



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

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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.

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 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 devices 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
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