



NMA REPORT #R-203-C

DATE: June 15, 2009

124 North Van Avenue
Houma, LA 70363-5895
Phone: (985) 851-2134
Fax: (985) 879-3911
www.nationalmariners.org
info@nationalmariners.org

Asserting our right "...to petition the Government for redress of grievances."

Amendment 1, U.S. Constitution, Dec. 15, 1791

BILL S.685 – OIL SPILL PREVENTION ACT OF 2009

This bill contain provisions that our Association supports and has advocated for years. However, this report only records the beginning of these "bills" passage through Congress. Remember, a Bill is NOT yet a law and might never become a law in the form you see here. For example, last year the Senate failed to consider H.R. 2830, a broad Bill the House of Representatives passed by a resounding vote of 395 to 7. The work, a major product of almost 70 members of the House of Representatives, was not even considered by the Senate before the Fall elections.

SUMMARY OF PROVISIONS

The major provisions in this bill would:

- (1) implement the International Maritime Organization (IMO) amendment requiring a double hull or an additional protective layer around the fuel tank for non-tank vessels;
- (2) clarify the Coast Guard's authority to direct the movement of vessel traffic in a Vessel Traffic System area and require the Coast Guard to assess the need for improved vessel traffic management measures;
- (3) create a medical review program for merchant mariners;
- (4) require the Coast Guard to conduct a study into the causes of marine accidents;
- (5) conform the duration of mariner licenses, certificates of registry, merchant mariner documents, and transportation worker identification credentials; and
- (6) establish a mechanism to allow the Coast Guard to provide humanitarian relief for seafarers abandoned in the United States and support of seafarers who are witnesses to maritime-related crimes.

Look into Senate Report #111-26 starting on the next page and ending on page 26 for discussions of each of these 6 topics.

2009
 111th Congress *1st Session*
 SENATE
 Report

111-26

Calendar No. 77

OIL SPILL PREVENTION ACT OF 2009
 R E P O R T
 OF THE
 COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
 on
 S. 685

congress.#13

JUNE 15, 2009- Ordered to be printed

	SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
	one hundred eleventh congress
	first session
JOHN D. ROCKEFELLER IV, West Virginia, <i>Chairman</i>	
DANIEL K. INOUE, Hawaii JOHN F. KERRY, Massachusetts BYRON L. DORGAN, North Dakota BARBARA BOXER, California BILL NELSON, Florida MARIA CANTWELL, Washington FRANK R. LAUTENBERG, New Jersey MARK PRYOR, Arkansas CLAIRE MCCASKILL, Missouri AMY KLOBUCHAR, Minnesota TOM UDALL, New Mexico MARK WARNER, Virginia MARK BEGICH, Alaska	KAY BAILEY HUTCHISON, Texas OLYMPIA J. SNOWE, Maine JOHN ENSIGN, Nevada JIM DEMINT, South Carolina JOHN THUNE, South Dakota ROGER F. WICKER, Mississippi JOHNNY ISAKSON, Georgia DAVID VITTER, Louisiana SAM BROWNBACK, Kansas MEL MARTINEZ, Florida MIKE JOHANNIS, Nebraska
ELLEN DONESKI, <i>CHIEF OF STAFF</i>	
JAMES REID, <i>DEPUTY CHIEF OF STAFF</i>	
BRUCE ANDREWS, <i>GENERAL COUNSEL</i>	
CHRISTINE KURTH, <i>REPUBLICAN STAFF DIRECTOR AND GENERAL COUNSEL</i>	
BRIAN HENDRICKS, <i>CHIEF COUNSEL</i>	
TODD BERTOSON, <i>REPUBLICAN SENIOR COUNSEL</i>	

Calendar No. 77
111TH CONGRESS
Report
SENATE

1st Session

111-26

--OIL SPILL PREVENTION ACT OF 2009

JUNE 15, 2009- Ordered to be printed
Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation,
submitted the following
REPORT

[To accompany S. 685]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 685) to require new vessels for carrying oil fuel to have double hulls, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 685, the Oil Spill Prevention Act of 2009, would make improvements to the design and construction of fuel tanks for non-tank vessels and to the medical review program for merchant mariners.

BACKGROUND AND NEEDS

Oil spills that result from accidents, groundings, or collisions create substantial environmental and economic damage. The most expensive spill in U.S. waters, the 1989 tank vessel *Exxon Valdez* spill in Alaska, cost \$2.5 billion to clean up. Less expensive but still significant spills have occurred since then. Most recently, in July 2008, a collision occurred in the Mississippi River between an oil tanker, the *Tintomara*, and an American Commercial Lines barge resulting in a 270,000 gallon oil spill. In addition to harming wetlands, riverbank, and other coastal habitats, the incident resulted in significant economic disruption including extensive waterway closures, closure of industrial and municipal water intakes, and interference with critical channel dredging operations. The water intake closures affected hundreds of thousands of people in communities along the river. The Mississippi River was closed to traffic for six days which resulted in an estimated economic impact of \$275 million per day. In November 2007, the non-tank vessel *Cosco Busan* spilled 58,000 gallons of fuel oil into San Francisco Bay, but had fuel tanks capable of carrying 2 million gallons of heavy-duty bunker fuel oil. Cleanup costs for this incident exceeded \$70 million, and other claims and losses, including commercial fishing closures and natural resource damages, are still being tabulated. A tank vessel transports oil or hazardous materials in bulk. A non-tank vessel transports other types of cargo or provides other services, such as offshore supply

vessels, passenger vessels, fishing vessels, or containerized cargo vessels. While oil transport and maritime traffic continues to increase, the total number of reported spills has generally declined each year since 1990, when the Oil Pollution Act of 1990 was signed into law. According to Coast Guard oil spill statistics compiled between 1973 and 2004, non-tank vessels and fishing vessels now account for the highest number of spill incidents, however tank vessels and barges are responsible for the majority of oil spilled by volume.

SUMMARY OF PROVISIONS

The major provisions in this bill would: (1) implement the International Maritime Organization (IMO) amendment requiring a double hull or an additional protective layer around the fuel tank for non-tank vessels; (2) clarify the Coast Guard's authority to direct the movement of vessel traffic in a Vessel Traffic System area and require the Coast Guard to assess the need for improved vessel traffic management measures; (3) create a medical review program for merchant mariners; (4) require the Coast Guard to conduct a study into the causes of marine accidents; (5) conform the duration of mariner licenses, certificates of registry, merchant mariner documents, and transportation worker identification credentials; and (6) establish a mechanism to allow the Coast Guard to provide humanitarian relief for seafarers abandoned in the United States and support of seafarers who are witnesses to maritime-related crimes.

LEGISLATIVE HISTORY

During the 110th Congressional Session a similar bill, S. 2699, was introduced on March 4, 2008, by Senators Lautenberg and Boxer and was referred to the Committee on Commerce, Science, and Transportation. A hearing on oil spill prevention was held on March 4, 2008. On May 15, 2008, the Committee met in open executive session and ordered S. 2699 reported favorably with amendment. On March 24, 2009, Senator Lautenberg introduced S. 685, the Oil Spill Prevention Act of 2009, by Senators Rockefeller, Boxer, Cantwell and Begich. The legislation was referred to the Senate Committee on Commerce, Science, and Transportation. On May 18, 2009, a manager's amendment was filed of the underlying bill by Senator Lautenberg to modify: Section 4 to expand the eligibility for mariners to submit medical examinations by medical examiners not on the national registry and further defines the term `medical examiner'; Section 5 to require the evaluation of additional criteria to determine the causes of marine casualties as well as consultation of appropriate federal advisory committees; and, Section 10 to make a technical correction.

Staff assigned to this legislation are Dabney Hegg, Democratic Senior Professional Staff Member, and Todd Bertosen, Republican Senior Counsel.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

Hon. JOHN D. ROCKEFELLER IV,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 685, the Oil Spill Prevention Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 685--Oil Spill Prevention Act of 2009

Summary: S. 685 would address maritime safety issues, including spills of fuel oil from vessels. Based on information provided by the U.S. Coast Guard and assuming appropriation of the necessary amounts, CBO estimates that implementing S. 685 would cost about \$7 million over the 2010-2014 period. Implementing section 9 could reduce offsetting receipts from commercial fees charged by the Coast Guard, but CBO estimates that any such reductions would be minimal and would be partially offset by reductions in direct spending. Enacting S. 685 would not affect revenues.

S. 685 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. The bill, however, contains private-sector mandates as defined in UMRA on U.S. merchant mariners and U.S. ship owners. While the cost of one of the mandates is likely to be small, the cost to comply with the other mandate is uncertain. Consequently, CBO cannot determine whether the aggregate costs to comply with the private-sector mandates in the bill would exceed the annual threshold established in UMRA (\$139 million in 2009, adjusted annually for inflation).

Estimated Cost to the Federal Government :

The estimated budgetary impact of S. 685 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

----- By fiscal year, in millions of dollars-- -----						
	2010	2011	2012	2013	2014	2010-2014

CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	3	2	2	*	*	7
Estimated Outlays	2	3	2	*	*	7

Basis of estimate: For this estimate CBO assumes that S. 685 will be enacted near the end of fiscal year 2009 and that the amounts specifically authorized by the legislation or

estimated to be necessary will be appropriated for each year. Estimated outlays are based on historical spending patterns for similar programs.

Spending subject to appropriation

Under section 2 of the bill, newly constructed ships that have an aggregate capacity of at least 600 cubic meters of fuel oil would be required to be built with a double hull or other protection against spills. CBO estimates that implementing this provision would cost the Coast Guard less than \$500,000 annually, assuming the availability of appropriated funds. The agency would need such additional amounts to promulgate and enforce new regulations.

The bill also would require the Coast Guard to conduct studies on marine casualties or environmental threats and on the need for tractor tugboats to escort vessels that carry large amounts of fuel into U.S. ports. CBO estimates that the total cost of conducting the two studies in 2010 would be about \$500,000, assuming availability of the necessary amounts.

Finally, section 10 would establish a Support of Seafarers Fund to pay the expenses of seamen who are abandoned by their ships or who must remain in the United States as witnesses in certain legal proceedings. The proposed fund would be available to pay seamen's wages and subsistence, medical care, repatriation, and other expenses. The fund would receive appropriated amounts (at an authorized level of \$1.5 million for each of fiscal years 2010 through 2012), and any amounts transferred from other federal accounts, or reimbursed by ship owners.

Assuming appropriation of the amounts authorized to be paid into the new fund, CBO estimates that implementing section 10 would increase discretionary spending by \$4.5 million over the 2010-2014 period. We estimate that direct spending of amounts transferred to the fund from other accounts or amounts reimbursed by ship owners (which would be treated as offsetting receipts, a credit against direct spending) would be minimal and would have no net impact on the federal budget.

DIRECT SPENDING

Section 9 would authorize the Coast Guard to extend for one year certain expiring marine licenses, certificates of registry, and merchant mariner documents. The authority to provide such extensions would apply through December 11, 2011. Because the extensions would delay the collection of fees charged for renewal of such documents, enacting this provision could reduce offsetting receipts (an offset against direct spending) over the next year or two. Some of those receipts may be spent without further appropriation, however, to cover collection expenses. CBO estimates that the net effect on direct spending from enacting this provision would be less than \$500,000 in each of fiscal years 2010 and 2011.

Intergovernmental and private-sector impact: S. 685 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The bill, however, contains private-sector mandates as defined in UMRA on U.S. merchant mariners and U.S. ship owners. While the cost of one of the mandates is likely to be small, the cost to comply with the other mandate is uncertain. Consequently, CBO cannot determine whether the aggregate costs to comply with the private-sector

mandates in the bill would exceed the annual threshold established in UMRA (\$139 million in 2009, adjusted annually for inflation).

Section 4 of the bill would require U.S. merchant mariners to comply with new medical standards established by the U.S. Coast Guard to ensure that the physical condition of all merchant mariners (approximately 220,000 currently employed) is adequate for them to safely carry out their duties onboard vessels. The standards would be based on a future study by the U.S. Coast Guard and consultation with the advisory committee established under the bill. The cost to comply with the mandate would depend on standards to be issued under the bill. Because the scope and stringency of those standards are uncertain, the cost is uncertain.

Section 10 would require ship owners to pay certain expenses of seamen who are abandoned under the conditions specified in the bill. The bill would require ship owners who do not pay those expenses to reimburse the Support of Seafarers Fund the total amount paid from the fund to support the seamen, plus a surcharge of 25 percent.

According to industry sources, situations in which ship owners would have to pay such expenses are rare, and payments would likely be low. Therefore, CBO estimates that the cost to ship owners to comply with this mandate would likely be minimal.

The Unfunded Mandates Reform Act excludes from the application of that act any legislative provision that is necessary for the ratification or implementation of international treaty obligations. CBO has determined that section 2 of S. 685 falls within that exclusion; therefore, we have not reviewed it for intergovernmental or private-sector mandates.

Estimate prepared by: Federal Costs: Deborah Reis; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Jacob Kuipers.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

This bill is intended to minimize the damage of an accidental oil spill by requiring a double hull or an additional protective layer around the fuel tank for non-tank vessels. This requirement already exists through the IMO Marine Environment Protection Committee, so it affects those already subject to the rules of the IMO. Additionally, any person affected by the creation of the medical advisory committee in this bill would be contributing to a safer and healthier maritime industry. The provision to allow merchant mariner credentials up to eight months in advance of their expiration would positively impact mariners with appropriate documentation.

ECONOMIC IMPACT

This legislation would not have an adverse economic impact on the Nation. This bill would promote a safer and more efficient maritime environment, which could ultimately reduce the monetary consequences of oil spills or other manmade disasters.

PRIVACY

S. 685 would have minimal effect on the privacy rights of individuals.

PAPERWORK

The Committee does not anticipate a major increase in paperwork burdens for individuals or business resulting from the passage of this legislation.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 would title S. 685 as the Oil Spill Prevention Act of 2009.

Section 2. Oil fuel tank protection

Section 2 would implement the IMO amendment 12A to the International Convention to Prevent Pollution from Ships (MARPOL) Annex I which establishes design requirements for protectively locating fuel tanks on all ships consistent with amendment 12A. It would also allow the Secretary to apply the requirements to vessels not subject to the convention consistent with the Administrative Procedures Act.

In March 2006, the IMO Marine Environment Protection Committee adopted a resolution to establish design requirements for protectively locating fuel tanks on all ships with an aggregate oil fuel capacity of 600 cubic meters or more that have a building contract on or after August 1, 2007, or a delivery date on or after August 1, 2010. The resolution limits fuel oil tank capacity to 2,500 cubic meters or approximately 660 thousand gallons. The resolution also includes inspection requirements for wing and double-bottom tanks or spaces when approving the design and construction of ships.

The IMO resolution offers two mechanisms through which a vessel can meet the new requirement. Vessel operators can either: (1) install a double-hull, or (2) install some form of bulkhead or shell plating surrounding a fuel tank. If operators install a bulkhead or shell plating, they must place the fuel tank a calculated safe distance from both the side and bottom of the non-tank vessel. The resolution also requires that fuel oil piping within specific proximity to the actual sides or bottom

of the vessel be fitted with readily accessible valves or similar closing devices or immediately adjacent to the fuel oil tank. The valves will be required to close in case of remote system failure and remain closed at sea any time the tank contains fuel oil. As a signatory to the International Convention to Prevent Pollution from Ships (MARPOL) Annex I, amendment 12A, the United States has an obligation to act in accordance with the convention.

Section 3. Maritime emergency prevention

Section 3 would clarify the Coast Guard's authority to direct the movement of vessel traffic in a VTS area and would require the Coast Guard to develop and distribute guidance to VTS personnel that clearly defines the authority to direct vessel movement when it is in the best interest of safety. The provision would direct the Coast Guard to conduct an assessment of the need for new, expanded, or improved vessel traffic management measures. The provision also would set forth additional navigational training requirements for Coast Guard VTS watchstander personnel. This provision is based on the National Transportation Safety Board's (NTSB) recommendation from the *Cosco Busan* incident.

Section 4. Merchant Mariner Medical Advisory Committee, medical standards, and medical requirements

Section 4 would establish an advisory committee of medical subject matter specialists familiar with the unique maritime occupational environment. These subject matter specialists would: (1) advise the Secretary on medical matters relating to the issuance of Merchant Mariner Credentials; (2) recommend medical standards and guidelines for the physical qualifications of mariners; and (3) develop training materials in order to certify that medical examiners in a national registry established by this section satisfy performance standards. This provision would provide a way for the Coast Guard to standardize the training for medical examiners and the reporting of medical examinations. The national registry would ensure a basic level of quality and the timely management of the medical review process. This language would create a medical review process and national registry of examiners similar to that within the Federal Motor Carrier Safety Administration and the Federal Aviation Administration. This provision is based on a NTSB recommendation.

Section 5. Study of marine casualty causation

Section 5 would require the Coast Guard to conduct a study into the causes of marine accidents.

Section 6. Coast Guard study on the use of tractor tugs

Section 6 would direct the Coast Guard to perform a study at the five highest volume ports in the United States on the use of tractor tug escorts that aid in avoiding shipping accidents by escorting vessels that transport or carry a high volume of oil. The use of tractor tug escorts is mandated by State regulation and/or by order of the Captain of the Port in a number of west coast ports. New generation tugboats are powerful enough to hold vessels in a static location in the event of a mechanical problem or the onset of fog. These tugs also provide a

number of other safety improvements by providing increased maneuverability in the tight confines of a harbor.

Section 7. Trained pollution investigators

Section 7 would require the Coast Guard to have at least one pollution investigator either on duty or on recall status at all time in each Sector Command pursuant to recommendations in the Incident Specific Preparedness Review of the *Cosco Busan* collision.

Section 8. Duration of credentials

Section 8 would amend current law to allow merchant mariners' credentials to be issued up to eight months in advance. The new credential would not be effective until the date that the previous merchant mariner credential expires. Under current law, licenses, certificates of registry, and merchant mariners' documents (credentials) are valid for exactly five years.

Section 9. Authorization to extend the duration of licenses, certificates of registry, and merchant mariner documents

Section 9 would provide the Coast Guard with the authority to extend the expiration date of credentials when deemed appropriate or necessary, such as during a national disaster, in the interest of national security, or to align the credential expiration date with the expiration of a Transportation Worker Identification Credential.

Section 10. Protection and fair treatment of seafarers

Section 10 would create a legal and fiscal remedy for two intractable, often inter-related problems: humanitarian relief for seafarers abandoned in the United States and support of seafarers who are witnesses to maritime-related crimes. In both instances, this section would allow the Secretary of the Department in which the Coast Guard operates to draw from a special fund to pay necessary support for abandoned seafarers, including seafarers who are witnesses in Coast Guard investigations and subsequent proceedings. Under current law, the Coast Guard has limited ability to assist abandoned seafarers, including those whose testimony is necessary for an investigation.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

PORTS AND WATERWAYS SAFETY ACT OF 1972

SEC. 4. VESSEL OPERATING REQUIREMENTS.

- (a) IN GENERAL- Subject to the requirements of section 5, the Secretary--
- (1) in any port or place under the jurisdiction of the United States, in the navigable waters of the United States, or in any area covered by an international agreement negotiated pursuant to section 11, may construct, operate, maintain, improve, or expand vessel traffic services, consisting of measures for controlling or supervising vessel traffic or for protecting navigation and the marine environment and may include, but need not be limited to one or more of the following: reporting and operating requirements, surveillance and communications systems, routing systems, and fairways;
 - (2) shall require appropriate vessels which operate in an area of a vessel traffic service to utilize or comply with that service;
 - (3) may require vessels to install and use specified navigation equipment, communications equipment, electronic relative motion analyzer equipment, or any electronic or other device necessary to comply with a vessel traffic service or which is necessary in the interests of vessel safety: *Provided*, That the Secretary shall not require fishing vessels under 300 gross tons as measured under section 14502 of title 46, United States Code, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title or recreational vessels 65 feet or less to possess or use the equipment or devices required by this subsection solely under the authority of this Act;
 - (4) may control vessel traffic in areas subject to the jurisdiction of the United States which the Secretary determines to be hazardous, or under conditions of reduced visibility, adverse weather, vessel congestion, or other hazardous circumstances by--
 - (A) specifying times of entry, movement, or departure;
 - (B) establishing vessel traffic routing schemes;
 - (C) establishing vessel size, speed, draft limitations and vessel operating conditions; and
 - (D) restricting operation, in any hazardous area or under hazardous conditions, to vessels which have particular operating characteristics or capabilities which he considers necessary for safe operation under the circumstances;
 - (5) may require the receipt of prearrival messages from any vessel, destined for a port or place subject to the jurisdiction of the United States, in sufficient time to permit advance vessel traffic planning prior to port entry, which shall include any information which is not already a matter of record and which the Secretary determines necessary for the control of the vessel and the safety of the port or the marine environment; and
 - (6) may prohibit the use on vessels of electronic or other devices that interfere with communication and navigation equipment, except that such authority shall not apply to electronic or other devices certified to transmit in the maritime services by the Federal Communications Commission and used within the frequency bands 157.1875-157.4375 MHz and 161.7875-162.0375 MHz.
- (b) SPECIAL POWERS- The Secretary may order any vessel, in a port or place subject to the jurisdiction of the United States or in the navigable waters of the

United States, to ~~5~~operate or ~~6~~ operate, including direction to change the vessel's heading and speed, or anchor in a manner he directs if--

- (1) he has reasonable cause to believe such vessel does not comply with any regulation issued under this Act or any other applicable law or treaty;
- (2) he determines that such vessel does not satisfy the conditions for port entry set forth in section 9; or
- (3) by reason of weather, visibility, sea conditions, port congestion, other emergency or hazardous circumstances, or the condition of such vessel, he is satisfied that such directive is justified in the interest of safety.

(c) PORT ACCESS ROUTES--

(1) In order to provide safe access routes for the movement of vessel traffic proceeding to or from ports or places subject to the jurisdiction of the United States, and subject to the requirements of paragraph (3) hereof, the Secretary shall designate necessary fairways and traffic separation schemes for vessels operating in the territorial sea of the United States and in high seas approaches, outside the territorial sea, to such ports or places. Such a designation shall recognize, within the designated area, the paramount right of navigation over all other uses.

(2) No designation may be made by the Secretary pursuant to this subsection, if such a designation, as implemented, would deprive any person of the effective exercise of a right granted by a lease or permit executed or issued under other applicable provisions of law: *Provided*, That such right has become vested prior to the time of publication of the notice required by clause (A) of paragraph (3) hereof: *Provided further*, That the determination as to whether the designation would so deprive any such person shall be made by the Secretary, after consultation with the responsible official under whose authority the lease was executed or the permit issued.

(3) Prior to making a designation pursuant to paragraph (1) hereof, and in accordance with the requirements of section 5, the Secretary shall--

(A) within six months after date of enactment of this Act (and may, from time to time thereafter), undertake a study of the potential traffic density and the need for safe access routes for vessels in any area for which fairways or traffic separation schemes are proposed or which may otherwise be considered and shall publish notice of such undertaking in the Federal Register;

(B) in consultation with the Secretary of State, the Secretary of the Interior, the Secretary of Commerce, the Secretary of the Army, and the Governors of affected States, as their responsibilities may require, take into account all other uses of the area under consideration (including, as appropriate, the exploration for, or exploitation of, oil, gas, or other mineral resources, the construction or operation of deepwater ports or other structures on or above the seabed or subsoil of the submerged lands or the Outer Continental Shelf of the United States, the establishment or operation of marine or estuarine sanctuaries, and activities involving recreational or commercial fishing); and

(C) to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved.

(4) In carrying out his responsibilities under paragraph (3), the Secretary shall proceed expeditiously to complete any study undertaken. Thereafter, he shall promptly issue a notice of proposed rulemaking for the designation

contemplated or shall have published in the Federal Register a notice that no designation is contemplated as a result of the study and the reason for such determination.

(5) In connection with a designation made pursuant to this subsection, the Secretary--

(A) shall issue reasonable rules and regulations governing the use of such designated areas, including the applicability of rules 9 and 10 of the International Regulations for Preventing Collisions at Sea, 1972, relating to narrow channels and traffic separation schemes, respectively, in waters where such regulations apply;

(B) to the extent that he finds reasonable and necessary to effectuate the purposes of the designation, make the use of designated fairways and traffic separation schemes mandatory for specific types and sizes of vessels, foreign and domestic, operating in the territorial sea of the United States and for specific types and sizes of vessels of the United States operating on the high seas beyond the territorial sea of the United States;

(C) may, from time to time, as necessary, adjust the location or limits of designated fairways or traffic separation schemes, in order to accommodate the needs of other uses which cannot be reasonably accommodated otherwise: Provided, That such an adjustment will not, in the judgment of the Secretary, unacceptably adversely affect the purpose for which the existing designation was made and the need for which continues; and

(D) shall, through appropriate channels, (i) notify cognizant international organizations of any designation, or adjustment thereof, and (ii) take action to seek the cooperation of foreign States in making it mandatory for vessels under their control to use any fairway or traffic separation scheme designated pursuant to this subsection in any area of the high seas, to the same extent as required by the Secretary for vessels of the United States.

(d) EXCEPTION- Except pursuant to international treaty, convention, or agreement, to which the United States is a party, this Act shall not apply to any foreign vessel that is not destined for, or departing from, a port or place subject to the jurisdiction of the United States and that is in--

(1) innocent passage through the territorial sea of the United States, or

(2) transit through the navigable waters of the United States which form a part of an international strait.

(e) COOPERATIVE AGREEMENTS-

(1) The Secretary may enter into cooperative agreements with public or private agencies, authorities, associations, institutions, corporations, organizations, or other persons to carry out the functions under subsection (a)(1).

(2) A nongovernmental entity may not under this subsection carry out an inherently governmental function.

(3) As used in this paragraph, the term 'inherently governmental function' means any activity that is so intimately related to the public interest as to mandate performance by an officer or employee of the Federal Government, including an activity that requires either the exercise of discretion in applying the authority of the Government or the use of judgment in making a decision for the Government.

TITLE 46. SHIPPING

SUBTITLE II. VESSELS AND SEAMEN

PART B. INSPECTION AND REGULATION OF VESSELS

CHAPTER 33. INSPECTION GENERALLY

3306. Regulations

(a) To carry out this part and to secure the safety of individuals and property on board vessels subject to inspection, the Secretary shall prescribe necessary regulations to ensure the proper execution of, and to carry out, this part in the most effective manner for--

(1) the design, construction, alteration, repair, and operation of those vessels, including superstructures, hulls, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, boilers, unfired pressure vessels, piping, electric installations, and accommodations for passengers and crew, sailing school instructors, and sailing school students;

(2) lifesaving equipment and its use;

(3) firefighting equipment, its use, and precautionary measures to guard against fire;

(4) inspections and tests related to paragraphs (1), (2), and (3) of this subsection; and

(5) the use of vessel stores and other supplies of a dangerous nature.

(b)(1) Equipment and material subject to regulation under this section may not be used on any vessel without prior approval of the Secretary.

(2) Except with respect to use on a public vessel, the Secretary may treat an approval of equipment or materials by a foreign government as approval by the Secretary for purposes of paragraph (1) if the Secretary determines that--

(A) the design standards and testing procedures used by that government meet the requirements of the International Convention for the Safety of Life at Sea, 1974;

(B) the approval of the equipment or material by the foreign government will secure the safety of individuals and property on board vessels subject to inspection; and

(C) for lifesaving equipment, the foreign government--

(i) has given equivalent treatment to approvals of lifesaving equipment by the Secretary; and

(ii) otherwise ensures that lifesaving equipment approved by the Secretary may be used on vessels that are documented and subject to inspection under the laws of that country.

(c) In prescribing regulations for sailing school vessels, the Secretary shall consult with representatives of the private sector having experience in the operation of vessels likely to be certified as sailing school vessels. The regulations shall--

- (1) reflect the specialized nature of sailing school vessel operations, and the character, design, and construction of vessels operating as sailing school vessels; and
 - (2) include requirements for notice to sailing school instructors and sailing school students about the specialized nature of sailing school vessels and applicable safety regulations.
- (d) In prescribing regulations for nautical school vessels operated by the United States Merchant Marine Academy or by a State maritime academy (as defined in section 51102 of this title), the Secretary shall consider the function, purpose, and operation of the vessels, their routes, and the number of individuals who may be carried on the vessels.
- (e) When the Secretary finds it in the public interest, the Secretary may suspend or grant exemptions from the requirements of a regulation prescribed under this section related to lifesaving and firefighting equipment, muster lists, ground tackle and hawsers, and bilge systems.
- (f) In prescribing regulations for offshore supply vessels, the Secretary shall consider the characteristics, methods of operation, and the nature of the service of offshore supply vessels.
- (g) In prescribing regulations for fish processing or fish tender vessels, the Secretary shall consult with representatives of the private sector having experience in the operation of these vessels. The regulations shall reflect the specialized nature and economics of fish processing or fish tender vessel operations and the character, design, and construction of fish processing or fish tender vessels.
- (h) The Secretary shall establish appropriate structural fire protection, manning, operating, and equipment requirements for vessels of at least 100 gross tons but less than 300 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title carrying not more than 150 passengers on domestic voyages, which meet the eligibility criteria of section 2113(4) of this title.
- (i) The Secretary shall establish appropriate structural fire protection, manning, operating, and equipment requirements for former public vessels of the United States of at least 100 gross tons but less than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title carrying not more than 150 passengers on domestic voyages, which meet the eligibility criteria of section 2113(5) of this title.
- (j) The Secretary may establish by regulation a safety management system appropriate for the characteristics, methods of operation, and nature of service of towing vessels.
- (k)(1) Each vessel of the United States that is constructed under a contract entered into after the date of enactment of the Oil Spill Prevention Act of 2009, or that is delivered after August 1, 2010, with an aggregate capacity of 600 cubic meters or more of oil fuel, shall comply with the requirements of Regulation 12A under Annex I to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, entitled 'Oil Fuel Tank Protection'.*
- (2) The Secretary may prescribe regulations to apply the requirements described in Regulation 12A to vessels described in paragraph (1) that are not otherwise subject to that convention.*
- (3) In this subsection the term 'oil fuel' means any oil used as fuel in connection with the propulsion and auxiliary machinery of the vessel in which such oil is carried.*

TITLE 46. SHIPPING

SUBTITLE II. VESSELS AND SEAMEN

PART E. MERCHANT SEAMEN LICENSES, CERTIFICATES, AND DOCUMENTS

CHAPTER 71. LICENSES AND CERTIFICATES OF REGISTRY

Sec. 7115. Merchant mariner medical advisory committee, medical standards, and medical requirements

(a) ESTABLISHMENT-

(1) *IN GENERAL-* There is established a Merchant Mariner Medical Advisory Committee.

(2) *FUNCTIONS-* The Committee shall--

(A) *advise the Secretary on matters relating to--*

(i) *medical certification determinations for issuance of merchant mariner credentials;*

(ii) *medical standards and guidelines for the physical qualifications of operators of commercial vessels;*

(iii) *medical examiner education; and*

(iv) *medical research; and,*

(B) *develop, as appropriate, specific courses and materials to be used by medical examiners listed in the national registry established under this section.*

(3) *MEMBERSHIP-*

(A) *IN GENERAL-* The Committee shall consist of the chief medical examiner and--

(i) *10 individuals who are health-care professionals with particular expertise, knowledge, or experience regarding the medical examinations of merchant mariners or occupational medicine; and*

(ii) *4 individuals who are professional mariners with knowledge and experience in mariner occupational requirements.*

(B) *STATUS OF MEMBERS-* Except for the chief medical examiner, members of the Committee shall not be considered Federal employees or otherwise in the service or the employment of the Federal Government, except that members shall be considered special Government employees, as defined in section 202(a) of title 18 and shall be subject to any administrative standards of conduct applicable to the employees of the department in which the Coast Guard is operating.

(C) *COMPENSATION; REIMBURSEMENT-* Except for the chief medical examiner, members of the Committee shall serve without compensation, except that, while engaged in the performance of

duties away from their homes or regular places of business of the member, the member of the Committee may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

(b) APPOINTMENTS; TERMS; VACANCIES; ORGANIZATION-

(1) APPOINTMENT- The Secretary shall appoint the members of the Committee, and each member shall serve at the pleasure of the Secretary.

(2) TERM OF OFFICE- The members shall be appointed for a term of 4 years, except that, of the members first appointed, 4 members shall be appointed for a term of 2 years and 4 members shall be appointed for a term of 1 year.

(3) VACANCIES- Any member appointed to fill the vacancy prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term.

(4) CHAIRMAN; VICE CHAIRMAN- The Secretary shall designate 1 member other than the chief medical examiner as the Chairman and 1 member other than the chief medical examiner as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of, or in the event of a vacancy in the office of, the Chairman.

(5) STAFF; SERVICES- The Secretary shall furnish to the Committee the personnel and services as are considered necessary for the conduct of its business.

(6) MEETINGS- No later than 6 months after the date of enactment of the Oil Spill Prevention Act of 2009, the Committee shall hold its first meeting and shall meet at least once each fiscal year.

(c) CHIEF MEDICAL EXAMINER- The Secretary shall appoint an employee of the Coast Guard who will serve as a chief medical examiner and who shall hold a position under section 3104 of title 5 relating to employment of specially qualified scientific and professional personnel, and shall be paid under section 5376 of title 5, relating to pay for certain senior-level positions.

(d) MEDICAL STANDARDS AND REQUIREMENTS-

(1) IN GENERAL- The Secretary, with the advice of the Committee, shall--

(A) establish, review, and revise--

(i) medical standards for merchant mariners that will ensure that the physical condition of merchant mariners is adequate to enable them to safely carry out their duties on board vessels; and

(ii) requirements for periodic physical examinations of such merchant mariners performed by a medical examiner who has, at a minimum, self-certified that he or she has completed training in physical and medical examination standards and is listed on a registry of medical examiners maintained in accordance with subsection (e) of this section;

(B) require each merchant mariner to have a current valid physical examination;

(C) conduct periodic reviews of a select number of medical examiners on the national registry to ensure that proper examinations of merchant mariners are being conducted;

(D) require each such medical examiner to, at a minimum, self-certify that he or she has completed specific training, including refresher courses, to be listed in the registry;

(E) require medical examiners to submit all completed medical examination reports as required under regulations established by the Secretary; and

(F) periodically review a representative sample of the medical examiners' reports associated with the name and numerical identifiers of applicants transmitted under subparagraph (E) for errors, omissions, or other indications of improper certification.

(2) MONITORING PERFORMANCE- The Secretary shall investigate patterns of errors or improper evaluation by medical examiners. If the Secretary finds that a medical examiner has evaluated a merchant mariner as being fit for seagoing service who fails otherwise to meet the applicable standards at the time of the examination or that a medical examiner has falsely claimed to have completed training in physical and medical examination standards as required by this section, the Secretary may remove the name of such medical examiner from the registry and may void the medical examinations of the applicant or holder.

(e) NATIONAL REGISTRY OF MEDICAL EXAMINERS- The Secretary, acting through the Commandant of the Coast Guard--

(1) shall establish and maintain a current national registry of medical examiners who are qualified to perform examinations;

(2) shall accept as valid only examinations by persons on the national registry of medical examiners;

(3) shall remove from the registry the name of any medical examiner who fails to meet or maintain the qualifications established by the Secretary for being listed in the registry or otherwise does not meet the requirements of this section or a regulation issued under this section;

(4) may make participation of medical examiners in the national registry voluntary if such a change will enhance the safety of merchant mariners holding United States Coast Guard credentials; and

(5) may include in the registry established under paragraph (1) licensed physicians who are certified by the Secretary of Transportation to perform medical examinations of operators of commercial motor vehicles under section 31149 of title 49 and airmen.

(f) USE OF MEDICAL EXAMINERS NOT ON THE NATIONAL REGISTRY- The Secretary shall accept examinations of merchant mariners conducted by medical examiners not listed on the national registry if such examinations meet specifications (including standards of review) established by the Secretary in consultation with the Merchant Mariner Medical Advisory Committee.

(g) MEDICAL EXAMINER DEFINED- In this section, the term `medical examiner' means a licensed physician, physician's assistant, or nurse practitioner who complies with the regulations issued by the Secretary for medical examiners conducting examinations of merchant mariners.

(h) COORDINATION- The Secretary, in coordination with the Secretary of Transportation, shall utilize the systems, processes, and procedures established for the administration of the Federal Motor Carrier Safety Administration's Medical Program authorized under section 31149 of title 49 and the Federal Aviation Administration's Office of Aerospace Medicine authorized under section 44702 of that title where synergies exist between such systems, processes, and procedures.

(i) REGULATIONS- The Secretary may issue such regulations as may be necessary to carry out this section.

TITLE 46. SHIPPING

SUBTITLE II. VESSELS AND SEAMEN

PART E. MERCHANT SEAMEN LICENSES, CERTIFICATES, AND DOCUMENTS

CHAPTER 71. LICENSES AND CERTIFICATES OF REGISTRY

Sec. 7302. Issuing merchant mariners' documents and continuous discharge books

(a) The Secretary shall issue a merchant mariner's document to an individual required to have that document under part F of this subtitle if the individual satisfies the requirements of this part. The document serves as a certificate of identification and as a certificate of service, specifying each rating in which the holder is qualified to serve on board vessels on which that document is required under part F.

(b) The Secretary also may issue a continuous discharge book to an individual issued a merchant mariner's document if the individual requests.

(c) The Secretary may not issue a merchant mariner's document under this chapter unless the individual applying for the document makes available to the Secretary, under section 30305(b)(5) of title 49, any information contained in the National Driver Register related to an offense described in section 30304(a)(3)(A) or (B) of title 49 committed by the individual.

(d) The Secretary may review the criminal record of an individual who applies for a merchant mariner's document under this section.

(e) The Secretary shall require the testing of an individual applying for issuance or renewal of a merchant mariner's document under this chapter for the use of a dangerous drug in violation of law or Federal regulation.

[Struck out->] (f) Except as provided in subsection (g), a merchant mariner's document issued under this chapter is valid for 5 years and may be renewed for additional 5-year periods.] [<-Struck out]

(f) *PERIODS OF VALIDITY AND RENEWAL OF MERCHANT MARINERS' DOCUMENTS-*

(1) *IN GENERAL-* Except as provided in subsection (g), a merchant mariner's document issued under this chapter is valid for a 5-year period and may be renewed for additional 5-year periods.

(2) *ADVANCE RENEWALS-* A renewed merchant mariner's document may be issued under this chapter up to 8 months in advance but is not effective until the date that the previously issued merchant mariner's document expires.

(g)(1) The Secretary may, pending receipt and review of information required under subsections (c) and (d), immediately issue an interim merchant mariner's document valid for a period not to exceed 120 days, to--

(A) an individual to be employed as gaming personnel, entertainment personnel, wait staff, or other service personnel on board a passenger vessel not engaged in foreign service, with no duties, including

emergency duties, related to the navigation of the vessel or the safety of the vessel, its crew, cargo or passengers; or
(B) an individual seeking renewal of, or qualifying for a supplemental endorsement to, a valid merchant mariner's document issued under this section.

(2) No more than one interim document may be issued to an individual under paragraph (1)(A) of this subsection.

Sec. 7106. Duration of licenses

[Struck out->] [A license issued under this part is valid for 5 years and may be renewed for additional 5-year periods. However, the validity of a license issued to a radio officer is conditioned on the continuous possession by the holder of a first-class or second-class radiotelegraph operator license issued by the Federal Communications Commission.] [<-Struck out]

(a) IN GENERAL- A license issued under this part is valid for a 5-year period and may be renewed for additional 5-year periods; except that the validity of a license issued to a radio officer is conditioned on the continuous possession by the holder of a first-class or second-class radiotelegraph operator license issued by the Federal Communications Commission.

(b) ADVANCE RENEWALS- A renewed license issued under this part may be issued up to 8 months in advance but is not effective until the date that the previously issued license expires.

Sec. 7107. Duration of certificates of registry

[Struck out->] [A certificate of registry issued under this part is valid for 5 years and may be renewed for additional 5-year periods. However, the validity of a certificate issued to a medical doctor or professional nurse is conditioned on the continuous possession by the holder of a license as a medical doctor or registered nurse, respectively, issued by a State.] [<-Struck out]

(a) IN GENERAL- A certificate of registry issued under this part is valid for a 5-year period and may be renewed for additional 5-year periods; except that the validity of a certificate issued to a medical doctor or professional nurse is conditioned on the continuous possession by the holder of a license as a medical doctor or registered nurse, respectively, issued by a State.

(b) ADVANCE RENEWALS- A renewed certificate of registry issued under this part may be issued up to 8 months in advance but is not effective until the date that the previously issued certificate of registry expires.

TITLE 46. SHIPPING

SUBTITLE II. VESSELS AND SEAMEN

PART E. MERCHANT SEAMEN LICENSES, CERTIFICATES, AND DOCUMENTS

CHAPTER 75. GENERAL PROCEDURES FOR LICENSING, CERTIFICATION, AND DOCUMENTATION

7507. Authority to extend the duration of licenses, certificates of registry, and merchant mariner documents

(a) LICENSES AND CERTIFICATES OF REGISTRY- Notwithstanding sections 7106 and 7107, the Secretary of the department in which the Coast Guard is operating may extend for up to one year an expiring license or certificate of registry issued for an individual under chapter 71 if the Secretary determines that extension is required--

(1) to enable the Coast Guard to eliminate a backlog in processing applications for those licenses or certificates of registry;

(2) because necessary records have been destroyed or are unavailable due to a natural disaster; or

(3) to align the expiration date of a license or certificate of registry with the expiration date of a transportation worker identification credential under section 70501.

(b) MERCHANT MARINER DOCUMENTS- Notwithstanding section 7302(g), the Secretary may extend for one year an expiring merchant mariner's document issued for an individual under chapter 71 if the Secretary determines that extension is required--

(1) to enable the Coast Guard to eliminate a backlog in processing applications for those licenses or certificates of registry;

(2) because necessary records have been destroyed or are unavailable due to a natural disaster; or

(3) to align the expiration date of a license or certificate of registry with the expiration date of a transportation worker identification credential under section 70501.

(c) MANNER OF EXTENSION- Any extensions granted under this section may be granted to individual seamen or a specifically identified group of seamen.

(d) EXPIRATION OF AUTHORITY- The authority for providing an extension under this section shall expire on December 31, 2011.'

TITLE 46. SHIPPING

SUBTITLE II. VESSELS AND SEAMEN

PART G. MERCHANT SEAMEN PROTECTION AND RELIEF

CHAPTER 111. PROTECTION AND RELIEF

11113. Protection and fair treatment of seafarers

(a) *PURPOSE-* The purpose of this section is to ensure the protection and fair treatment of seafarers.

(b) *FUND-*

(1) *ESTABLISHMENT-* There is established in the Treasury a special fund known as the `Support of Seafarers Fund'.

(2) *USE OF AMOUNTS IN FUND-* The amounts covered into the Fund shall be available to the Secretary, without further appropriation and without fiscal year limitation, to--

(A) pay necessary support, pursuant to subsection (c)(1)(A) of this section; and

(B) reimburse a shipowner for necessary support, pursuant to subsection (c)(1)(B) of this section.

(3) *AMOUNTS CREDITED TO FUND-* Notwithstanding any other provision of law, the Fund may receive--

(A) any moneys ordered to be paid to the Fund in the form of community service pursuant to section 3563(b) of title 18;

(B) amounts reimbursed or recovered pursuant to subsection (d) of this section;

(C) amounts appropriated to the Fund pursuant to subsection (g) of this section; and

(D) appropriations available to the Secretary for transfer.

(4) *PREREQUISITE FOR COMMUNITY SERVICE CREDITS-* The Fund may receive credits pursuant to paragraph (3)(A) of this subsection only when the unobligated balance of the Fund is less than \$5,000,000.

(5) *REPORT REQUIRED-*

(A) Except as provided in subparagraph (B) of this paragraph, the Secretary shall not obligate any amount in the Fund in a given fiscal year unless the Secretary has submitted to Congress, concurrent with the President's budget submission for that fiscal year, a report that describes--

(i) the amounts credited to the Fund, pursuant to paragraph (3) of this subsection, for the preceding fiscal year;

(ii) a detailed description of the activities for which amounts were charged; and

(iii) the projected level of expenditures from the Fund for the coming fiscal year, based on--

(I) on-going activities; and

(II) new cases, derived from historic data.

(B) The limitation in subparagraph (A) of this paragraph shall not apply to obligations during the first fiscal year during which amounts are credited to the Fund.

(6) *FUND MANAGER-* The Secretary shall designate a Fund manager, who shall--

(A) ensure the visibility and accountability of transactions utilizing the Fund;

(B) prepare the report required by paragraph (5); and

(C) monitor the unobligated balance of the Fund and provide notice to the Secretary and the Attorney General whenever the unobligated balance of the Fund is less than \$5,000,000.

(c) *IN GENERAL-*

(1) *AUTHORITY-* The Secretary is authorized--

(A) to pay, in whole or in part, without further appropriation and without fiscal year limitation, from amounts in the Fund, necessary support of--

(i) any seafarer who enters, remains, or has been paroled into the United States and is involved in an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard; and

(ii) any seafarer whom the Secretary finds to have been abandoned in the United States; and

(B) to reimburse, in whole or in part, without further appropriation and without fiscal year limitation, from amounts in the Fund, a shipowner, who has filed a bond or surety satisfactory pursuant to subparagraph (A) and provided necessary support of a seafarer who has been paroled into the United States to facilitate an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard, for costs of necessary support, when the Secretary deems reimbursement necessary to avoid serious injustice.

(2) LIMITATION- Nothing in this section shall be construed--

*(A) to create a right, benefit, or entitlement to necessary support; or
(B) to compel the Secretary to pay, or reimburse the cost of, necessary support.*

(d) REIMBURSEMENTS; RECOVERY-

(1) IN GENERAL- Any shipowner shall reimburse the Fund an amount equal to the total amount paid from the Fund for necessary support of the seafarer, plus a surcharge of 25 percent of such total amount if--

(A)(i) the shipowner, during the course of an investigation, reporting, documentation, or adjudication of any matter that the Coast Guard referred to a United States Attorney or the Attorney General, fails to provide necessary support of a seafarer who has been paroled into the United States to facilitate the investigation, reporting, documentation, or adjudication; and

(ii) a criminal penalty is subsequently imposed against the shipowner; or

(B) the shipowner, under any circumstance, abandons a seafarer in the United States, as decided by the Secretary.

(2) ENFORCEMENT- If a shipowner fails to reimburse the Fund as required under paragraph (1) of this subsection, the Secretary may--

(A) proceed in rem against any vessel of the shipowner in the Federal district court for the district in which such vessel is found; and

(B) withhold or revoke the clearance, required by section 60105 of this title, of any vessel of the shipowner wherever such vessel is found.

(3) Whenever clearance is withheld or revoked pursuant to paragraph (2)(B) of this subsection, clearance may be granted if the shipowner reimburses the Fund the amount required under paragraph (1) of this subsection.

(e) SURETY; ENFORCEMENT OF TREATIES, LAWS, AND REGULATIONS-

(1) BOND AND SURETY AUTHORITY- The Secretary is authorized to require a bond or surety satisfactory as an alternative to withholding or revoking clearance required under section 60105 of this title if, in the opinion of the

Secretary, such bond or surety satisfactory is necessary to facilitate an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard if the surety corporation providing the bond is authorized by the Secretary of the Treasury under section 9305 of title 31 to provide surety bonds under section 9304 of that title.

(2) APPLICATION- The authority to require a bond or a surety satisfactory or to request the withholding or revocation of the clearance required under section 60105 of this title applies to any investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard.

(f) DEFINITIONS- In this section:

(1) ABANDONS; ABANDONED- The term `abandons' or `abandoned' means a shipowner's unilateral severance of ties with a seafarer or the shipowner's failure to provide necessary support of a seafarer.

(2) BOND OR SURETY SATISFACTORY- The term `bond or surety satisfactory' means a negotiated instrument, the terms of which may, at the discretion of the Secretary, include provisions that require the shipowner to-

- (A) provide necessary support of a seafarer who has or may have information pertinent to an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Secretary;*
 - (B) facilitate an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Secretary;*
 - (C) stipulate to certain incontrovertible facts, including, but not limited to, the ownership or operation of the vessel, or the authenticity of documents and things from the vessel;*
 - (D) facilitate service of correspondence and legal papers;*
 - (E) enter an appearance in United States district court;*
 - (F) comply with directions regarding payment of funds;*
 - (G) name an agent in the United States for service of process;*
 - (H) make stipulations as to the authenticity of certain documents in United States district court;*
 - (I) provide assurances that no discriminatory or retaliatory measures will be taken against a seafarer involved in an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Secretary;*
 - (J) provide financial security in the form of cash, bond, or other means acceptable to the Secretary; and*
 - (K) provide for any other appropriate measures as the Secretary considers necessary to ensure the Government is not prejudiced by granting the clearance required by section 60105 of title 46.*
- (3) FUND- The term `Fund' means the Support of Seafarers Fund, established pursuant to this section.*
- (4) NECESSARY SUPPORT- The term `necessary support' means normal wages, lodging, subsistence, clothing, medical care (including*

hospitalization), repatriation, and any other expense the Secretary deems appropriate.

(5) SEAFARER- The term `seafarer' means an alien crewman who is employed or engaged in any capacity on board a vessel subject to the jurisdiction of the United States.

(6) SHIPOWNER- The term `shipowner' means the individual or entity that owns, has an ownership interest in, or operates a vessel subject to the jurisdiction of the United States.

(7) VESSEL SUBJECT TO THE JURISDICTION OF THE UNITED STATES- The term `vessel subject to the jurisdiction of the United States' has the same meaning it has in section 70502(c) of this title, except that it excludes a vessel owned or bareboat chartered and operated by the United States, by a State or political subdivision thereof, or by a foreign nation, except when that vessel is engaged in commerce.

(g) REGULATIONS- The Secretary may prescribe regulations to implement this section.

(h) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to the Fund \$1,500,000 for each of fiscal years 2010, 2011, and 2012.

Calendar No. 77
111th CONGRESS
1st Session
S. 685
[Report No. 111-26]

To require new vessels for carrying oil fuel to have double hulls, and for other purposes.

IN THE SENATE OF THE UNITED STATES

March 24, 2009

Mr. LAUTENBERG (for himself, Mr. ROCKFELLER, Ms. CANTWELL, Mrs. BOXER, and Mr. BEGICH) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

June 15, 2009

Reported by Mr. ROCKEFELLER, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To require new vessels for carrying oil fuel to have double hulls, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Oil Spill Prevention Act of 2009'.

SEC. 2. OIL FUEL TANK PROTECTION.

Section 3306 of title 46, United States Code, is amended by adding at the end the following new subsection:

`(k)(1) Each vessel of the United States that is constructed under a contract entered into after the date of enactment of the Oil Spill Prevention Act of 2009, or that is delivered after August 1, 2010, with an aggregate capacity of 600 cubic meters or more of oil fuel, shall comply with the requirements of Regulation 12A under Annex I to the Protocol of 1978 relating to the

International Convention for the Prevention of Pollution from Ships, 1973, entitled 'Oil Fuel Tank Protection.'

(2) The Secretary may prescribe regulations to apply the requirements described in Regulation 12A to vessels described in paragraph (1) that are not otherwise subject to that convention.

(3) In this subsection the term 'oil fuel' means any oil used as fuel in connection with the propulsion and auxiliary machinery of the vessel in which such oil is carried.'

SEC. 3. MARITIME EMERGENCY PREVENTION.

(a) IN GENERAL- Section 4(b) of the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1223(b)) is amended--

(1) by striking 'operate or' and inserting 'operate, including direction to change the vessel's heading and speed, or'; and

(2) by inserting 'emergency or' after 'other' in paragraph (3).

(b) REVISION OF VTS POLICY- The Secretary of the department in which the Coast guard is operating shall--

(1) provide guidance to all vessel traffic personnel that clearly defines the use of authority to direct or control vessel movement when such direction or control is justified in the interest of safety; and

(2) require vessel traffic personnel communications to identify the vessel, rather than the pilot, when vessels are operating in vessel traffic service pilotage areas.

(c) Adequacy of VTS Locations and Infrastructure-

(1) IN GENERAL- The Secretary of the department in which the Coast Guard is operating shall continue to conduct individual port and waterway safety assessments under the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1221 et seq.) to determine and prioritize the United States ports, waterways, and channels that are in need of new, expanded, or improved vessel traffic management risk mitigation measures, including vessel traffic service systems, by evaluating--

(A) the nature, volume, and frequency of vessel traffic;

(B) the risks of collisions, allisions, spills, and other maritime mishaps associated with that traffic;

(C) the projected impact of installation, expansion, or improvement of a vessel traffic service system or other risk mitigation measures; and

(D) any other relevant data.

(2) ANALYSES- Based on the results of the assessments under paragraph (1), the Secretary shall identify the requirements for necessary expansion, improvement, or construction of buildings, networks, communications, or other infrastructure to improve the effectiveness of existing vessel traffic service systems, or necessary to support recommended new vessel traffic service systems, including all necessary costs for construction, reconstruction, expansion, or improvement.

- (3) PERSONNEL- The Secretary shall--
- (A) review and validate the recruiting, retention, training, and expansion of the vessel traffic service personnel workforce necessary to maintain the effectiveness of existing vessel traffic service systems and to support any expansion or improvement identified by the Secretary under this section; and
 - (B) require basic navigation training for vessel traffic service watchstander personnel--
 - (i) to support and complement the existing mission of the vessel traffic service to monitor and assess vessel movements within a vessel traffic service Area;
 - (ii) to exchange information regarding vessel movements with vessel and shore-based personnel; and
 - (iii) to provide advisories to vessel masters.
- (4) REPORT- Within 1 year after the date of enactment of this Act, the Secretary shall submit to the Congress a report consolidating the results of the analyses under paragraph (2), together with recommendations for implementing the study results.

SEC. 4. MERCHANT MARINER MEDICAL ADVISORY COMMITTEE, MEDICAL STANDARDS, AND MEDICAL REQUIREMENTS.

(a) IN GENERAL- Chapter 71 of title 46, United States Code, is amended by adding at the end thereof the following:

` Sec. 7115. Merchant mariner medical advisory committee, medical standards, and medical requirements

- ` (a) Establishment-
- ` (1) IN GENERAL- There is established a Merchant Mariner Medical Advisory Committee.
 - ` (2) FUNCTIONS- The Committee shall--
 - ` (A) advise the Secretary on matters relating to--
 - ` (i) medical certification determinations for issuance of merchant mariner credentials;
 - ` (ii) medical standards and guidelines for the physical qualifications of operators of commercial vessels;
 - ` (iii) medical examiner education; and
 - ` (iv) medical research; and,
 - ` (B) develop, as appropriate, specific courses and materials to be used by medical examiners listed in the national registry established under this section.
 - ` (3) MEMBERSHIP-
 - ` (A) IN GENERAL- The Committee shall consist of the chief medical examiner and--
 - ` (i) 10 individuals who are health-care professionals with particular expertise, knowledge, or experience regarding the

medical examinations of merchant mariners or occupational medicine; and

`(ii) 4 individuals who are professional mariners with knowledge and experience in mariner occupational requirements.

`(B) STATUS OF MEMBERS- Except for the chief medical examiner, members of the Committee shall not be considered Federal employees or otherwise in the service or the employment of the Federal Government, except that members shall be considered special Government employees, as defined in section 202(a) of title 18 and shall be subject to any administrative standards of conduct applicable to the employees of the department in which the Coast Guard is operating.

`(C) COMPENSATION; REIMBURSEMENT- Except for the chief medical examiner, members of the Committee shall serve without compensation, except that, while engaged in the performance of duties away from their homes or regular places of business of the member, the member of the Committee may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

`(b) Appointments; Terms; Vacancies; Organization-

`(1) APPOINTMENT- The Secretary shall appoint the members of the Committee, and each member shall serve at the pleasure of the Secretary.

`(2) TERM OF OFFICE- The members shall be appointed for a term of 4 years, except that, of the members first appointed, 4 members shall be appointed for a term of 2 years and 4 members shall be appointed for a term of 1 year.

`(3) VACANCIES- Any member appointed to fill the vacancy prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term.

`(4) CHAIRMAN; VICE CHAIRMAN- The Secretary shall designate 1 member other than the chief medical examiner as the Chairman and 1 member other than the chief medical examiner as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of, or in the event of a vacancy in the office of, the Chairman.

`(5) STAFF; SERVICES- The Secretary shall furnish to the Committee the personnel and services as are considered necessary for the conduct of its business.

`(6) MEETINGS- No later than 6 months after the date of enactment of the Oil Spill Prevention Act of 2009, the Committee shall hold its first meeting and shall meet at least once each fiscal year.

`(c) CHIEF MEDICAL EXAMINER- The Secretary shall appoint an employee of the Coast Guard who will serve as a chief medical examiner and who shall hold a position under section 3104 of title 5 relating to employment of specially qualified scientific and professional personnel, and shall be paid under section 5376 of title 5, relating to pay for certain senior-level positions.

`(d) Medical Standards and Requirements-

`(1) IN GENERAL- The Secretary, with the advice of the Committee , shall--

`(A) establish, review, and revise--

`(i) medical standards for merchant mariners that will ensure that the physical condition of merchant mariners is adequate to enable them to safely carry out their duties on board vessels; and

`(ii) requirements for periodic physical examinations of such merchant mariners performed by a medical examiner who has, at a minimum, self-certified that he or she has completed training in physical and medical examination standards and is listed on a registry of medical examiners maintained in accordance with subsection (e) of this section;

`(B) require each merchant mariner to have a current valid physical examination;

`(C) conduct periodic reviews of a select number of medical examiners on the national registry to ensure that proper examinations of merchant mariners are being conducted;

`(D) require each such medical examiner to, at a minimum, self-certify that he or she has completed specific training, including refresher courses, to be listed in the registry;

`(E) require medical examiners to submit all completed medical examination reports as required under regulations established by the Secretary; and

`(F) periodically review a representative sample of the medical examiners' reports associated with the name and numerical identifiers of applicants transmitted under subparagraph (E) for errors, omissions, or other indications of improper certification.

`(2) MONITORING PERFORMANCE- The Secretary shall investigate patterns of errors or improper evaluation by medical examiners. If the Secretary finds that a medical examiner has evaluated a merchant mariner as being fit for seagoing service who fails otherwise to meet the applicable standards at the time of the examination or that a medical examiner has falsely claimed to have completed training in physical and medical examination standards as required by this section, the Secretary may remove the name of such medical examiner from the registry and may void the medical examinations of the applicant or holder.

`(e) NATIONAL REGISTRY OF MEDICAL EXAMINERS- The Secretary, acting through the Commandant of the Coast Guard--

`(1) shall establish and maintain a current national registry of medical examiners who are qualified to perform examinations;

`(2) shall accept as valid only examinations by persons on the national registry of medical examiners;

` (3) shall remove from the registry the name of any medical examiner who fails to meet or maintain the qualifications established by the Secretary for being listed in the registry or otherwise does not meet the requirements of this section or a regulation issued under this section;
` (4) may make participation of medical examiners in the national registry voluntary if such a change will enhance the safety of merchant mariners holding United States Coast Guard credentials; and
` (5) may include in the registry established under paragraph (1) licensed physicians who are certified by the Secretary of Transportation to perform medical examinations of operators of commercial motor vehicles under section 31149 of title 49 and airmen.

[Struck out->] `(f) MEDICAL EXAMINER DEFINED- In this section, the term 'medical examiner' means an individual registered in accordance with the regulations issued by the Secretary as a medical examiner. [~~Struck out]~~

`(f) USE OF MEDICAL EXAMINERS NOT ON THE NATIONAL REGISTRY- The Secretary shall accept examinations of merchant mariners conducted by medical examiners not listed on the national registry if such examinations meet specifications (including standards of review) established by the Secretary in consultation with the Merchant Mariner Medical Advisory Committee.

`(g) MEDICAL EXAMINER DEFINED- In this section, the term 'medical examiner' means a licensed physician, physician's assistant, or nurse practitioner who complies with the regulations issued by the Secretary for medical examiners conducting examinations of merchant mariners.

[Struck out->] (g) [~~Struck out]~~ (h) COORDINATION- The Secretary, in coordination with the Secretary of Transportation, shall utilize the systems, processes, and procedures established for the administration of the Federal Motor Carrier Safety Administration's Medical Program authorized under section 31149 of title 49 and the Federal Aviation Administration's Office of Aerospace Medicine authorized under section 44702 of that title where synergies exist between such systems, processes, and procedures.

[Struck out->] (h) [~~Struck out]~~ (i) REGULATIONS- The Secretary may issue such regulations as may be necessary to carry out this section.'

(b) CLERICAL AMENDMENT- The chapter analysis for chapter 71 of title 46, United States Code, is amended by adding at the end the following:

` 7115. Merchant mariner medical advisory committee, medical standards, and medical requirements.'

SEC. 5. STUDY OF MARINE CASUALTY CAUSATION.

(a) OBJECTIVES- The Secretary of the department in which the Coast Guard is operating shall conduct a comprehensive study that will identify data requirements and collection procedures, reports, and other measures that will improve the department's ability--

- (1) to determine the causes of, and contributing factors (including fatigue) to, marine casualties;
- (2) to prevent marine casualties and threats to the environment;

(3) to minimize the impacts of marine casualties and environmental threats;

(4) to maximize the lives and property saved and environment protected in the event of a marine casualty;

(5) to evaluate future marine casualties;

(6) to monitor trends to identify causes and contributing factors; and

(7) to develop effective safety improvement policies, including workload, manning and medical review provisions, and programs.

(b) DESIGN- The study shall employ standard research methods and statistical analysis and be designed to yield information that [Struck out->] will-- [~~Struck out~~] *will help the department assess the role that human factors, mechanical or equipment failure, and environmental factors play in marine casualty causation. Among other issues, the study will--*

(1) help the department assess the role that workload and fatigue play in marine casualty causation;

(2) help the department assess the role that manning, particularly a one man bridge operation, plays in marine casualty causation;

(3) help the department assess the role that the medical condition of merchant mariners plays in marine casualty causation;

(4) *help the department assess the efficacy of safety management systems in preventing marine casualties;*

[Struck out->] (4) [~~Struck out~~] (5) help the department to identify activities and other measures likely to lead to significant reductions in the frequency and severity of marine casualties; and

[Struck out->] (5) [~~Struck out~~] (6) to the extent practicable, rank such activities and measures by the reductions each would likely achieve if implemented.

(c) CONSULTATION- In designing and conducting the study, the Secretary shall--

(1) consult with persons with expertise on marine casualty causation and prevention;

(2) consult with merchant mariners, ship managers, professional maritime associations, human factors professionals, occupational medicine specialists, and providers of medical review services to the maritime industry;

(3) *consult with Federal advisory committees, including the Merchant Marine Personnel Advisory Committee and the Towing Safety Advisory Committee;*

[Struck out->] (3) [~~Struck out~~] (4) consult with academic institutions, domestic and foreign, with particular experience and expertise in workload and fatigue, safe manning, and the medical condition of merchant mariners in the maritime [Struck out->] environment; [~~Struck out~~] *environment and safety management systems;* and

[Struck out->] (4) [~~Struck out~~] (5) review the relevant literature available on previous studies from domestic and foreign sources.

(d) COMPARISON WITH NTSB- The Secretary shall, in cooperation with the Chairman of the National Transportation Safety Board, compare and contrast the procedures and processes employed by the Coast Guard and the National Transportation Safety Board with particular attention to--

- (1) preventing marine casualties and threats to the environment;
- (2) minimizing the impacts of marine casualties and environmental threats; and
- (3) maximizing the number of lives saved, the amount of property saved, and the environment protected in the event of a marine casualty.

(e) PUBLIC COMMENT- The Secretary shall make available for public comment information about the objectives, methodology, implementation, findings, and other aspects of the study.

(f) Reports-

- (1) IN GENERAL- The Secretary shall promptly transmit to Congress the results of the study, together with any legislative recommendations.
- (2) REVIEW AND UPDATE- The Secretary shall review the study at least once every 5 years and update the study and report as necessary.

SEC. 6. COAST GUARD STUDY ON USE OF TRACTOR TUGS.

(a) STUDY- The Commandant of the Coast Guard shall conduct a comprehensive review of existing studies of the need for tractor tug escorts to be used by vessels carrying petroleum products or with large supplies of fuel onboard in the 5 largest United States ports, by volume of petroleum product, where the use of such tugs by those vessels is not otherwise required by State law or Captain-of-the-Port order, identify any gaps or other unaddressed issues, and conduct a study that--

- (1) consolidates the information contained in the existing studies and addresses any such gaps or issues that need to be addressed; and
- (2) to the extent such issues are not satisfactorily addressed in the existing studies, includes--

- (A) an evaluation of the necessary power requirements of such tractor tug escorts;
- (B) an analysis of the appropriate passages for the use of such tractor tug escorts;
- (C) an inventory and analysis of the existing use of tractor tug escorts in United States ports; and
- (D) an analysis of which vessel types in the ports studied should be required to have tractor tug escorts and a statement of the reason for recommending such a requirement.

(b) REPORT- Within 1 year after the date of enactment of this Act, the Commandant shall submit the report, together with any findings, conclusions, and recommendations the Commandant deems appropriate, to the Senate Committee on Commerce, Science, and Transportation.

SEC. 7. TRAINED POLLUTION INVESTIGATORS.

To the extent practicable, the Commandant of the Coast Guard shall ensure that there is at least 1 trained and experienced pollution investigator on duty, or in an on-call status, at all times for each Coast Guard Sector Command.

SEC. 8. DURATION OF CREDENTIALS.

(a) MERCHANT MARINER'S DOCUMENTS- Section 7302(f) of title 46, United States Code, is amended to read as follows:

`(f) Periods of Validity and Renewal of Merchant Mariners' Documents-

`(1) IN GENERAL- Except as provided in subsection (g), a merchant mariner's document issued under this chapter is valid for a 5-year period and may be renewed for additional 5-year periods.

`(2) ADVANCE RENEWALS- A renewed merchant mariner's document may be issued under this chapter up to 8 months in advance but is not effective until the date that the previously issued merchant mariner's document expires.'

(b) DURATION OF LICENSES- Section 7106 of such title is amended to read as follows:

` 7106. Duration of licenses

`(a) IN GENERAL- A license issued under this part is valid for a 5-year period and may be renewed for additional 5-year periods; except that the validity of a license issued to a radio officer is conditioned on the continuous possession by the holder of a first-class or second-class radiotelegraph operator license issued by the Federal Communications Commission.

`(b) ADVANCE RENEWALS- A renewed license issued under this part may be issued up to 8 months in advance but is not effective until the date that the previously issued license expires.'

(c) CERTIFICATES OF REGISTRY- Section 7107 of such title is amended to read as follows:

` 7107. Duration of certificates of registry

`(a) IN GENERAL- A certificate of registry issued under this part is valid for a 5-year period and may be renewed for additional 5-year periods; except that the validity of a certificate issued to a medical doctor or professional nurse is conditioned on the continuous possession by the holder of a license as a medical doctor or registered nurse, respectively, issued by a State.

`(b) ADVANCE RENEWALS- A renewed certificate of registry issued under this part may be issued up to 8 months in advance but is not effective until the date that the previously issued certificate of registry expires.'

SEC. 9. AUTHORIZATION TO EXTEND THE DURATION OF LICENSES, CERTIFICATES OF REGISTRY, AND MERCHANT MARINERS' DOCUMENTS.

(a) MERCHANT MARINER LICENSES AND DOCUMENTS- Chapter 75 of title 46, United States Code, is amended by adding at the end the following:

` 7507. Authority to extend the duration of licenses, certificates of registry, and merchant mariner documents

` (a) LICENSES AND CERTIFICATES OF REGISTRY- Notwithstanding sections 7106 and 7107, the Secretary of the department in which the Coast Guard is operating may extend for up to one year an expiring license or certificate of registry issued for an individual under chapter 71 if the Secretary determines that extension is required--

` (1) to enable the Coast Guard to eliminate a backlog in processing applications for those licenses or certificates of registry;

` (2) because necessary records have been destroyed or are unavailable due to a natural disaster; or

` (3) to align the expiration date of a license or certificate of registry with the expiration date of a transportation worker identification credential under section 70501.

` (b) MERCHANT MARINER DOCUMENTS- Notwithstanding section 7302(g), the Secretary may extend for one year an expiring merchant mariner's document issued for an individual under chapter 71 if the Secretary determines that extension is required--

` (1) to enable the Coast Guard to eliminate a backlog in processing applications for those licenses or certificates of registry;

` (2) because necessary records have been destroyed or are unavailable due to a natural disaster; or

` (3) to align the expiration date of a license or certificate of registry with the expiration date of a transportation worker identification credential under section 70501.

` (c) MANNER OF EXTENSION- Any extensions granted under this section may be granted to individual seamen or a specifically identified group of seamen.

` (d) EXPIRATION OF AUTHORITY- The authority for providing an extension under this section shall expire on December 31, 2011.'

(b) CLERICAL AMENDMENT- The chapter analysis for such chapter is amended by adding at the end the following:

` 7507. Authority to extend the duration of licenses, certificates of registry, and merchant mariner documents.'

SEC. 10. PROTECTION AND FAIR TREATMENT OF SEAFARERS.

(a) IN GENERAL- Chapter 111 of title 46, United States Code, is amended by adding at the end the following new section:

` 11113. Protection and fair treatment of seafarers

` (a) PURPOSE- The purpose of this section is to ensure the protection and fair treatment of seafarers.

`(b) Fund-

`(1) ESTABLISHMENT- There is established in the Treasury a special fund known as the `Support of Seafarers Fund'.

`(2) USE OF AMOUNTS IN FUND- The amounts covered into the Fund shall be available to the Secretary, without further appropriation and without fiscal year limitation, to--

`(A) pay necessary support, pursuant to subsection (c)(1)(A) of this section; and

`(B) reimburse a shipowner for necessary support, pursuant to subsection (c)(1)(B) of this section.

`(3) AMOUNTS CREDITED TO FUND- Notwithstanding any other provision of law, the Fund may receive--

`(A) any moneys ordered to be paid to the Fund in the form of community service pursuant to section [Struck out->] 8B1.3 of the United States Sentencing Guidelines or otherwise; [~~Struck out~~] 3563(b) of title 18;

`(B) amounts reimbursed or recovered pursuant to subsection (d) of this section;

`(C) amounts appropriated to the Fund pursuant to subsection (g) of this section; and

`(D) appropriations available to the Secretary for transfer.

`(4) PREREQUISITE FOR COMMUNITY SERVICE CREDITS- The Fund may receive credits pursuant to paragraph (3)(A) of this subsection only when the unobligated balance of the Fund is less than \$5,000,000.

`(5) REPORT REQUIRED-

`(A) Except as provided in subparagraph (B) of this paragraph, the Secretary shall not obligate any amount in the Fund in a given fiscal year unless the Secretary has submitted to Congress, concurrent with the President's budget submission for that fiscal year, a report that describes--

`(i) the amounts credited to the Fund, pursuant to paragraph (3) of this subsection, for the preceding fiscal year;

`(ii) a detailed description of the activities for which amounts were charged; and

`(iii) the projected level of expenditures from the Fund for the coming fiscal year, based on--

`(I) on-going activities; and

`(II) new cases, derived from historic data.

`(B) The limitation in subparagraph (A) of this paragraph shall not apply to obligations during the first fiscal year during which amounts are credited to the Fund.

`(6) FUND MANAGER- The Secretary shall designate a Fund manager, who shall--

`(A) ensure the visibility and accountability of transactions utilizing the Fund;

`(B) prepare the report required by paragraph (5); and

` (C) monitor the unobligated balance of the Fund and provide notice to the Secretary and the Attorney General whenever the unobligated balance of the Fund is less than \$5,000,000.

` (c) IN GENERAL-

` (1) AUTHORITY- The Secretary is authorized--

` (A) to pay, in whole or in part, without further appropriation and without fiscal year limitation, from amounts in the Fund, necessary support of--

` (i) any seafarer who enters, remains, or has been paroled into the United States and is involved in an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard; and

` (ii) any seafarer whom the Secretary finds to have been abandoned in the United States; and

` (B) to reimburse, in whole or in part, without further appropriation and without fiscal year limitation, from amounts in the Fund, a shipowner, who has filed a bond or surety satisfactory pursuant to subparagraph (A) and provided necessary support of a seafarer who has been paroled into the United States to facilitate an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard, for costs of necessary support, when the Secretary deems reimbursement necessary to avoid serious injustice.

` (2) LIMITATION- Nothing in this section shall be construed--

` (A) to create a right, benefit, or entitlement to necessary support; or

` (B) to compel the Secretary to pay, or reimburse the cost of, necessary support.

` (d) REIMBURSEMENTS; RECOVERY-

` (1) IN GENERAL- Any shipowner shall reimburse the Fund an amount equal to the total amount paid from the Fund for necessary support of the seafarer, plus a surcharge of 25 percent of such total amount if--

` (A)(i) the shipowner, during the course of an investigation, reporting, documentation, or adjudication of any matter that the Coast Guard referred to a United States Attorney or the Attorney General, fails to provide necessary support of a seafarer who has been paroled into the United States to facilitate the investigation, reporting, documentation, or adjudication; and

` (ii) a criminal penalty is subsequently imposed against the shipowner; or

` (B) the shipowner, under any circumstance, abandons a seafarer in the United States, as decided by the Secretary.

` (2) ENFORCEMENT- If a shipowner fails to reimburse the Fund as required under paragraph (1) of this subsection, the Secretary may--

` (A) proceed in rem against any vessel of the shipowner in the Federal district court for the district in which such vessel is found; and

` (B) withhold or revoke the clearance, required by section 60105 of this title, of any vessel of the shipowner wherever such vessel is found.

` (3) Whenever clearance is withheld or revoked pursuant to paragraph (2)(B) of this subsection, clearance may be granted if the shipowner reimburses the Fund the amount required under paragraph (1) of this subsection.

` (e) Surety; Enforcement of Treaties, Laws, and Regulations-

` (1) BOND AND SURETY AUTHORITY- The Secretary is authorized to require a bond or surety satisfactory as an alternative to withholding or revoking clearance required under section 60105 of this title if, in the opinion of the Secretary, such bond or surety satisfactory is necessary to facilitate an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard if the surety corporation providing the bond is authorized by the Secretary of the Treasury under section 9305 of title 31 to provide surety bonds under section 9304 of that title.

` (2) APPLICATION- The authority to require a bond or a surety satisfactory or to request the withholding or revocation of the clearance required under section 60105 of this title applies to any investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard.

` (f) DEFINITIONS- In this section:

` (1) ABANDONS; ABANDONED- The term `abandons' or `abandoned' means a shipowner's unilateral severance of ties with a seafarer or the shipowner's failure to provide necessary support of a seafarer.

` (2) BOND OR SURETY SATISFACTORY- The term `bond or surety satisfactory' means a negotiated instrument, the terms of which may, at the discretion of the Secretary, include provisions that require the shipowner to--

` (A) provide necessary support of a seafarer who has or may have information pertinent to an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Secretary;

` (B) facilitate an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Secretary;

` (C) stipulate to certain incontrovertible facts, including, but not limited to, the ownership or operation of the vessel, or the authenticity of documents and things from the vessel;

` (D) facilitate service of correspondence and legal papers;

- `(E) enter an appearance in United States district court;
 - `(F) comply with directions regarding payment of funds;
 - `(G) name an agent in the United States for service of process;
 - `(H) make stipulations as to the authenticity of certain documents in United States district court;
 - `(I) provide assurances that no discriminatory or retaliatory measures will be taken against a seafarer involved in an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Secretary;
 - `(J) provide financial security in the form of cash, bond, or other means acceptable to the Secretary; and
 - `(K) provide for any other appropriate measures as the Secretary considers necessary to ensure the Government is not prejudiced by granting the clearance required by section 60105 of title 46.
- `(3) FUND- The term `Fund' means the Support of Seafarers Fund, established pursuant to this section.
- `(4) NECESSARY SUPPORT- The term `necessary support' means normal wages, lodging, subsistence, clothing, medical care (including hospitalization), repatriation, and any other expense the Secretary deems appropriate.
- `(5) SEAFARER- The term `seafarer' means an alien crewman who is employed or engaged in any capacity on board a vessel subject to the jurisdiction of the United States.
- `(6) SHIPOWNER- The term `shipowner' means the individual or entity that owns, has an ownership interest in, or operates a vessel subject to the jurisdiction of the United States.
- `(7) VESSEL SUBJECT TO THE JURISDICTION OF THE UNITED STATES- The term `vessel subject to the jurisdiction of the United States' has the same meaning it has in section 70502(c) of this title, except that it excludes a vessel owned or bareboat chartered and operated by the United States, by a State or political subdivision thereof, or by a foreign nation, except when that vessel is engaged in commerce.
- `(g) REGULATIONS- The Secretary may prescribe regulations to implement this section.
- `(h) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to the Fund \$1,500,000 for each of fiscal years 2010, 2011, and 2012.'
- (b) CLERICAL AMENDMENT- The chapter analysis for chapter 111 of title 46, United States Code, is amended by adding at the end the following new item:
- `11113. Protection and fair treatment of seafarers.'