FRED KENNEY[1]
JUDGE ADVOCATE GENERAL

ON
"COAST GUARD AND MARITIME TRANSPORTATION AUTHORIZATION ISSUES"

BEFORE THE
HOUSE SUBCOMMITTEE
ON COAST GUARD AND MARITIME TRANSPORTATION

OCTOBER 29, 2013

Good morning Chairman Hunter, Ranking Member Garamendi, and distinguished Members of the Subcommittee.

I am pleased to appear before you today to discuss the Coast Guard's legislative proposals.

OVERVIEW

During this Session of the 113th Congress, the Coast Guard has transmitted twelve legislative proposals – six of which pertain to the Coast Guard as a military service and a response entity; and six of which pertain to maritime safety, shipping, and navigation. From the viewpoint of the Coast Guard, both as a response entity and as a maritime safety entity, two proposals deserve specific mention:

- Active Duty for Emergency Augmentation of Regular Forces, a proposal to align the Secretary of Homeland Security's disaster and emergency response authorities with those of the Secretary of Defense.
- Reporting of Positive Drug Testing Results, a proposal to close a statutory gap that allows certain mariners to evade the requirement to show proof of cure or rehabilitation.

Additionally, I will speak to four other matters:

- Sportfishing and Recreational Boating Safety Act of 2013, a separate proposal to modernize the administration of the Sport Fish Restoration and Boating Trust Fund.
- Physical Disability of Flag Officers, a proposal to affirm the Secretary of Homeland Security as the final authority with regard to service determinations of Coast Guard flag officers.
- Protection and Fair Treatment of Seafarers, a Coast Guard legislative proposal to facilitate the prosecution of marine environmental crimes.

[1] RADM Kenney appears before the Subcommittee on behalf the Commandant to testify on U.S. Coast Guard legislative proposals. He does not appear or offer testimony in his capacity as the Judge Advocate General of the Coast Guard.

- 18 U.S.C. § 39A(c), an exception to the prohibition on the use of laser pointers aimed at aircraft, which pose a direct threat to the safety of Coast Guard aviators and should be prohibited in all circumstances.

COAST GUARD LEGISLATIVE PROPOSALS

Active duty for emergency augmentation of regular forces.—Under current law, the Secretary of Homeland Security may order a Coast Guard reservist to active duty for not more than 60 days in any 4-month period or 120 days in any 2-year period.

Historically, this authority has been sufficient for short-duration incidents. Yet, during the 2010 BP DEEPWATER HORIZON incident, the Service discovered that current authority would have been inadequate for repeated sustained activations and deployments, particularly if such activations and deployments occurred within a 12-18 month period.

In the spring of 2010, the pool of fully mobilized, ready, and available Coast Guard reservists stood at approximately 4,700 (excluding those members who were in initial training activities, medically unfit for duty, and elsewhere committed). By January 2011, the Secretary had recalled 2,535 members – nearly 54 percent of the reserve members – to active duty (60-day orders) in response to the BP DEEPWATER HORIZON incident. As a result of the duration of the incident and the 60-day limitation of the orders, as soon as the reservists were proficient in their assigned tasks, they had to be demobilized. If, within 18 months of being released from duties in conjunction with the BP DEEPWATER HORIZON incident, the Secretary had mobilized any one of these 2,535 reservists, that reservist would have been unavailable for two years. In other words, if a Hurricane Katrina-like disaster had followed the BP DEEPWATER HORIZON incident, the Service's response capacity would have been severely, if not critically, compromised.

Congress has anticipated this scenario. In 2011, Congress authorized the Secretary of Defense to recall reservists to active duty for a continuous period of not more than 120 days in the event of a Stafford Act disaster or emergency. This provision of law, however, does not cover the Secretary of Homeland Security or Coast Guard reservists. To permit the possibility of sustained activations, this proposal would authorize the Secretary to order Coast Guard reservists to active duty for a continuous period of not more than 120 days in the event of a Stafford Act disaster or emergency or in the event of a spill of national significance. In terms of response capacity among all branches of the armed forces, this proposal would align Coast Guard response authorities with Department of Defense authorities.

Reporting of Positive Drug Testing Results.—Under current law, the head of a federal agency must release to the Commandant of the Coast Guard a report of a verified positive drug test or a verified drug test violation for a federal civilian employee, a Public Health Service (PHS) officer, or a National Oceanic and Atmospheric Administration (NOAA) commissioned officer who is employed in any capacity on board a vessel operated by the agency.

Current law, however, is silent with regard to an applicant for employment on such vessel if the applicant tests positive for drugs or has a drug test violation.
In such cases, the applicant may, and often does, abandon the federal application process and seeks employment on commercial vessels without having to provide proof of cure or rehabilitation for the prior positive drug test or violation.

To address this gap in enforcement, this proposal would amend applicable law to treat an applicant for federal employment as it does a federal employee, thus requiring the agency head to release, to the Commandant, such information. As well, the proposal would narrow the scope of current law to cover only the federal employee, PHS officer, NOAA officer, and applicant who is a holder of a license, certificate, or merchant mariner's document issued by the Coast Guard. To ensure compliance, the proposal would require every license holder, as a condition of the document, to consent to the release of the report to the Commandant. This is intended to address any perceived ambiguity in law with regard to an agency head's capacity to release such information.

Sportfishing and Recreational Boating Safety Act of 2013.—Both the Coast Guard and the U.S. Fish and Wildlife Service derive funds from the Sport Fish Restoration and Boating Trust Fund to serve the boating and fishing public. Yet, the manner in which current law provides for the administration of those funds by the two agencies has some variance that warrants uniformity. Specifically, the funding for advisory councils should be brought into parity and an additional amendment to enhance the funding for national nonprofit organizations is appropriate to implement Office of Management and Budget and Government Accountability Office recommendations for proper measurement of program success.

Physical Disability of Flag Officers.—Under current law, if a general officer, flag officer, or medical officer is being processed for retirement by reason of age or length of service, and suffers a medical disability that would otherwise qualify the officer for a physical disability retirement, the Secretary of Homeland Security may not retire such member, place the member on the temporary disability retired list, or separate such member from an armed force without the prior approval of the Secretary of Defense. Due to an inadvertent omission of common statutory text, the Secretary of Homeland Security's decisions concerning physical disability retirements of Coast Guard flag officers are now subject to the Secretary of Defense's approval.

This proposal would make the Secretary of Homeland Security's decision regarding the physical disability retirement of a Coast Guard flag officer final, when the Coast Guard is not operating as a service in the Navy.

For some, this proposal does not preserve the ministerial protection for flag officers that current law provides under title 10. I note that the title 10 provision in question was not intended to protect flag officers, but to protect against abuse of the physical-disability system by flag officers.[2] Specifically, 10 U.S.C. § 1216(d) was "designed as an additional safeguard in the attempt to reduce the possibility of abuses in the administering of physical-disability retirement procedures [by medical officers as well as flag and general officers]."[3] At that time, "[t]here was particular concern because of the considerably higher percentage of disability retirements among senior officers, especially general and flag officers and medical officers who had completed their careers and were retiring on length of service or because of age."[4] Due to organizational dissimilarities, the Secretary of Homeland Security is not only a service secretary, but also a cabinet secretary like the Secretary of Defense.

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[2] *See* H. Rep. No. 94-819, at 2, 3-5 reprinted in 1976 U.S.C.C.A.N. 302, 304-305.
[3] *Id.* at 4 (304).
[4] *Id.*

As such, 10 U.S.C. § 1216(d) results in two cabinet secretaries reviewing and approving disability determinations for Coast Guard flag officers. Of the several options available to resolve this double review, the Coast Guard proposes to treat the Secretary of Homeland Secretary as cabinet secretary and, in terms of reviewing physical disabilities for Coast Guard flag officers, to vest final approval authority in the Secretary of Homeland Security when the Coast Guard is not in the service of the Navy.

PROTECTION AND FAIR TREATMENT OF SEAFARERS

I take this opportunity to highlight one Coast Guard legislative proposal, "Protection and Fair Treatment of Seafarers," that the Coast Guard first transmitted in 2007, but that Congress has yet to enact.

This proposal is designed, in large part, to neutralize a litigation tactic that a select few vessel owners and operators employ to evade their responsibilities under federal environmental law. Additionally, this proposal would permit the U.S. Government to render aid and assistance to mariners who, through no fault of their own, find themselves abandoned in the United States. Significantly, this proposal would not cost the American taxpayer one dollar.

The Coast Guard investigates allegations of crimes under the Act to Prevent Pollution from Ships (APPS) that routinely turn on the availability of a seafarer witness who possesses direct knowledge of the criminal act. When a vessel is found in violation of APPS, the vessel can be held *in rem* or under a customs hold until the owner or operator provides surety satisfactory to the Secretary, which includes a financial bond that covers the possible fines, as well as support for the crewmember who remains behind as a government witness. As a negotiation or litigation tactic, the owner or operator will occasionally refuse to provide surety satisfactory to the Secretary and threaten to abandon or abandon the seafarer witness by refusing to pay continued support for the seafarer witness – knowing that the United States has no other ready means, other than to incarcerate the witness using a material witness warrant, aside from negotiating surety, to ensure the continued availability of, or provide support for, the seafarer witness. And in most instances, when the owner or operator resists paying or refuses to pay the seafarer witness' support, the United States is often left to acquiesce to unsatisfactory conditions, such as lesser surety amounts to secure the fine, or to abandon an investigation altogether, which undermines the effectiveness of the Act's regime.

Occasionally, the Coast Guard encounters the seafarer whom an owner/operator has abandoned for purely economic reasons. Under current law, the United States' ability to assist the seafarer victims is extremely limited. More importantly, the inability to assist the seafarer provides no moral incentive for other coastal nations to do the same for the American seafarers who may be abandoned in those countries.

To address these unique circumstances, this provision would authorize the Secretary to provide necessary support for the seafarer whose continued availability in the United States as a witness is necessary for an investigation, reporting, documentation, or adjudication and for the seafarer who is simply abandoned in the United States. The provision is unique in that the funds for such support would be derived solely from reimbursements paid by the owner/operator who fails to provide the necessary support.

That is to say, when an owner/operator who fails to provide support for a seafarer who remains behind to be a witness in an enforcement case, if the United States is forced to pay for the maintenance and support of the crew, this provision would require the owner/operator to reimburse the United States for any expenditures it was required to make. Such support is consistent with the International Maritime Organization (IMO) and the International Labour Organization (ILO) "Guidelines on Fair Treatment of Seafarers in the Event of a Maritime Accident" (IMO Circular Letter No. 2711 (June 26, 2006); IMO Resolution LEG.3(91) (April 27, 2006), and "Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers" (IMO Resolution A.930(22) (November 29, 2001)).

Resolving this issue remains a priority for the Coast Guard. I would appreciate the Subcommittee's further consideration of this proposal. If necessary, I am prepared to brief each Member of this Subcommittee personally and address any concerns that you may have. I am confident that we can find a means to address any Member concerns or objections.

18 U.S.C. § 39A(c)

As a final matter, I draw the Subcommittee's attention to 18 U.S.C. § 39A, which establishes the criminal prohibition against knowingly aiming a laser pointer at an aircraft, yet allows an individual to use "a laser emergency signaling device to send an emergency distress signal."

The physical characteristics of lasers that retain very high irradiance over distance make them a highly ineffective means of emergency signaling in a maritime environment: the likelihood of an individual, in both distress and perpetual motion, fixing the beam on the eyes of rescue personnel or a reflective surface visible to such personnel is, at best, remote. Those characteristics also render it a deadly means of signaling: aiming at a vessel or an aircraft could cause temporary blindness (a.k.a. "flash blindness"), retinal bruising and, in extreme cases, permanent blindness if the beam strikes the eyes of rescue personnel. For the Coast Guard, which commonly uses air assets to facilitate the location of mariners in distress, the consequences could not be more adverse: the use of such a signaling device by an individual in distress could cause the temporary disruption of a search and rescue mission and the loss of equipment and death of personnel deployed to effectuate a rescue.

Since reports of laser incidents first began in 2005, the number of reported incidents have increased dramatically – nationwide, from 311 in 2005 to 3,591 in 2011. In fiscal year 2013, there were 54 lasing incidents involving Coast Guard aircraft and vessels, a 210 percent increase from fiscal year 2012. More often than not, the incidents occurred at dangerously low altitudes (*i.e.,* less than 3,000 feet) and overwhelmingly involved green laser light (94%), which inflicts the severest degree of eye damage.

As recently as October 9, 2013, a Coast Guard small boat and helicopter, while operating near the Pacific Coast Highway bridge in Depoe Bay, Oregon, were targeted by a green laser. The small boat was struck several times; the helicopter was struck once. Coast Guard personnel subsequently identified passengers in a parked car who were pointing a laser light out of the vehicle. Local law enforecement conducted a stop of a vehicle, and a laser was recovered during a search incident to arrest. In statements made to local law enforcement officers, one passenger implicated the other. The latter individual has been arraigned in state court on multiple charges, including menacing and disorderly conduct (a misdemeanor) for pointing the laser at the small boat and helicopter.

The District Attorney's Office does not anticipate proceeding on the misdemeanor charge in favor of possible federal prosecution. Potential federal criminal violations include both 18 U.S.C. § 39A (Aiming a laser pointer at an aircraft) and 18 U.S.C. § 2280 (Violence against maritime navigation).

In light of the limited utility of lasers as emergency signaling devices and the grave harm that such devices could likely cause to Coast Guard personnel, I recommend that Subcommittee reconsider this exception to the general prohibition.

CONCLUSION

Thank you for the opportunity to testify today, and for your continued support of the United States Coast Guard. I look forward to answering any questions you may have.

Question#:	1
Topic:	end strength levels
Hearing:	Coast Guard and Maritime Transportation Authorization Issues
Primary:	The Honorable John Garamendi
Committee:	TRANSPORTATION (HOUSE)
Witness:	Rear Admiral Fred Kenney, USCG Judge Advocate General
Organization:	U.S. Department of Homeland Security

Question: Admiral Kenney, it is my understanding that the current authorized end-strength level for the Coast Guard exceeds the actual end-strength level that was used to develop the FY 2014 budget request.

Recognizing that the budget process rarely results in the Coast Guard getting more funding than it actually needs, does the current authorized end-strength level reflect the actual need for Coast Guard personnel to fulfill mission requirements and meet performance goals?

Response: No. Authorized personnel levels in the current draft Coast Guard Authorization Act do not allow for sufficient flexibility because an end-strength of 41,000 is less than the FY 2014 Enacted end-strength of 42,597 military personnel. An authorized end-strength of 43,000 would allow the Coast Guard the necessary flexibility to manage the military workforce to the FY 2014 Enacted level.

Question#:	2
Topic:	International Ice Patrol
Hearing:	Coast Guard and Maritime Transportation Authorization Issues
Primary:	The Honorable John Garamendi
Committee:	TRANSPORTATION (HOUSE)

Question: The Coast Guard conducts aerial surveillance in the North Atlantic off the coast of Newfoundland from February through August to fulfill U.S. obligations under the International Ice Patrol established under the Convention for the Safety of Life at Sea (SOLAS). This program was created after the sinking of the TITANIC in 1912. Under the treaty, the United States is to be reimbursed for the Coast Guard's costs by foreign flag states whose vessels transit the area. In is my understanding that the United States has not received reimbursement for the Coast Guard's costs since at least 2000. Over the last five fiscal years, the Coast Guard has spent $41 million and 1,779 flight hours on its IIP treaty obligations.

Regarding IIP surveillance flights, are these flights devoted exclusively to ice patrol surveillance or does the Coast Guard consider these flights to be a collateral mission conducted concomitant to other Coast Guard mission activities?

Response: IIP flights are exclusively devoted to the iceberg reconnaissance mission.

Question: Why has the Federal Government been unable to collect reimbursement for the Coast Guard's expenses as required under the Convention?

Response: The Department of State is responsible for collecting reimbursement for IIP execution costs.

Question#:	3
Topic:	Seafarers
Hearing:	Coast Guard and Maritime Transportation Authorization Issues
Primary:	The Honorable John Garamendi
Committee:	TRANSPORTATION (HOUSE)

Question: Under current law, the United States' ability to assist foreign seafarers abandoned by vessel operators in the U.S. is extremely limited. Since 2007 the Coast Guard has requested Congress to provide authority to render aid and assistance to mariners who, through no fault of their own, find themselves abandoned in the U.S. Such authority would enhance the Coast Guard's ability to support crewmember "whistle blower" witnesses who agree to testify against vessel operators for alleged violations of the Act to Prevent Pollution from Ships (APPS). The Coast Guard is seeking authority to provide necessary support for the seafarer whose continued availability in the U.S. as a witness is necessary for an investigation, reporting, documentation, or adjudication and for the seafarer who is simply abandoned. Funds would be provided by reimbursements paid by vessel owner/operators who fail to provide necessary support. This provision would be consistent with several international labor standards.

How many law enforcement actions or court proceedings does the Coast Guard undertake each year that utilize an abandoned seafarer as a witness?

Response: Between three to five cases annually involve an abandoned crewmember/witness.

Question: Are these cases fairly rare or common?

Response: Coast Guard believes there is a direct relationship between the surety amount and abandonment: the higher the financial bond in a surety amount, which is dependent on the number of violations, the more likely that a company will abandon a crewmember/witness. Note that surety satisfactory to the Secretary includes a financial bond to cover any possible criminal fines for violations of the Act to Prevent Pollution from Ships (APPS) (33 U.S.C. 1901 *et seq.*) and the maintenance of the crewmember/witness. Recently, the Coast Guard has seen an increase in the number of companies that have refused to agree to the terms of surety and have refused to pay for the maintenance of the crewmember/witness, an act that amounts to abandonment. In such cases, the Coast Guard has been forced to negotiate lower surety bond amounts and settle for lesser terms in its surety agreements in order to deter abandonment, often at the risk of not being able to cover the possible criminal fines that the Coast Guard reasonably believes would likely be awarded. Sometimes, the company will enter into a surety agreement only after unsuccessfully litigating and challenging in federal civil court Coast Guard's authority to demand crewmember/witness maintenance as a condition for releasing a vessel. Despite a case being expedited, a period of around six months, during which the abandoned

Question#:	3
Topic:	Seafarers
Hearing:	Coast Guard and Maritime Transportation Authorization Issues
Primary:	The Honorable John Garamendi
Committee:	TRANSPORTATION (HOUSE)

crewmember/witness must rely on other means for support or, in the alternative, be arrested by the U.S. Government as a material witness, is not unusual.

Question: As I understand the proposal, this new authority would cost the Federal taxpayer nothing because the funds would be derived from reimbursements paid by vessel owners or operators. Initially, however, would the Congress have to appropriate some funding to capitalize the account?

Response: Congress may either (1) appropriate funds to capitalize the account; (2) permit the Coast Guard to expend appropriated funds for the necessary support of a seafarer and then, over time, allow the reimbursement (with surcharge) feature of the proposal to capitalize the account; or (3) both.

The proposal's reimbursement (with surcharge) feature would require less "up front" money in the form of appropriations to capitalize the account and, significantly, would require such "up front" money only once. In the first instance of abandonment after enactment, the Coast Guard would absorb the cost of necessary support for the seafarer whom a vessel owner/operator abandons, then sue to recover that cost, plus a surcharge. The reimbursement would make the federal taxpayers whole, and the surcharge would stand ready to pay for the necessary support of a seafarer in the next instance of abandonment.

The surcharges component of the reimbursement feature is key. Without it, there is a risk that the Fund could be depleted.

Question#:	4
Topic:	DWTF
Hearing:	Coast Guard and Maritime Transportation Authorization Issues
Primary:	The Honorable John Garamendi
Committee:	TRANSPORTATION (HOUSE)

Question: The U.S. flagged distant water tuna fleet (DWTF) fishes for tuna in the Central and Western Pacific Ocean pursuant to the South Pacific Tuna Treaty. There are approximately 36 boats fishing under the U.S. flag. The Federal Government pays roughly $24 million annually to partially cover permit fees to allow U.S DWTF vessels to fish in the treaty area. Due to the remote location of this fishery Congress has interceded intermittently to provide the fleet with exemptions from regulations affecting U.S. flag vessels, notably U.S. manning requirements. Nonetheless, all DWTF vessels must comply with U.S. ownership requirements to maintain their respective U.S. registry endorsement. The 2010 sinking of the tuna purse seiner F/V MAJESTIC BLUE and subsequent litigation has raised questions about the ownership of at least this one DWTF vessel. In an April 14, 2013 U.S. District Court decision, the court found that a Korean company, Dongwon, had a direct and controlling ownership interest in the F/V MAJESTIC BLUE which violates ownership requirements under 46 U.S.C. § 50501. The Court's finding raises concerns about the ownership record of other vessels in the U.S. flag DWTF.

Please provide me with the most recent documentation and ownership records for all DWTF vessels fishing in the Central and Western Pacific, and please verify those vessels that meet all U.S. ownership requirements?

Response: The National Vessel Documentation Center has reviewed their Vessel Documentation records for all of the vessels that make-up the U.S. flagged distant water tuna fleet. Of the thirty eight vessels all but one has a valid document. The exception is the PACIFIC PRINCESS. The Certificate of Documentation (COD) for that vessel was revoked due to the citizenship evidence not being provided to MARAD in accordance with the American Fisheries Act. The following is a table with all of the pertinent information requested including vessel name, official number, owner of record, COD status, and type of endorsement. It should be noted that the documentation of all vessels is a self certifying process. In other words, when providing their application (CG form CG-1258), the owner, by signing a properly completed CG-1258, is certifying that it meets all applicable requirements to document the vessel with the endorsement sought, which includes the citizenship. By regulation (46 C.F.R. § 67.43), that certification establishes a rebuttable presumption that the applicant is a United States citizen.

Vessel Name	Official Number	Owner of Record	COD Status – Endorsement Type
AMERICAN EAGLE	1206090	American Eagle Fishing LLC	Valid - Registry
AMERICAN ENTERPRISE	1209513	American Enterprise Fishing	Valid - Registry

Question#:	4
Topic:	DWTF
Hearing:	Coast Guard and Maritime Transportation Authorization Issues
Primary:	The Honorable John Garamendi
Committee:	TRANSPORTATION (HOUSE)

		LLC	
AMERICAN VICTORY	1215847	American Legacy Fishing LLC	Valid – Registry
AMERICAN TRIUMPH	1215734	American Triumph Fishing LLC	Valid - Registry
CAPE BRETON	1060977	Cape Breton Fishing LP	Valid - Registry
CAPE COD	599831	Cape Cod Fishing LP	Valid – Registry & Fishery
CAPE ELIZABETH III	962922	Cape Elizabeth Fishing LP	Valid – Registry & Fishery
CAPE FERRAT	1074874	Cape Ferrat Fishing LP	Valid – Registry
CAPE FINISTERRE	610466	Cape Finisterre Fishing LP	Valid – Registry & Fishery
CAPE HATTERAS	1217627	Cape Hatteras Fishing LP	Valid – Registry
CAPE HORN	939836	Cape Horn Fishing LP	Valid – Registry & Fishery
F/V CAPE MAY	645777	Cape May Fishing LP	Valid – Registry & Fishery
CAPE SAN LUCAS	1209784	Cape San Lucas Fishing LP	Valid – Registry
CAPT VINCENT GANN	953794	Cape Mendocino Fishing LP	Valid – Registry & Fishery
CAROL LINDA	624971	Vasco Enterprises, Inc	Valid – Registry
DANIELA	531005	AACH Holdings Co., LLC	Valid – Registry, Fishery & Coastwise
FREISLAND	1216624	Friesland Fishing Company LLC	Valid – Registry
ISABELLA	1212240	AACH Holdings Co., No 2 LLC	Valid – Registry
JEANETTE	565986	C&F Fishing LTD	Valid – Registry & Fishery
KOORALE	545564	M&F Fishing LTD	Valid – Registry & Fishery
OCEAN CHALLENGER	1209712	Ocean Challenger LLC	Valid – Registry
OCEAN CONQUEST	1202618	Ocean Conquest LLC	Valid – Registry
OCEAN ENCOUNTER	1202619	Ocean Encounter LLC	Valid – Registry
OCEAN EXPEDITION	1205812	Ocean Expedition LLC	Valid – Registry
OCEAN GALAXY	1214839	Ocean Galaxy LLC	Valid – Registry
OCEAN WARRIOR	1205808	Ocean Warrior LLC	Valid – Registry
PACIFIC PRIDE	1214250	Pacific Pride LLC	Valid – Registry
PACIFIC PRINCESS	600678	Pacific Princess Partnership LTD	Revoked (7/26/13)
PACIFIC RANGER	1214248	Pacific Ranger LLC	Valid – Registry
RAFFAELLO	539046	Fishing Company Raffaello LLC	Valid – Registry & Fishery
SEA BOUNTY	1214841	Sea Bounty LLC	Valid – Registry
SEA DEFENDER	1202621	Sea Defender LLC	Valid – Registry

Question#:	4
Topic:	DWTF
Hearing:	Coast Guard and Maritime Transportation Authorization Issues
Primary:	The Honorable John Garamendi
Committee:	TRANSPORTATION (HOUSE)

SEA ENCOUNTER	604592	Desilva Sea Encounter Corp	Valid – Registry
SEA FOX	1207469	Sea Fox LLC	Valid – Registry
SEA HONOR	1210858	Sean Honor LLC	Valid – Registry
SEA QUEST	1203206	Sea Quest LLC	Valid – Registry
SEA TRADER	1207470	Sea Trader LLC	Valid – Registry
WESTERN PACIFIC	564010	Western Pacific Fisheries LLC	Valid – Registry & Fishery

Question#:	5
Topic:	EPA's VGP rule
Hearing:	Coast Guard and Maritime Transportation Authorization Issues
Primary:	The Honorable John Garamendi
Committee:	TRANSPORTATION (HOUSE)

Question: The Coast Guard and EPA worked very hard to minimize inconsistencies between the Coast Guard's ballast water treatment rule which was developed pursuant to the National Invasive Species Act, and EPA's 2013 Vessel General Permit (VGP), which was developed pursuant to the Clean Water Act. Some vessel operators have expressed concern that it would be easier for both the Coast Guard and EPA if Congress were to amend the law to provide a single statutory authority for the regulation of vessel discharges under which the Coast Guard and EPA would each have clearly defined roles.

Admiral Kenney, in the development of EPA's VGP rule and the Coast Guard's ballast water regulation, can you give me any examples of issues on which the Coast Guard and EPA were unable to fully harmonize their respective regulations because the agencies are operating under different statutory authorities?

Response: The Coast Guard and the EPA are working together to ensure that ballast water regulatory efforts under the National Invasive Species Act and the Clean Water Act are as consistent as possible. One area of difference between the two agencies' approaches is that the Coast Guard has a regulatory provision specifically outlining a process for obtaining extensions to its ballast water compliance deadlines; the EPA's VGP does not have a comparable provision. Prior to 2008, the Coast Guard and EPA were able to easily reconcile the differing statutory mandates through the regulatory exception contained at 40 CFR 122.3(a), which generally excluded discharges incidental to the normal operation of a vessel, including ballast water, from NPDES permitting. In July 2008, the 9th Circuit Court of Appeals upheld a district court's vacatur of that exclusion and the agencies have since strived to implement consistent regulations. The National Invasive Species Act (NISA) standard requires the Coast Guard to prevent introduction of invasive species to the maximum extent practicable. The Coast Guard has statutory authority to extend BWMS installation dates until Coast Guard type-approved BWMS systems are commercially available. Both agencies are committed to maximize harmonization and are meeting regularly to address implementation issues as they arise. The agencies recently issued a jointly signed letter that memorializes that commitment and confirms the need to develop U.S.-type approved BWMS.

Question: Are you confident that the implementation of both rules will not run afoul of competing statutory conflicts?

Question#:	5
Topic:	EPA's VGP rule
Hearing:	Coast Guard and Maritime Transportation Authorization Issues
Primary:	The Honorable John Garamendi
Committee:	TRANSPORTATION (HOUSE)

Response: The Coast Guard continues to work closely with EPA to avoid conflicts between the two regimes – to the greatest extent possible under the existing legislation provided by Congress.

Question: What steps has the Coast Guard taken to provide sufficient guidance to the regulated community so that they understand how these two rules work together?

Response: The Coast Guard is meeting and discussing with EPA the appropriate way forward to help the regulated community understand how the two regimes work together. The two agencies recently issued a jointly signed cover letter regarding the enforcement of vessel discharge requirements to supplement the Coast Guard BWMS extension approvals. In addition, Coast Guard and EPA staff jointly presented their ballast water compliance regimes at various industry attended/sponsored conferences, FACA meetings, and many other widely attended meetings. The Coast Guard also posts all ballast water regulation information including a list of frequently asked questions (FAQs) on its public Internet portal: https://homeport.uscg.mil/ballastwater.

Question#:	6
Topic:	Section 220
Hearing:	Coast Guard and Maritime Transportation Authorization Issues
Primary:	The Honorable Rick Larsen
Committee:	TRANSPORTATION (HOUSE)

Question: Section 220 of the Coast Guard and Maritime Transportation Act of 2012 required the Commandant to maintain the schedule and requirements for the total acquisition of 180 Response Boat-Mediums, unless he submitted to the subcommittee justification for reducing the size of this fleet. In a June 26, 2013 hearing, I asked Vice Admiral Currier whether this justification had been delivered to the subcommittee and he said it had not, but that the Coast Guard was continuing with a limited acquisition and we would receive a justification when the new fiscal year began. That deadline has come and gone. Subcommittee staff tells me we still haven't received this justification. I am somewhat frustrated to have to ask this question again: has this justification been delivered to the subcommittee? When will it be delivered?

Response: The Acquisition Program Baseline for the RB-M was approved by the Coast Guard Acquisition Executive on November 25th 2013. A Report to Congress containing justification required by section 220 of the CGMT Authorization Act of 2012 has been delivered to Congress.

Question#:	7
Topic:	leasing of icebreakers
Hearing:	Coast Guard and Maritime Transportation Authorization Issues
Primary:	The Honorable Rick Larsen
Committee:	TRANSPORTATION (HOUSE)

Question: Some have suggested that leasing of icebreakers might be a cost effective way to increase the Coast Guard's capabilities in the Arctic. In the past, the Coast Guard has suggested this is not a viable option. Has the Coast Guard's policy on leasing changed?

Response: Leasing and cooperative agreements with international partners for icebreaking support are viable alternatives for agencies that have used Coast Guard icebreaking services in the past. With respect to Coast Guard's own inherently governmental missions, the Coast Guard's assessment has not changed and these options are not being considered.

Question#:	8
Topic:	icebreaker acquisition
Hearing:	Coast Guard and Maritime Transportation Authorization Issues
Primary:	The Honorable Rick Larsen
Committee:	TRANSPORTATION (HOUSE)

Question: Over the last two years, the Coast Guard has requested and received $8 million to begin studying icebreaker acquisition. This number is below the authorized amount. I am concerned that some may look at this difference and infer that the Coast Guard does not require larger authorization levels for icebreakers to meet Arctic goals. In order to effectively meet the goals of the Arctic strategy, will the Coast Guard need larger funding levels for icebreaker acquisition in the future? What would the effect of decreasing authorization amounts be on the Arctic strategy?

Response: Funding provided in FY 2013 coupled with the $2 million requested in FY 2014 will enable us to complete the required pre-acquisition activities and requirements development.

STATEMENT OF
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BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES

October 29, 2013

Good morning Chairman Hunter, Ranking Member Garamendi, and members of the Subcommittee. Thank you for the opportunity to address you today on matters related to the Commission's re-authorization.

The Commission is the independent agency charged with the regulation of U.S. oceanborne foreign commerce valued at $930 billion annually, accounting for 29.3 million twenty-foot equivalent units (TEUs) of import and export cargo. The Commission continues to cultivate a regulatory system that ensures competition, facilitates commerce, and encourages reliable service to U.S. exporters and importers while minimizing government intervention and costs. The Commission also remains alert to foreign activities that have the potential to harm the U.S. maritime industry, and we will remain vigilant on behalf of the American importer, exporter, and consumer.

The Commission carries out important, statutorily-mandated programs aimed at maintaining an efficient and competitive international ocean transportation system; protecting the public from unlawful, unfair, and deceptive ocean transportation practices; and resolving shipping disputes. These key FMC initiatives allow the Commission to resolve issues that have an impact on importers and exporters, as well as support one of the Commission's primary objectives to increase U.S. exports and further the interests of the greater shipping community. A fair, efficient, and adequate ocean transportation system depends on the FMC's ability to evaluate carrier and terminal agreements for anti-competitive impact and to license ocean transportation intermediaries to protect the shipping public and facilitate international trade.

The Commission is specifically charged by the Shipping Act with the following responsibilities:

(1) Establishing a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs;

(2) Providing an efficient and economic transportation system in the ocean commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices;

(3) Encouraging the development of an economically sound and efficient liner fleet of vessels of the United States capable of meeting national security needs; and

(4) Promoting the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.

The Commission's oversight of ocean common carriers, ocean transportation intermediaries, and marine terminal operators is an important element in the effort to protect our Nation's seaports. Unique among federal agencies, the FMC regulates virtually all entities involved in liner shipping, receiving, handling, and transporting cargo and passengers in foreign commerce. The FMC's unique mission affords it the opportunity to assist front-line security efforts by providing information regarding the backgrounds of parties using our Nation's supply chain, including those with direct access to our seaports. The Commission's updated agreement with Customs and Border Protection (CBP) to share data from the Automated Commercial Environment-International Trade Data System enhances both agencies' ability to achieve their statutory missions.

The Commission accomplishes these responsibilities through its programs and the activities highlighted below.

Trade Monitoring

The Commission reviews and monitors agreements and activities of ocean common carriers and marine terminal operators under the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998 in order to provide an efficient and economic transportation system. Specifically, the Commission examines those agreements that are immunized from the anti-trust laws, to ensure that they do not have significantly anti-competitive effects. The Commission, pursuant to its statutory mandate, also monitors market conditions in the U.S.-foreign oceanborne trades and reports its findings annually to Congress.

Agreements have provided an avenue for Commission regulated entities to facilitate trade and further efficient port operations. For example, marine terminal operators are able to discuss very important issues such as cargo efficiencies and environmental impacts. Currently, the Commission is reviewing a filing of an agreement between the world's three largest container carriers – Maersk, CMA CGM, and MSC, the "P3 Alliance." The P3 Alliance agreement will be subject to the review of not only the Commission, but also of regulators in important U.S. trading partners, the European Union and China. Recently, I called on fellow regulators in the European Union and China to join with me in a global regulatory summit to have a dialogue on our respective global challenges in maritime trade monitoring and regulation.

Ocean Transportation Intermediaries

The Commission regulates non-vessel-operating common carriers (NVOCCs) and freight forwarders, the middlemen responsible for moving oceanborne cargo in the U.S. foreign trades. In the years since the original implementation of the Commission's regulation of ocean transportation intermediaries (OTIs), it has taken several actions to address concerns raised by the regulated industry. The Commission continues to ensure that licensed entities have the requisite character and financial responsibility to protect the shipping public. The Commission's hard work in streamlining the OTI licensing process has resulted in the Commission completing 90 percent of the hundreds of OTI applications it receives within 60 days.

Last fall, the Commission issued changes to its procedural rules for the first time in many years to improve its administrative proceedings and provide a just, speedy, and less expensive resolution to matters brought to the Commission. During the summer of 2012, the Commission revised its tariff exemptions to eliminate record-keeping requirements for negotiated rate arrangements offered by U.S.-based NVOCCs who choose to use those instruments. During the summer of 2013, the Commission issued a final rule that expanded that exemption to foreign-based NVOCCs. The Commission will continue to engage the shipping public and the regulated industry to explore, through its retrospective review of regulations, how it can streamline and improve its rules and procedures.

Earlier this year, the Commission issued an Advance Notice of Proposed Rulemaking (ANPRM) to its OTI rules intended to: (1) adapt to changing conditions in the OTI industry that include inflation regarding bond requirements, use of the internet, and deceptive OTI trade practices through the internet; (2) improve regulatory effectiveness by making it easier for the public and the FMC to locate licensed OTIs by requiring license renewals; (3) improve transparency by requiring OTIs and agents to include identifying information on all shipping documents; (4) streamline processes by enhancing the Commission's ability to protect consumers and to facilitate commerce; and (5) reduce regulatory burdens by eliminating separate bonding requirements for unincorporated branch offices.

We are now in the process of reviewing the public comments to the ANPRM and will determine how to revise the proposal based on those comments. When we have done that, we will again ask the public to comment on those revisions, and that request will include an initial analysis under the Regulatory Flexibility Act to determine any impacts on small businesses. Unfortunately, like the Commission's other important work, this review has been delayed by the recent shutdown.

Consumer Protection

The Commission's mission includes ensuring service and providing protection for members of the public — those who travel on cruise ships or deal with international shipping companies when they ship personal belongings or household goods abroad.

As mentioned earlier this year, during the Commission's budget testimony, the Commission enhanced the financial protection for cruise passengers who sail from U.S. ports, while reducing financial responsibility requirements on smaller cruise lines. The Commission increased the maximum coverage requirement for larger cruise lines from $15 million to $30 million per cruise line, and now requires that this cap be adjusted every two years, based on the Consumer Price Index for All Urban Consumers. It also provided relief for smaller cruise ship operators by reducing their coverage requirements in instances in which alternative forms of financial protection may be in place. The Commission continues to assist the cruising public through its Office of Consumer Affairs and Dispute Resolution (CADRS) by providing information and guidance on passenger rights and obligations paid to cruise lines as it relates to voyages or other cruise-related issues.

CADRS continues to assist the shipping public with complaints related to cargo shipments. In addition, the Commission maintains a full-time presence in the major U.S. port regions of Southern California, South Florida, New York/New Jersey, Seattle, New Orleans and Houston through Area Representatives based in each of those locales to support the Commission and handle hundreds of informal complaints. The Area Representatives are a cost-saving, efficient, and effective way to act as local conduits for information to and from the maritime industry and the shipping public, investigate alleged violations of the shipping statutes, and resolve complaints and disputes between parties involved in international oceanborne shipping, including those who are not sophisticated shippers. The industry has embraced the service provided by the local Area Representatives who handle many informal complaints lodged by local businesses and individuals each year.

Protecting the Shipping Public from Fraud and Abuse

Where possible, compliance with statutory and regulatory requirements can be achieved informally. For those that are not resolved, investigative cases are opened and the Area Representatives conduct on-site investigations related to unlawful shipping practices, including unlicensed OTI activities, misdescription of commodities by shippers, and improper service contract rate application by ocean carriers.

The Commission's Bureau of Enforcement, Area Representatives, and investigative staff continue to prevent and end shipping practices that are unfair or deceptive. Targeted violations have included illegal or unfiled agreements among ocean common carriers; unfair or fraudulent practices affecting household goods shippers; and misdescription of cargo, which not only affects shipment costs, but can also pose a serious safety and security risk by preventing vessel operators and port officials from knowing what goods are being transported on vessels into the

United States. The Commission has collected almost $4 million in civil penalties over the last two fiscal years for Shipping Act violations, sent directly to the U.S. Treasury General Fund.

Monitoring Foreign Practices

The Commission encourages the development of a sound and efficient fleet of U.S. vessels to meet national security needs through its regulation issued under the authority of the Controlled Carrier Act, Section 19 of the Merchant Marine Act of 1920 and the Foreign Shipping Practices Act (FSPA). Section 19 empowers the Commission to make rules and regulations to address conditions unfavorable to shipping in our foreign trades; FSPA allows the Commission to address adverse conditions affecting U.S. carriers in our foreign trades that do not exist for foreign carriers in the United States. Under the Controlled Carrier Act, the Commission can review the rates of foreign government-controlled carriers to ensure that they are not below a level that is just and reasonable. The Commission carefully monitors the activities of state-owned ocean common carriers to ensure that U.S. trades remain substantially free of unfair practices. The Commission has also studied the maritime practices of our trading partners generally. In July 2012, the Commission released a *Study of U.S. Inland Containerized Cargo Moving through Canada and Mexican Ports*. That study analyzed the factors that may be relevant to the diversion of some U.S.-origin or -destined cargo through Canadian or Mexican seaports.

The Commission has an impressive record of identifying possible foreign restrictive practices and finding solutions to address costly restrictions imposed by foreign regulators. In 2002, because of a Commission-initiated proceeding, the U.S. and China were able to reach a diplomatic solution to a seemingly-unsolvable problem only because of the Commission's willingness to embrace an industry-proposed solution that resulted in an increased burden on the FMC. As a result, in 2004, the Commission agreed to create an optional bond rider system to accommodate the lack of the availability of such instruments in China. This accommodation, still in place after nearly 10 years, has saved U.S. NVOCCs, many of whom are small businesses, from the cost of compliance with Chinese regulatory requirements that otherwise would tie up desperately-needed capital in a Chinese bank.

More recently, the Commission has been the driving force behind a hard look at changes to Chinese tax law that may unfairly impact U.S. shippers and non-Chinese carriers. Changes to China's value-added-tax system is being closely reviewed by the Commission, and we are pleased that the U.S. and the PRC have agreed to discuss the possible impacts of this Chinese law in the context of the U.S.-PRC Bilateral Maritime Negotiations led by the Maritime Administration of the Department of Transportation and held in Chicago yesterday. We are hopeful that these talks will generate productive outcomes and look forward to hearing about the results.

Commission Resources

Limited resources and a very small budget have required the Commission to leverage the relationships it has with its foreign counterparts in increasingly creative ways to accomplish its legislative mandate to harmonize regulation in international ocean shipping. Strategic management of the FMC's human resources, property management, financial, and procurement practices and other vital support activities is essential to meet the agency's regulatory and programmatic goals.

The Commission's FY2014 budget proposal of $25,000,000 represents the *minimum* necessary for the Commission to achieve these statutory mandates, while funding 126 FTEs. This funding level would prevent future furloughs and allow staff to provide necessary oversight of the ocean transportation industry the Commission regulates. As 95% of the FMC budget is directly related to payroll, rent, and other fixed costs, there are few options for further reductions.

The Commission's FY2013 post sequestration funding level is $22,839,425. This funding level required the Commission to severely restrict hiring of replacements, cancel travel and training, delay and/or cancel purchases and contracts, and deeply cut the agency's outreach efforts needed to resolve issues affecting the shipping industry. One position we intend to fill in the continuing resolution period is for the Inspector General, as required by statute. This low funding level also has caused the Commission to make unsustainable cuts to its already minimal information technology systems, which are necessary to ensure security, provide efficiencies and reduce burdens on the industry it regulates.

Despite drastic reductions, agency staff was forced to take six (6) furlough days during FY2013, with the possibility of additional days by the end of this calendar year. The furloughs have already significantly disrupted workflow for a small agency with major responsibilities. Agency-wide furloughs in FY2013 demonstrated that loss of employee time had an enormously negative impact on the Commission's ability to carry out its statutory mandates. Restricting any increases in funding in the years ahead will reduce the agency to a level at which it will not be able to perform its core statutory duties.

Before the government shutdown and sequestration, the Commission pursued the implementation of several information technology programs and initiatives to comply with governing IT statutes and regulations, as well as to improve the efficiency, convenience, and effectiveness with which the agency serves the public, particularly in the licensing process. In particular, enhanced information systems are essential to efficient identification and licensing of regulated entities and to information sharing with our counterparts at CBP and other federal agencies. These IT systems would also enable our Area Representatives, the Bureau of Enforcement, and CADRS staff to have timely and comprehensive access to data needed to tackle the practices of ocean transportation intermediaries and vessel operators that abuse or defraud the shipping public.

Investment in new and innovative technology will substantially improve efficiency, enabling the Commission to focus on support of systems critical to FMC's core mission. In response to recent government-wide transformation initiatives, should funding be available, the

FMC will continue the integration of technologies to capture, manage, store, preserve, and deliver documents. The technology investments will depend on availability of funds, but would result in greater productivity, efficiency, and transparency.

Mr. Chairman and members of the Subcommittee, I appreciate your interest and efforts in working with the Federal Maritime Commission to foster a fair, efficient, and adequate ocean transportation system. The Commission's leaders and staff depend on our ability to evaluate carrier and terminal agreements for anti-competitive impact and to license ocean transportation intermediaries to protect the shipping public and facilitate international trade. Updated technology is critical to accomplishing the Commission's mission and will lessen the regulatory burden on the entities we regulate. I thank the Subcommittee for its support of the Commission through the years and respectfully request favorable funding consideration for Fiscal Year 2014 and beyond, so that the agency may continue to perform these vital statutory functions, and so that the public and shipping industry may continue to be served reliably, efficiently, and effectively.

Chairman Cordero, Federal Maritime Commission

1. FMC Budget Cuts

The majority is seeking to reduce authorized funding levels for the Federal Maritime Commission despite the fact that the administration's FY 2014 budget request of $25 million represents a $2.1 million increase for the FMC over its post sequestration FY 2013 funding level of $22.8 million.

- *Chairman Cordero, what have been the practical implications on the FMC's day-to-day operations due to budget cuts imposed by sequestration? Is the FMC capable of overseeing the volume of ocean-borne trade moving into and out of the U.S. with its present level of funding?*

The practical implications on the FMC's daily operations due to budget cuts imposed by the $22,839,425 post sequestration funding level include: severe restrictions on hiring replacements, cancelling travel, cancelling training, delaying and/or cancelling purchases and contracts, and deeply cutting the agency's outreach efforts needed to address issues affecting the shipping industry. As 95% of the FMC budget is directly related to payroll, rent, and other fixed costs, there are very few avenues to impose further reductions. One position we intend to fill in the continuing resolution period is for the agency's Inspector General, as required by statute. This low funding level also has caused the Commission to make unsustainable cuts to its already minimal information technology systems, which are necessary to ensure security, provide efficiencies, and reduce burdens on regulated entities. The six (6) furlough days during FY2013 had an enormously negative impact on the Commission's ability to carry out its statutory mandates. Restricting any increases in funding in the years ahead will reduce the agency's ability to perform its core statutory duties.

The present level of funding is not a sustainable funding level for the FMC to oversee the volume of oceanborne trade moving into and out of the U.S. Under the current funding level, there will be significant backlogs and waiting times for license reviews for ocean transportation intermediaries (OTIs), which would delay those mostly small business operators from legally doing business in U.S. foreign oceanborne trades. The FMC's oversight of the economic impact of marine terminal operators (MTOs) and ocean common carriers (VOCCs) will be reduced, possibly leading to anti-competitive effects such as higher transportation costs and reduction in transportation service. Also the FMC's expert technical assistance to U.S. delegations on maritime economic policy in trade agreements and maritime bilateral agreements with major trading partners like China, has already been reduced to a minimum. Any further reduction would eliminate that function.

The FMC is unable to pursue the implementation of several information technology programs and initiatives to comply with governing IT statutes and regulations, as well as to improve the efficiency, convenience, and effectiveness with which the agency serves the public, particularly in the licensing process. In particular, enhanced information systems are essential to efficient identification and licensing of regulated entities, and to information sharing with our

counterparts at CBP and other federal agencies. These IT systems would also enable our Area Representatives, the Bureau of Enforcement, and Consumer Affairs Dispute Resolution Services staff to have timely and comprehensive access to data needed to address the practices of ocean transportation intermediaries and vessel operators that abuse or defraud the shipping public.

- *What initiatives within the FMC have been delayed indefinitely due to insufficient resources? What has been the effect on the FMC's ability to take enforcement actions for violations by ocean common carriers, ocean transportation intermediaries and marine terminal operators? What has been the effect on the FMC's regional offices?*

IT initiatives needed for the Commission to carry out its Congressional mandate have been delayed indefinitely due to insufficient resources. The Commission has experienced numerous IT system failures in the recent past, and the Commission has not been able to mitigate or prevent these failures because it lacks the resources to do so. The Commission – and the public that relies on it – will experience more crashes and down-time without an adequate level of funding.

In addition, ongoing fiscal controls on travel and contracting impede the FMC's ability to take enforcement actions for violations by VOCCs, OTIs and MTOs. While the attorneys with the Bureau of Enforcement (BOE) have sought to mitigate these effects through greater reliance on informal conferences and telephone negotiations with outside legal counsel for parties seeking to compromise FMC civil penalty claims, these funding constraints impede BOE's ability to directly meet with the principals of OTIs and previously unlicensed entities, to address regulatory issues, review documents proffered to explain or mitigate any violations, and to negotiate in person when an OTI lacks experienced legal counsel.

Likewise, in formal proceedings to assess penalties or pursue possible OTI license revocations, budgetary constraints have had a negative impact. BOE is using discovery devices such as requests for admissions and requests for production of documents in place of pursuing depositions of Respondent parties, corporate officers or third parties dealing with Shipping Act violators. Unfortunately, these strategies generally slow the progress and pace of ongoing enforcement proceedings during the pretrial phase.

The effect on the FMC's regional offices, which house its Area Representatives (ARs), has been negative as well. The FMC's ARs act as local conduits for information to and from the maritime industry and the shipping public, investigate alleged violations of the shipping statutes, resolve complaints and disputes between parties involved in international oceanborne shipping, and function as an indispensible resource to Commission headquarters. Replacement staffing for a retired Area Representative in the Houston TX area has been deferred due to FMC-wide furloughs during fiscal year 2013, and concerns for ongoing agency funding in FY2014. The FMC is pursuing recruitment for the Houston position, subject to funding on and after January 15, 2014. Other important investigative personnel with years of experience in the agency also have announced their intention to retire in January, threatening a potential "brain drain" of

personnel having the greatest experience and exposure in handling investigations of Shipping Act violations. Unfortunately the inadequate level of funding impedes the FMC's ability to engage in succession and strategic planning for FMC investigative and enforcement functions.

- *What have the last few years meant for the Commission's ability to backfill vacancies? What current vacancies do you have? What has this meant for workflow?*

Budget cuts have prevented the Commission from backfilling many vacancies, including government-wide mission critical occupations such as auditors, human resource specialists, and information technology specialists. The Commission has the following vacancies: General Counsel; Administrative Services Manager; Attorney Advisor; Dispute Resolution Specialist; Auditor; two Area Representatives; Human Resources Specialist; Financial Specialist; Administrative Support Assistant; two Program Managers; Inspector General; Industry Analyst; and Special Assistant for Investigations. These vacancies (which represent over 10% of the current staff) have compromised the Commission's ability to efficiently carry out many of its functions including responding to shipping disputes, resolving complaints, and addressing industry concerns.

2. Ocean Transportation Intermediaries

The FMC's Advanced Notice of Proposed Rulemaking (ANPR) to update its regulations concerning Ocean Transportation Intermediaries (OTIs) was discussed at the subcommittee's regulatory oversight hearing in September. Testimony was received from the regulated community critical of the need for the rulemaking and expressing concern that the ANPR would create a substantial regulatory burden on OTIs. Chairman Cordero testified that the FMC is aware of the OTIs' concerns and is reviewing comments to develop a revised final rule. No tentative date was given as to when this final rule might be published in the Federal Register.

- *When does the FMC expect to publish a final rule to revise your OTI regulations?*

The Commission will consider the comments it has received and determine whether and how to potentially revise the rule to reflect changing conditions in the OTI industry, improve regulatory effectiveness, improve transparency, streamline processes, and reduce regulatory burdens. The next phase for the ANPR would be a Notice of Proposed Rulemaking, if the Commission continues to pursue amending the OTI rules in Docket 13-05. This would include an invitation for written comments from the public and industry as well as an analysis under the Regulatory Flexibility Act to determine the proposed rule's impact on small businesses. Only after the Commission has solicited comments, analyzed them, and performed any required analysis under the Regulatory Flexibility Act, would a rule become final. Once a rule becomes final, a party could challenge the rule in court. In light of this procedure, it is not possible to indicate whether, or when, a final rule will be published.

- *Has the FMC been forced to delay this rulemaking due to cuts imposed by sequestration? Are there other regulatory actions that have been indefinitely postponed?*

Though the Commission has not delayed this rulemaking directly due to cuts imposed by sequestration, the Commission has had to make difficult choices of which projects to staff with human resources. As part of this decision-making process, the Commission has had to balance the needs of the shipping public along with its statutorily-mandated duties. Essential staff can only work on a finite number of projects, and the inability to fill much-needed positions has had an impact on staffing across the agency.

Delays in regulatory actions continue as a result of the FMC's low sequestration funding levels. As an example, recently the Commission received a request from exporters to investigate fraudulent business practices by a licensed OTI located in the midwest. Due to insufficient funding at the Commission, the Director of Field Investigations has been unable to dispatch the investigative staff necessary to compile written complaints, to document the shipments and apparent failure to release cargo at destination upon payment of all freight charges, and to directly intervene with the OTI whose practices are at the focus of the exporters' complaints. Informal telephone contacts and mediation efforts by the FMC's Office of Consumer Affairs and Dispute Resolution Services have had only limited success to date in obtaining redress for the exporters.

STATEMENT OF PAUL N. JAENICHEN
ACTING MARITIME ADMINISTRATOR
MARITIME ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION

BEFORE THE
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION

Coast Guard and Maritime Transportation Authorization Issues

October 29, 2013

Chairman Hunter, Ranking Member Garamendi and members of the Subcommittee. Thank you for the opportunity to present written testimony to the Subcommittee regarding maritime transportation authorization issues. I regret that I am unable to participate in person.

The U.S. maritime industry plays a critical role in meeting the Nation's economic and security needs, which Congress has recognized through its support of programs to foster, promote and develop the U.S. Merchant Marine. Continued support of these programs is needed to sustain the U.S. Maritime Transportation System as it exists today, but a different approach will be needed to improve and grow the industry and to ensure its viability into the future.

Strategy to Revitalize the U.S. Merchant Marine

The Maritime Administration is guided by the preamble of the Merchant Marine Act of 1936 which includes a declaration of federal policy calling for the existence and continuation of a U.S.- flag Merchant Marine to carry our domestic commerce and a substantial portion of our foreign commerce. The U.S.-flag fleet not only provides safe, reliable and environmentally responsible transport of cargo to support economic activity, both domestically and internationally, but also supports Department of Defense (DOD) sustainment sealift capacity requirements in times of war or national emergencies. However, the U.S. Merchant Marine engaged in international trade has steadily declined since World War II and currently carries only a small fraction (less than 2 percent) of our Nation's overseas trade. Studies of the commercial vessel operating industry indicate that the cost to operate a U.S. flag vessel is significantly higher than the average cost of operating a comparable vessel under foreign flag registry.

Today, there are fewer than 90 self-propelled U.S.-flag oceangoing ships of 1,000 gross tons or more operating principally or solely in the international trades, down from more than 300 vessels in 1975. Major and decisive action is required to reverse this decline, or a viable U.S. presence in international maritime commerce could be at risk.

Accordingly, MARAD currently is developing a strategy to revitalize the U.S. merchant marine (Strategy). The Strategy will focus on incentives for ship owners to flag vessels under the U.S. flag with U.S. crews. Although the Strategy will likely include other segments of the industry, the initial focus will be on developing options which, if implemented, could result in gains for the U.S. flag and potentially result in a significantly higher portion of U.S. overseas trade for U.S. flag vessels. Increased U.S. overseas trade for U.S. flag vessels would also provide more jobs for American seafarers. In turn, this would increase the number of ships and mariners to respond in time of war or national emergencies.

As a first step in developing a strategy to revitalize the U.S. merchant marine strategy, MARAD is organizing a public meeting inviting the public and other Marine Transportation System stakeholders to participate in a discussion intended to develop such a strategy. The meeting is scheduled for January 14-16, 2014 as published in the Federal Register on October 28th at Docket No. MARAD-2013-0101. The goal of the public meeting is to generate unconstrained ideas to improve, strengthen and sustain U.S. cargo opportunities and sealift capacity and to develop a list of items for action, voluntary adoption, or further study.

Cargo Preference

Complementing the approaches expected to be developed as part of the strategy to revitalize the U.S. merchant marine, MARAD has intensified its efforts to identify additional federal programs with international transportation opportunities. Engagement with Federal agencies that administer programs that support international maritime trade has been expanded, and MARAD is working expeditiously on the rulemaking to modernize cargo preference rules consistent with Duncan Hunter National Defense Authorization Act of 2009.

Maritime Security Program/ National Defense Reserve Fleet/Ready Reserve Force

In accordance with federal policy, a priority of MARAD is ensuring the readiness and availability of a capable U.S. Merchant Marine fleet with modern U.S.-flag vessels, skilled labor and global logistics support to help meet national maritime transportation requirements in peacetime emergencies and armed conflicts. The National Defense Reserve Fleet (NDRF) and its Ready Reserve Force (RRF) component provide valuable support to DOD in time of war or national emergency as one part of the required sealift force.

The Maritime Security Program (MSP) complements the RRF and the Military Sealift Command's reserve sealift vessels with operating assistance funds to a fleet of 60 privately-owned, militarily useful, U.S.-flagged and U.S.-citizen-crewed ships. The MSP fleet ensures the U.S. military has assured access to a global fleet of ships in international commercial service, plus intermodal logistics capability, to move military equipment and supplies when required. The MSP fleet helps support the employment of approximately 2,700 U.S. mariners and an additional 5,000 shore-side jobs—key personnel to provide the necessary base to support government vessel crewing. MSP vessels have been key contributors to our Nation's efforts in Afghanistan and Iraq over the last decade, moving over 50 percent of all military

cargo – over 26 million tons – to the Middle East. Since 2009, MSP carriers have moved over 90 percent of the ocean-borne cargo needed to support U.S. military operations and rebuilding programs in both countries.[1] Of even greater significance, MSP carriers led development of multi-modal services into Afghanistan via the Northern Distribution Network and establishing air-sea bridging that provide critical alternative routes to resupply and support our U.S. military forces.

Last year, Congress included language in the National Defense Authorization Act for Fiscal Year (FY) 2013 to extend existing MSP contractor agreements through FY 2025. As of June 14, 2013, all 60 MSP operating agreement holders extended their commitment to the program with U.S.-flag vessels and intermodal systems through FY 2025. The Continuing Appropriations Act, 2014 (P.L. 113-46), enacted October 17, 2013, provides full funding of $186 million for the program through January 15, 2014. I thank the members of the Subcommittee for their support for this full funding. Given that MSP payments only partially offset the cost to operating under U.S. flag, many of the vessel owners may shift to foreign flag registry and continue operation without the MSP stipend. The loss of these vessels would mean the loss of experienced U.S. mariners with unlimited ocean credentials who can crew the Government-owned sealift fleet, and thus would diminish the country's ability to meet critical national security requirements with the assured access to this logistics capability. The Commander of the United States Transportation Command has reiterated to me and the Secretary of Transportation that a full 60-ship MSP is needed to support DOD's requirements. Continuation of full MSP funding for FY 2014 will ensure support for DOD requirements under our own flag.

Maritime Education

MARAD's mariner training activities focus on preparing individuals for maritime careers while developing and maintaining a vital and viable U.S. Merchant Marine for commerce, emergency response, and national security. The U.S. Merchant Marine Academy (USMMA) and State Maritime Academies educate and graduate Merchant Marine officers ready to serve the maritime industry and Armed Forces by providing the highest caliber academic study with state of the art learning facilities. MARAD appreciates the Congressional support for the education and training of the Nation's future Merchant Marine officers and maritime transportation professionals.

As a result of the recent Federal government shutdown, MARAD will consider and may possibly recommend statutory authorizations that would minimize the impact of any future lapse in appropriations for the USMMA. While all the Federal service academies were forced to make changes as a result of the Government shutdown, the impact on the USMMA was especially severe because nearly all of the USMMA's faculty and staff are civilian federal employees. Unlike the other service academies whose staffs include a large number of active duty military personnel, the USMMA

[1] Report by NDTA Military Sealift Committee Maritime Policy Working Group, "The Use of Commercial Vessels and Intermodal Systems for Military Sealift," 2009-2011 Addendum.

experienced significantly reduced operations, classes were cancelled and administrative support programs ceased.

The USMMA also operates under a very tight academic schedule, which makes it difficult for Midshipmen to make up for lost educational time. Specifically, the Midshipmen need to complete their course work and their sea days in order to qualify to take the U.S. Coast Guard licensing exam and graduate. As a result of the shutdown, Midshipmen missed 13 days of class and will have to forego scheduled academic breaks in order to complete their graduation requirements. Significant effort and costs were expended to transport the Midshipmen back to the Academy when the Government reopened.

Port Infrastructure and Development

The Nation's ports are vital to the U.S. economy and ultimately job growth – our ports process 99.4 percent of the nation's overseas trade by volume and 65.5 percent by value[2]. However, some of the port facilities we rely on as a Nation to move essential commodities are in a declining state of repair, and the current climate of eroding revenues and tight credit can stall infrastructure projects when and where they are needed most. Because much of this infrastructure is privately owned and operated, the Federal Government has historically taken a largely "hands off" stance regarding port development and expansion. However, numerous ports have indicated a need for assistance in planning and State/local engagement to identify and secure the financing from all levels of government and from the private sector to modernize and expand their infrastructure to meet current and future freight needs.

Port infrastructure development legislation[3] enacted in February 2010, directs the Secretary of Transportation, through the Maritime Administrator, to "...establish a port infrastructure development program for the improvement of port facilities...."

In response to the legislation, MARAD conducted extensive stakeholder engagement to identify the key issues and solutions to develop the program's framework and ultimately respond to the needs of the port community. Once fully implemented, the program – StrongPorts – will provide ports with systematic support in three categories – Planning and Engagement, Financing and Project Management. The program objective is to improve port capacity, efficiency and state of good repair through an improved planning process to attract private, local, state and Federal financing of "investment grade" projects. The first phase of the program began in late September 2013 with a joint venture between MARAD and the American Association of Port Authorities to develop a port planning and investment toolkit.

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[2] Source: "Port-Related Infrastructure Investments Can Reap Dividends," by Kurt Nagle, President and CEO of AAPA. Industry Today, Vol. 14, Issue 3.
[3] Title 46, U.S. Code, Section 50302.

Additionally, the President's Budget Request for FY 2014 includes $2 million for the StrongPorts program, the majority of which will go toward port planning grants, if the funds are appropriated. Our long term vision is to assist hundreds of our Nation's ports in improved planning, stakeholder engagement and infrastructure investment through this program to ensure they are ready for the significant growth in freight volumes predicted in the coming years.

Marine Environment

Another priority for the Agency is addressing the most pressing environmental issues facing the maritime industry. Of primary concern are invasive species in ballast water, energy/fuel consumption and air emissions.

Effective collaboration among government and industry stakeholders is necessary to effectively transition toward a "greener" maritime future. In the past two years, MARAD has been increasingly proactive in analyzing and demonstrating alternative fuels/technologies for maritime applications. Some of these maritime applications place a strong emphasis on the use of natural gas. MARAD's Maritime Environment and Technology Assistance initiative will continue to advance critical research on ballast water discharges, advance infrastructure and methodologies for certifying and verifying ballast water technologies and improve vessel emissions data.

Shipyards and Ship Building

MARAD appreciates the Subcommittee's continued support for programs to enhance domestic ship building capabilities. Increased applications in FY 2013 for Maritime loan guarantees (Title XI) and Small Shipyard Grants reflect applicants' willingness to invest in U.S. shipbuilding.

For FY 2013, MARAD received 113 applications for $9.46 million in Small Shipyard Grant funding. Twelve shipyards in 10 states received grants. The current Title XI subsidy balance for pending and new applications is $38 million, which will support approximately $421 million in shipyard projects assuming average risk category subsidy rates. MARAD is currently evaluating five applications requesting approximately $1.026 billion in financing for 18 ships.

Thank you for this opportunity to address maritime authorization issues. I appreciate the Subcommittee's interest and look forward to working with members as we develop a strategy to strengthen the U.S. Merchant Marine into the future.

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TESTIMONY OF
MICHAEL H. SHAPIRO
PRINCIPAL DEPUTY ASSISTANT ADMINISTRATOR
OFFICE OF WATER
U.S. ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES

October 29, 2013

Good morning, Chairman Hunter, Ranking Member Garamendi, and members of the Subcommittee. I am Michael H. Shapiro, the Principal Deputy Assistant Administrator of the Office of Water at the U.S. Environmental Protection Agency (EPA). Thank you for the opportunity to discuss the EPA's regulation of vessel discharges under the Clean Water Act (CWA)'s National Pollutant Discharge Elimination System (NPDES) program.

My testimony will provide an update on our regulation of vessel discharges, including ballast water, under the 2013 Vessel General Permit, or "VGP," that was finalized in March of this year and will become effective on December 19th of this year. I will highlight the improvements that the 2013 VGP makes to the existing VGP, and discuss the regulation of ballast water discharges by the 2013 VGP and how the EPA's VGP complements the Coast Guard's final rule.I will also provide background and an overview of the draft small Vessel General Permit (sVGP), which was published for comment in December 2011 and on which the Agency has not yet taken final action.

Vessel General Permit (VGP) Background

The EPA had a long-standing regulatory exclusion from NPDES permitting for discharges incidental to the normal operation of a vessel. On March 30, 2005, the U.S. District Court for the Northern District of California (in *Northwest Environmental Advocates et al. v. EPA*) ruled that the exclusion exceeded the

agency's authority under the CWA. While the focus of the case involved the significant impact of aquatic nuisance species (ANS) introduced by ballast water discharges from ships making transoceanic voyages, the district court vacated the vessel incidental discharge exclusion in its entirety. Section 301(a) of the CWA generally prohibits the discharge of a pollutant without an NPDES permit. So after the district court's vacatur, which ultimately went into effect on February 6, 2009, vessels would not have been able to discharge ballast water or other incidental discharges in waters of the U.S. without NPDES permit authorization. Following an unsuccessful appeal of the District Court's decision to the U.S. Court of Appeals for the Ninth Circuit, the EPA issued its first version of the VGP in December 2008 to regulate and authorize incidental discharges from vessels, such as ballast water. Pursuant to the Clean Water Act, the EPA and states may issue general permits for a five-year term, at which time they must be reissued.

The 2008 VGP

The 2008 VGP authorizes discharges from approximately 70,000 domestic and foreign vessels, which are subject to the permit's requirements while in waters of the U.S., including the three-mile territorial sea and inland waters, and applies to all non-military, non-recreational vessels greater than or equal to 79 feet in length. The ballast water discharge provisions also apply to commercial fishing vessels of any size that discharge ballast water.

The VGP regulates discharges incidental to the normal operation of vessels operating in a capacity as a means of transportation. The VGP includes general effluent limits applicable to 26 specific discharge streams; narrative water quality-based effluent limits; inspection, monitoring, recordkeeping, and reporting requirements; and additional requirements applicable to certain vessel types. The effluent limits are primarily in the form of Best Management Practices (BMPs), which were developed based upon standard industry practices that were already being performed on vessels.

With respect to ballast water, the 2008 VGP incorporated all of the Coast Guard's mandatory ballast water management and exchange requirements, and offers increased environmental protection with several additional requirements, such as requiring U.S.-bound vessels with empty ballast water tanks to conduct saltwater flushing, and mandating ballast water exchange for vessels engaged in Pacific nearshore voyages that have taken on ballast water in areas less than 50 nautical miles from shore. The VGP also includes a narrative water quality-based effluent limit that requires permittees to control discharges as necessary to meet applicable water quality standards. In addition, the permit contains certain additional conditions imposed by the states under the CWA section 401 certification process.

Implementation and Ensuring Compliance with the VGP

The VGP requires that vessel owners and operators assure that vessel discharges meet effluent limits and related requirements; prescribes a corrective action process for fixing permit violations; and includes requirements for inspections, monitoring, recordkeeping and reporting. These provisions have been successfully implemented by permittees over the past four years, resulting in environmental improvements, and have also enabled the EPA to make improvements in the 2013 VGP by refining the permit's requirements to better reflect existing vessel practices. The EPA used information received from the approximately 50,000 Notices of Intent to be covered by the VGP submitted by permittees and other sources of information in order to update permit conditions in a manner that minimizes burden on permittees.

The EPA is fortunate to have strong federal partners in mitigating the threat posed by ballast water discharges, including the Coast Guard. With respect to compliance monitoring, in February 2011, the EPA and the Coast Guard signed a Memorandum of Understanding (MOU) that set up a cooperative federal inspection regime for the VGP. Under the MOU, the Coast Guard has incorporated components of the EPA's VGP into its existing inspection protocols and procedures so that the United States

identifies potential violations of the permit and vessel pollution in U.S. waters in an effective and efficient manner. The MOU creates a framework for improving EPA and Coast Guard collaboration on data tracking, training, compliance monitoring, EPA's enforcement and industry outreach. As a result of the MOU, there is a regular exchange of information regarding potential violations.

It is also important to note the critical role that the Saint Lawrence Seaway Development Corporation (the Seaway) has played in developing and implementing effective ballast water programs for vessels entering the Great Lakes. In 2008, the Seaway was the first U.S. federal government entity to mandate saltwater flushing for vessels entering the Great Lakes from outside the U.S. Exclusive Economic Zone (EEZ). Additionally, the Seaway, in partnership with the Coast Guard and our Canadian partners, implements a 100% inspection regime for all applicable vessels entering the Lakes to assure that they have conducted ballast water exchange or saltwater flushing. Finally, the Seaway continues to play a leadership role in facilitating communication between various stakeholders in the Great Lakes, including the states, to ensure effective ballast water regulation of vessels entering the Great Lakes. Based in part on these efforts, we believe that the Great Lakes have been better protected from invasive species over the last five years, and we look forward to the Seaway's continuing role in effectively implementing ballast water requirements for vessels entering the Great Lakes.

The 2013 VGP

The 2008 VGP expires on December 19, 2013, at which time the 2013 VGP will become effective. The 2013 VGP covers the same universe of approximately 70,000 vessels as the current permit. The permit continues to regulate the 26 specific discharge categories that were addressed by the 2008 permit.

The EPA received approximately 5,500 comments on the draft VGP during the 75-day public comment period. We finalized the permit in March of this year so that vessel owners and operators would have time to plan for and implement any new permit conditions. In developing the permit, we focused on

increasing environmental protection based on sound science, ensuring vessel safety, and minimizing burden for permittees with common-sense and easy-to-implement provisions.

The 2013 VGP reduces the administrative burden for vessel owners and operators in several ways, such as eliminating duplicative reporting requirements, clarifying that electronic recordkeeping may be used instead of paper records, and streamlining self-inspection requirements for vessels that are out of service for extended periods. The VGP also increases environmental protection with provisions for mechanical systems that may leak lubricants into the water and for exhaust gas scrubber washwater, which will reduce the quantity and toxicity of oils and other pollutants that enter U.S. waters. In addition, because untreated graywater, especially in large quantities, can cause environmental harm, the 2013 VGP includes a prohibition against the discharge of untreated graywater from cruise ships within 3 nautical miles from shore. The untreated graywater produced by cruise ships may contain high levels of nutrients, pathogens, residual levels of organic material and cleaning chemicals.

Development of Ballast Water Provisions in the VGP

In developing ballast water limits for both the current VGP and the new VGP, the EPA considered limits based on both the best technology available economically achievable to treat the pollutants (i.e., technology-based effluent limits), and any more stringent limits necessary to protect water quality (i.e., water quality-based effluent limits). In order to further our scientific understanding of the state of ballast water science, the EPA, with assistance from the Coast Guard, sought advice from the EPA's Science Advisory Board (SAB) on the performance and availability of ballast water treatment technologies. The EPA, again with the Coast Guard's help, also commissioned a report from the National Academy of Sciences (NAS) to inform our understanding of the relationship between the concentration of living organisms in ballast water and the likelihood of nonindigenous organisms successfully establishing populations in U.S. waters. The EPA's primary purpose in requesting the NAS and SAB reports was to

obtain expert input and advice regarding: (1) the derivation of environmentally sound numeric effluent limits for ballast water, and (2) the status and availability of ballast water treatment technologies.

The EPA used the results of these studies to inform the discharge limits in the draft VGP, which are generally consistent with those contained in both the International Maritime Organization's 2004 Ballast Water Management Convention ("IMO Convention") and the Coast Guard's final ballast water rule. In finalizing these limits, the EPA concluded that they would be expected to substantially reduce the risk of introduction and establishment of non-indigenous invasive species in waters of the U.S. via ballast water discharges.. The permit specifies that the limits will be phased in over time during a timeframe that mirrors the schedule outlined in the Coast Guard's final rule.

The 2008 VGP contained a variety of state-specific ballast water conditions, which were included as a result of the CWA's section 401 state certification process. By sharing the results of the scientific studies with states and actively fostering coordination between the states throughout the 2013 permit development process, the EPA facilitated greater consistency among state 401 certification ballast water conditions for the 2013 VGP.

Ballast Water Discharge Limits: Comparing the VGP and the Coast Guard's Final Rule

The Administration continues to be deeply concerned about the environmental and economic impacts that can result from the introduction of ANS into U.S. waters. ANS introductions contribute to the loss of aquatic biodiversity and existing ANS introductions have caused significant social, economic, and biological impacts. Economic costs from invasions of ANS range in the billions of dollars annually. To help prevent future ANS introductions and the significant impacts they cause, the Coast Guard and the EPA have worked very closely over the past several years to develop a strong federal ballast water management program that will reduce the risk of new introductions. In administering our respective authorities, the Coast Guard and the EPA have worked closely to harmonize, as appropriate and

permitted by law, the final Coast Guard ballast water discharge standard regulations and the EPA's 2013 VGP.

It is important to note that the Coast Guard and the EPA are implementing different laws. The Coast Guard implements the Non-indigenous Aquatic Nuisance Prevention and Control Act (NANPCA), as amended by the National Invasive Species Act (NISA), and the EPA implements the CWA. As a result of the Coast Guard and the EPA's efforts to coordinate and develop a robust technical and scientific foundation for our decisions, our agencies each have a similar understanding of the technological and ecological factors associated with ballast water discharges, their treatment, and their impacts. As the EPA begins to implement the 2013 VGP, we will continue to work with the Coast Guard to ensure consistency with respect to the regulation of ballast water discharges.

After evaluating the preliminary determinations made in the draft permit regarding best available technology and water quality requirements based on comments received and other information before it in the record, the VGP and the Coast Guard's final rule are generally aligned in terms of numeric ballast water effluent limitations, applicability of those limits, and the implementation schedule. Like the current VGP, in order to fulfill the CWA's statutory mandates, the 2013 VGP has some additional monitoring and other quality control requirements beyond those in the Coast Guard's final rule, one of which I'd like to highlight.

The EPA has finalized in the VGP a requirement to continue existing ballast water exchange practices as water quality-based effluent limits for certain vessels entering the Great Lakes. In addition to meeting the numeric discharge standards in the permit, vessels that enter the Great Lakes after operating beyond the Exclusive Economic Zone are required by the EPA's permit to continue to conduct mid-ocean ballast water exchange when they have taken on ballast water from a non-Great Lakes freshwater or brackish water port in the previous month. The purpose of this requirement, which is not included in the

Coast Guard's final rule, is to add another measure of protection against potential new invasive freshwater species that are transported via ballast tanks to the freshwater environment of the Great Lakes. By requiring ballast water exchange mid-ocean in addition to removal by treatment, any remaining freshwater species that were taken up in the ship's ballast in fresh or brackish waters would either be discharged into the open ocean or shocked by saline water during ballast water exchange before being discharged into the freshwater of the Great Lakes. The EPA finalized this additional measure for the Great Lakes, a unique and valuable resource, based on a recognition that those water bodies have been particularly impacted by the introduction of various invasive species and remain susceptible to future introductions if appropriate measures are not taken. Based on public comments received and clear scientific evidence that this practice would increase protection for the Great Lakes, the EPA limited the requirement to vessels whose voyage patterns are more likely to result in ballast water discharges that may pose a higher risk of invasion. This subset of vessels has conducted exchange safely for years, and the final VGP includes provisions to address safety issues. This provision, as well as the other requirements of the permit, will be reviewed during the 2018 renewal of the general permit, and may be modified or dropped if found to be no longer necessary.

The Small Vessel General Permit (sVGP)

As you are aware, Congress passed and the President signed two laws in the summer of 2008 that narrowed the scope of the NPDES permit requirement for incidental vessel discharges. The first law, the Clean Boating Act (Public Law 110-288), exempted recreational vessels from the requirement to obtain an NPDES permit for their incidental discharges and directed the EPA and the Coast Guard to develop uniform national regulations for such discharges under Section 312 of the CWA. The second law (Public Law 110-299) generally imposed a two-year moratorium on NPDES permitting requirements for commercial vessels less than 79 feet and commercial fishing vessels regardless of size, except for their ballast water discharges. This moratorium was subsequently extended to December 18, 2013, by Public

Law 111-215 and to December 18, 2014, by Public Law 112-213. In addition, Public Law 110-299 directed the EPA to conduct a study of vessel discharges and develop a report to Congress. The EPA finalized this Report to Congress, entitled "Study of Discharges Incidental to Normal Operation of Commercial Fishing Vessels and Other Non-Recreational Vessels Less Than 79 Feet," in August 2010.

The EPA proposed the sVGP in December 2011 to provide CWA permit authorization for commercial vessels less than 79 feet and commercial fishing vessels regardless of size when the moratorium expires. Section 301(a) of the CWA generally prohibits the discharge of a pollutant without an NPDES permit, and as of the December 2014 expiration date of the moratorium, the affected vessels would be prohibited from discharging in waters of the U.S. without NPDES permit coverage. In addition, in the event the P.L. 112-213 moratorium expires the VGP will provide a mechanism for authorizing the discharge of fish hold effluent from fishing vessels greater than 79 feet in length.

We estimate that between 118,000 and 138,000 vessels could be subject to the sVGP's requirements upon expiration of the current moratorium. Without coverage under the sVGP, owners/operators could face penalties for violating the CWA's prohibition against the discharge of a pollutant without a permit. Hence, the EPA proposed the draft sVGP to provide the most administratively efficient permit possible consistent with our regulations. As currently proposed, if the owner or operator of a vessel less than 79 feet believes the sVGP to be inappropriate for their vessel, they may seek coverage under the VGP or an individual NPDES permit.

This sVGP would be the first under the CWA to specifically address discharges incidental to the normal operation of commercial vessels less than 79 feet in length. Recognizing that small commercial vessels are substantially different in how they operate than their larger counterparts, the draft sVGP is shorter and simpler than the VGP. The draft permit specifies BMPs for several broad discharge management categories including fuel management, engine and oil control, solid and liquid maintenance, graywater

management, fish hold effluent management, and ballast water management. These BMPs include common-sense management measures to reduce environmental impacts from these discharges, including measures to reduce the risk of spreading invasive species. Based on the types of discharges from these vessels, the draft sVGP also contains simplified paperwork requirements relative to VGP. Instead of submitting a Notice of Intent to EPA to obtain coverage, owners/operators would be required to fill out and maintain onboard a simple one-page permit authorization form. The EPA expects to issue the final sVGP well before the December 2014 expiration of the current moratorium, so that it will be available to small vessel owners and operators at that time if needed.

Conclusion

The EPA is continuing its hard work of helping to protect our nation's waters from pollution through its Clean Water Act efforts to address vessel discharges. The EPA and the Coast Guard will continue to work closely in the future to minimize the risk of introduction and spread of aquatic nuisance species through cooperative regulation of ballast water discharges.

Once again, Chairman Hunter, Ranking Member Garamendi, and Members of the Subcommittee, thank you for the opportunity to discuss the EPA's VGP and sVGP. I look forward to answering any questions you may have.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 18 2014

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Duncan Hunter
Chairman
Subcommittee on Coast Guard and Maritime Transportation
Committee on Transportation and Infrastructure
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your November 22, 2013, letter requesting responses to questions for the record following the October 29, 2013 hearing before the Subcommittee titled "Coast Guard and Maritime Transportation Authorization Issues."

The responses to your questions are provided in the enclosure. Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Greg Spraul in the EPA's Office of Congressional and Intergovernmental Relations at [redacted] or [redacted].

Sincerely,

Laura Vaught
Associate Administrator

Enclosures

cc: The Honorable John Garamendi, Ranking Member
Subcommittee on Coast Guard and Maritime Transportation

Witness Questions for the Record
Michael Shapiro, Environmental Protection Agency
Subcommittee on Coast Guard and Maritime Transportation
Hearing on Coast Guard and Maritime Transportation Authorization Issues
Tuesday, October 29, 2013

The Honorable John Garamendi

1. Uniform Statutory Framework for Ballast Water and Vessel Discharges

The Coast Guard and EPA worked very hard to minimize inconsistencies between the Coast Guard's ballast water treatment rule which was developed pursuant to the National Invasive Species Act, and EPA's 2013 Vessel General Permit (VGP), which was developed pursuant to the Clean Water Act. Some vessel operators have expressed concern that it would be easier for both the Coast Guard and EPA if Congress were to amend the law to provide a single statutory authority for the regulation of vessel discharges under which the Coast Guard and EPA would each have clearly defined roles.

- ***Mr. Shapiro, in the development of EPA's VGP rule and the Coast Guard's ballast water regulation, can you give me any examples of issues on which the Coast Guard and EPA were unable to fully harmonize their respective regulations because the agencies are operating under different statutory authorities? Are you confident that the implementation of both rules will not run afoul of competing statutory conflicts?***

In developing the VGP's ballast water requirements, the EPA ensured that the VGP was as consistent as appropriate with the USCG rule requirements, and provided detailed explanation of the VGP's relationship with the Coast Guard rule in the VGP fact sheet. As explained in my testimony, in order to fulfill the Clean Water Act's statutory mandates, the 2013 VGP includes some additional monitoring and other quality control requirements beyond those in the Coast Guard's final rule, including a requirement to continue existing ballast water exchange practices for certain vessels entering the Great Lakes.

Since development of the VGP, the EPA and the Coast Guard have continued to coordinate on implementation of the VGP and the Coast Guard rule. Recently, the EPA worked closely with the Coast Guard to develop and distribute a joint letter to vessel owner/operators that have been granted an extension from the Coast Guard's ballast water regulations to foster consistent implementation of the VGP and the Coast Guard rule and to provide the regulated community with a common understanding about how the permit and the rule work together with respect to such extensions. This letter, along with the EPA's Enforcement Response Policy, which is referenced in the joint letter, is enclosed.

- ***What steps has EPA taken to provide sufficient guidance to the regulated community so that they understand how these two rules work together?***

EPA staff has attended numerous industry meetings and conferences in the U.S., Europe, and Asia, and focused on discussions with the regulated community about the VGP and how the VGP and the Coast Guard rule work together. The EPA has also hosted two webinars for the regulated community on the VGP's requirements. In addition, EPA staff has responded to questions from permittees about how to implement the VGP's requirements.

2. Status of sVGP

Certain vessels (non-recreational vessels less than 79 feet in length and fishing vessels) have been exempt from National Pollutant Discharge Elimination System (NPDES) permitting requirements for discharges incidental to the normal operation of a vessel. This moratorium was extended to December 18, 2014 by the 2012 Coast Guard and Maritime Transportation Authorization Act (P.L. 112-213). In anticipation of the expiration of the moratorium, EPA proposed a draft Small Vessel General Permit (sVGP) in December 2011 to provide for a Clean Water Act permit program for incidental discharges from vessels currently covered by the moratorium. EPA estimates that the as many as 118,000 to 140,000 vessels could seek coverage under the sVGP permit. The EPA has not given a firm date for when it intends to publish a final permit. Rep. LoBiondo is looking to introduce legislation to permanently waive the existing moratorium from the NPDES permit requirement for vessels subject to the sVGP.

- ***What is the status of EPA's sVGP rule? When can we expect to see a final rule published in the Federal Register?***

The sVGP was proposed in December 2011 and the final permit has been submitted to the Office of Management and Budget for interagency review. The EPA plans to finalize the sVGP well in advance of the December 2014 expiration of the moratorium in order to ensure that vessels can continue to operate and comply with the Clean Water Act and to provide small vessel owner/operators time to plan for and implement any new permit conditions.

- ***Some critics of the sVGP rule are proposing that the Congress should simply make the existing moratorium on NPDES discharge permits permanent. What are EPA's views on this idea? What would be the effect on coastal water quality?***

We have not taken a position on the idea of making the moratorium permanent. The potential effects on water quality of discharges from moratorium vessels is outlined in the EPA's 2010 Report to Congress titled "Study of Discharges Incidental to Normal Operation of Commercial Fishing Vessels and Other Non-Recreational Vessels Less than 79 Feet" (available at: http://cfpub.epa.gov/npdes/vessels/reportcongress.cfm).

- ***Will any small recreational vessels fall under the sVGP requirements?***

No. Recreational vessels are exempted from NPDES permitting under 33 U.S.C §§1323(o) and 1342(r) (the Clean Boating Act).

3. VGP Notice of Intent System

In order to obtain authorization to discharge under the Vessel General Permit (VGP), vessel operators must submit a form called a Notice of Intent, or NOI, to EPA. Under the 2013 VGP, which takes effect December 19, vessel operators are required to submit this form electronically through EPA's eNOI system by December 12. EPA made changes to its eNOI system for the 2013 VGP with the stated intent that vessel operators would have at least three months to submit an NOI prior to the new permit's effective date, putting its launch date in mid-September. However, it is my understanding that the updated eNOI system did not go live until September 30, on the eve of the government shutdown. I am further informed that EPA told its stakeholders that it had "skipped [its]

final bug checks and formatting review" to "move forward" the eNOI launch date. Furthermore, EPA customer support was unavailable until October 18, less than two months before the NOI due date. Vessel operators have expressed concern that EPA's modifications to the eNOI system may have resulted in making the eNOI system harder, rather than easier, to use, and that compliance with notice requirements could present a substantial administrative burden on some operators.

- ***Please detail and explain the steps EPA is taking to ensure that vessel operators, particularly those with large fleets, are able to easily and efficiently submit their NOIs by the December 12 deadline – which is only seven weeks away?***

The EPA's 2013 VGP eNOI system became available to the public on September 30, 2013, and the EPA was available to provide customer support on that same day. The system released on September 30 was fully operational, had been tested for many weeks prior to its release, and included help text integrated throughout the system to guide users from registration through submission. Although the EPA was unable to provide any system support during the government shutdown, a number of users were able to successfully submit their NOIs during this period. While the EPA has made a few minor modifications to the system since startup, the system has been operational, save for brief maintenance or system update periods.

As of January 3, 2014, the EPA has received 38,287 NOIs from more than 2,000 owner/operators located in 65 countries and 36 U.S. states or territories.

In addition, based on early user feedback, the EPA created a new option in the system to allow users to batch-upload multiple NOIs using a simple Microsoft Excel-based tool. Users have submitted more than 22,000 NOIs using this tool. In general, the EPA believes the 2013 VGP eNOI system is more user-friendly than the previous system, experiencing considerably fewer problems, and providing an enhanced level of user authentication through electronic signatures.

To help users better understand how to use the system, the EPA hosted a webcast on November 14, 2013, to walk users through the eNOI system and to answer questions. This webcast followed a similar webcast that had been held a week earlier to provide an overview of the 2013 VGP requirements.

- ***Under the 2013 VGP, EPA is increasing reporting requirements and requiring all reports to be submitted electronically. Given the issues that some users have had with EPA's electronic systems since 2008, what changes has EPA made to ensure that these reports can be submitted without creating an undue administrative burden for vessel operators?***

The 2013 VGP reduces the administrative burden for vessel owners and operators in several ways, such as eliminating duplicative reporting requirements, clarifying that electronic recordkeeping may be used instead of paper records, and streamlining self-inspection requirements for vessels that are out of service for extended periods. The EPA is currently developing the companion module for users to submit annual report information to the agency, with the first report due February 28, 2015. The EPA is building this module as a component of the 2013 VGP eNOI system as a way to eliminate any redundancy in data entry, to improve consistency in reporting, and to leverage users' familiarity with the existing eNOI system. Like the eNOI system, the annual reporting module will also include a Microsoft Excel-based batch upload tool to simplify submission for users that have to submit annual reports for multiple vessels. The EPA expects that the annual reporting tool will minimize the burden on users for submitting information required under the 2013 VGP.

December 24, 2013

Dear Vessel Owner/Operator:

Thank you for your letter to the United States Coast Guard (USCG) in which you requested an extension to the USCG implementation schedule for Ballast Water Management Discharge Standards for vessels required to use Coast Guard approved ballast water management systems. The USCG has shared with the U.S. Environmental Protection Agency (EPA) your extension request to facilitate a coordinated response. The USCG and the EPA share the important goal of protecting the nation's waters. We both regulate the discharge of oil, hazardous substances, and non-indigenous invasive species into the maritime environment and are working together to ensure that the Agencies are as consistent as possible under their respective statutory authorities. Our coordinated approach has been essential to our success in reducing the further introduction of non-indigenous invasive species into the nation's waters.

In response to your letter and to assist your understanding of our collaborative approach, we provide you with both the USCG's letter approving your extension request and the EPA's Enforcement Response Policy. This coordinated response represents a unified approach to addressing the ballast water management issues you raised in your extension request to the USCG. As you may be aware, the USCG and the EPA directly partner on a variety of ballast water initiatives, including the development of the EPA ETV protocols, upon which the USCG type approval requirements depend. We both strongly support the use of USCG type approved technology and are working together to ensure the availability of such systems for the earliest implementation of ballast water management system compliance dates.

Sincerely,

Joseph A. Servidio, RDML
Assistant Commandant for Prevention Policy
U. S. Coast Guard

Michael H. Shapiro,
Principal Deputy Assistant Administrator
Office of Water
U. S. Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 27 2013

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Enforcement Response Policy for EPA's 2013 Vessel General Permit: Ballast Water Discharges and U.S. Coast Guard Extensions under 33 C.F.R. Part 151

FROM: Cynthia Giles
Assistant Administrator

TO: Regional Vessel General Permit Enforcement and Program Directors

Section 2.2.3.5 of EPA's 2013 Vessel General Permit ("2013 VGP")[1] specifies certain numeric ballast water discharge limits for vessels covered by the 2013 VGP. The discharge of ballast water is also subject to U.S. Coast Guard regulations[2] under the National Aquatic Nuisance Prevention and Control Act / National Invasive Species Act. Unlike the 2013 VGP, Coast Guard regulations specify certain technologies be applied on vessels for treatment of ballast water prior to discharge. As part of the regular coordination between EPA and the Coast Guard as co-regulators of ballast water discharges, the provisions of the 2013 VGP and Coast Guard requirements for ballast water were intended to work in tandem.

However, Coast Guard type approved ballast water management systems pursuant to 33 C.F.R § 151 subparts C and D are not yet available and consequently, pursuant to 33 C.F.R. § 151.2036, the Coast Guard has indicated that, on a case-by-case basis, it may determine "that despite all efforts to meet the ballast water discharge standard requirements," it is necessary to issue a temporary extension of the schedule to implement the required technology on a particular vessel. In addition, Section 1.9.1 of EPA's 2013 VGP contemplated the possibility that such extensions might be granted: "[W]here the U.S. Coast Guard has granted . . . an extension request pursuant to 33 CFR 151.2036, that information will be considered by EPA."

Accordingly, this memorandum articulates how EPA will consider the grant of an extension by the Coast Guard when a vessel has not complied with the numeric ballast water

[1] *Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels* (effective date December 19, 2013), available at http://www.epa.gov/npdes/pubs/vgp_permit2013.pdf.
[2] *See* 33 C.F.R. Part 151.

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discharge limits in the 2013 VGP. Specifically, this enforcement response policy applies *only* to those situations when:

- a vessel has applied for and received an extension from the Coast Guard pursuant to 33 C.F.R. §151.2036 related to ballast water discharges and the vessel is in compliance with all requirements of the extension;
- the vessel is not in compliance with its ballast water numeric discharge limit under the 2013 VGP; and
- the vessel is otherwise in compliance with all other provisions of the 2013 VGP, including submission of a valid Notice of Intent.

In these circumstances, EPA enforcement personnel should take into account conditions expressed in the Coast Guard's extension letter such as whether the vessel conducts complete ballast water exchange in an area 200 nautical miles from any shore prior to discharging ballast water into the waters of the United States, adheres to the Coast Guard's ballast water management plan as well as to recordkeeping and reporting provisions, and complies with all other applicable ballast water requirements under relevant Coast Guard regulations and the VGP. When a vessel has adequately undertaken these measures (as well as any other reasonably available or appropriate measures under the circumstances to minimize the extent or the effects of the VGP ballast water numeric discharge exceedance), EPA will consider such violations of the 2013 VGP ballast water numeric discharge limit a low enforcement priority.

This enforcement response policy does not apply to grossly excessive ballast water discharges or those that may present an imminent and substantial endangerment, criminal violations of the Clean Water Act, or (if applicable) violations of judicial orders or administrative orders. Nevertheless, prior to initiating an enforcement action for an exceedance of a VGP ballast water numeric discharge limit where the Coast Guard has issued an extension, EPA regional enforcement personnel should first consult with the Water Enforcement Division in the Office of Civil Enforcement, for a joint determination of whether, in light of all the relevant facts and circumstances, to proceed with the action.

Finally, it should be understood that this enforcement response policy is intended solely for the guidance of EPA enforcement personnel, and is not intended to and cannot be relied on to create any rights, substantive or procedural, enforceable by any party against EPA or the United States. EPA also reserves the right to act at variance from this policy in particular instances, and to change it at any time.

If you have any questions about this policy, please contact Mark Pollins, Director of the Water Enforcement Division at (202) 564-4001.

cc: Enforcement Directors
Regional Counsels
NPDES Managers
Nancy Stoner, OW
Ken Kopocis, OW
Steve Neugeboren, OGC

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Mark R. Rosekind, Ph.D.
Board Member

Testimony of the Honorable Mark R. Rosekind, Ph.D.
Board Member
National Transportation Safety Board
Before the
Subcommittee on Coast Guard and Maritime Transportation
Committee on Transportation and Infrastructure
U.S. House of Representatives
Hearing on
Coast Guard and Maritime Transportation Authorization Issues
October 29, 2013

Good morning Chairman Hunter, Ranking Member Garamendi, and Members of the Subcommittee.

Thank you for the invitation to appear before you today to discuss important maritime transportation safety issues resulting from numerous investigations conducted by the National Transportation Safety Board (NTSB).

NTSB-USCG Cooperation

The USCG and NTSB work closely together to evaluate those accidents that meet the threshold of a major marine casualty, as set forth in joint NTSB-USCG regulations. Upon a determination that the NTSB will lead an investigation of a major marine casualty, it will establish the facts, circumstances, and probable cause of the event, consistent with its statutory mandate. Even where a determination is made that the USCG will lead an investigation, the NTSB frequently provides investigative support to the USCG, such as providing voyage data recorder information retrieval and materials properties analysis. The NTSB investigates all major marine casualties that occur each year – typically 30-35 per year.

Recent NTSB-USCG Activities

In June 2013 the Chairman of the NTSB hosted the Commandant of the Coast Guard for the annual Chairman–Commandant meeting. Several topics were discussed at this meeting including the ongoing good cooperation and constructive relationship between the agencies as well as the synergy in our investigative expertise and collaboration. Particularly noted in the meeting were concerns related to safety aspects of DUKW amphibious passenger tour vehicles and large passenger vessel safety. These discussions resulted in agreement that the USCG would lead efforts to improve amphibious passenger vehicle safety with NTSB support and the NTSB would lead a passenger vessel safety forum in partnership with the USCG with a focus on large foreign passenger vessels calling US ports.

Large foreign flagged passenger vessels have been increasingly in the spotlight since the grounding and capsizing of the *Costa Concordia* in January 2011. Since then there have been several accidents, including fires on board vessels resulting in the loss of power or significant damage to the vessel. Many of these accidents happened in close proximity to the US coast and affected thousands of US citizens sailing onboard. While some assume that the NTSB is investigating these incidents, under current regulations, investigations of these events involving foreign flagged vessels, occurring in international waters, although close to the US, are not led by the NTSB, but are conducted by the USCG, which is also the oversight agency for these operations.

The US Coast Guard is the official representative to the International Maritime Organization (IMO) and as such represents this country on maritime regulatory matters internationally. One important aspect of the IMO's work is to ensure maritime casualties are thoroughly investigated and that those countries directly involved or designated as "substantially interested states" to an accident consistent with the IMO Casualty Code work collaboratively to guarantee the most thorough, unbiased investigation. Many countries such as the UK, Sweden, Japan, Australia, Canada, Denmark, Finland and Ireland, among others also have their maritime regulatory agency as the primary representative to IMO. The independent safety agency in these countries, however, acts as the official representative when it comes to casualty investigations and representing the country as a substantially interested state. This distinction is important as it meets the intent of the IMO Code on Casualty Investigations in terms of an independent and unbiased investigative process that is not intended to apportion blame or determine liability but rather to understand the circumstances leading to the accident in order to determine measures to prevent recurrence and improve safety. Although the NTSB is the independent accident investigator, unlike the countries listed above, it does not serve as the official representative to IMO on casualty investigations.

Through cooperation and agreement provided by the memorandum of understanding (MOU) between the USCG and NTSB, both agencies have worked closely to review and provide feedback to accident reports from other countries where the US is a substantially interested state. The NTSB's Office of Marine Safety provides expert support from licensed, experienced merchant mariners and professional investigators on staff.

Out-of-Water Survival Craft and Small Passenger Vessel Safety

Throughout its history, the NTSB has investigated hundreds of marine accidents, identified a broad array of safety risks, and issued over 2400 recommendations to the USCG and other entities to improve marine safety. A longstanding issue of considerable interest to the NTSB is the importance of out-of-water survival craft, particularly for passengers and crewmembers on small passenger vessels.

NTSB Investigations and Recommendations Concerning Lifesaving Equipment

The NTSB first addressed this issue in determining the probable cause and making recommendations concerning the sinking of the *M/V Comet* off Point Judith, Rhode Island on May 19, 1973. Of the 25 fishing party passengers and 2 crewmembers, only 11 were rescued.

The NTSB determined the loss of life following the vessel's sinking, among other things, was due to "the lack of adequate equipment to protect the victims from prolonged exposure to cold water."[1]

The NTSB also stated its concurrence with the recommendation of the USCG Marine Board convened to investigate the vessel's sinking to require "all primary lifesaving devices to keep persons out of the water when the prevailing water temperature is expected to be 60° F or less."[2] In responding to this Marine Board recommendation, the Commandant acknowledged, "should one of these small passenger vessels sink in an area where the sea water temperature is sufficiently cold, present equipment would offer little chance of survival." The Commandant also stated, "[t]he need for such equipment as an anticipatory measure will be given further consideration."[3]

In July 1986, the NTSB issued Safety Recommendation M-86-61 to the USCG to:

> Require that all passenger vessels except for ferries on river routes on short runs of 30 minutes or less have primary lifesaving equipment that prevents immersion in the water for all passengers and crew.[4]

In its safety recommendation letter to the USCG, the NTSB again reiterated its concerns with the use of immersible lifesaving equipment on small passenger vessels:

> The Safety Board is concerned about the use of buoyant apparatus and lifefloats aboard small passenger vessels in lieu of liferafts. Since neither buoyant apparatus nor lifefloats keep survivors from immersion in the water, potential hypothermal effects can result. Use of such buoyant apparatus or lifefloats is permitted between May 15 and October 15, north of the 33rd parallel on the U.S. east coast. However, National Oceanic and Atmospheric Administration (NOAA) data show that water temperatures can be quite low (below 50°) even during summer months along the east coast. In fact, the USCG requires most vessels that operate in waters where temperatures drop below 60° to carry exposure suits for all crewmembers in recognition of the potential for hypothermia.[5]

The NTSB's most recent recommendation on this topic is from our investigation of the *Queen of the West* engine room fire that occurred on the Columbia River in Oregon on April 8, 2008, and was issued to the USCG in 2009.

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[1] Marine Casualty Report—*Foundering of the Motor Vessel COMET off Point Judith, Rhode Island, on May 19, 1973, with Loss of Life* (USCG/NTSB-MAR-75-4), at p. 8.
[2] Id.
[3] Id., at p. 12.
[4] NTSB Safety Recommendation Letter to USCG Commandant, July 24, 1986, at p. 13.
[5] Id., at p. 9.

> Require that out-of-water survival craft for all passengers and crew be provided on board small passenger vessels on all routes. (M-09-17)[6]

The *Queen of the West* was a passenger vessel with 177 persons onboard when fire broke out. The fire was detected and contained by the suppression systems and crew actions. However, had the fire grown to the extent that required the captain to order the evacuation of the vessel, 124 passengers, who were mostly senior citizens, and 53 crewmembers would have abandoned ship with only one six-person rescue boat available. Had the vessel fire spread more quickly, the passengers and crew would have evacuated into 44°F water wearing only lifejackets for flotation. The nearest assistance was about 2 hours away and the effects of hypothermia would have quickly set in, putting the passengers and crew at a high risk for injury and death.[7]

More recently, the need to implement the out-of-water survival craft requirement was justified again in the NTSB's investigation of the September 8, 2011, *Trinity II* liftboat accident in the Bay of Campeche, Gulf of Mexico.[8] The crew was partially submerged in the warm water of the Gulf of Mexico after abandoning their ship in a storm. The length of their immersion slowly lowered the crew's body temperatures, and four died as a result of hypothermia, drowning or complications from prolonged exposure. Had the crew been able to remain out of the water all of them likely would have survived.

Legislation Related to Survival Craft

Following the *Queen of the West* engine room fire and the NTSB's investigation, Congress included a provision in the Coast Guard Authorization Act of 2010,[9] prohibiting the USCG from approving a survival craft as a safety device unless the craft ensures that "no part of an individual is immersed in water." The provision further prohibited the USCG from approving a survival craft that does not meet the new standard subsequent to January 15, 2015. Section 303 of the Coast Guard and Maritime Transportation Act of 2012,[10] directed the USCG to submit a Congressional report on a number of specific areas enumerated in the 2010 Act and delayed the January 15, 2015, implementation date for the out-of-water survival craft requirement. The 2012 Act specified the new implementation date as "the date that is 30 months after the date on which the [USCG] report ... is submitted." The USCG submitted its report, *Survival Craft Safety*, in August 2013; therefore, moving the implementation date to February 2016. Out-of-water survival craft can save lives and we urge Congress not to repeal or delay the requirement further.

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[6] NTSB Safety Recommendation Letter to USCG Commandant, July 24, 2009, at p. 4.

[7] *Engineroom Fire on Board U.S. Small Passenger Vessel* Queen of the West, *Columbia River, Near Rufus, Oregon, April 8, 2008*, Marine Accident Report NTSB/MAR-09/04/SUM (Washington, DC: National Transportation Safety Board, 2009).

[8] *Personnel Abandonment of Weather-Damaged US Liftboat* Trinity II *with Loss of Life, Bay of Campeche, Gulf of Mexico, September 8, 2011*, Marine Accident Report NTSB/MAR-13/01 (Washington, DC: National Transportation Safety Board, 2013).

[9] Pub. L. 111-281, § 609, 124 Stat. 2905, 2968, October 15, 2010, *codified at* 46 U.S.C. § 3104.

[10] Pub. L. 112-213, 126 Stat. 1540, 1563, December 20, 2012, amending 46 U.S.C. § 3104.

Hours of Service (HOS)

The NTSB supports a systematic approach to fatigue management that includes three fundamental elements: education; medical oversight, including diagnosis and treatment of sleep disorders; and proper scheduling and hours of service rules. In our investigation of the *Eagle Otome* accident,[11] we recommended that pilot oversight organizations implement fatigue mitigation and prevention programs that: (1) regularly inform mariners of the hazards of fatigue and effective strategies to prevent it; (2) promulgate HOS rules that prevent fatigue resulting from extended hours of service, insufficient rest within a 24-hour period, and disruption of circadian rhythms; and (3) HOS rules that ensure that mariners' work schedules do not cause fatigue. The USCG's voluntary crew endurance management system (CEMS) educates operators about the causes and effects of fatigue and ways to mitigate it. Similarly, the Coast Guard's revision of its medical oversight system provides critical oversight of the diagnosis and treatment of sleep disorders.[12]

In 2011, the USCG published a notice of proposed rulemaking (NPRM) regarding towing vessel safety.[13] Although the USCG indicated it was not making any specific proposal at that time, it sought additional data, information and public comment on potential requirements for hours of service or crew endurance management for mariners aboard towing vessels. The USCG also pointed out that such rules should ensure that mariners could obtain a minimum of eight hours of uninterrupted sleep and prevent circadian rhythm disruptions from interfering with mariners' ability to maintain the regularity of a sleep-wake schedule needed for recuperative rest.[14] The USCG cited the results of its application of the Fatigue Avoidance Scheduling Tool (FAST) to various watchkeeping schedules to examine their effects on circadian rhythms and uninterrupted sleep periods.[15]

Although recent literature on the application of biomathematical models to work settings has demonstrated shortcomings in such an approach,[16] we agree with the USCG's conclusion that the 6-hours-on, 6-hours-off watch schedule widely used by inland waterway operators does not provide the uninterrupted sleep time or circadian rhythm regularity that mariners need to obtain sufficient recuperative sleep. Research cited in the NPRM clearly shows that a 4-hours-

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[11] *Collision of Tankship* Eagle Otome *with Cargo Vessel* Gull Arrow *and Subsequent Collision with the* Dixie Vengeance *Tow, Sabine-Neches Canal, Port Arthur, Texas, January 23, 2010*, Marine Accident Report NTSB/MAR-11/04, (Washington, DC: National Transportation Safety Board, 2011).

[12] A more complete discussion of the NTSB's review of the Coast Guard's response to NTSB recommendations pertaining to medical oversight can be found in the *Eagle Otome* report, Id.

[13] 76 *Fed. Reg.* 49976, August 11, 2011.

[14] Id., at 49992.

[15] Id., at 49996.

[16] D. Dawson and others, "Modeling Fatigue and the Use of Fatigue Models in Work Settings," *Accident Analysis and Prevention*, vol. 43 (2011), pp. 549–564.

on, 8-hours-off watch schedule is better at reducing the effects of fatigue on mariner performance than a 6-hours-on, 6-hours-off watch schedule.[17]

The complex waterways on which towing vessels operate (near shallow water, often near obstructions such as major rail and highway bridge abutments, and near vessels carrying passengers or hazardous materials) require operators to continuously maintain the highest levels of alertness. Anything that reduces a mariner's cognitive performance—whether insufficient sleep, medication use, medical condition, extended duty, or disrupted circadian rhythms—can lead to potentially catastrophic accidents. Accordingly, the NTSB fully supports the establishment of effective science-based HOS rules for towing vessel operators, and we urge the Coast Guard to promulgate the necessary regulations at the earliest possible time. Such regulations, when implemented, should be consistent with NTSB Safety Recommendation M-99-1, which asked the Coast Guard to:

> Establish within 2 years scientifically based hours-of-service regulations that set limits on hours of service, provide predictable work and rest schedules, and consider circadian rhythms and human sleep and rest requirements.[18]

Proposed USCG HOS regulations should provide for at least eight hours of uninterrupted sleep, prevent extended periods of duty, and ensure that mariners' circadian rhythms are not disrupted. Recent rules promulgated by the Federal Aviation Administration, the Federal Motor Carrier Safety Administration, and the Federal Railroad Administration demonstrate that Federal transportation regulators can issue science-based HOS rules that would mitigate the effects of fatigue and help prevent fatigue-inducing work schedules.

Other NTSB Activities Related to Vessel Safety

At the same time the NTSB released the *Trinity II* accident report, the agency issued a Safety Alert entitled, *Mariners: Improve Your Chances of Survival When Abandoning Ship*. A copy of this *Safety Alert* is attached to this written hearing statement. The *Safety Alert* describes several problems leading up to the ten crewmembers abandonment of the water-damaged liftboat in near-hurricane-force conditions that negatively impacted their probability of survival once they were in the water. The crew's inflatable liferafts were blown away after crewmembers attempted to inflate them on deck rather than in the water, as they should have been. When they abandoned the liftboat, they were forced to cling to a lifefloat that did not offer out-of-water flotation. The *Safety Alert* also stresses the need for mariners to develop and execute a thorough weather preparedness plan; conduct realistic emergency drills that include the proper use of lifesaving equipment; and a step-by-step assessment of all such equipment, especially liferafts, that cannot actually be deployed during drills.

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[17] M. Harma and others, "Effects of 6/6 and 4/8 Watch Systems on Sleepiness Among Bridge Officers," *Chronobiology International*, vol. 25 (2008), pp. 413–423.
[18] NTSB Safety Recommendation Letter to USCG Commandant, June 1, 1999.

Closing

I appreciate the opportunity to appear before you today to discuss maritime safety and I am prepared to answer your questions.

NTSB
SAFETY ALERT
National Transportation Safety Board

Mariners: Improve Your Chances of Survival When Abandoning Ship

Good preparation and proper use of safety equipment is key

The problem

The NTSB recently investigated an accident that required the crew to abandon a weather-damaged liftboat in near-hurricane-force conditions.[1] Several problems leading up to and during the vessel abandonment negatively impacted the 10 crewmembers' probability of survival once they were in the water, and four of them died as a result:

- The company hurricane plan did not account for rapidly and locally developing low pressure weather systems. This reduced the crewmembers' ability to properly plan for the developing storm and to make an early decision to leave the vessel through routine means before the onset of the storm.
- The vessel had recently been equipped with two new inflatable throw-over-type liferafts. However, the liferafts were inflated on deck instead of in the water when the crew prepared to abandon the vessel. This led to the liferafts blowing away from the vessel and vanishing in the high winds and seas. The crewmembers ended up clinging to a lifefloat, which, unlike the liferafts, did not provide out-of-water flotation, shelter from the elements, and nonperishable food and drinking water.
- Although the crewmembers had gathered additional food, drinking water, and other supplies while preparing to evacuate, they failed to take these with them.
- The vessel was equipped with an emergency position indicating radio beacon (EPIRB), which if activated would have quickly alerted authorities and narrowed the search area. However, the crewmembers did not take the EPIRB with them

[1] *Personnel Abandonment of Weather-Damaged US Liftboat* Trinity II, *with Loss of Life, Bay of Campeche, Gulf of Mexico, September 8, 2011.* The report is available at www.ntsb.gov, under report number NTSB/MAR-13/01.

when they abandoned the vessel. As a result, they spent 3 days in the water before search and rescue assets were able to locate them.

What can mariners do?

- **Develop and execute a thorough weather preparedness plan.** Ensure that your plan takes into account surface low pressure systems, nontropical storms, and other weather systems that may form rapidly and locally. (For example, not all hurricanes approach from the east.)

- **Ensure you know how to use safety equipment.** Don't wait until a real emergency to find out whether you know how to properly use lifesaving equipment. Instead, include in your regular weekly or monthly drills a thorough step-by-step assessment of all such equipment, especially liferafts, which can't actually be deployed during drills.

- **Plan before evacuating.** Before an emergency, ensure you know your assigned duties and responsibilities—such as who's bringing what supplies—and ensure the responsible person is aware of the location of those items.

- **Drill as if it is a real emergency.** Conducting realistic drills gets the attention of crewmembers, builds their confidence and proficiency in emergency response procedures, and reinforces a strong safety culture. Review drill performance with crew to identify areas for improvement.

- **Even in coastal waters, plan for the worst.** Despite being close to shore and/or in a normally high-traffic waterway, don't assume that others will be able to come to your immediate aid, especially if your location changes. Be physically and mentally prepared for the possibility of a prolonged exposure situation.

- **Follow your plan.** In emergency situations involving high stress and exhaustion, ensure all aspects are covered by running through step-by-step emergency procedures in accordance with established checklists. Use shoreside support resources to assist you with this.

- **Don't forget the EPIRB.** The EPIRB is a vital piece of equipment that can significantly shorten the time necessary to locate and rescue you. Take it with you! In addition, carry a personal locator beacon (PLB); it is an inexpensive and effective device.

- **Stay together in the water.** Search and rescue personnel will more easily spot a group of people in the water than dispersed swimmers.

Questions for the Record to Mark R. Rosekind, Ph.D.

National Transportation Safety Board Member

Hours of Service

Dr. Rosekind, over the last five years there has been a growing body of scientific research and literature on split sleep. Research conducted in the aerospace, maritime, and trucking industries indicates that obtaining sleep in two periods, a main or anchor sleep period and supplemental nap period, can have the same effect on performance as a single block of uninterrupted sleep. A recent study by the Federal Motor Carrier Safety Administration found that subjects operating on a split sleep schedule (with two five-hour opportunities for sleep between 3:00 a.m. and 8:00 a.m. and 3:00 p.m. and 8:00 p.m.) obtained more sleep than subjects given a consolidated 10-hour opportunity for daytime sleep (from 10:00 a.m. to 8:00 p.m.).

These research findings seem to offer intriguing potential for application to the maritime industry, where split sleep schedules are the norm in nearly all industry sectors.

- Has the NTSB taken a comprehensive look at the scientific literature on split sleep?

- How will the NTSB take the scientific literature on split sleep into account in the development of future recommendations on fatigue and watch standing and in the evaluation of agency implementation of previous NSTB recommendations?

- From your perspective, how might split sleep strategies be used to improve crewmember alertness and performance in the maritime industry?

Response from the NTSB:

1. Has the NTSB taken a comprehensive look at the scientific literature on split sleep?

For over 40 years, the NTSB has identified fatigue as a safety risk in transportation, and the NTSB has issued more than 200 safety recommendations since 1972 to address the problem of human fatigue in all modes of transportation. It has been on our Most Wanted List from 1990 to 2012. The NTSB first and foremost recommends the development of science-based hours of service policies in preventing fatigue, increasing safety, and improving performance in all transportation operations. This includes recommendations for reducing schedule irregularity and unpredictability, and allowing for at least 8 hours of uninterrupted sleep.

The NTSB continues to investigate accidents where fatigue is identified as a probable cause or contributing factor. Therefore, the agency maintains expertise within its investigative staff that monitors the scientific literature on many fatigue-related issues, including split sleep, in an effort to inform investigations and to develop the most effective safety recommendations possible. The

Federal Motor Carrier Safety Administration (FMCSA) study cited (December 2012) is an example of the continually expanding literature related to fatigue in transportation.

The FMCSA study cited concludes: "Results of the present study suggest that when consolidated night sleep is not possible, split sleep is preferable to consolidated daytime sleep ..." This clearly indicates that consolidated night sleep, consistent with extensive scientific literature, remains the optimal strategy. Also, the study again demonstrates the strength of circadian factors as daytime sleep resulted in less sleep as opposed to the amount obtained in two five-hour split sleep opportunities comparable to a consolidated night sleep opportunity.

2. How will the NTSB take the scientific literature on split sleep into account in the development of future recommendations on fatigue and watch standing and in the evaluation of agency implementation of previous NSTB recommendations?

Continued research on strategies that mitigate the adverse effects of fatigue will help in further identifying mechanisms that create operational fatigue risks and interventions that reduce these risks. Clearly, at this point, there is a lot more research needed. Even the December 2012 FMCSA report recognizes its limitations, for example, that the study's conclusions are based on the carefully controlled and monitored environment of the laboratory and not representative of the variable conditions drivers experience during actual operations. It anticipates that the findings would be followed up in a field study at some point with actual drivers in their usual environment driving their usual routes. The target population in such a field study would be chosen to be representative of the industry and would therefore be older, heavier, include women, and generally more heterogeneous, relative to the study population in the report's laboratory study.

However, any scientific literature, including material on split sleep relevant to an investigation, that evaluates current NTSB safety recommendations or contributes to the development of future recommendations would be taken into account by the NTSB.

3. From your perspective, how might split sleep strategies be used to improve crewmember alertness and performance in the maritime industry?

Split sleep potentially applies to all transportation modes and more data are needed on the unique aspects of possible applications such as in crossing multiple time zones on international flights or being required to work during periods of the day when circadian rhythms increase the risk of fatigue.

It is critical to note that duty schedules are only part of the equation to manage fatigue better in transportation. Even when an individual has enough time to get sleep, medical conditions, living environment, and personal choices can affect the ability to obtain sufficient quantity and quality sleep. NTSB recommendations on fatigue in transportation and their implementation take into account the need for multiple solutions and hours of service is just one part. Scheduling policies

and practices, education, organizational strategies, healthy sleep practices, and vehicle and environmental factors all play important roles in ensuring transportation operators are working at their optimal performance.

As further research is conducted and more data become available, a variety of rest options may be included as part of the acceptable fatigue mitigation strategies available for operators working 24/7 schedules, including those in the marine industry, that involve duty during the nighttime window of circadian low. The NTSB continues to emphasize the importance of science-based hours-of-service policies.

1. Out-of-Water Survival Craft Report Assessment

Section 609 of the Coast Guard Authorization Act of 2010 (P.L. 111-281) prohibits commercial vessel operators from using survival craft after January 1, 2015 which allow any part of an individual to be immersed in water. Section 303 of the Coast Guard and Maritime Transportation Act of 2012 (P.L 112-213) delayed the effective date until 30 months after the date on which the Coast Guard submits to the Committee a report on the use of such survival craft.

On August 26, 2013, the Coast Guard submitted to the Committee its report entitled, *Survival Craft Safety, Report to Congress*; a corrected version of this report was received subsequently by the subcommittee on the evening of September 9, 2013. The findings of the Coast Guard report generally determined that the carriage requirement for out-of-water survival craft would not significantly improve vessel safety. Additionally, the report found that the carriage requirement would likely not improve the survivability of persons who are forced to abandon ship. Moreover, the Coast Guard concluded that this requirement would impose monetized costs on vessel operators far in excess of the benefits. These findings drew sharply contrasting views from members of the subcommittee and from invited witnesses.

- *Does the NTSB feel the current USCG regulations on carriage requirements for survival craft are inadequate? Could you summarize the NTSB's analysis of the Coast Guard's recent survival craft report? What shortcomings did the NTSB identify in the Coast Guard's analysis and recommendations?*

  The current carriage requirements for survival craft on passenger vessels are not adequate. Even in warm water, prolonged exposure in water results in significant injuries or death. In fact, 4 crewmembers died from exposure in an accident recently investigated by the NTSB after having abandoned their vessel in the warm waters of the Gulf of Mexico, in which the Board's report found that their lack of use of available out-of-water flotation devices led to their deaths (Personnel Abandonment of Weather-Damaged US Liftboat *Trinity II*, with Loss of Life Bay of Campeche, Gulf of Mexico September 8, 2011). The largest oversight in the recent report "Survival Craft Safety" is the lack of detailed accident data. This lack of data does not provide enough information and is therefore inadequate to support the report's conclusions that the risk based analysis can be used to determine which vessels need out-of-water survival craft. Data are essential for effective risk based programs; this report shows and acknowledges the data are not there.

- *What is the NTSB's view on the additional needs of the elderly, physically challenged, etc. when it comes to abandoning a boat and needing safety equipment such as survival craft? Do you believe that these individuals have the best chance of surviving a marine accident by using survival craft that hold all parts of the body out of the water?*

  In the NTSB's investigation of the *Queen of the West* engine room fire, we found that the majority of the 177 passengers on board were senior citizens and many used walkers. Had the fire spread, these passengers would have had only a 6 person rescue boat with

which to evacuate the ship. Otherwise, they would have entered water that was 44 degrees. Given the age and physical abilities of the passengers and water temperature, prolonged exposure likely would have resulted in death or serious injuries for passengers.

- *Do you think that any study on survival craft can be comprehensive if a.) no practical in-water tests are conducted during the drafting of the study, and b.) if the casualty data on which the study is based are themselves incomplete?*

  Without complete data, risk based analysis is ineffective, and studies on which incomplete data are based should be re-evaluated.

- *By extending the effective date of this regulation to February, 2016, does this have a chilling effect on industry to develop innovative technical solutions for compliance with the carriage requirement? Has this been the case in other situations?*

  The carriage requirements in the 2010 Coast Guard reauthorization bill would certainly drive demand and potentially innovative solutions for this type of product. In the aviation industry, we saw that requiring safety equipment spurred innovation to meet the requirements in ways that were not originally envisioned when the law/regulation was enacted. A 1986 mid-air collision was the final straw that spurred Congress to mandate terrain collision avoidance system (TCAS) on board commercial airliners. Although some early forms of TCAS were in place before 1986, it wasn't until this mandate that the Federal Aviation Administration and aviation industry made it a priority to develop the needed technology for commercial airliners.

- *Could this regulation be implemented with flexibility? Is there any reason why the regulations in force under the International Convention for the Safety of Life at Sea (SOLAS) that allow for novel designs that provide equivalent or higher standards of safety, and that encourage more functional and potentially cost-effective equipment, could not be applied domestically?*

  The NTSB is not calling for one specific technology to meet the recommendation for out-of-water survival craft. We believe that there could be innovative designs that meet the goal of keeping people out of the water in cases of emergency evacuations. In fact, we know that survival craft manufacturers are already taking advantage of the novel design allowance in SOLAS to develop new lifeboats and life rafts that have extremely innovative designs and meet the needs of specific customers or segments of the industry.

- *Should this carriage requirement remain on the books, how does the NTSB address the issue of cost to the industry?*

Lives will be saved if vessels are required to carry out-of-water survival craft. We believe a requirement will create economies of scale to drive down the price of equipment, and spur innovation to potentially create less expensive options to keep people out of the water.

2. Towing Vessel Hours of Service/Split Sleep Strategy

In the preamble to its towing vessel inspection NPRM, the Coast Guard proposed that towing vessel watch standing schedules should be altered to require a daily minimum of seven to eight hours of uninterrupted sleep for personnel working on tug and tow vessels.

- *Does the NTSB agree with this proposal? Will it result in improved safety?*

  Not only does the NTSB agree with the Coast Guard's proposal to require a seven- to eight-hour minimum of uninterrupted sleep, but we believe that it is long overdue. The NTSB has issued recommendations calling for science-based hours of service rules that would provide at least eight hours of uninterrupted sleep and reduce scheduling unpredictability and irregularity in transportation operations. Fourteen years ago we issued Safety Recommendation M-99-1 that asked the Coast Guard to establish, within two years, scientifically based hours-of-service regulations that set limits on hours of service, provide predictable work and rest schedules, and consider circadian rhythms and human sleep and rest requirements.

  There is an overwhelming amount of scientific literature that demonstrates adults require seven to eight hours of sleep for optimum performance. As little as two hours or less of sleep loss can result in performance impairment compromising safety. The complex waterways on which towing vessels operate require operators to maintain the highest levels of alertness at all times. Anything that reduces a mariner's cognitive performance, especially sleep loss, can lead to potentially catastrophic accidents.

In a response for the record submitted by American Waterway Operators (AWO) from the subcommittee's September 20 regulatory oversight hearing, AWO disagreed with the Coast Guard's proposed change to watch standing requirements. Among the reasons, AWO claimed that there is a significant and growing body of scientific evidence that there is more than one way for transportation workers to get the quality and quantity of sleep that they need to operate safely, and that "split sleep" – that is, obtaining the necessary seven to eight hours of sleep in two blocks – is a scientifically valid approach. AWO claims that a better and more effective approach to addressing fatigue prevention and crew endurance management is to require companies to include a fatigue/crew endurance program in their safety management system, as recommended by the Towing Safety Advisory Council (TSAC).

- *Can you please comment on whether "split sleep" or a fatigue/crew endurance program will provide the same quality and quantity of rest as the Coast Guard's recommended changes in watch standing? What are your views on this matter? What is the current scientific consensus on split sleep?*

There are two items here for consideration. First, regarding split sleep, we must approach this issue with the fundamental consideration that the overwhelming body of scientific data concludes humans require eight hours of uninterrupted sleep. Although there is emerging research on the potential effectiveness of "split sleep," further data are needed to determine if split sleep provides the same quality and quantity of sleep as a full eight hours of uninterrupted sleep, especially as it relates to waking levels of performance and alertness. The AWO has undertaken a variety of research projects that may provide the data needed to determine if sleep during split schedules allows for the equivalent quality and quantity of sleep as provided by eight hours of uninterrupted sleep. Monitoring progress on the research underway has the potential to inform future policies. The effectiveness of split sleep as a substitute for eight hours of continuous sleep, however, remains to be seen; especially as it relates to waking levels of performance and alertness.

Second, a fatigue/crew endurance program should be seen as complementary to hours-of-service policies, not as a substitute. It would be misleading to imply that a training program could suffice for eight hours of physiologically required sleep. So, the first step is to provide vessel operators with a schedule that accommodates the core physiological requirement of adequate sleep and to augment it with supportive efforts such as fatigue/crew endurance programs.

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