COAST GUARD AMENDMENTS OF 2005

(109–19)

HEARING

BEFORE THE

SUBCOMMITTEE ON
COAST GUARD AND MARITIME TRANSPORTATION

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

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COAST GUARD AMENDMENTS OF 2005

Wednesday, May 12, 2005

HOUSE OF REPRESENTATIVES, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION, WASHINGTON, D.C.

The committee met, pursuant to call, at 10:00 a.m. in room 2167, Rayburn House Office Building, Hon. Frank LoBiondo [chairman of the subcommittee] presiding.

Mr. LOBIONDO. Good morning. The Subcommittee on Coast Guard and Maritime Transportation will come to order.

The Subcommittee is meeting today to hear testimony on the Coast Guard Amendments of 2005. The Subcommittee, again, as I said, is meeting this morning to review the Committee print of the Coast Guard Amendments of 2005. The bill makes several changes to laws related to the Coast Guard and Maritime Transportation sector. It includes a number of provisions that will improve the Coast Guard's ability to enhance maritime security in U.S. waters, in foreign ports and on the high seas. The bill directs the Secretary to establish a pilot program to demonstrate technologies to track vessels at greater distances from our shores.

It has been three years since the Long Range Vessel Tracking System was authorized under the Maritime Transportation Security Act. While I understand the need to work through the IMO on the issue, I don't understand why the Coast Guard would not move to set up a voluntary program in the interim. The Long Range Vessel Tracking System will enhance the Coast Guard's ability to identify and target vessels of interest and will further push out our borders. I hope the pilot program included in this bill will encourage the Coast Guard to field this system as soon as possible.

The bill also makes changes to existing law to improve the ability of the Federal Government to prosecute individuals apprehended as part of the Coast Guard's illegal drug interdiction missions. It authorizes the Coast Guard to provide technical assistance to improve the law enforcement and maritime safety and security training programs of our international partners, and it increases civil penalties for vessel owners and operators who violate maritime transportation security regulations.

The authorities granted by this bill will enhance the Coast Guard's ability to carry out its many traditional and homeland security missions. I hope that my colleagues will support these amendments as we move forward with H.R. 889, the Coast Guard and Maritime Transportation Act of 2005, at full Committee later this month. I want to thank the witnesses for appearing before the

Subcommittee this morning and I look forward to hearing your views on the bill.

Now we will turn to Mr. Filner.

Mr. FILNER. Thank you, Mr. Chairman. Good morning.

As you said, most of the amendments that have been proposed have been submitted to Congress by the Coast Guard for improvements in the laws. Other amendments have been proposed by members for inclusion in this year's authorization bill, which include closing a loophole to ensure that ferries that do not charge a fare are subject to all Coast Guard safety inspection and manning laws; requiring the Coast Guard to adjust the rate for pilotage on the Great Lakes annually; establishing a Coast Guard history fellowship program that will provide grants to doctoral students in history to write their dissertation on some aspect of Coast Guard history; and establishing a program in the Department of Transportation to promote the use of U.S.-flagged liquified natural gas tankers.

If these tankers are going to enter our waters, it makes sense that they be U.S.-flagged ships employing the best mariners in the world, our U.S. mariners.

As you know, Mr. Chairman, there are a number of provisions in the Administration's proposal that are not included because they require more study by our Committee. For example, the Coast Guard proposed to totally rewrite the laws related to issuing licenses in merchant mariners' documents to U.S. mariners. But unfortunately, they never bothered to talk to the industry or the affected mariners in these proposals. It is a complex issue that affects thousands of jobs on U.S.-flagged ships. We will need to carefully examine these proposed changes to ensure that our waterways will continue to be safe and that the rights and benefits of mariners are protected.

Thank you, Mr. Chairman. I look forward to working with you in a bipartisan way for the full Committee markup of the bill.

Mr. LOBIONDO. Thank you, Mr. Filner.

Mr. Diaz-Balart, do you have anything in opening to say?

Mr. DIAZ-BALART. No, thank you, Mr. Chairman.

Mr. LOBIONDO. Mr. Boustany?

Mr. BOUSTANY. No, thank you, Mr. Chairman.

Mr. LOBIONDO. Thank you. Welcome, Mr. Calvin Lederer, Deputy Judge Advocate General of the United States Coast Guard. Thank you for being here.

TESTIMONY OF CALVIN M. LEDERER, DEPUTY JUDGE ADVOCATE GENERAL, UNITED STATES COAST GUARD

Mr. LEDERER. Thank you, Mr. Chairman, and good morning to you and to the distinguished members of the Subcommittee.

I am Calvin Lederer, Deputy Judge Advocate General of the Coast Guard. On behalf of the Commandant, thank you for your invitation to appear here before you today.

I also thank you, Mr. Chairman and Representative Filner, for your support and sponsorship of the Coast Guard and Maritime Transportation Act of 2005, which authorizes full funding for the Coast Guard for the coming year. As you know, the Coast Guard is a multi-mission maritime service. Every day we simultaneously

lead the Federal Government in maritime homeland security and perform our many other missions, such as fisheries enforcement, search and rescue and environmental protection. Coast Guard men and women are also still providing their unique maritime security capability as part of the coalition forces in Iraq and other locations distant from our shores.

On April 12th, the Commandant transmitted to you the President's proposed Coast Guard Authorization Act of 2005. I would like to highlight some of that proposal's key provisions and ask that you consider including them in the Committee's bill to which you referred earlier, Mr. Chairman.

The President's proposals will enhance the Coast Guard's ability to effectively carry out our homeland security responsibilities and also allow us to better carry out our traditional missions. The President's proposal does include a complete update of the merchant mariner credentialing statutes in Title 46 of the United States Code. One of the legacies of the events of September 11th is the urgent necessity to better control who is able to obtain Government-issued credentials. The 9/11 Commission report noted that the hijackers used Government-issued identification cards like driver's licenses, and recommended that forms of identification be made more secure.

The changes we propose as an important step we can take to instill a culture of security within a system that has previously focused almost exclusively on safety and efficiency and better insulated vessels and maritime infrastructure from the threat of terrorist attack. These changes will enable the Department of Homeland Security to heighten the security of all mariner credentials in partnership with the mariners themselves and the maritime industry.

In the area of marine safety, we can do more to protect the commercial fishing industry. In recent years, it has become clear that the rate of fatalities in the commercial fishing industry is alarmingly high. In 2002, the Bureau of Labor Statistics found that commercial fishermen working aboard uninspected fishing vessels died at a rate of 71.1 per 100,000 workers, while the rate for the American workplace as a whole was 4 deaths per 100,000.

Between the years 1999 and 2003, the uninspected fishing vessel industry reported 291 deaths and 528 vessels lost. The Administration's proposal would authorize the Secretary to establish a limited five-year pilot program in two geographic areas to examine two vessels and their crews to ensure both that required safety equipment is on board and that the crew is trained and exercised in its proper use. Data from our current voluntary program in which only 6 percent of fishing vessels take part indicate that these examinations reduce fatalities and vessel losses.

Turning to oil spills, the recent spill, such as the Athos-1 in Delaware Bay have highlighted the need for the Coast Guard to have a capability to quickly meet large numbers of claims against the Oil Spill Liability Trust Fund that was authorized in the Oil Pollution Act of 1990. The President's proposal addresses this need by providing for limited access to the fund to pay direct costs of processing claims.

We have listened to the Committee's concerns with respect to past proposals, and we have significantly narrowed the types of

costs that we propose be paid out of the no-year part of the fund. The proposal would give the Coast Guard a surge capability to quickly and efficiently get the relief Congress intended to those who are damaged by an oil spill.

My written statement discusses these issues and others in greater depth, and I ask that it be included in the record for your consideration, respectfully.

The men and women of the Coast Guard meet extraordinary challenges every day. I am honored to be here on their behalf, and on their behalf and the Commandant's, thank you very much for your efforts to enact a Coast Guard authorization bill again this year and for the opportunity to appear before you as well.

I will be delighted to answer any questions you may have.

Mr. LOBIONDO. Thank you very much.

I will start off with a couple. Concerning the Coast Guard headquarters, the Administration's fiscal year 2006 budget requests approximately $38 million to begin the study and design work to transfer the Coast Guard headquarters to the St. Elizabeth Hospital complex. The budget suggests that other Federal agencies, we are guessing likely within the Department of Homeland Security, will follow the Coast Guard to St. Elizabeth. But if I am correct, I understand that no other Federal agency has been designated to make that move, and the campus cannot be accessed from the I-295 nor is it accessible by Metrorail.

So the question is, has the Coast Guard asked to be transferred to St. Elizabeth's? And is the Coast Guard in consultation with GSA to oversee the site study and any design work to ensure the area would be developed should any transfer? Does that meet the Coast Guard requirements? And the last question is, is the Coast Guard investigating ways to transport personnel from the Metrorail or improve access to I-295? I don't know who is going to pay for that access. I understand it can be a substantial amount of money.

Mr. LEDERER. Mr. Chairman, the Coast Guard's interest is in relocating from our current location, or at least finding a way to colocate all of our headquarters activities in one location, which our current location does not appear to provide a solution. By fiscal year 2008, we expect to have a 400,000 square feet shortfall in the headquarters in terms of our overall needs.

Currently we are dispersed over five locations. So there is a need to find a way to consolidate Coast Guard headquarters in one location to improve the efficiency of the headquarters.

With respect to the St. Elizabeth's proposal, of course the General Services Administration is the lead agency for this. They have a $24.9 million budget item, I believe, in their fiscal year 2006 budget specifically to engage in the kind of master planning that is necessary to determine what St. Elizabeth's can support or can't support.

They have entered into a contract, as I understand it, that will require a master plan to be produced by September of 2006 that will specifically address all of these issues that you have referred to, Mr. Chairman, such as accessibility being a major issue which is recognized, as well as what else can St. Elizabeth's support in

terms of Federal Government activities in addition to the Coast Guard.

So I think, sir, the answer is these issues are very much in our mind and apparently are also in the mind of GSA, which has let its contract for this master plan. We are confident that these issues will be addressed by the GSA as it moves forward in the master plan. We hope to work very closely with GSA as they move ahead in their planning.

Mr. LOBIONDO. Do you have any idea of timing?

Mr. LEDERER. Yes, sir. The master plan, as I say, is the contract that they have let with a company, Jones, Lang, LaSalle, it is expected, well, not expected, the requirement of the contract is to produce a master plan in one year's time. So that should be reported out in September of 2006. That I think will give us a significant amount of information to decide next steps.

Mr. LOBIONDO. Last month you proposed to rewrite the statutes relating to the Coast Guard's merchant mariner documentation program. We have heard, though, numerous concerns that have been raised by the maritime industry, and I'm just wondering if you can talk a little bit about what the Coast Guard may be doing to work with the industry to address some of these concerns and generally where we stand with that.

Mr. LEDERER. Well, sir, first if I could address the nature of the proposal. In large measure, this proposal does two things. One, it simplifies and modernizes the existing provisions concerning merchant mariner credentials. But equally and in fact more important, it addresses maritime security in a way that the existing rules do not.

We have discussed this with MERPAC. They have taken it under advisement, they have not taken a position with the Coast Guard as yet. They wanted to look at the proposal more closely. We are planning a public meeting in June to listen to concerns of industry and mariners concerning these proposals.

The important point, sir, I think is that this proposal is a chance to simplify in large measure, as I mentioned, and would lead to regulation a great kind of the kinds of issues that we suspect that the industry would be concerned about. So we would have significant amount of opportunity for input from the industry as we move forward to further implement the statutory change once it takes place.

But the issue of maritime security, that is a major driver in terms of the timing of the provision. Currently, in terms of the issuance of merchant mariner credentials, maritime security is not one of the bases on which you can issue or not issue. So one of the specific changes that we might like to do is to clearly indicate that maritime security is a consideration, not only for suspension and revocation of an existing credential but also for the issuance of that.

So linking the whole merchant mariner credentialing system to maritime security is a significant objective that we have here. The specific changes that this proposal would work to existing practice are actually rather few in number, but they are significant, as I say, because they raise maritime security.

One of the issues which we have proposed, or one of the issues we would like to address is, for example, temporary suspension of the credential in the event of an incident. We would propose that temporary suspension be permitted immediately. But we want to balance that with due process of mariners. So we require in our proposal that a mariner have the opportunity before a hearing, before an administrative law judge, within 30 days of the temporary suspension.

This kind of provision addresses a situation like we had in Staten Island, where we had no ability to immediately suspend without the benefit of an immediate hearing before an administrative law judge.

So summarizing, Mr. Chairman, with respect to the very specific things we are proposing here, there are very few specific changes that would alter the terrain of the current credentialing system and inject maritime security in a statutory fashion that advances us on the road. It also puts us in a position where we can continue to mutually develop with TSA and other agencies transportation worker identify cards, but again without significantly or actually in any way disadvantaging, in our minds, mariners or the industry.

Mr. LOBIONDO. Thank you.

Mr. Filner.

Mr. FILNER. I would just like to pursue that issue a little bit more, sir. As you know, this Committee, the Congress wrote the standards for a transportation worker identification card in the Maritime and Transportation Security Act. And that was a security document to grant access to a secure area.

I think if Congress had wanted the merchant mariners document to become the security card, we would have done that. So you want to link the two, I guess, in one card. So what is wrong with the way the system is set up now? That is, why do you need to duplicate the security background check that will be done for this TWIC card in your evaluation of mariners?

Mr. LEDERER. Mr. Filner, we are not yet in the position of proposing that there be one credential and only one credential. But we want to set the conditions so that is a greater possibility and to modify the system or at least provide the basis for regulatory reform that might allow that down the road. So to make life easier, in fact, for mariners, they can have a single credential that would satisfy the requirements of the TWIC, satisfy requirements concerning qualifications for merchant mariner credentials as well as security and at the same time, satisfy the notion of an international seafarer card that Congress has also spoken about.

So we would like to provide a potential for that. I don't think that we have a clear plan at this point to have a single credential.

Mr. FILNER. I am not sure why that necessarily would be simpler or better for the mariner, in that whatever standards are used for the security, somebody may lack for whatever reason, but still be able to work on non-secure areas. It sounds like your one card would, I mean, let's say the person had visited the Middle East or something and by some standard that became ineligible for a secure card. But now you're going to deny the ability to work at all.

Mr. LEDERER. Sir, at this point, as I say, we are not proposing a one card solution. But certainly that is one of many alternatives at the Department of Homeland Security

Mr. FILNER. Well, what's wrong with the existing law that you want to, what different standards are you going to apply to that security clearance that is not good enough? What is wrong with the system that you want to change it?

Mr. LEDERER. Currently, with respect to merchant mariner credentials, there is no requirement for security background check going in at all right now. That is a significant thing that I think we need.

The focus of merchant mariner credentials, currently, as I understand it, is focusing on qualifications and not security. So

Mr. FILNER. Right, but then we set up this second card.

Mr. LEDERER. The TWIC.

Mr. FILNER. Yes, the TWIC. What's wrong with that?

Mr. LEDERER. Potentially, that might be acceptable. But it would seem to me that the potential of having a single round of security checks that would satisfy both the needs of the TWIC and the needs of merchant mariner credentials would be worthwhile.

Mr. FILNER. But then it's like a truck driver, you know, a truck driver gets a license that says they are able to drive a truck. And if they need to get into a secure area, then they will have to go under a TWIC thing. So you have separated competence in the field versus a security clearance, which seems to me to be a better fit. If you put everything in one, then somebody can't even have the competence in the field measured. Who knows what the security thing is? We have had instances, since 9/11, of people, for a lot of reasons, a lot of unjust reasons, being denied the security clearance of something or other, maybe having the same name as somebody else and not being able to get it.

So it seems to me with one card you get into all the problems of a society which is going to a one-computer thing and if you screw that up, if you make a mistake on your visa card, if somebody makes a mistake and you're going to be denied a driver's license because of that, that would be pretty disastrous for a lot of people. I think you are moving into that direction and you ought to be very cautions. That is why we are not prepared to do anything about it yet.

Mr. LEDERER. Sir, if I could just make one comment in response. While you raise valid concerns about what the level of security may be required ultimately for the TWIC versus what we want in terms of a mariner who is actually onboard a vessel and operating on a vessel. Leaving that issue aside, with respect to merchant mariner credentials, security needs to be an issue that we have to be concerned about in terms of giving a credential to a mariner to actually operate on a vessel when he is at sea.

Maritime security is a significant concern. We need to factor that into the merchant mariner credential process as it exists today. Leaving aside completely what the form of the TWIC may ultimately take and whether it might be one card or several cards, but basically, merchant mariner credentials need to be tied to maritime security as well as marine safety.

Mr. LOBIONDO. Mr. Reichert, do you have questions?

Mr. REICHERT. Thank you, Mr. Chairman.

A question, sir. Thank you for being here this morning.

Section 102 of this Committee print authorizes the Commandant of the Coast Guard to provide technical assistance to international navies during regular Coast Guard operations without a specific request from a third party to the U.S. Government. How will this new authority assist the Coast Guard in your drug activities?

Secondly, have any turf war issues [audio gap].

Mr. LEDERER. First of all, good morning, Mr. Reichert, and thank you for your question.

We think this would be a significant benefit really across the full spectrum of Coast Guard missions as we operate internationally, but in terms of our drug interdiction in particular. We operate alongside and in cooperation with the navies and coast guards of other nations. Those opportunities provide opportunity to train them further in terms of boarding practices, for example, and so this kind of a change would give us affirmative authority to be able to go and engage in different types of training activities from our normal operations.

One example, and also another issue I think that comes up occasionally is that some of the foreign navies and coast guards with which we work are not as financially well off as we are. As a consequence, they may not be, their operations are hindered by equipment that sometimes is not functional. This would allow us the opportunity to provide some incidental assistance when we are conducting normal operations.

We have seen this happen with the Haitian Coast Guard, for example, where we were able to provide assistance to them in terms of making sure their vessels are operational as we are actually in the course of an operation. We saw that happen during the Haiti operations in 2004. Of course, that gets to repatriation of migrants and different areas of our world of work.

Getting back to drug enforcement, in terms of boarding practices, case preparation, those kinds of issues, this should provide us the opportunity to work more directly to support our international partners, but again, only incidental to our normal operations.

With respect to turf, we have a very close positive working relationship with the Department of State. We think they are supportive of this modest increase in our authorities. In fact, the provision does require us to coordinate with the Department of State when we are undertaking that.

The Department of Defense is another agency with which we work a great deal. That gets mostly away from the drug enforcement issue, more towards our overseas activities, or maybe working with foreign navies.

Mr. REICHERT. Thank you. The second question has to do with Section 201, that changed the definition, amends the definition of a passenger vessel. In Washington State, we have quite a ferry system, as you probably know. I am just curious how this definition, amendment of the definition will affect your ability, if it is affecting the Washington State ferry system, if there is any change at all, and working with the Washington State people to do that.

Mr. LEDERER. If you are referring to the Committee's proposal to change the definition or to include ferries within the definition of

inspected vessels, we welcome moving in that direction. We think that the Committee's proposal is perhaps a touch too broad as it currently stands, because the language I believe that would be changed is to have a ferry, would have any passenger on board. With respect to the current inspection regime, we discern between large vessels and small vessels. With respect to large vessels, you have to exceed 100 tons and then be one of these types of vessels. That probably addresses the point reasonably well with respect to ferries, larger ferries, in other words.

But the Committee's proposal would also change then language with respect to small passenger vessels and include ferries within that. That would then reach basically the smallest type of ferry, including if you can imagine one of those ferries that goes across a river and takes one or two cars at a time. I don't think we want to get into the business of inspecting those and I don't think that addresses the objective that the Committee had.

So we would like to work with the Committee to address the problem of larger ferries based either on tonnage or perhaps on the number of passengers that vessel may carry.

Mr. REICHERT. Thank you. Thank you, Mr. Chairman.

Mr. LOBIONDO. We are going to take a brief break, and while we do that, let me say that Congressman Vito Fossella had wanted to be here today, and a last minute change made it impossible for him to attend.

But I want to ask unanimous consent that his statement be made a part of the record. Congressman Fossella has been involved with this issue from the very instance of the terrible Staten Island ferry accident and the whole issue of ferry inspections. We had a hearing up in Staten Island and I wanted to thank him for his leadership on this issue and ask for that unanimous consent request.

Mr. LOBIONDO. Okay, we're set to go. Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman. A couple quick questions. On Section 204, is the net result of that an anchor-handling vessel is now subject to the Jones Act, has to be American-owned, American-flagged?

Mr. LEDERER. Good morning, Mr. Taylor. That is our understanding of their proposal.

Mr. TAYLOR. Okay. Going back to 201, the small passenger vessel. If it is carrying passengers with or without charge, what are the chances that suddenly every vessel is now subject to this? If you think about every vessel that I know of is carrying, except a barge, is carrying a passenger.

Mr. LEDERER. Yes, sir. That is another issue that is raised by the Committee's proposal. There is no definition of a ferry that is in the Committee's proposal nor is there a definition of ferry that is contained the law currently. There is a definition of ferry that is contained within the Code of Federal Regulations with respect to fees. That would serve reasonably well in terms of trying to find some kind of definitional basis for how we might regulate ferries for inspection purposes under Title 46.

So the absence of a definition of a ferry is an issue that we would be happy to address in greater discussions with the Committee. One thing I would mention, to the extent that we tied this provi-

sion to the size of the vessel or the number of passengers that it carries, that would then limit the scope so that you are getting at what I think the Committee was getting at, which is the Staten Island ferry type of case, which is truly a commercial ferry where you are trying to avoid tragedies.

Mr. TAYLOR. Sometime between now and markup, if you could get me the language of defining passenger vessel. I don't want to see the unintended consequence where every aluminum skiff, every kayak, every dingy is suddenly held to the same regulations.

Mr. LEDERER. We welcome the opportunity to provide you drafting assistance to work with the Committee's proposals that exist now and to recraft it in a way that we think would not reach those types of vessels and at the same time, avoid the kinds of tragedies that the Committee is seeking to avoid.

Mr. TAYLOR. Okay. Lastly, you do have an explanation, but I would like to hear it from you, explain the changes in Section 205.

Mr. LEDERER. Sir, I am sorry, I don't have the Committee's bill in front of me, 205 referring to?

Mr. TAYLOR. Amends the Maritime Drug Law Enforcement Act to allow the Coast Guard to certify a foreign nation's response to an inquiry of a vessel's nationality without notifying the Coast Guard

Mr. LEDERER. Okay. This relates to our drug enforcement activities, sir. Currently the way it works is that when we are engaging with another vessel, or I should say when we believe there is a suspect drug vessel, we will make a right of visit boarding or address the master of the vessel and say, so what nation are you from. Then the individual will say, I am from Colombia, let's say.

We then will contact the flag state and either confirm or deny the nationality of the vessel. If the country confirms that yes, this vessel is of Colombian registry, then we ask Colombia for permission to board and potentially seize the vessel, which we get in due course, where it is clear that the vessel's nationality is Colombian.

The difficulty that this addresses, and I might add furthermore, that when that case is then brought to prosecution, there is a certification that is easily done that is accepted in court which simply says, we contacted the Colombians and the Colombians said, this is our vessel. They confirmed nationality.

Therefore, the boarding that proceeded thereafter was in accordance with international law and the rest of the case goes just fine. The difficulty is that in the go-fast situation, which is the majority of our cases, not necessarily all or even a very large majority, but a majority of our cases, in the go-fast situation, the vessel may make a claim of nationality and then the purported flag state really can't confirm or deny. So this very simple change in the law will allow us to make a certification to the court that simply says, we spoke to Colombia and Colombia could neither confirm nor deny, and that therefore gave us a legal basis to declare this vessel stateless, board it, seize it, and that's why this defendant is in front of you today.

So it is a very small but very significant change. Currently we probably, a couple of dozen times a year have to bring Coast Guard watch standers into court, sometimes multiple watch standers, to testify concerning the content of their communications with the

flag states or at least the purported flag states. This would avoid that and simply make it easier to just file one certification.

Mr. TAYLOR. Okay. I think that's it. Thank you, Mr. Chairman. Thank you, sir.

Mr. LOBIONDO. Thank you, Mr. Taylor. Mr. Diaz-Balart?

Mr. TAYLOR. Mr. Chairman, if I may.

Mr. LOBIONDO. Yes, Mr. Taylor.

Mr. TAYLOR. And I apologize. Section 106, you are making some changes to the section on Coast Guard reservists to active duty for not more than 60 days in a full month period, not more than 120 days in a two year period. What is the present law?

Mr. LEDERER. The present law, sir, is essentially half of that. We can recall reservists, really only in a consequence management kind of a role, but as there is a major man-made or natural disaster, in response to that disaster, we can call people up. Currently, we can only call up for 30 days within a 4-month period, and then 60 days within a 2-year period.

So this provision makes two very significant changes that are important to maritime and homeland security. First, it expands the number of days to 60 days within a 4-month period that we can call somebody up, and then for a total of 120 days in any 2-year period. So it doubles essentially the amount of time we can call a reservist up.

But the other thing is that we can call that reservist up in advance of an incident occurring, that is to say in the situation I have posited, where have intelligence suggesting that there may be a transportation security incident in the offing, we can call up reservists in advance of that occurring so that we can bolster our maritime homeland security posture. So that's essentially what we are proposing and what the existing law is, sir.

Mr. TAYLOR. That I would think is extremely broad language. I would think this is going to give you extremely broad language. We think something is getting ready to happen, so therefore we are calling you guys up. That is basically the only justification you need?

Mr. LEDERER. Well, sir, if the homeland security alert level was to go to orange or if we have an indication we are to go to red, the ports in that area that we presume are threatened are going to have to go to a higher state of security, going to MARSEC2 with a potential of MARSEC3. In that situation, we need to augment our forces, both by moving active forces and potentially by augmenting with reservists.

We are very conscious, very conscious of the necessity not to interfere or disrupt the lives of our reservists. At the same time, the Secretary needs the flexibility to call up reserve when he believes they are necessary to address a potential incident that we have to at least conjure up.

Mr. TAYLOR. Okay. Thank you, sir.

Mr. LOBIONDO. Thank you. Mr. Diaz-Balart? Questions?

Mr. DIAZ-BALART. No, thank you, Mr. Chairman.

Mr. LOBIONDO. Mr. Mack?

Mr. MACK. Thank you, Mr. Chairman.

I wondered if you could just talk briefly about, in the Deepwater program, what kind of cost savings there may be and continuity of

equipment if the time line was changed from 10, 15, 20 years to 5, 10 years, something like that, if you have any kind of analysis done on that.

Mr. LEDERER. Sir, we have looked extensively at the issue of time line and advancing the time line for Deepwater, I don't think quite to that level. I think the Commandant would like to hear a five-year time line.

But with respect to what specific economies we might get, depending on how you shorten the time line, I do not have that data with me, sir. Of course, that's a matter that's been under significant discussion, both with this Committee and also with the appropriators. We believe that are getting close to providing some additional data that will be of use both to this Committee and to the Appropriations Committee.

I would not want to misstate myself by suggesting facts and figures that I don't have a good handle on.

Mr. LOBIONDO. Mr. Fortuna.

Mr. FORTUNA. Thank you, Mr. Chairman.

I would like to delve a little bit further into the certification of the vessel nationality process and how does the different steps and perhaps additional requirements impact the court's ability to prosecute fully illegal drug smugglers, in your estimation.

Mr. LEDERER. Good morning, Mr. Fortuna. The benefit of this change is really, it is a resource issue. It will just give us the ability to simply certify to record that we were unable to identify the nationality of the vessel, and therefore we could assimilate the vessel to a vessel without nationality, and therefore in accordance with international law, we properly boarded it.

So really it is a matter of reducing the burden down to simply preparing a simple certification that could be presented to the court without having to bring in multiple Coast Guardsmen off other duties. Kind of like the situation in traffic court where we have to bring in the police officer to testify concerning the case. This avoids that, at least in terms of the nationality issue. So it keeps watch standers in their stations doing the kind of work they ought to be doing, rather than flying to Tampa or Miami or wherever to testify in court.

Mr. FORTUNA. Will this provision affect other vessels other than just smuggling vessels coming into the U.S. waters at all?

Mr. LEDERER. No, sir, this will only be effective with respect to counter-narcotics work, because it would deal with the maritime, or I should say the Drug Law Enforcement Act.

Mr. FORTUNA. Thank you very much. Thank you, Mr. Chairman.

Mr. LOBIONDO. Mr. Boustany.

Mr. BOUSTANY. Thank you, Mr. Chairman.

On the provision dealing with liquified natural gas and authorizing the Merchant Marine Academy to train aboard foreign-flagged vessels, do you have a pilot program set up, or in mind for this?

Mr. LEDERER. Good morning to you, sir. These are provisions I believe that were proposed by the Committee. We have no pilot program of that sort currently. With respect to both the merchant marine issue and the LNG tanker issue, we would have to defer those issues primarily to the Department of Transportation.

I think that's about the best we can do on that right now. Although of course we have an interest in, for example, documents, going back to the issue of merchant mariner credentials, we have foreign cadets in our various maritime academies around the country and we do have a desire, for example, to make sure they can train on vessels with ease. That is getting beyond the scope of your question, though, sir.

Mr. BOUSTANY. Sure. Thank you.

Also, current law authorizes the Coast Guard and under certain circumstances the Navy to control the movement of vessels in U.S. waters, to protect safety, security of naval vessels that are anchored in those waters. The bill would extend this authority to a distance of 12 nautical miles from shore, to be consistent with recent Presidential proclamation that expanded our U.S. territorial waters.

Can you talk a little bit about the effect this is going to have on other Coast Guard authorities and are there other Coast Guard authorities or missions that are restricted currently to a zone extending to three rather than twelve?

Mr. LEDERER. With respect to most of our other authorities, actually, through the good offices of Congress, our authorities have been extended out to 12 in the context of several statutes. Of course, the Coast Guard's authority, law enforcement authority is worldwide. But there are a number of statutes that give specific authorities that have in fact been expanded out to 12 through prior Congressional action.

The effect of this provision really is to protect the Navy. And it doesn't really advance Coast Guard authorities more generally. In essence, we currently have two naval protective zones, one on the east coast, one on the west coast. And the existing law allows the senior naval officer to essentially exercise the authorities of the naval protective zone, that is to keep people away from his vessel, standing essentially in the stead of the Coast Guard.

Currently, the Navy only has the authority to protect its own vessels out to three nautical miles. So the effect of this provision would be to allow the naval commander to protect his vessel all the way out to the end of the territory at sea without relying on Coast Guard vessels. So the incidental advantage to the Coast Guard is that since we have other authorities that will allow us to protect that naval vessel between three and twelve, then this avoids the necessity for us to provide escorts in all cases.

As it is right now, the Navy prefers to provide its own security more often than not. So this essentially provides additional flexibility to the Navy to protect its own vessels.

Mr. BOUSTANY. Thank you. That's all I have.

Mr. LOBIONDO. Okay. I think that's it, Mr. Lederer. We thank you very much for being here today and the Committee stands adjourned.

[Whereupon, at 10:48 a.m., the Subcommittee was adjourned.]

Hon. Luis G. Fortuño
Subcommittee on Coast Guard and Maritime Transportation
May 12, 2005

- Good afternoon.

- I would like to take this opportunity to bring to this Committee's attention the scope of the work done by the Coast Guard in my region, while at the same time stress the need to increase the assets assigned to Sector San Juan.

- The area of responsibility of the Coast Guard, Sector San Juan, includes not only Puerto Rico, but the Dominican Republic to the West, the Lesser Antilles to the East, and Colombia and Venezuela to the South.

- Due to its substantial coastline, which includes in addition to the populated islands, small cays and islets, this region is ripe for transshipment of drugs into the continental United States. As a result, the Coast Guard in Puerto Rico must devote much of its time and resources to drug interdiction efforts.

- In fiscal year 2004 Coast Guard drug interdiction operations in the area resulted in seizing 14,337 kilograms of cocaine, 17,247 kilograms of marijuana and 21 kilograms of heroin.

- The Coast Guard in Puerto Rico also plays a very important role in alien migrant interdiction operations.

- To illustrate this situation and recognize the Coast Guard's eagerness to go above and beyond its call of duty, even when it involves risking their own life, I have distributed a copy of the article entitled "Panic in the Waves" that appeared in the Coast Guard's Shield of Freedom Magazine this past February.

- On December 3, 2005, four helicopters from Air Station Borinquen, the 110-foot patrol boats Chincoteague and Key Largo, and four rescue boats from Station San Juan were involved in the heroic rescue

of more than 80 Dominican migrants from a yola which capsized in the surf line off Vega Alta, Puerto Rico.

- The quick thinking, training, and professionalism of the Coast Guard led to saving 84 of the more than 92 migrants on board the capsized yola.

- Unfortunately, this is a very common occurrence in the waters surrounding Puerto Rico. More resources need to be deployed to this area to deter migrants from attempting to enter the United States via Puerto Rico. Last Fiscal Year the Coast Guard alone intercepted and apprehended 1891 Dominicans, 226 Cubans, 205 Haitians and 36 migrants from the Peoples Republic of China.

- Nowhere else in the US is the Coast Guard so underserved and under such great pressure to meet demands for the completion of it mission of being "America's Maritime Guardian".

- The Coast Guard, Sector San Juan, needs our support to be able to continue zealously guarding this critical entry point to the United States.

- I commend the Coast Guard for going over and beyond their call of duty and urge this Committee to take a close look at their needs and increase the assets deployed to the region.

Statement of Congressman Vito Fossella Before the Subcommittee on Coast Guard and Maritime Transportation May 12, 2005

I would like to thank Chairman LoBiondo and Ranking Member Filner for holding this hearing. I am here to express my strong support for a small, but extremely important part of this bill: Sec. 201 – The Treatment of Ferries as Passenger Vessels. This provision requires not-for-hire passenger ferries to comply with the Coast Guard's inspection requirement. Current law only requires vessels charging a fee to adhere to the requirement. Technically, free passenger ferries that don't charge a fee do NOT have to follow such regulations. Section 201 in this bill fixes this loophole and ensures regular Coast Guard inspections are legally required on all maritime vessels.

The provision is particularly important to me due to the tragic October 15, 2003 accident on the Staten Island Ferry. On this solemn morning, 11 people lost their lives and 70 more were injured, many critically, all because an unhealthy individual passed out at the wheel and everyone else responsible for the safety of the ships' passengers were asleep at the switch. I can not thank Chairman LoBiondo for his leadership following this tragedy. He agreed to hold hearings in my district aimed at getting to the bottom of what happened. The crash victims' families and I will always be grateful for your efforts.

The hearing and the recently released report from the National Transportation Safety Board shed much light not only on that day's events, but other deficiencies in our federal maritime safety regulations. The findings led me to start working on draft legislation addressing these shortcomings. I am happy to see a key provision of my draft bill, bringing not-for-hire passenger vessels under the Coast Guard's inspection requirement, included in the legislation before the Subcommittee today. I would also suggest the Committee consider the other provisions of my proposed legislation: requiring voyage data recorders on ferries and bolstering penalties for doctors who falsify medical records for maritime pilot applications.

One of the reasons the NTSB investigation took so long was the lack of data on what happened in the wheelhouse. Requiring voyage data recorders, or "black boxes", on passenger vessels will solve this problem. We require them on planes and they are extremely helpful in determining the causes of aviation accidents. It only makes sense to apply such technology to maritime ferries.

Such devices are not new in the maritime arena and could do a lot to prevent future accidents. A resident from my home State of New York brought to my attention Richard Pollack's book, "The Colombo Bay", earlier this year. In detailing the voyage of the container ship of the same name, Pollack notes how the vessels "black box" captures not only all the voices of ship personnel, but the readings from a GPS receiver, radar and all radio communication. If such communication were recovered from the Staten Island

Ferry accident, we may have a better idea of additional measures that could be taken to prevent future accidents. The book also mentions how black boxes can interact with other technology to sound an alarm if this ship is off course or when motion sensors detect the proper amount of people are not in the wheelhouse. Given the availability of such technology, it only makes sense to establish the inclusion of at least voyage data recorders in all passenger vessels. These devices can provide critical data in the event of an accident to prevent subsequent tragedies. They could also open the door for additional vessel safety technology.

I would once again like the thank the Chairman and Ranking Member of the Subcommittee, as well as the Chairman and Ranking Member of the Full Committee for allowing me to speak and for considering this important piece of legislation.

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DEPARTMENT OF HOMELAND SECURITY

U. S. COAST GUARD

STATEMENT OF

CALVIN M. LEDERER[1]

ON THE

COAST GUARD AUTHORIZATION ACT OF 2005

BEFORE THE

SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION

COMMITTEE ON TRANSPORTATION INFRASTRUCTURE

U. S. HOUSE OF REPRESENTATIVES

MAY 11, 2005

[1]Mr. Lederer appears before the Committee on behalf the Commandant to testify on USCG policy and programs relevant to the Administration's proposed Coast Guard Authorization Act of 2005. He does not appear or offer testimony in his capacity as the Deputy Judge Advocate General of the Coast Guard.

Introduction

Good morning, Mr. Chairman and distinguished members of the Subcommittee. Thank you for providing this opportunity to talk with you about the Coast Guard and Maritime Transportation Act f 2005. This is the third consecutive year the Subcommittee has invited the Coast Guard to appear to discuss our authorizing legislation. Allow me to express appreciation on behalf of the Commandant for your extending this opportunity, and also for the efforts of Congress to pass a Coast Guard Authorization Act each year, as you have done now for three consecutive years. These annual Acts help us keep critical authorities at the cutting edge, enabling us to respond quickly and effectively to the new challenges our service faces daily. We are also grateful for the strong support that H.R. 889, recently approved by this Subcommittee, provides for the President's fiscal year 2006 request for the Coast Guard, recommending full funding for our Operating Expense, Acquisition Construction, and Improvements, Environmental Compliance and Restoration, and Reserve Training programs.

As the members of this Subcommittee are well aware, the Coast Guard is a military, multi-mission, maritime service. We are the lead Federal agency for Maritime Homeland Security, a vital and grave responsibility in today's world. Even as we meet here today, there are Coast Guard men and women performing maritime security and force protection missions across the nation, and in fact, across the globe. At the same time, we maintain the high levels of performance long expected of us in our other mission areas such as fisheries enforcement, search and rescue, drug and migrant interdiction, and marine environmental protection.

On April 12th, the Commandant transmitted to you the Administration's proposed Coast Guard Authorization Act for 2005. The bill contains sixteen provisions that provide the Coast Guard with important new authorities, as well as expansions and clarifications of existing authorities. I ask that you adopt these provisions. I would like to highlight some of the key provisions.

Merchant Mariner Credentials

The awful events of September 11th 2001 made clear that our country must take more care in controlling who is able to secure and use government-issued forms of identification. The 9/11 Commission report, noted that the September 11th hijackers obtained and used government-issued identification cards such as driver's licenses. The Commission recommended that forms of identification be made more secure. Congress partially addressed this issue in the Maritime Transportation Security Act of 2002 with the requirement for the Transportation Workers Identification Card or TWIC. The Coast Guard has been working with the Transportation Security Administration (TSA) to implement the TWIC. The Maritime Transportation Security Act of 2002, at Section 70105(b)(2)(B) (46 U.S.C. § 70105(b)(2)(B)), requires merchant mariners to have TWICs. Therefore, as part of the TWIC rulemaking process, MMDs will be addressed. While that comprehensive effort continues, revision of the law pertaining to merchant mariner credentials known as licenses or merchant mariner documents (MMDs) is in order. These documents are, by statute, identification documents, yet they contain virtually no security features. This, among other reasons, is why the Commandant, the Secretary of Homeland Security and the President have submitted a complete update of the merchant mariner credentialing statutes. We cannot, and must not, continue with business as usual in the area of mariner credentialing. Not when, as this committee is well aware, our ports and harbors are still vulnerable to terrorist attack. The specter of a terrorist obtaining and using a merchant mariner credential to access and attack vital areas of a strategic port is one that is very real. The changes we have proposed will enable the Department to heighten the security of all mariner credentials

in partnership with the mariners themselves and the maritime industry. Additionally, the Coast Guard will work with TSA to ensure the regulations for obtaining the MMDs are consistent with TWIC to minimize future impacts on mariners and to ensure mariners undergo appropriate security threat assessments in accordance with the Maritime Transportation Security Act of 2002.

Our proposal enhances the Coast Guard's ability to be flexible and agile in establishing appropriate criteria and processes for obtaining merchant mariner credentials and in recovering them from unqualified holders. Our proposal also updates the mariner credentialing statutes. The existing merchant mariner credentialing statutes have developed piecemeal over the last 50 years and have not been comprehensively updated since 1983, over twenty years ago in a very different world. As a result, they are unclear, self contradictory and in some cases obsolete. This proposal would update, clarify and simplify the statutes allowing the Coast Guard to better administer the mariner credentialing program as well as addressing the many changes in the domestic and international maritime communities, and especially, as I mentioned above, security concerns post September 11th.

Critical issues the Administration's proposal addresses include:

- Authority to conduct background checks to evaluate mariners for both maritime security and maritime safety purposes,
- Authority to issue a single credential, including allowing for the merger with the TWIC,
- Authority to issue cadet credentials (including to foreign cadets) for training and educational purposes, and
- Authority to refuse to issue a credential to a mariner who is a maritime safety or security risk
- Authority to refuse to issue a credential for one year to a mariner who lies on application.

The suspension and revocation chapter allows for immediate temporary suspension of a merchant mariner credential where the mariner is involved in an accident involving death or serious injury or where a mariner is determined to be a threat to security or safety. Because we are very concerned with fairness and the rights of merchant mariners, it also requires a hearing on any temporary suspension within 30 days of the suspension. The proposal also enhances compliance with the law by adding significant new civil and criminal penalties for making, using, or presenting fraudulent credentials.

Pilot Program for Dockside Safety Examinations

In recent years it has become clear that the rate of fatalities in the commercial fishing industry is alarmingly high. In 2002, the Bureau of Labor Statistics found that commercial fishermen working aboard uninspected fishing vessels died at a rate of 71.1 per 100,000 workers, while the rate for the American workplace as a whole was 4 deaths per 100,000. Between the years 1999 and 2003, the uninspected fishing vessel industry reported 291 deaths and 528 vessels lost. By comparison, the Bureau reported that deaths in the towing vessel industry, another uninspected segment of the marine industry, were only 19.5 per 100,000 workers. These figures clearly demonstrate that the death rate for the uninspected commercial fishing vessel industry is unacceptable in comparison to other segments of the maritime industry and the American workforce in general.

The Administration's proposal would authorize the Secretary to establish a pilot program to conduct mandatory dockside crew survivability examinations on uninspected U.S. commercial fishing vessels in two geographic areas over the next five (5) years. The purpose of the pilot

program would be to examine fishing vessels and their crews to ensure the required safety equipment is on board and that the crew is trained and exercised in its proper use.

Currently, the Secretary does not have the authority to conduct mandatory dockside exams. Data compiled from voluntary dockside examinations now carried out by the Coast Guard show conclusively that increased survivability of an uninspected fishing vessel and its crew is directly proportional to the availability and maintenance of the safety and survival systems on the vessel, particularly when the crew has been properly trained to use these systems effectively in emergency response scenarios. We estimate that only 6% of the owners or operators of the approximately 90,000 uninspected commercial fishing vessels operating in the U.S. today make their vessels and crew available to the Coast Guard for a voluntary dockside examination. Since 1991, when the Coast Guard first began offering voluntary examinations, history has demonstrated that the crews of fishing vessels examined under such a program have a much higher survivability rate during an accident or loss of the vessel.

While the Commercial Fishing Industry Vessel Safety Act of 1988[1] established additional safety requirements for commercial fishing industry vessels, the Act has not been effective. The Act authorized the Secretary to prescribe regulations to require commercial fishing vessels to be equipped with safety gear and to meet additional standards. However, the Act contained no means to allow the Secretary to enforce the safety standards for vessels other than for fish processing vessels and fish tender vessels engaged in the Aleutian trade.

Though the voluntary dockside examination program has proven effective to reduce crew fatalities and vessel losses for the 6% of the commercial fishing vessel fleet that has participated, it is not enough. Besides the staggering toll on fishermen's lives, non-compliance with existing safety standards continues to result in fishing vessel accidents which cost the commercial fishing industry over $240 million annually. The costs do not stop there as data for fiscal year 2000 reveal that the Coast Guard conducted over 2,100 search and rescue (SAR) cases for commercial fishing vessels, expending over 11,000 resource hours at a cost of over $18 million. The Coast Guard is confident based upon data from the voluntary program that mandatory Dockside Crew Survivability Examinations will significantly lower the number of lives lost and reduce the costs now experienced by the commercial fishing industry and the U.S. Government.

Other Priorities

. The Administration proposed several provisions last year that were not enacted. We have resubmitted some provisions after listening to your concerns and suggestions and making improvements based upon your input. One such provision is Oil Spill Liability Trust Fund (OSLTF) Availability for Certain Costs. This proposal would provide for limited access to the OSLTF, established by the Oil Pollution Act of 1990 (OPA 90), to pay certain *direct costs* of processing claims. The current proposal addresses Congressional concerns with past proposals by significantly narrowing the types of costs that could be paid to include only direct costs such as setting up an onsite claims paying organization in the wake of a major oil spill or the cost of contracting scientific or technical support needed to properly adjudicate claims.

Our proposed bill also includes other modest but critically important provisions that would enhance our authorities in maritime homeland security and drug interdiction. These are Extension of Coast Guard Vessel Anchorage and Movement Authority, which would extend to

[1] Public Law 100-424

12 miles the Coast Guard's authority to enact maritime protection zones around naval vessels; Enhanced Civil Penalties for Violations of the Maritime Transportation Security Act (MTSA), which would make each day of a continuing violation of MTSA maritime security regulations a separate offense; and Certification of Vessel Nationality in Drug Smuggling Cases, which would allow the certification of the nationality, or lack thereof, of interdicted drug smuggling vessels without the presence in a U.S. court of foreign officials. The Administration's bill includes other important provisions that would improve our management of the officer corps, streamline and lower costs of small procurements and clarify and update the tonnage laws administered by the Coast Guard.

Conclusion

Our country faces many challenges in today's dangerous world. In the maritime arena the Coast Guard strives every day to be the Shield of Freedom, to protect our homeland and to continue to perform our traditional missions in the outstanding manner that the men and women of the Coast Guard have performed all of their many missions for over 200 years.

By enacting these proposed legislative changes, Congress will better equip today's Coast Guard to meet our current and future maritime safety and security challenges.

Thank you again for the opportunity to testify before you today. I will be happy to answer any questions.

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