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

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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 "Update of Efforts to Combat Piracy"

PURPOSE

On Wednesday, April 10, 2013, at 2:00 p.m., in 2167 Rayburn House Office Building, the Subcommittee on Coast Guard and Maritime Transportation will hold a hearing to review the efforts of the federal government to safeguard U.S. and international interests against acts of piracy off the coast of Africa and other waters.

BACKGROUND

Current Trends

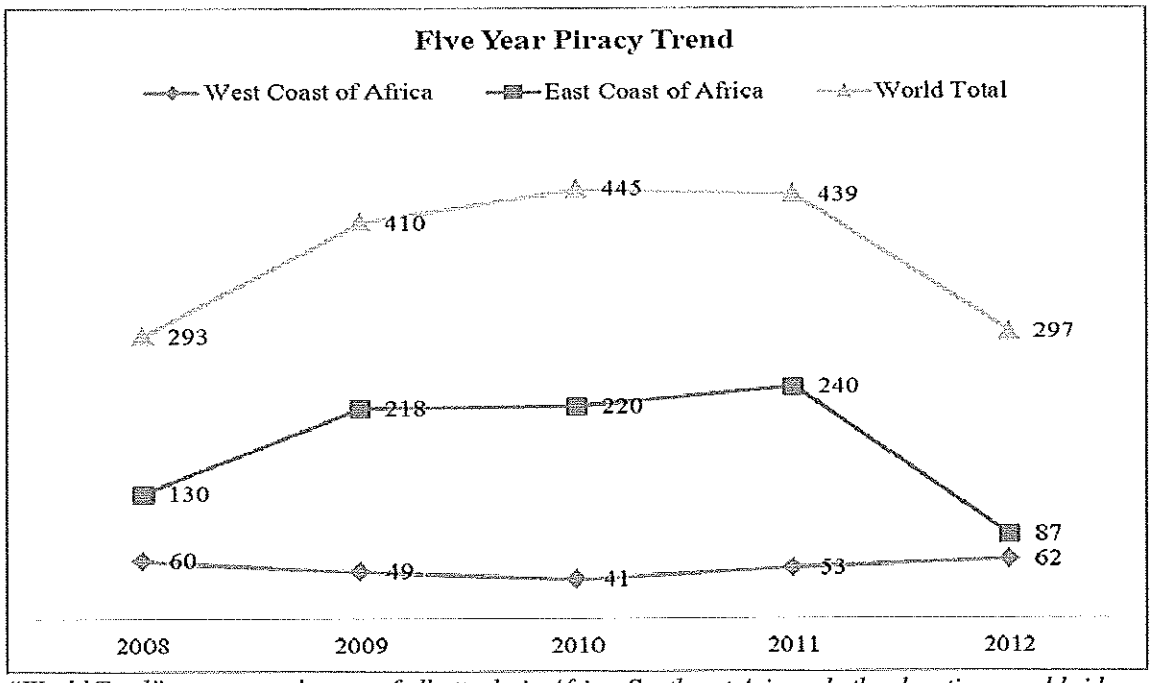
According to the International Chamber of Commerce International Maritime Bureau, the number of pirate attacks reached a 5-year low in 2012 with 297 vessels attacked compared with 439 in 2011. The number of mariners taken hostage or kidnapped for ransom fell from 802 in 2011 to 611 in 2012. The number of mariners killed fell from 35 in 2011 to 6 in 2012.

The reduction in the number of attacks worldwide in 2012 is primarily the result of a large drop in attacks off the East Coast of Africa, specifically off the Coast of Somalia. In 2011, 237 vessels were attacked and 28 hijacked off the East Coast of Africa. In 2012, the number of vessels attacked and hijacked in the area fell to 75 and 14 respectively. As of April 1, 2013, pirates operating out of Somalia held 5 vessels and 65 mariners hostage.

Although the number of pirate attacks have fallen off Africa's East Coast, the number off the West Coast, especially in the Gulf of Guinea, has risen in recent years. In 2011, 53 vessels were attacked off the West Coast. In 2012, the number of attacks rose to 62. Pirate attacks in these waters are often violent, planned, and aimed at stealing refined oil products, which are then sold on the black market.

Piracy is also prevalent in the waters off the Indonesian archipelago where the number of attacks has increased yearly since 2009. Although most of these attacks involved robbery and petty theft, 47 mariners were taken hostage in 2012.

Since 2008, pirates have attacked or attempted to attack 20 U.S.-flagged vessels. Pirates took three Americans hostage and killed four Americans. A complete list of pirate attacks on U.S.-flagged vessels and American citizens is attached to this memo.



"World Total" represents the sum of all attacks in Africa, Southeast Asia and other locations worldwide.

Plan

National Security Council Counter Piracy Plan: In December 2008, the National Security Council (NSC) issued its "Countering Piracy Off the Horn of Africa: Partnership and Action Plan" (Plan), which outlines the strategies the federal government will pursue to mitigate piracy. The Plan directs three "lines of action":

1. Preventing Pirate Attacks by Reducing Vulnerabilities: The Plan calls for an international naval force to patrol waters off the Horn of Africa and share intelligence on pirate activities; the establishment of a Contact Group of countries willing to work together to coordinate responses to piracy; and for vessels to adopt best management practices to avoid pirate attack.

2. Interrupt Acts of Piracy: The Plan calls for the United States and international partners to interdict pirate vessels and intervene in pirate attacks.

3. Hold Pirates Accountable: The plan calls for the establishment of agreements with African and other nations to prosecute captured pirates.

Prevention

U.S. Efforts

Efforts To Protect U.S. Vessels and Crew: Section 70103 of title 46, United States Code, requires U.S.-flagged ocean-going commercial vessels to file Vessel Security Plans (VSP) with the Coast Guard which outline the technologies, procedures, and policies the vessel will implement to deter a security incident. The Coast Guard periodically issues Maritime Security (MARSEC) Directives requiring vessel owners to update their VSPs to respond to the latest security threats. MARSEC 104-6, released in May 2009 and currently in its sixth revision, requires vessels transiting High Risk Waters (HRW) to include antipiracy measures in their VSPs. The Coast Guard defines HRW as a body of water or area where an act of terrorism, piracy, or armed robbery against ships is prevalent. The Coast Guard has designated waters off the Indonesian Archipelago, the Gulf of Guinea, South America, and much of the Indian Ocean, Gulf of Aden, and Arabian Sea as HRW.

Dozens of U.S.-flagged vessels operate in HRW on a daily basis, delivering food aid, military cargoes, and other supplies to countries and industries in these areas. Vessel operators have worked closely with the Coast Guard and the Maritime Administration (MARAD) to develop Best Management Practices for Protection Against Somali Piracy (BMP), which have formed the backbone of the antipiracy measures required by MARSEC 104-6. These BMPs include: proceeding at full speed and posting additional lookout while transiting HRW, regularly reporting positions to military authorities, employing physical barriers such as razor wire, and carrying armed security.

The Coast Guard, MARAD, and the Department of State (DoS) have provided additional guidance and policy to U.S.-flagged vessels. This guidance includes updates to HRW, legal assistance on the use of private security, and other pertinent information. Much of this material is distributed via Port Security Advisories (PSAs), which are all available on the Coast Guard's Homeport website. MARSEC Directive 104-6, the BMPs, and the PSAs have been continuously updated based on lessons learned from attempted and successful pirate attacks.

MARAD, with assistance from the Military Sealift Command, has developed an Anti-Piracy Assistance Team (APAT) to help merchant mariners combat piracy in foreign waters. The APAT visits U.S.-flagged vessels in port to assess their physical security vulnerabilities and provide mariners with BMPs against piracy. Finally, MARAD developed a training curriculum for mariners on antipiracy procedures. Pursuant to Section 502 of the Coast Guard and Maritime Transportation Act of 2012 (P.L. 112-213), MARAD is currently updating the curriculum to include training on firearm safety for vessels with armed security and procedures to follow to improve mariner survivability if taken hostage by pirates.

International Efforts

Working with DoS, the Coast Guard and MARAD share information with several international organizations and other nations on best management practices, international and foreign laws governing shipboard security measures, and instances of actual or attempted piracy.

Contact Group on Piracy: Pursuant to United Nations Security Council Resolution 1851, the Contact Group on Piracy off the Coast of Somalia (CGPCS) was established on January 14, 2009 to facilitate the discussion and coordination of actions among states and organizations to suppress piracy. The Working Groups are tasked with military and operational coordination, capacity building, judicial issues, shipping self-awareness, and public information related to piracy. As the U.S. representative, the Coast Guard sits on all five Contact Groups and previously chaired Working Group Three, Shipping Awareness.

Maritime Security Centre – Horn of Africa: In 2008, the European Union (EU) established the Maritime Security Centre – Horn of Africa (MSC-HOA). MSC-HOA provides 24 hour manned monitoring of vessels transiting through the Gulf of Aden. MSC-HOA coordinates military escorts for transits of vessels through HRW. MSC-HOA will also work with particularly vulnerable vessels and coordinate appropriate protection arrangements with naval forces in the area.

Somalia Capacity Building: A permanent solution to piracy off the East Coast of Africa will not come until a stable and effective government returns to Somalia. DoS continues efforts to counter piracy by working with the United Nations and other countries to help the Somali Transitional Federal Government establish effective governance and provide security and economic livelihoods for Somali citizens.

Interruption

U.S. Efforts

Combined Task Force 151: In 2009, U.S. Naval Forces Central Command (NAVCENT) established Combined Task Force 151 (CTF-151), which is a multi-national naval force that executes the counter-piracy mission in and around the Gulf of Aden, Arabian Sea, Indian Ocean, and the Red Sea. It consists of naval and maritime assets from approximately 20 coalition nations.

While the Coast Guard does not conduct independent operations in the area, it is a force provider for U.S. Central Command, which regularly requests Coast Guard Law Enforcement Detachments (LEDET) for deployment on Navy ships in support of CTF-151. LEDETs are highly skilled law enforcement teams with expertise in law enforcement tactics, case package preparation, and chain of custody for evidence and apprehended suspects.

International Efforts

The European Union Naval Force Operation Atalanta: The European Union Naval Force (EUNAVFOR) Operation Atalanta was launched by the European Union (EU) to protect World Food Program vessels delivering aid to displaced Somalians. The other major objective of Atalanta is to detect, prevent, and repress acts of piracy and armed robbery off the coast of Somalia. Different from other antipiracy military operations, the EU has authorized its navies as part of Operation Atalanta to strike Somali pirate equipment on land; allowing warships or helicopters to fire at fuel barrels, boats, trucks or other equipment stowed on beaches. The EU has announced that Operation Atalanta will terminate in December 2014.

Other Naval Activities: On any given day up to 30 vessels from as many as 22 nations are engaged in antipiracy operations in the region. Other navies from Asia and the Middle East, including China, Russia, and Iran, conduct counter-piracy patrols and escort operations. These are independent from efforts of CTF-151 and EUNAVFOR, but are coordinated through participation in Shared Awareness and Deconfliction meetings, which helps ensure communication among navies patrolling the region.

Prosecution

Piracy has been a crime of universal jurisdiction under customary international law for centuries. As such, every nation has legal authority to establish jurisdiction and punish offenders, regardless of the nationality of the pirate, the victim, or the vessel involved. Since 2008, the United States has successfully convicted 24 pirates in 5 separate cases involving attacks against U.S.-flagged vessels. An additional three pirates currently face the death penalty for the murder of four Americans aboard the SV QUEST in February 2011.

The DoS has worked with the United Nations and foreign nations to establish partnerships for prosecuting pirates and an international trust fund to help nations defray the expenses associated with prosecution and incarceration of pirates. The DoS also negotiated a prosecution agreement with the Seychelles, which enables U.S. forces to deliver captured pirates there for prosecution and incarceration. The United States previously had a bilateral prosecution agreement with Kenya through which the United States transferred approximately 25 pirates for trial. However, Kenya formally withdrew from that agreement in September 2010. Other nations must secure their own bilateral agreements for prosecution or prosecute in their own courts. As of January 2013, over 1,179 prosecutions of acts of piracy have been completed or are currently ongoing in 21 countries.

Issues

Private Security

Industry has increasingly turned to private security companies to protect their vessels, crews, and cargo. International consensus appears to be shifting towards private security because it is effective at stopping pirate attacks, does not require costly military involvement, and does not require mariners to take up arms on their own. MARSEC Directive 104-6 encourages U.S.-flagged vessels to consider using private security for these same reasons. The Coast Guard Authorization Act of 2010 (P.L. 111-281) provided liability relief to the owner, operator, charterer, captain, crew, and private security teams of U.S.-flagged vessels for actions they take to defend their vessel against pirate attacks.

Cost: The operators of U.S.-flagged vessels transiting HRW and carrying Department of Defense (DoD) cargo in support of military operations in the Middle East are reimbursed by DoD for the cost of employing private armed security. However, U.S.-flagged vessels transiting HRW and carrying humanitarian cargoes generated by the United States Agency for International Development are not reimbursed by DoS for the cost of employing private armed security. Section 503 of P.L. 112-213 requires the Secretary of Transportation to direct agencies carrying government impelled cargoes such as humanitarian aid to reimburse, subject to the availability of appropriations, vessel operators for the cost of employing such security.

Certification: As more vessels navigating HRW turned to armed security for protection, vessel operators and insurers identified the need for a professional standard to which maritime security companies could be held. In response, the International Organization for Standardization (ISO) developed specification ISO 28007, Guidelines for Private Maritime Security Companies Providing Privately Contracted Armed Security Personnel Aboard Vessels. ISO 28007 contains requirements for private maritime security companies to meet to be ISO certified. The development of these international minimum standards is expected to further help vessel operators employ private security in a responsible manner.

Port Entry: Several nations prohibit commercial vessels carrying armed security from entering their ports. DoS is the lead agency charged with helping U.S.-flagged vessels determine the legality of armed security in foreign ports. DoS has also worked through the CGPCS to develop procedures for vessel masters to declare and properly secure weapons when entering foreign ports. Nevertheless, local port officials occasionally ignore international procedures and hold vessels and crew until gratuities are paid. In addition, several vessel operators are often forced to pay to have weapons helicoptered off their vessels prior to entering port or throw the weapons overboard.

Lack of Security Measures Aboard Foreign Flagged Vessels

Although U.S.-flagged vessels are required to adhere to Coast Guard antipiracy MARSEC directives, other flag states do not require their vessels to implement similar

robust security plans and measures. The United States recently proposed an amendment to the International Ship and Port Facility Security Code that would have required the International Maritime Organization nations to mandate adherence to guidance similar to the Coast Guard's MARSEC directives for U.S.-flagged vessels. It failed to pass.

Disrupting Pirate Financing

In April 2010, the President signed Executive Order 13536, which declared that "...the persistence of violence in Somalia, and armed robbery at sea off the coast of Somalia...constitute an unusual and extraordinary threat to the national security and foreign policy of the United States...". The Executive Order provides authorization for the United States to seize assets from anyone determined to be committing acts of piracy and prosecute those providing material support. On April 4, 2013, the President extended the Executive Order for an additional year.

Although the United States has a long tradition of opposing the payment of ransoms, the Executive Order drew criticism from both industry and labor over concerns the prohibition on materiel support would make the payment of ransom illegal. Vessel operators were concerned they could be liable for ransom payments. Labor was concerned the Executive Order would prevent future ransom payments, which could result in prolonged captivity or death for captured mariners. The Department of the Treasury's Office of Foreign Assets Control (OFAC) made it clear that liability will not be waived. However, OFAC has offered to work with industry to determine if a vessel operator would be liable as a result of any specific ransom payment.

There is currently little visibility on where ransom money goes after it is paid. There are concerns that ransoms could be used to finance the activities of several terrorist organizations known to operate in Africa. DoS has taken the lead in efforts to track the flow of pirate financing and supplies. DoS formed a new working group in the CGPCS to facilitate multilateral coordination and is working closely with INTERPOL to develop a database on Somali piracy to help further criminal investigations against piracy financiers and ringleaders. In September 2012, the Committee requested the Government Accountability Office (GAO) investigate the effectiveness of actions taken by the federal government to track ransom payments and prosecute piracy financiers and ringleaders. The GAO expects to complete the report by the end of the year.

WITNESS LIST

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