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111TH CONGRESS
1ST SESSION

S. 1194

[Report No. 111-95]

To reauthorize the Coast Guard for fiscal years 2010 and 2011, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 4, 2009

Ms. CANTWELL (for herself, Ms. SNOWE, Mr. ROCKEFELLER, Mrs. HUTCHISON, Mrs. McCASKILL, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

OCTOBER 30, 2009

Reported by Mr. ROCKEFELLER, with an amendment

[Strike all after the enacting clause and insert the part printed in italic]

A BILL

To reauthorize the Coast Guard for fiscal years 2010 and 2011, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Coast Guard Author-
5 ization Act for Fiscal Years 2010 and 2011”.

★(Star Print)

1 **SEC. 2. TABLE OF CONTENTS.**

2 The table of contents for this Act is as follows:

- Sec. 1. Short title.
 Sec. 2. Table of contents.

TITLE I—AUTHORIZATIONS

- Sec. 101. Authorization of appropriations.
 Sec. 102. Authorized levels of military strength and training.

TITLE II—ADMINISTRATION

- Sec. 201. Authority to distribute funds through grants, cooperative agreements,
 and contracts to maritime authorities and organizations.
 Sec. 202. Assistance to foreign governments and maritime authorities.
 Sec. 203. Cooperative agreements for industrial activities.
 Sec. 204. Defining Coast Guard vessels and aircraft.

TITLE III—ORGANIZATION

- Sec. 301. Vice commandant; vice admirals.
 Sec. 302. Number and distribution of commissioned officers on the active duty
 promotion list.

TITLE IV—PERSONNEL

- Sec. 401. Leave retention authority.
 Sec. 402. Legal assistance for Coast Guard reservists.
 Sec. 403. Reimbursement for certain medical related expenses.
 Sec. 404. Reserve commissioned warrant officer to lieutenant program.
 Sec. 405. Enhanced status quo officer promotion system.
 Sec. 406. Appointment of civilian Coast Guard judges.
 Sec. 407. Coast Guard participation in the Armed Forces Retirement Home
 system.

TITLE V—ACQUISITION REFORM

- Sec. 501. Chief Acquisition Officer.
 Sec. 502. Acquisitions.

“CHAPTER 15—ACQUISITIONS

“SUBCHAPTER 1—GENERAL PROVISIONS

- “Sec.
 “561. Acquisition directorate
 “562. Senior acquisition leadership team
 “563. Improvements in Coast Guard acquisition management
 “564. Recognition of Coast Guard personnel for excellence in acquisition
 “565. Prohibition on use of lead systems integrators
 “566. Required contract terms
 “567. Department of Defense consultation
 “568. Undefined contractual actions

“SUBCHAPTER 2—IMPROVED ACQUISITION PROCESS AND PROCEDURES

“Sec.

- “571. Identification of major system acquisitions
- “572. Acquisition
- “573. Preliminary development and demonstration
- “574. Acquisition, production, deployment, and support
- “575. Acquisition program baseline breach

“SUBCHAPTER 3—DEFINITIONS

- “Sec.
- “581. Definitions”

Sec. 503. Report and guidance on excess pass-through charges.

TITLE VI—SHIPPING AND NAVIGATION

- Sec. 601. Technical amendments to chapter 313 of title 46, United States Code.
- Sec. 602. Clarification of rulemaking authority.
- Sec. 603. Coast Guard maintenance of LORAN-C navigation system.
- Sec. 604. Icebreakers.
- Sec. 605. Vessel size limits.

TITLE VII—VESSEL CONVEYANCE

- Sec. 701. Short title.
- Sec. 702. Conveyance of Coast Guard vessels for public purposes.

1 **TITLE I—AUTHORIZATIONS**

2 **SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

3 Funds are authorized to be appropriated for nec-
 4 essary expenses of the Coast Guard for each of fiscal years
 5 2010 and 2011 as follows:

6 (1) For the operation and maintenance of the
 7 Coast Guard, \$6,556,188,000, of which \$24,500,000
 8 is authorized to be derived from the Oil Spill Liabil-
 9 ity Trust Fund to carry out the purposes of section
 10 1012(a)(5) of the Oil Pollution Act of 1990.

11 (2) For the acquisition, construction, renova-
 12 tion, and improvement of aids to navigation, shore
 13 and offshore facilities, vessels, and aircraft, includ-
 14 ing equipment related thereto, \$1,383,980,000, of

1 which \$20,000,000 shall be derived from the Oil
2 Spill Liability Trust Fund to carry out the purposes
3 of section 1012(a)(5) of the Oil Pollution Act of
4 1990, to remain available until expended; such funds
5 appropriated for personnel compensation and bene-
6 fits and related costs of acquisition, construction,
7 and improvements shall be available for procurement
8 of services necessary to carry out the Integrated
9 Deepwater Systems program.

10 (3) For retired pay (including the payment of
11 obligations otherwise chargeable to lapsed appropria-
12 tions for this purpose), payments under the Retired
13 Serviceman's Family Protection and Survivor Ben-
14 efit Plans, and payments for medical care of retired
15 personnel and their dependents under chapter 55 of
16 title 10, United States Code, \$1,361,245,000.

17 (4) For environmental compliance and restora-
18 tion functions under chapter 19 of title 14, United
19 States Code, \$13,198,000.

20 (5) For research, development, test, and evalua-
21 tion programs related to maritime technology,
22 \$19,745,000.

23 (6) For operation and maintenance of the Coast
24 Guard reserve program, \$133,632,000.

1 **SEC. 102. AUTHORIZED LEVELS OF MILITARY STRENGTH**
2 **AND TRAINING.**

3 (a) **ACTIVE DUTY STRENGTH.**—The Coast Guard is
4 authorized an end-of-year strength of active duty per-
5 sonnel of 49,954 as of September 30, 2010, and 52,452
6 as of September 30, 2011.

7 (b) **MILITARY TRAINING STUDENT LOADS.**—The
8 Coast Guard is authorized average military training stu-
9 dent loads as follows:

10 (1) For recruit and special training, 2,500 stu-
11 dent years for fiscal year 2010, and 2,625 student
12 years for fiscal year 2011.

13 (2) For flight training, 170 student years for
14 fiscal year 2010 and 179 student years for fiscal
15 year 2011.

16 (3) For professional training in military and ci-
17 vilian institutions, 350 student years for fiscal year
18 2010 and 368 student years for fiscal year 2011.

19 (4) For officer acquisition, 1,300 student years
20 for fiscal year 2010 and 1,365 student years for fis-
21 cal year 2011.

1 **TITLE II—ADMINISTRATION**

2 **SEC. 201. AUTHORITY TO DISTRIBUTE FUNDS THROUGH**
 3 **GRANTS, COOPERATIVE AGREEMENTS, AND**
 4 **CONTRACTS TO MARITIME AUTHORITIES AND**
 5 **ORGANIZATIONS.**

6 Section 149 of title 14, United States Code, is
 7 amended by adding at the end the following:

8 “(e) GRANTS TO INTERNATIONAL MARITIME ORGA-
 9 NIZATIONS.—The Commandant may, after consultation
 10 with the Secretary of State, make grants to, or enter into
 11 cooperative agreements, contracts, or other agreements
 12 with, international maritime organizations for the purpose
 13 of acquiring information or data about merchant vessel in-
 14 spections, security, safety and environmental require-
 15 ments, classification, and port state or flag state law en-
 16 forcement or oversight.”.

17 **SEC. 202. ASSISTANCE TO FOREIGN GOVERNMENTS AND**
 18 **MARITIME AUTHORITIES.**

19 Section 149 of title 14, United States Code, as
 20 amended by section 201, is further amended by adding
 21 at the end the following:

22 “(d) AUTHORIZED ACTIVITIES.—

23 “(1) The Commandant may transfer or expend
 24 funds from any appropriation available to the Coast
 25 Guard for—

1 “(A) the activities of traveling contact
2 teams, including any transportation expense,
3 translation services expense, or administrative
4 expense that is related to such activities;

5 “(B) the activities of maritime authority li-
6 aison teams of foreign governments making re-
7 ciprocal visits to Coast Guard units, including
8 any transportation expense, translation services
9 expense, or administrative expense that is re-
10 lated to such activities;

11 “(C) seminars and conferences involving
12 members of maritime authorities of foreign gov-
13 ernments;

14 “(D) distribution of publications pertinent
15 to engagement with maritime authorities of for-
16 eign governments; and

17 “(E) personnel expenses for Coast Guard
18 civilian and military personnel to the extent
19 that those expenses relate to participation in an
20 activity described in subparagraph (C) or (D).

21 “(2) An activity may not be conducted under
22 this subsection with a foreign country unless the
23 Secretary of State approves the conduct of such ac-
24 tivity in that foreign country.”.

1 **SEC. 203. COOPERATIVE AGREEMENTS FOR INDUSTRIAL**
2 **ACTIVITIES.**

3 Section 151 of title 14, United States Code, is
4 amended—

5 (1) by inserting “(a) IN GENERAL.—” before
6 “All orders”; and

7 (2) by adding at the end the following:

8 “(b) ORDERS AND AGREEMENTS FOR INDUSTRIAL
9 ACTIVITIES.—Under this section, the Coast Guard indus-
10 trial activities may accept orders and enter into reimburs-
11 able agreements with establishments, agencies, and de-
12 partments of the Department of Defense and the Depart-
13 ment of Homeland Security.”.

14 **SEC. 204. DEFINING COAST GUARD VESSELS AND AIR-**
15 **CRAFT.**

16 (a) IN GENERAL.—Chapter 17 of title 14, United
17 States Code, is amended by inserting after section 638 the
18 following new section:

19 “§ 638a. Coast Guard vessels and aircraft defined

20 “For the purposes of sections 637 and 638 of this
21 title, the term Coast Guard vessels and aircraft means—

22 “(1) any vessel or aircraft owned, leased, trans-
23 ferred to, or operated by the Coast Guard and under
24 the command of a Coast Guard member; or

25 “(2) any other vessel or aircraft under the tae-
26 tical control of the Coast Guard on which one or

1 more members of the Coast Guard are assigned and
2 conducting Coast Guard missions.”.

3 (b) ~~CLERICAL AMENDMENT.~~—The table of contents
4 for chapter 17 of such title is amended by inserting after
5 the item relating to section 638 the following:

“638a. Coast Guard vessels and aircraft defined.”.

6 **TITLE III—ORGANIZATION**

7 **SEC. 301. VICE COMMANDANT; VICE ADMIRALS.**

8 (a) ~~VICE COMMANDANT.~~—The fourth sentence of sec-
9 tion 47 of title 14, United States Code, is amended by
10 striking “vice admiral” and inserting “admiral”.

11 (b) ~~VICE ADMIRALS.~~—Section 50 of such title is
12 amended to read as follows:

13 **“§ 50. Vice admirals**

14 “(a)(1) The President may designate no more than
15 4 positions of importance and responsibility that shall be
16 held by officers who—

17 “(A) while so serving, shall have the grade of
18 vice admiral, with the pay and allowances of that
19 grade; and

20 “(B) shall perform such duties as the Com-
21 mandant may prescribe.

22 “(2) The President may appoint, by and with the ad-
23 vice and consent of the Senate, and reappoint, by and with
24 the advice and consent of the Senate, to any such position
25 an officer of the Coast Guard who is serving on active

1 duty above the grade of captain. The Commandant shall
2 make recommendations for such appointments.

3 ~~“(b)(1) The appointment and the grade of vice admiral shall be effective on the date the officer assumes that~~
4 ~~duty and, except as provided in paragraph (2) of this sub-~~
5 ~~section or in section 51(d) of this title, shall terminate~~
6 ~~on the date the officer is detached from that duty.~~

8 ~~“(2) An officer who is appointed to a position des-~~
9 ~~ignated under subsection (a) shall continue to hold the~~
10 ~~grade of vice admiral—~~

11 ~~“(A) while under orders transferring the officer~~
12 ~~to another position designated under subsection (a),~~
13 ~~beginning on the date the officer is detached from~~
14 ~~that duty and terminating on the date before the~~
15 ~~day the officer assumes the subsequent duty, but not~~
16 ~~for more than 60 days;~~

17 ~~“(B) while hospitalized, beginning on the day of~~
18 ~~the hospitalization and ending on the day the officer~~
19 ~~is discharged from the hospital, but not for more~~
20 ~~than 180 days; and~~

21 ~~“(C) while awaiting retirement, beginning on~~
22 ~~the date the officer is detached from duty and end-~~
23 ~~ing on the day before the officer’s retirement, but~~
24 ~~not for more than 60 days.~~

1 “(c)(1) An appointment of an officer under sub-
 2 section (a) does not vacate the permanent grade held by
 3 the officer.

4 “(2) An officer serving in a grade above rear admiral
 5 who holds the permanent grade of rear admiral (lower
 6 half) shall be considered for promotion to the permanent
 7 grade of rear admiral as if the officer was serving in the
 8 officer’s permanent grade.

9 “(d) Whenever a vacancy occurs in a position des-
 10 ignated under subsection (a), the Commandant shall in-
 11 form the President of the qualifications needed by an offi-
 12 cer serving in that position or office to carry out effectively
 13 the duties and responsibilities of that position or office.”.

14 (e) REPEAL.—Section 50a of such title is repealed.

15 (d) CONFORMING AMENDMENTS.—Section 51 of such
 16 title is amended—

17 (1) by striking subsections (a), (b), and (c) and
 18 inserting the following:

19 “(a) An officer, other than the Commandant, who,
 20 while serving in the grade of admiral or vice admiral, is
 21 retired for physical disability shall be placed on the retired
 22 list with the highest grade in which that officer served.

23 “(b) An officer, other than the Commandant, who is
 24 retired while serving in the grade of admiral or vice admi-
 25 ral, or who, after serving at least 2½ years in the grade

1 of admiral or vice admiral, is retired while serving in a
 2 lower grade, may in the discretion of the President, be
 3 retired with the highest grade in which that officer served.

4 “(e) An officer, other than the Commandant, who,
 5 after serving less than 2½ years in the grade of admiral
 6 or vice admiral, is retired while serving in a lower grade,
 7 shall be retired in his permanent grade.”; and

8 (2) by striking “Area Commander, or Chief of
 9 Staff” in subsection (d)(2) and inserting “or Vice
 10 Admiral”.

11 (e) CLERICAL AMENDMENTS.—

12 (1) The section caption for section 47 of such
 13 title is amended to read as follows:

14 **“§ 47. Vice commandant; appointment”.**

15 (2) The table of contents for chapter 3 of such
 16 title is amended—

17 (A) by striking the item relating to section
 18 47 and inserting the following:

“47. Vice Commandant; appointment.”;

19 (B) by striking the item relating to section
 20 50a; and

21 (C) by striking the item relating to section
 22 50 and inserting the following:

“50. Vice admirals.”.

1 (f) TECHNICAL CORRECTION.—Section 47 of such
2 title is further amended by striking “subsection” in the
3 fifth sentence and inserting “section”.

4 (g) TREATMENT OF INCUMBENTS; TRANSITION.—

5 (1) Notwithstanding any other provision of law,
6 the officer who, on the date of enactment of this
7 Act, is serving as Vice Commandant—

8 (A) shall continue to serve as Vice Com-
9 mandant;

10 (B) shall have the grade of admiral with
11 pay and allowances of that grade; and

12 (C) shall not be required to be reappointed
13 by reason of the enactment of that Act.

14 (2) Notwithstanding any other provision of law,
15 an officer who, on the date of enactment of this Act,
16 is serving as Chief of Staff, Commander, Atlantic
17 Area, or Commander, Pacific Area—

18 (A) shall continue to have the grade of vice
19 admiral with pay and allowance of that grade
20 until such time that the officer is relieved of his
21 duties and appointed and confirmed to another
22 position as a vice admiral or admiral; and

23 (B) for the purposes of transition, may
24 continue, for not more than 1 year after the
25 date of enactment of this Act, to perform the

1 duties of the officer's former position and any
 2 other such duties that the Commandant pre-
 3 scribes.

4 **SEC. 302. NUMBER AND DISTRIBUTION OF COMMISSIONED**
 5 **OFFICERS ON THE ACTIVE DUTY PROMOTION**
 6 **LIST.**

7 (a) IN GENERAL.—Section 42 of title 14, United
 8 States Code, is amended—

9 (1) by striking subsections (a), (b), and (c) and
 10 inserting the following:

11 “(a) The total number of Coast Guard commissioned
 12 officers on the active duty promotion list, excluding war-
 13 rant officers, shall not exceed 7,200. This total number
 14 may be temporarily increased up to 2 percent for no more
 15 than the 60 days that follow the commissioning of a Coast
 16 Guard Academy class.

17 “(b) The total number of commissioned officers au-
 18 thorized by this section shall be distributed in grade not
 19 to exceed the following percentages:

20 “(1) 0.375 percent for rear admiral.

21 “(2) 0.375 percent for rear admiral (lower
 22 half).

23 “(3) 6.0 percent for captain.

24 “(4) 15.0 percent for commander.

25 “(5) 22.0 percent for lieutenant commander.

1 The Secretary shall prescribe the percentages applicable
2 to the grades of lieutenant, lieutenant (junior grade), and
3 ensign. The Secretary may, as the needs of the Coast
4 Guard require, reduce any of the percentages set forth in
5 paragraphs (1) through (5) and apply that total percent-
6 age reduction to any other lower grade or combination of
7 lower grades.

8 “(e) The Secretary shall, at least once a year, com-
9 pute the total number of commissioned officers authorized
10 to serve in each grade by applying the grade distribution
11 percentages of this section to the total number of commis-
12 sioned officers listed on the current active duty promotion
13 list. In making such calculations, any fraction shall be
14 rounded to the nearest whole number. The number of com-
15 missioned officers on the active duty promotion list serving
16 with other departments or agencies on a reimbursable
17 basis or excluded under the provisions of section 324(d)
18 of title 49, shall not be counted against the total number
19 of commissioned officers authorized to serve in each
20 grade.”;

21 (2) by striking subsection (e) and inserting the
22 following:

23 “(e) The number of officers authorized to be serving
24 on active duty in each grade of the permanent commis-
25 sioned teaching staff of the Coast Guard Academy and

1 of the Reserve serving in connection with organizing, ad-
 2 ministering, recruiting, instructing, or training the reserve
 3 components shall be prescribed by the Secretary.”; and

4 (3) by striking the caption of such section and
 5 inserting the following:

6 **“§ 42. Number and distribution of commissioned offi-**
 7 **cers on the active duty promotion list”.**

8 (b) CLERICAL AMENDMENT.—The table of contents
 9 for chapter 3 of such title is amended by striking the item
 10 relating to section 42 and inserting the following:

“42. Number and distribution of commissioned officers on the active duty pro-
 motion list.”.

11 **TITLE IV—PERSONNEL**

12 **SEC. 401. LEAVE RETENTION AUTHORITY.**

13 Section 701(f)(2) of title 10, United States Code, is
 14 amended by inserting “or a declaration of a major disaster
 15 or emergency by the President under the Robert T. Staf-
 16 ford Disaster Relief and Emergency Assistance Act (Pub-
 17 lic Law 93–288, 42 U.S.C. 5121 et seq.)” after “oper-
 18 ation”.

19 **SEC. 402. LEGAL ASSISTANCE FOR COAST GUARD RESERV-** 20 **ISTS.**

21 Section 1044(a)(4) of title 10, United States Code,
 22 is amended—

23 (1) by striking “(as determined by the Sec-
 24 retary of Defense),” and inserting “(as determined

1 by the Secretary of Defense and the Secretary of the
 2 department in which the Coast Guard is operating;
 3 with respect to the Coast Guard when it is not oper-
 4 ating as a service of the Navy);” and

5 (2) by striking “prescribed by the Secretary of
 6 Defense,” and inserting “prescribed by Secretary of
 7 Defense and the Secretary of the department in
 8 which the Coast Guard is operating, with respect to
 9 the Coast Guard when it is not operating as a serv-
 10 ice of the Navy.”.

11 **SEC. 403. REIMBURSEMENT FOR CERTAIN MEDICAL-RE-**
 12 **LATED TRAVEL EXPENSES.**

13 Section 1074i(a) of title 10, United States Code, is
 14 amended—

15 (1) by striking “IN GENERAL.—In” and insert-
 16 ing “IN GENERAL.—(1) In”; and

17 (2) by adding at the end the following:

18 “(2) In any case in which a covered beneficiary re-
 19 sides on an INCONUS island that lacks public access
 20 roads to the mainland and is referred by a primary care
 21 physician to a specialty care provider on the mainland who
 22 provides services less than 100 miles from the location in
 23 which the beneficiary resides, the Secretary shall reim-
 24 burse the reasonable travel expenses of the covered bene-
 25 ficiary, and, when accompaniment by an adult is nec-

1 essary, for a parent or guardian of the covered beneficiary
2 or another member of the covered beneficiary's family who
3 is at least 21 years of age.”.

4 **SEC. 404. RESERVE COMMISSIONED WARRANT OFFICER TO**
5 **LIEUTENANT PROGRAM.**

6 Section 214(a) of title 14, United States Code, is
7 amended to read as follows:

8 “(a) The President may appoint temporary commis-
9 sioned officers—

10 “(1) in the Regular Coast Guard in a grade,
11 not above lieutenant, appropriate to their qualifica-
12 tions, experience, and length of service, as the needs
13 of the Coast Guard may require, from among the
14 commissioned warrant officers, warrant officers, and
15 enlisted members of the Coast Guard, and from li-
16 censed officers of the United States merchant ma-
17 rine; and

18 “(2) in the Coast Guard Reserve in a grade,
19 not above lieutenant, appropriate to their qualifica-
20 tions, experience, and length of service, as the needs
21 of the Coast Guard may require, from among the
22 commissioned warrant officers of the Coast Guard
23 Reserve.”.

1 **SEC. 405. ENHANCED STATUS QUO OFFICER PROMOTION**
2 **SYSTEM.**

3 (a) Section 253(a) of title 14, United States Code,
4 is amended—

5 (1) by inserting “and” after “considered,”; and

6 (2) by striking “consideration, and the number
7 of officers the board may recommend for promotion”
8 and inserting “consideration”.

9 (b) Section 258 of such title is amended—

10 (1) by inserting “(a)” before “The Secretary”;

11 and

12 (2) by adding at the end the following:

13 “(b) In addition to the information provided pursuant
14 to subsection (a), the Secretary may furnish the selection
15 board—

16 “(1) specific direction relating to the needs of
17 the service for officers having particular skills, in-
18 cluding direction relating to the need for a minimum
19 number of officers with particular skills within a
20 specialty; and

21 “(2) such other guidance that the Secretary be-
22 lieves may be necessary to enable the board to prop-
23 erly perform its functions.

24 Selections made based on the direction and guidance pro-
25 vided under this subsection shall not exceed the maximum
26 percentage of officers who may be selected from below the

1 announced promotion zone at any given selection board
2 convened under section 251 of this title.”.

3 (c) Section 259(a) of such title is amended by strik-
4 ing “board” the second place it appears and inserting
5 “board, giving due consideration to the needs of the serv-
6 ice for officers with particular skills so noted in the spe-
7 cific direction furnished pursuant to section 258 of this
8 title,”.

9 (d) Section 260(b) of such title is amended by insert-
10 ing “to meet the needs of the service (as noted in the spe-
11 cific direction furnished the board under section 258 of
12 this title)” after “qualified for promotion”.

13 **SEC. 406. APPOINTMENT OF CIVILIAN COAST GUARD**
14 **JUDGES.**

15 Section 875 of the Homeland Security Act of 2002
16 (6 U.S.C. 455) is amended—

17 (1) by redesignating subsection (e) as sub-
18 section (d); and

19 (2) by inserting after subsection (b) the fol-
20 lowing:

21 “(c) APPOINTMENT OF JUDGES.—The Secretary may
22 appoint civilian employees of the Department of Homeland
23 Security as appellate military judges, available for assign-
24 ment to the Coast Guard Court of Criminal Appeals as

1 provided for in section 866(a) of title 10, United States
2 Code.”.

3 **SEC. 407. COAST GUARD PARTICIPATION IN THE ARMED**
4 **FORCES RETIREMENT HOME SYSTEM.**

5 (a) **ELIGIBILITY UNDER THE ARMED FORCES RE-**
6 **TIREMENT HOME ACT.**—Section 1502 of the Armed
7 Forces Retirement Home Act of 1991 (24 U.S.C. 401)
8 is amended—

9 (1) by striking “does not include the Coast
10 Guard when it is not operating as a service of the
11 Navy.” in paragraph (4) and inserting “has the
12 meaning given such term in section 101(4) of title
13 10.”;

14 (2) by striking “and” in paragraph (5)(C);

15 (3) by striking “Affairs.” in paragraph (5)(D)
16 and inserting “Affairs; and”;

17 (4) by adding at the end of paragraph (5) the
18 following:

19 “(E) the Assistant Commandant of the
20 Coast Guard for Human Resources.”; and

21 (5) by adding at the end of paragraph (6) the
22 following:

23 “(E) The Master Chief Petty Officer of the
24 Coast Guard.”.

25 (b) **DEDUCTIONS.**—

1 (1) Section 2772 of title 10, United States
2 Code, is amended—

3 (A) by striking “of the military depart-
4 ment” in subsection (a);

5 (B) by striking “Armed Forces Retirement
6 Home Board” in subsection (b) and inserting
7 “Chief Operating Officer of the Armed Forces
8 Retirement Home”; and

9 (C) by striking subsection (c).

10 (2) Section 1007(i) of title 37, United States
11 Code, is amended—

12 (A) by striking “Armed Forces Retirement
13 Home Board,” in paragraph (3) and inserting
14 “Chief Operating Officer of the Armed Forces
15 Retirement Home,”; and

16 (B) by striking “does not include the Coast
17 Guard when it is not operating as a service of
18 the Navy.” in paragraph (4) and inserting “has
19 the meaning given such term in section 101(4)
20 of title 10.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on the first day of the first
23 pay period beginning on or after January 1, 2010.

1 **TITLE V—ACQUISITION REFORM**

2 **SEC. 501. CHIEF ACQUISITION OFFICER.**

3 (a) IN GENERAL.—Chapter 3 of title 14, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 **“§ 55. Chief Acquisition Officer**

7 “(a) IN GENERAL.—There shall be in the Coast
8 Guard a Chief Acquisition Officer selected by the Com-
9 mandant who shall be a Rear Admiral or civilian from the
10 Senior Executive Service (career reserved). The Chief Ac-
11 quisition Officer shall serve at the Assistant Commandant
12 level and have acquisition management as that individual’s
13 primary duty.

14 “(b) QUALIFICATIONS.—The Chief Acquisition Offi-
15 cer shall be an acquisition professional with a Level III
16 certification and must have at least 10 years experience
17 in an acquisition position, of which at least 4 years were
18 spent as—

19 “(1) the program executive officer;

20 “(2) the program manager of a Level 1 or
21 Level 2 acquisition project or program;

22 “(3) the deputy program manager of a Level 1
23 or Level 2 acquisition; or

24 “(4) a combination of such positions.

1 “(e) FUNCTIONS OF THE CHIEF ACQUISITION OFFI-
2 ceer.—The functions of the Chief Acquisition Officer in-
3 clude—

4 “(1) monitoring the performance of programs
5 and projects on the basis of applicable performance
6 measurements and advising the Commandant,
7 through the chain of command, regarding the appro-
8 priate business strategy to achieve the missions of
9 the Coast Guard;

10 “(2) maximizing the use of full and open com-
11 petition at the prime contract and subcontract levels
12 in the acquisition of property, capabilities, and serv-
13 ices by the Coast Guard by establishing policies, pro-
14 ceedures, and practices that ensure that the Coast
15 Guard receives a sufficient number of competitive
16 proposals from responsible sources to fulfill the Gov-
17 ernment’s requirements, including performance and
18 delivery schedules, at the lowest cost or best value
19 considering the nature of the property or service
20 procured;

21 “(3) making acquisition decisions in concur-
22 rence with the technical authority, or technical au-
23 thorities, as appropriate, of the Coast Guard, as des-
24 ignated by the Commandant, consistent with all

1 other applicable laws and decisions establishing pro-
2 cedures within the Coast Guard;

3 “(4) ensuring the use of detailed performance
4 specifications in instances in which performance
5 based contracting is used;

6 “(5) managing the direction of acquisition pol-
7 icy for the Coast Guard, including implementation of
8 the unique acquisition policies, regulations, and
9 standards of the Coast Guard;

10 “(6) developing and maintaining an acquisition
11 career management program in the Coast Guard to
12 ensure that there is an adequate acquisition work-
13 force;

14 “(7) assessing the requirements established for
15 Coast Guard personnel regarding knowledge and
16 skill in acquisition resources and management and
17 the adequacy of such requirements for facilitating
18 the achievement of the performance goals established
19 for acquisition management;

20 “(8) developing strategies and specific plans for
21 hiring, training, and professional development; and

22 “(9) reporting to the Commandant, through the
23 chain of command, on the progress made in improv-
24 ing acquisition management capability.”

1 (b) CLERICAL AMENDMENT.—The table of contents
 2 for chapter 3 of title 14, United States Code, is amended
 3 by adding at the end the following:

“55. Chief Acquisition Officer.”.

4 (c) SELECTION DEADLINE.—As soon as practicable
 5 after the date of enactment of this Act, but no later than
 6 October 1, 2011, the Commandant of the Coast Guard
 7 shall select a Chief Acquisition Officer under section 55
 8 of title 14, United States Code.

9 **SEC. 502. ACQUISITIONS.**

10 (a) IN GENERAL.—Part I of title 14, United States
 11 Code, is amended by inserting after chapter 13 the fol-
 12 lowing:

13 “CHAPTER 15. ACQUISITIONS

 “SUBCHAPTER 1—GENERAL PROVISIONS

“Sec.

“561. Acquisition directorate

“562. Senior acquisition leadership team

“563. Improvements in Coast Guard acquisition management

“564. Recognition of Coast Guard personnel for excellence in acquisition

“565. Prohibition on use of lead systems integrators

“566. Required contract terms

“567. Department of Defense consultation

“568. Undefined contractual actions

 “SUBCHAPTER 2—IMPROVED ACQUISITION PROCESS AND PROCEDURES

“Sec.

“571. Identification of major system acquisitions

“572. Acquisition

“573. Preliminary development and demonstration

“574. Acquisition, production, deployment, and support

“575. Acquisition program baseline breach

 “SUBCHAPTER 3—DEFINITIONS

“Sec.

“581. Definitions

1 “SUBCHAPTER 1—GENERAL PROVISIONS

2 **“§ 561. Acquisition directorate**

3 “(a) ESTABLISHMENT.—The Commandant of the
4 Coast Guard shall establish an acquisition directorate to
5 provide guidance and oversight for the implementation
6 and management of all Coast Guard acquisition processes,
7 programs, and projects.

8 “(b) MISSION.—The mission of the acquisition direc-
9 torate is—

10 “(1) to acquire and deliver assets and systems
11 that increase operational readiness, enhance mission
12 performance, and create a safe working environ-
13 ment; and

14 “(2) to assist in the development of a workforce
15 that is trained and qualified to further the Coast
16 Guard’s missions and deliver the best value products
17 and services to the Nation.

18 **“§ 562. Senior acquisition leadership team**

19 “(a) ESTABLISHMENT.—The Commandant shall es-
20 tablish a senior acquisition leadership team within the
21 Coast Guard comprised of—

22 “(1) the Vice Commandant;

23 “(2) the Deputy and Assistant Commandants;

24 “(3) appropriate senior staff members of each
25 Coast Guard directorate;

1 “(4) appropriate senior staff members for each
2 assigned field activity or command; and

3 “(5) any other Coast Guard officer or employee
4 designated by the Commandant.

5 “(b) FUNCTION.—The senior acquisition leadership
6 team shall—

7 “(1) meet at the call of the Commandant at
8 such places and such times as the Commandant may
9 require;

10 “(2) provide advice and information on oper-
11 ational and performance requirements of the Coast
12 Guard;

13 “(3) identify gaps and vulnerabilities in the
14 operational readiness of the Coast Guard;

15 “(4) make recommendations to the Com-
16 mandant and the Chief Acquisition Officer to rem-
17 edy the identified gaps and vulnerabilities in the
18 operational readiness of the Coast Guard; and

19 “(5) contribute to the development of a profes-
20 sional, experienced acquisition workforce by pro-
21 viding acquisition-experience tours of duty and edu-
22 cational development for officers and employees of
23 the Coast Guard.

1 **“§ 563. Improvements in Coast Guard acquisition**
 2 **management**

3 **“(a) PROJECT AND PROGRAM MANAGERS.—**

4 **“(1) PROJECT OR PROGRAM MANAGER DE-**
 5 **FINED.—**In this section, the term ‘project or pro-
 6 gram manager’ means an individual designated—

7 **“(A) to develop, produce, and deploy a new**
 8 **asset to meet identified operational require-**
 9 **ments; and**

10 **“(B) to manage cost, schedule, and per-**
 11 **formance of the acquisition or project or pro-**
 12 **gram.**

13 **“(2) LEVEL 1 PROJECTS.—** An individual may
 14 not be assigned as the project or program manager
 15 for a Level 1 acquisition unless the individual holds
 16 a Level III acquisition certification as a program
 17 manager.

18 **“(3) LEVEL 2 PROJECTS.—** An individual may
 19 not be assigned as the project or program manager
 20 for a Level 2 acquisition unless the individual holds
 21 a Level II acquisition certification as a program
 22 manager.

23 **“(b) GUIDANCE ON TENURE AND ACCOUNTABILITY**
 24 **OF PROGRAM AND PROJECT MANAGERS.—**Not later than
 25 one year after the date of enactment of the Coast Guard
 26 Authorization Act for Fiscal years 2010 and 2011, the

1 Commandant shall issue guidance to address the qualifica-
 2 tions, resources, responsibilities, tenure, and account-
 3 ability of program and project managers for the manage-
 4 ment of acquisition programs and projects. The guidance
 5 shall address, at a minimum—

6 “(1) the qualifications required for project or
 7 program managers, including the number of years of
 8 acquisition experience and the professional training
 9 levels to be required of those appointed to project or
 10 program management positions; and

11 “(2) authorities available to project or program
 12 managers, including, to the extent appropriate, the
 13 authority to object to the addition of new program
 14 requirements that would be inconsistent with the pa-
 15 rameters established for an acquisition program.

16 “(c) ACQUISITION WORKFORCE.—

17 “(1) IN GENERAL.—The Commandant shall
 18 designate a sufficient number of positions to be in
 19 the Coast Guard’s acquisition workforce to perform
 20 acquisition-related functions at Coast Guard head-
 21 quarters and field activities.

22 “(2) REQUIRED POSITIONS.—The Commandant
 23 shall ensure that members of the acquisition work-
 24 force have expertise, education, and training in at
 25 least 1 of the following acquisition career fields:

1 “(A) Acquisition logistics.

2 “(B) Auditing.

3 “(C) Business, cost estimating, and finan-
4 cial management.

5 “(D) Contracting.

6 “(E) Facilities engineering.

7 “(F) Industrial or contract property man-
8 agement.

9 “(G) Information technology.

10 “(H) Manufacturing, production, and qual-
11 ity assurance.

12 “(I) Program management.

13 “(J) Purchasing.

14 “(K) Science and technology.

15 “(L) Systems planning, research, develop-
16 ment, and engineering.

17 “(M) Test and evaluation.

18 “(3) ACQUISITION WORKFORCE EXPEDITED
19 HIRING AUTHORITY.—

20 “(A) IN GENERAL.—For purposes of see-
21 tions 3304, 5333, and 5753 of title 5, the Com-
22 mandant may—

23 “(i) designate any category of acquisi-
24 tion positions within the Coast Guard as
25 shortage category positions; and

1 “(ii) use the authorities in such sec-
2 tions to recruit and appoint highly quali-
3 fied person directly to positions so des-
4 ignated.

5 “(B) LIMITATION.—The Commandant may
6 not appoint a person to a position of employ-
7 ment under this paragraph after September 30,
8 2012.

9 “(d) MANAGEMENT INFORMATION SYSTEM.—

10 “(1) IN GENERAL.—The Commandant shall es-
11 tablish a management information system capability
12 to improve acquisition workforce management and
13 reporting.

14 “(2) INFORMATION MAINTAINED.—Information
15 maintained with such capability shall include the fol-
16 lowing standardized information on individuals as-
17 signed to positions in the workforce:

18 “(A) Qualifications, assignment history,
19 and tenure of those individuals assigned to posi-
20 tions in the acquisition workforce or holding ac-
21 quisition-related certifications.

22 “(B) Promotion rates for officers and
23 members of the Coast Guard in the acquisition
24 workforce.

1 “(e) CAREER PATHS.—To establish acquisition man-
 2 agement as a core competency of the Coast Guard, the
 3 Commandant shall—

4 “(1) ensure that career paths for officers, mem-
 5 bers, and employees of the Coast Guard who wish to
 6 pursue careers in acquisition are identified in terms
 7 of the education, training, experience, and assign-
 8 ments necessary for career progression of those offi-
 9 cers, members, and employees to the most senior po-
 10 sitions in the acquisition workforce; and

11 “(2) publish information on such career paths.

12 **“§ 564. Recognition of Coast Guard personnel for ex-**
 13 **cellence in acquisition**

14 “(a) IN GENERAL.—Not later than 180 days after
 15 the date of enactment of the Coast Guard Authorization
 16 Act for Fiscal Years 2010 and 2011, the Commandant
 17 shall commence implementation of a program to recognize
 18 excellent performance by individuals and teams comprised
 19 of officers, members, and employees of the Coast Guard
 20 that contributed to the long-term success of a Coast Guard
 21 acquisition project or program.

22 “(b) ELEMENTS.—The program shall include—

23 “(1) specific award categories, criteria, and eli-
 24 gibility and manners of recognition;

1 “(2) procedures for the nomination by per-
 2 sonnel of the Coast Guard of individuals and teams
 3 comprised of officers, members, and employees of
 4 the Coast Guard for recognition under the program;
 5 and

6 “(3) procedures for the evaluation of nomina-
 7 tions for recognition under the program by one or
 8 more panels of individuals from the Government,
 9 academia, and the private sector who have such ex-
 10 pertise and are appointed in such manner as the
 11 Commandant shall establish for the purposes of this
 12 program.

13 “(c) AWARD OF CASH BONUSES.—As part of the pro-
 14 gram required by subsection (a), the Commandant, sub-
 15 ject to the availability of appropriations, may award to any
 16 civilian employee recognized pursuant to the program a
 17 cash bonus to the extent that the performance of such in-
 18 dividual so recognized warrants the award of such bonus.

19 **“§ 565. Prohibition on use of lead systems integrators**

20 “(a) IN GENERAL.—

21 “(1) USE OF LEAD SYSTEMS INTEGRATOR.—

22 Except as provided in subsection (b), the Com-
 23 mandant may not use a private sector entity as a
 24 lead systems integrator for an acquisition contract
 25 awarded or delivery order or task order issued after

1 the date of enactment of the Coast Guard Author-
2 ization Act for Fiscal Years 2010 and 2011.

3 “(2) FULL AND OPEN COMPETITION.—The
4 Commandant and any lead systems integrator en-
5 gaged by the Coast Guard, pursuant to the excep-
6 tions described in subsection (b), shall use full and
7 open competition for any acquisition contract award-
8 ed after the date of enactment of that Act, unless
9 otherwise excepted in accordance with the Competi-
10 tion in Contracting Act of 1984 (41 U.S.C. 251
11 note), the amendments made by that Act, and the
12 Federal Acquisition Regulations.

13 “(3) NO EFFECT ON SMALL BUSINESS ACT.—
14 Nothing in this subsection shall be construed to su-
15 percede or otherwise affect the authorities provided
16 by and under the Small Business Act (15 U.S.C.
17 631 et seq.).

18 “(b) EXCEPTIONS.—

19 “(1) NATIONAL DISTRESS AND RESPONSE SYS-
20 TEM MODERNIZATION PROGRAM; NATIONAL SECUR-
21 ITY CUTTERS 2 AND 3.—Notwithstanding sub-
22 section (a), the Commandant may use a private sec-
23 tor entity as a lead systems integrator for the Coast
24 Guard to complete the National Distress and Re-
25 sponse System Modernization Program, the C4ISR

1 projects directly related to the Integrated Deepwater
2 Program, and National Security Cutters 2 and 3 if
3 the Secretary of Homeland Security certifies that—

4 “(A) the acquisition is in accordance with
5 the Competition in Contracting Act of 1984 (41
6 U.S.C. 251 note); the amendments made by
7 that Act, and the Federal Acquisition Regula-
8 tions; and

9 “(B) the acquisition and the use of a pri-
10 vate sector entity as a lead systems integrator
11 for the acquisition is in the best interest of the
12 Federal Government.

13 “(2) TERMINATION DATE FOR EXCEPTIONS.—

14 Except for the modification of delivery or task or-
15 ders pursuant to Parts 4 and 42 of the Federal Ac-
16 quisition Regulations, the Commandant may not use
17 a private sector entity as a lead systems integrator
18 after the earlier of—

19 “(A) September 30, 2012; or

20 “(B) the date on which the Commandant
21 certifies in writing to the appropriate congres-
22 sional committees that the Coast Guard has
23 available and can retain sufficient contracting
24 personnel and expertise within the Coast
25 Guard, through an arrangement with other

1 Federal agencies, or through contracts or other
2 arrangements with private sector entities, to
3 perform the functions and responsibilities of the
4 lead system integrator in an efficient and cost-
5 effective manner.

6 **“§ 566. Required contract terms**

7 “(a) IN GENERAL.—The Commandant shall ensure
8 that a contract awarded or a delivery order or task order
9 issued for an acquisition of a capability or an asset with
10 an expected service life of 10 years and with a total acqui-
11 sition cost that is equal to or exceeds \$10,000,000 award-
12 ed or issued by the Coast Guard after the date of enact-
13 ment of the Coast Guard Authorization Act for Fiscal
14 Years 2010 and 2011—

15 “(1) provides that all certifications for an end-
16 state capability or asset under such contract, deliv-
17 ery order, or task order, respectively, will be con-
18 ducted by the Commandant or an independent third
19 party, and that self-certification by a contractor or
20 subcontractor is not allowed;

21 “(2) requires that the Commandant shall main-
22 tain the authority to establish, approve, and main-
23 tain technical requirements;

24 “(3) requires that any measurement of con-
25 tractor and subcontractor performance be based on

1 the status of all work performed, including the ex-
2 tent to which the work performed met all perform-
3 ance, cost, and schedule requirements;

4 “(4) specifies that, for the acquisition or up-
5 grade of air, surface, or shore capabilities and assets
6 for which compliance with TEMPEST certification
7 is a requirement, the standard for determining such
8 compliance will be the air, surface, or shore standard
9 then used by the Department of the Navy for that
10 type of capability or asset; and

11 “(5) for any contract awarded to acquire an
12 Offshore Patrol Cutter, includes provisions speci-
13 fying the service life, fatigue life, and days underway
14 in general Atlantic and North Pacific Sea conditions,
15 maximum range, and maximum speed the cutter will
16 be built to achieve.

17 “(b) PROHIBITED CONTRACT PROVISIONS.—The
18 Commandant shall ensure that any contract awarded or
19 delivery order or task order issued by the Coast Guard
20 after the date of enactment of the Coast Guard Authoriza-
21 tion Act for Fiscal Years 2010 and 2011 does not include
22 any provision allowing for equitable adjustment that is not
23 consistent with the Federal Acquisition Regulations.

24 “(c) INTEGRATED PRODUCT TEAMS.—Integrated
25 product teams, and all teams that oversee integrated prod-

1 uct teams, shall be chaired by officers, members, or em-
2 ployees of the Coast Guard.

3 “(d) DEEPWATER TECHNICAL AUTHORITIES.—The
4 Commandant shall maintain or designate the technical au-
5 thorities to establish, approve, and maintain technical re-
6 quirements. Any such designation shall be made in writing
7 and may not be delegated to the authority of the Chief
8 Acquisition Officer established by section 55 of this title.

9 “§ 567. Department of Defense consultation

10 “(a) IN GENERAL.—The Commandant shall make ar-
11 rangements as appropriate with the Secretary of Defense
12 for support in contracting and management of Coast
13 Guard acquisition programs. The Commandant shall also
14 seek opportunities to make use of Department of Defense
15 contracts, and contracts of other appropriate agencies, to
16 obtain the best possible price for assets acquired for the
17 Coast Guard.

18 “(b) INTER-SERVICE TECHNICAL ASSISTANCE.—The
19 Commandant shall seek to enter into a memorandum of
20 understanding or a memorandum of agreement with the
21 Secretary of the Navy to obtain the assistance of the Of-
22 fice of the Assistant Secretary of the Navy for Research,
23 Development, and Acquisition, including the Navy Sys-
24 tems Command, with the oversight of Coast Guard major
25 acquisition programs. The memorandum of understanding

1 or memorandum of agreement shall, at a minimum, pro-
2 vide for—

3 “(1) the exchange of technical assistance and
4 support that the Assistant Commandants for Acqui-
5 sition, Human Resources, Engineering, and Infor-
6 mation technology may identify;

7 “(2) the use, as appropriate, of Navy technical
8 expertise; and

9 “(3) the exchange of personnel between the
10 Coast Guard and the Office of the Assistant Sec-
11 retary of the Navy for Research, Development, and
12 Acquisition, including Naval Systems Commands, to
13 facilitate the development of organic capabilities in
14 the Coast Guard.

15 “(c) ~~TECHNICAL REQUIREMENT APPROVAL PROCE-~~
16 ~~DURES.~~—The Chief Acquisition Officer shall adopt, to the
17 extent practicable, procedures modeled after those used by
18 the Navy Senior Acquisition Official to approve all tech-
19 nical requirements.

20 **“§ 568. Undefined contractual actions**

21 “(a) ~~IN GENERAL.~~—The Coast Guard may not enter
22 into an undefined contractual action unless such action
23 is directly approved by the Head of Contracting Activity
24 of the Coast Guard.

1 “(b) REQUESTS FOR UNDEFINITIZED CONTRACTUAL
2 ACTIONS.—Any request to the Head of Contracting Activ-
3 ity for approval of an undefinitized contractual action
4 shall include a description of the anticipated effect on re-
5 quirements of the Coast Guard if a delay is incurred for
6 the purposes of determining contractual terms, specifica-
7 tions, and price before performance is begun under the
8 contractual action.

9 “(c) REQUIREMENTS FOR UNDEFINITIZED CONTRAC-
10 TUAL ACTIONS.—

11 “(1) DEADLINE FOR AGREEMENT ON TERMS,
12 SPECIFICATIONS, AND PRICE.—A contracting officer
13 of the Coast Guard may not enter into an
14 undefinitized contractual action unless the contrac-
15 tual action provides for agreement upon contractual
16 terms, specification, and price by the earlier of—

17 “(A) the end of the 180-day period begin-
18 ning on the date on which the contractor sub-
19 mits a qualifying proposal to definitize the con-
20 tractual terms, specifications, and price; or

21 “(B) the date on which the amount of
22 funds obligated under the contractual action is
23 equal to more than 50 percent of the negotiated
24 overall ceiling price for the contractual action.

25 “(2) LIMITATION ON OBLIGATIONS.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), the contracting officer for an
3 undefinitized contractual action may not obli-
4 gate under such contractual action an amount
5 that exceeds 50 percent of the negotiated over-
6 all ceiling price until the contractual terms,
7 specifications, and price are definitized for such
8 contractual action.

9 “(B) EXCEPTION.—Notwithstanding sub-
10 paragraph (A), if a contractor submits a quali-
11 fying proposal to definitize an undefinitized
12 contractual action before an amount that ex-
13 ceeds 50 percent of the negotiated overall ceil-
14 ing price is obligated on such action, the con-
15 tracting officer for such action may not obligate
16 with respect to such contractual action an
17 amount that exceeds 75 percent of the nego-
18 tiated overall ceiling price until the contractual
19 terms, specifications, and price are definitized
20 for such contractual action.

21 “(3) WAIVER.—The Commandant may waive
22 the application of this subsection with respect to a
23 contract if the Commandant determines that the
24 waiver is necessary to support—

1 ~~“(A) a contingency operation (as that term~~
2 ~~is defined in section 101(a)(13) of title 10);~~

3 ~~“(B) operations to prevent or respond to a~~
4 ~~transportation security incident (as defined in~~
5 ~~section 70101(6) of title 46);~~

6 ~~“(C) an operation in response to an emer-~~
7 ~~gency that poses an unacceptable threat to~~
8 ~~human health or safety or to the marine envi-~~
9 ~~ronment; or~~

10 ~~“(D) an operation in response to a natural~~
11 ~~disaster or major disaster or emergency des-~~
12 ~~ignated by the President under the Robert T.~~
13 ~~Stafford Disaster Relief and Emergency Assist-~~
14 ~~ance Act (42 U.S.C. 5121 et seq.).~~

15 ~~“(4) LIMITATION ON APPLICATION.—This sub-~~
16 ~~section does not apply to an undefinitized contrac-~~
17 ~~tual action for the purchase of initial spares.~~

18 ~~“(d) INCLUSION OF NONURGENT REQUIREMENTS.—~~
19 ~~Requirements for spare parts and support equipment that~~
20 ~~are not needed on an urgent basis may not be included~~
21 ~~in an undefinitized contractual action by the Coast Guard~~
22 ~~for spare parts and support equipment that are needed~~
23 ~~on an urgent basis unless the Commandant approves such~~
24 ~~inclusion as being—~~

25 ~~“(1) good business practice; and~~

1 “(2) in the best interests of the United States.

2 “(e) MODIFICATION OF SCOPE.—The scope of an
3 undefinitized contractual action under which performance
4 has begun may not be modified unless the Commandant
5 approves such modification as being—

6 “(1) good business practice; and

7 “(2) in the best interests of the United States.

8 “(f) ALLOWABLE PROFIT.—The Commandant shall
9 ensure that the profit allowed on an undefinitized contrac-
10 tual action for which the final price is negotiated after
11 a substantial portion of the performance required is com-
12 pleted reflects—

13 “(1) the possible reduced cost risk of the con-
14 tractor with respect to costs incurred during per-
15 formance of the contract before the final price is ne-
16 gotiated; and

17 “(2) the reduced cost risk of the contractor
18 with respect to costs incurred during performance of
19 the remaining portion of the contract.

20 “(g) DEFINITIONS.—In this section:

21 “(1) UNDEFINITIZED CONTRACTUAL ACTION.—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), the term ‘undefinitized con-
24 tractual action’ means a new procurement ac-
25 tion entered into by the Coast Guard for which

1 the contractual terms, specifications, or price
 2 are not agreed upon before performance is
 3 begun under the action.

4 “(B) EXCLUSION.—The term
 5 ‘undefinitized contractual action’ does not in-
 6 clude contractual actions with respect to—

7 “(i) foreign military sales;

8 “(ii) purchases in an amount not in
 9 excess of the amount of the simplified ac-
 10 quisition threshold; or

11 “(iii) special access programs.

12 “(2) QUALIFYING PROPOSAL.—The term ‘quali-
 13 fying proposal’ means a proposal that contains suffi-
 14 cient information to enable complete and meaningful
 15 audits of the information contained in the proposal
 16 as determined by the contracting officer.

17 “SUBCHAPTER 2—IMPROVED ACQUISITION PROCESS
 18 AND PROCEDURES

19 “§ 571. Identification of major system acquisitions

20 “(a) IN GENERAL.—

21 “(1) SUPPORT MECHANISMS.—The Com-
 22 mandant shall develop and implement mechanisms
 23 to support the establishment of mature and stable
 24 operational requirements for acquisitions under this
 25 subchapter.

1 ~~“(2) MISSION ANALYSIS; AFFORDABILITY AS-~~
 2 ~~SESSMENT.—The Commandant may not initiate a~~
 3 ~~Level 1 or Level 2 acquisition project or program~~
 4 ~~until the Commandant—~~

5 ~~“(A) completes a mission analysis that—~~

6 ~~“(i) identifies any gaps in capability;~~

7 ~~and~~

8 ~~“(ii) develops a clear mission need;~~

9 ~~and~~

10 ~~“(B) prepares a preliminary affordability~~

11 ~~assessment for the project or program.~~

12 ~~“(b) ELEMENTS.—~~

13 ~~“(1) REQUIREMENTS.—The mechanisms re-~~
 14 ~~quired by subsection (a) shall ensure the implemen-~~
 15 ~~tation of a formal process for the development of a~~
 16 ~~mission-needs statement, concept-of-operations docu-~~
 17 ~~ment, capability development plan, and resource pro-~~
 18 ~~posal for the initial project or program funding, and~~
 19 ~~shall ensure the project or program is included in~~
 20 ~~the Coast Guard Capital Investment Plan.~~

21 ~~“(2) ASSESSMENT OF TRADE-OFFS.—In con-~~
 22 ~~ducting an affordability assessment under subsection~~
 23 ~~(a)(2)(B), the Commandant shall develop and imple-~~
 24 ~~ment mechanisms to ensure that trade-offs among~~
 25 ~~cost, schedule, and performance are considered in~~

1 the establishment of preliminary operational require-
2 ments for development and production of new assets
3 and capabilities for Level 1 and Level 2 acquisitions
4 projects and programs.

5 “(e) HUMAN RESOURCE CAPITAL PLANNING.—The
6 Commandant shall develop staffing predictions, define
7 human capital performance initiatives, and identify pre-
8 liminary training needs for any such project or program.

9 “(d) DHS ACQUISITION APPROVAL.—A Level 1 or
10 Level 2 acquisition project or program may not be imple-
11 mented unless it is approved by the Department of Home-
12 land Security Acquisition Review Board or the Joint Re-
13 view Board.

14 “§ 572. Acquisition

15 “(a) IN GENERAL.—The Commandant may not es-
16 tablish a Level 1 or Level 2 acquisition project or program
17 approved under section 571(d) until the Commandant—

18 “(1) clearly defines the operational require-
19 ments for the project or program;

20 “(2) establishes the feasibility of alternatives;

21 “(3) develops an acquisition project or program
22 baseline;

23 “(4) produces a life-cycle cost estimate; and

1 “(5) assesses the relative merits of alternatives
2 to determine a preferred solution in accordance with
3 the requirements of this section.

4 “(b) ANALYSIS OF ALTERNATIVES.—

5 “(1) IN GENERAL.—The Commandant shall
6 conduct an analysis of alternatives for the asset or
7 capability to be acquired in an analyze and select
8 phase of the acquisition process.

9 “(2) REQUIREMENTS.—The analysis of alter-
10 natives shall be conducted by a federally funded re-
11 search and development center, a qualified entity of
12 the Department of Defense, or a similar independent
13 third party entity that has appropriate acquisition
14 expertise and has no substantial financial interest in
15 any part of the acquisition project or program that
16 is the subject of the analysis. At a minimum, the
17 analysis of alternatives shall include—

18 “(A) an assessment of the technical matu-
19 rity, and technical and other risks;

20 “(B) an examination of capability, inter-
21 operability, and other disadvantages;

22 “(C) an evaluation of whether different
23 combinations or quantities of specific assets or
24 capabilities could meet the Coast Guard’s over-
25 all performance needs;

1 “(D) a discussion of key assumptions and
2 variables, and sensitivity to change in such as-
3 sumptions and variables;

4 “(E) when an alternative is an existing
5 asset or prototype, an evaluation of relevant
6 safety and performance records and costs;

7 “(F) a calculation of life-cycle costs includ-
8 ing—

9 “(i) an examination of likely research
10 and development costs and the levels of un-
11 certainty associated with such estimated
12 costs;

13 “(ii) an examination of likely produc-
14 tion and deployment costs and levels of un-
15 certainty associated with such estimated
16 costs;

17 “(iii) an examination of likely oper-
18 ating and support costs and the levels of
19 uncertainty associated with such estimated
20 costs;

21 “(iv) if they are likely to be signifi-
22 cant, an examination of likely disposal
23 costs and the levels of uncertainty associ-
24 ated with such estimated costs; and

1 “(v) such additional measures as the
2 Commandant or the Secretary of Home-
3 land Security determines to be necessary
4 for appropriate evaluation of the asset; and
5 “(G) the business ease for each viable al-
6 ternative.

7 “(e) TEST AND EVALUATION MASTER PLAN.—

8 “(1) IN GENERAL.—For any Level 1 or Level
9 2 acquisition project or program the Chief Acquisi-
10 tion Officer shall approve a test and evaluation mas-
11 ter plan specific to the acquisition project or pro-
12 gram for the capability, asset, or subsystems of the
13 capability or asset and intended to minimize tech-
14 nical, cost, and schedule risk as early as practicable
15 in the development of the project or program.

16 “(2) TEST AND EVALUATION STRATEGY.—The
17 master plan shall—

18 “(A) set forth an integrated test and eval-
19 uation strategy that will verify that capability-
20 level or asset-level and subsystem-level design
21 and development, including performance and
22 supportability, have been sufficiently proven be-
23 fore the capability, asset, or subsystem of the
24 capability or asset is approved for production;
25 and

1 “(B) require that adequate developmental
2 tests and evaluations and operational tests and
3 evaluations established under subparagraph (A)
4 are performed to inform production decisions.

5 “(3) OTHER COMPONENTS OF THE MASTER
6 PLAN.—At a minimum, the master plan shall iden-
7 tify—

8 “(A) the key performance parameters to be
9 resolved through the integrated test and evalua-
10 tion strategy;

11 “(B) critical operational issues to be as-
12 sessed in addition to the key performance pa-
13 rameters;

14 “(C) specific development test and evalua-
15 tion phases and the scope of each phase;

16 “(D) modeling and simulation activities to
17 be performed, if any, and the scope of such ac-
18 tivities;

19 “(E) early operational assessments to be
20 performed, if any, and the scope of such assess-
21 ments;

22 “(F) operational test and evaluation
23 phases;

24 “(G) an estimate of the resources, includ-
25 ing funds, that will be required for all test,

1 evaluation, assessment, modeling, and simula-
2 tion activities; and

3 “(H) the Government entity or inde-
4 pendent entity that will perform the test, eval-
5 uation, assessment, modeling, and simulation
6 activities.

7 “(4) UPDATE.—The Chief Acquisition Officer
8 shall approve an updated master plan whenever
9 there is a revision to project or program test and
10 evaluation strategy, scope, or phasing.

11 “(5) LIMITATION.—The Coast Guard may
12 not—

13 “(A) proceed beyond that phase of the ac-
14 quisition process that entails approving the sup-
15 porting acquisition of a capability or asset be-
16 fore the master plan is approved by the Chief
17 Acquisition Officer; or

18 “(B) award any production contract for a
19 capability, asset, or subsystem for which a mas-
20 ter plan is required under this subsection before
21 the master plan is approved by the Chief Acqui-
22 sition Officer.

23 “(d) LIFE-CYCLE COST ESTIMATES.—

24 “(1) IN GENERAL.—The Commandant shall im-
25 plement mechanisms to ensure the development and

1 regular updating of life-cycle cost estimates for each
2 Level 1 or Level 2 acquisition to ensure that these
3 estimates are considered in decisions to develop or
4 produce new or enhanced capabilities and assets.

5 “(2) TYPES OF ESTIMATES.—In addition to
6 life-cycle cost estimates that may be developed by ac-
7 quisition program offices, the Commandant shall re-
8 quire that an independent life-cycle cost estimate be
9 developed for each Level 1 or Level 2 acquisition
10 project or program.

11 “(3) REQUIRED UPDATES.—For each Level 1
12 or Level 2 acquisition project or program the Com-
13 mandant shall require that life-cycle cost estimates
14 shall be updated before each milestone decision is
15 concluded and the project or program enters a new
16 acquisition phase.

17 “(e) DHS ACQUISITION APPROVAL.—A project or
18 program may not enter the obtain phase under section 573
19 unless the Department of Homeland Security Acquisition
20 Review Board or the Joint Review Board (or other entity
21 to which such responsibility is delegated by the Secretary
22 of Homeland Security) has approved the analysis of alter-
23 natives for the project. The Joint Review Board may also
24 approve the low rates initial production quantity for the
25 project or program if such an initial production quantity

1 is planned by the acquisition project or program and
2 deemed appropriate by the Joint Review Board.

3 **“§ 573. Preliminary development and demonstration**

4 “(a) IN GENERAL.—The Commandant shall ensure
5 that developmental test and evaluation, operational test
6 and evaluation, life cycle cost estimates, and the develop-
7 ment and demonstration requirements are met to confirm
8 that the projects or programs meet the requirements de-
9 scribed in the mission-needs statement and the oper-
10 ational-requirements document and the following develop-
11 ment and demonstration objectives:

12 “(1) To demonstrate that the most promising
13 design, manufacturing, and production solution is
14 based upon a stable, producible, and cost-effective
15 product design.

16 “(2) To ensure that the product capabilities
17 meet contract specifications, acceptable operational
18 performance requirements, and system security re-
19 quirements.

20 “(3) To ensure that the product design is ma-
21 ture enough to commit to full production and de-
22 ployment.

23 **“(b) TESTS AND EVALUATIONS.—**

24 “(1) IN GENERAL.—The Commandant shall en-
25 sure that the Coast Guard conducts developmental

1 tests and evaluations and operational tests and eval-
2 uations of a capability or asset and the subsystems
3 of the capability or asset for which a master plan
4 has been prepared under section 572(c)(1).

5 “(2) USE OF THIRD PARTIES.—The Com-
6 mandant shall ensure that the Coast Guard uses
7 independent third parties with expertise in testing
8 and evaluating the capabilities or assets and the
9 subsystems of the capabilities or assets being ac-
10 quired to conduct developmental tests and evalua-
11 tions and operational tests and evaluations whenever
12 the Coast Guard lacks the capability to conduct the
13 tests and evaluations required by a master plan.

14 “(3) COMMUNICATION OF SAFETY CONCERNS.—
15 The Commandant shall require that safety concerns
16 identified during developmental or operational tests
17 and evaluations or through independent or Govern-
18 ment-conducted design assessments of capabilities or
19 assets and subsystems of capabilities or assets to be
20 acquired by the Coast Guard shall be communicated
21 as soon as practicable, but not later than 30 days
22 after the completion of the test or assessment event
23 or activity that identified the safety concern, to the
24 program manager for the capability or asset and the

1 subsystems concerned and to the Chief Acquisition
2 Officer.

3 ~~“(4) ASSET ALREADY IN LOW, INITIAL, OR~~
4 ~~FULL-RATE PRODUCTION.—If operational test and~~
5 ~~evaluation on a capability or asset already in low,~~
6 ~~initial, or full-rate production identifies a safety con-~~
7 ~~cern with the capability or asset or any subsystems~~
8 ~~of the capability or asset not previously identified~~
9 ~~during developmental or operational test and evalua-~~
10 ~~tion, the Commandant shall—~~

11 ~~“(A) notify the program manager and the~~
12 ~~Chief Acquisition Officer of the safety concern~~
13 ~~as soon as practicable, but not later than 30~~
14 ~~days after the completion of the test and eval-~~
15 ~~uation event or activity that identified the safe-~~
16 ~~ty concern; and~~

17 ~~“(B) notify the Chief Acquisition Officer~~
18 ~~and include in such notification—~~

19 ~~“(i) an explanation of the actions that~~
20 ~~will be taken to correct or mitigate the~~
21 ~~safety concern in all capabilities or assets~~
22 ~~and subsystems of the capabilities or as-~~
23 ~~sets yet to be produced, and the date by~~
24 ~~which those actions will be taken;~~

1 “(ii) an explanation of the actions
2 that will be taken to correct or mitigate
3 the safety concern in previously produced
4 capabilities or assets and subsystems of
5 the capabilities or assets; and the date by
6 which those actions will be taken; and

7 “(iii) an assessment of the adequacy
8 of current funding to correct or mitigate
9 the safety concern in capabilities or assets
10 and subsystems of the capabilities or as-
11 sets and in previously produced capabilities
12 or assets and subsystems.

13 “(e) TECHNICAL CERTIFICATION.—

14 “(1) IN GENERAL.—The Commandant shall—
15 ensure that any Level 1 or Level 2 acquisition
16 project or program is certified by the technical au-
17 thority of the Coast Guard after review by an inde-
18 pendent third party with capabilities in the mission
19 area, asset, or particular asset component.

20 “(2) TEMPEST TESTING.—The Commandant
21 shall—

22 “(A) cause all electronics on all aircraft,
23 surface, and shore assets that require TEM-
24 PEST certification and that are delivered after
25 the date of enactment of the Coast Guard Au-

1 thorization Act for Fiscal Years 2010 and 2011
2 to be tested in accordance with master plan
3 standards and communications security stand-
4 ards by an independent third party that is au-
5 thorized by the Federal Government to perform
6 such testing; and

7 “(B) certify that the assets meet all appli-
8 cable TEMPEST requirements.

9 “(3) VESSEL CLASSIFICATION.—The Com-
10 mandant shall cause each cutter, other than the Na-
11 tional Security Cutter, acquired by the Coast Guard
12 and delivered after the date of enactment of the
13 Coast Guard Authorization Act for Fiscal Years
14 2010 and 2011 is to be classed by the American Bu-
15 reau of Shipping before final acceptance.

16 “(d) ACQUISITION DECISION.—The Commandant
17 may not proceed to full scale production, deployment, and
18 support of a Level 1 or Level 2 acquisition project or pro-
19 gram unless the Department of Homeland Security Acqui-
20 sition Review Board has verified that the delivered asset
21 or system meets the project or program performance and
22 cost goals.

23 “§ 574. **Acquisition, production, deployment, and sup-**
24 **port**

25 “(a) IN GENERAL.—The Commandant shall—

1 “(1) ensure there is a stable and efficient pro-
2 duction and support capability to develop an asset or
3 system;

4 “(2) conduct follow on testing to confirm and
5 monitor performance and correct deficiencies; and

6 “(3) conduct acceptance tests and trails upon
7 the delivery of each asset or system to ensure the
8 delivered asset or system achieves full operational
9 capability.

10 “(b) ELEMENTS.—The Commandant shall—

11 “(1) execute the production contracts;

12 “(2) ensure the delivered products meet oper-
13 ational cost and schedules requirements established
14 in the acquisition program baseline;

15 “(3) validate manpower and training require-
16 ments to meet system needs to operate, maintain,
17 support, and instruct the system; and

18 “(4) prepare a project or program transition
19 plan to enter into programmatic sustainment, oper-
20 ations, and support.

21 “§ 575. Acquisition program baseline breach

22 “(a) IN GENERAL.—The Commandant shall submit
23 a report to the appropriate congressional committees as
24 soon as possible, but not later than 30 days, after the
25 Chief Acquisition Officer of the Coast Guard becomes

1 aware of the breach of an acquisition program baseline
2 for any Level 1 or Level 2 acquisition program, by—

3 “(1) a likely cost overrun greater than 15 per-
4 cent of the acquisition program baseline for that in-
5 dividual capability or asset or a class of capabilities
6 or assets;

7 “(2) a likely delay of more than 180 days in the
8 delivery schedule for any individual capability or
9 asset or class of capabilities or assets; or

10 “(3) an anticipated failure for any individual
11 capability or asset or class of capabilities or assets
12 to satisfy any key performance threshold or param-
13 eter under the acquisition program baseline.

14 “(b) CONTENT.—The report submitted under sub-
15 section (a) shall include—

16 “(1) a detailed description of the breach and an
17 explanation of its cause;

18 “(2) the projected impact to performance, cost,
19 and schedule;

20 “(3) an updated acquisition program baseline
21 and the complete history of changes to the original
22 acquisition program baseline;

23 “(4) the updated acquisition schedule and the
24 complete history of changes to the original schedule;

1 “(5) a full life-cycle cost analysis for the capa-
2 bility or asset or class of capabilities or assets;

3 “(6) a remediation plan identifying corrective
4 actions and any resulting issues or risks; and

5 “(7) a description of how progress in the reme-
6 diation plan will be measured and monitored.

7 “(c) SUBSTANTIAL VARIANCES IN COSTS OR SCHED-
8 ULE.—If a likely cost overrun is greater than 25 percent
9 or a likely delay is greater than 12 months from the costs
10 and schedule described in the acquisition program baseline
11 for any Level 1 or Level 2 acquisition project or program
12 of the Coast Guard, the Commandant shall include in the
13 report a written certification, with a supporting expla-
14 nation, that—

15 “(1) the capability or asset or capability or
16 asset class to be acquired under the project or pro-
17 gram is essential to the accomplishment of Coast
18 Guard missions;

19 “(2) there are no alternatives to such capability
20 or asset or capability or asset class which will pro-
21 vide equal or greater capability in both a more cost-
22 effective and timely manner;

23 “(3) the new acquisition schedule and estimates
24 for total acquisition cost are reasonable; and

1 “(4) the management structure for the acquisi-
2 tion program is adequate to manage and control per-
3 formance, cost, and schedule.

4 “SUBCHAPTER 3—DEFINITIONS

5 **“§ 581. Definitions**

6 “**In this chapter:**

7 “(1) **APPROPRIATE CONGRESSIONAL COMMIT-**
8 **TEES.**—The term ‘appropriate congressional com-
9 mittees’ means the House of Representatives Com-
10 mittee on Transportation and Infrastructure and the
11 Senate Committee on Commerce, Science, and
12 Transportation.

13 “(2) **CHIEF ACQUISITION OFFICER.**—The term
14 ‘Chief Acquisition Officer’ means the officer ap-
15 pointed under section 55 of this title.

16 “(3) **COMMANDANT.**—The term ‘Commandant’
17 means the Commandant of the Coast Guard.

18 “(4) **JOINT REVIEW BOARD.**—The term ‘Joint
19 Review Board’ means the Department of Homeland
20 Security’s Investment Review Board, Joint Require-
21 ments Council, or other entity within the Depart-
22 ment designated by the Secretary as the Joint Re-
23 view Board for purposes of this chapter.

24 “(5) **LEVEL 1 ACQUISITION.**—The term ‘Level 1
25 acquisition’ means—

1 “(A) an acquisition by the Coast Guard—

2 “~~(i)~~ the estimated life-cycle costs of
3 which exceed \$1,000,000,000; or

4 “~~(ii)~~ the estimated total acquisition
5 costs of which exceed \$300,000,000; or

6 “(B) any acquisition that the Chief Acqui-
7 sition Officer of the Coast Guard determines to
8 have a special interest—

9 “~~(i)~~ due to—

10 “~~(I)~~ the experimental or tech-
11 nically immature nature of the asset;

12 “~~(II)~~ the technological complexity
13 of the asset;

14 “~~(III)~~ the commitment of re-
15 sources; or

16 “~~(IV)~~ the nature of the capability
17 or set of capabilities to be achieved; or

18 “~~(ii)~~ because such acquisition is a
19 joint acquisition.

20 “(6) LEVEL 2 ACQUISITION.—The term ‘Level 2
21 acquisition’ means an acquisition by the Coast
22 Guard—

23 “(A) the estimated life-cycle costs of which
24 are equal to or less than \$1,000,000,000, but
25 greater than \$300,000,000; or

1 “(B) the estimated total acquisition costs
2 of which are equal to or less than
3 \$300,000,000, but greater than \$100,000,000.

4 “(7) LIFE-CYCLE COST.—The term ‘life-cycle
5 cost’ means all costs for development, procurement,
6 construction, and operations and support for a par-
7 ticular capability or asset, without regard to funding
8 source or management control.

9 “(8) SAFETY CONCERN.—The term ‘safety con-
10 cern’ means any hazard associated with a capability
11 or asset or a subsystem of a capability or asset that
12 is likely to cause serious bodily injury or death to a
13 typical Coast Guard user in testing, maintaining, re-
14 pairing, or operating the capability, asset, or sub-
15 system or any hazard associated with the capability,
16 asset, or subsystem that is likely to cause major
17 damage to the capability, asset, or subsystem during
18 the course of its normal operation by a typical Coast
19 Guard user.”.

20 (b) CONFORMING AMENDMENT.—The part analysis
21 for part I of title 14, United States Code, is amended by
22 inserting after the item relating to chapter 13 the fol-
23 lowing:

“15. Acquisitions561”.

1 **SEC. 503. REPORT AND GUIDANCE ON EXCESS PASS-**
2 **THROUGH CHARGES.**

3 (a) **COMPTROLLER GENERAL REPORT.—**

4 (1) **IN GENERAL.—**Not later than 180 days
5 after the date of enactment of this Act, the Comp-
6 troller General shall issue a report on pass-through
7 charges on contracts, subcontracts, delivery orders,
8 and task orders that were executed by a lead sys-
9 tems integrator under contract to the Coast Guard
10 during the 3 full calendar years preceding the date
11 of enactment of this Act.

12 (2) **MATTERS COVERED.—**The report under this
13 subsection—

14 (A) shall assess the extent to which the
15 Coast Guard paid excessive pass-through
16 charges to contractors or subcontractors that
17 provided little or no value to the performance of
18 a contract or the production of a procured
19 asset; and

20 (B) shall assess the extent to which the
21 Coast Guard has been particularly vulnerable to
22 excessive pass-through charges on any specific
23 category of contracts or by any specific category
24 of contractors.

25 (b) **GUIDANCE REQUIRED.—**

1 (1) IN GENERAL.—Not later than 180 days
2 after the date of enactment of this Act, the Com-
3 mandant shall prescribe guidance to ensure that
4 pass-through charges on contracts, subcontracts, de-
5 livery orders, and task orders that are executed with
6 a private entity acting as a lead systems integrator
7 by or on behalf of the Coast Guard are not excessive
8 in relation to the cost of work performed by the rel-
9 evant contractor or subcontractor. The guidance
10 shall, at a minimum—

11 (A) set forth clear standards for deter-
12 mining when no, or negligible, value has been
13 added to a contract by a contractor or subcon-
14 tractor;

15 (B) set forth procedures for preventing the
16 payment by the Government of excessive pass-
17 through charges; and

18 (C) identify any exceptions determined by
19 the Commandant to be in the best interest of
20 the Government.

21 (2) SCOPE OF GUIDANCE.—The guidance pre-
22 scribed under this subsection—

23 (A) shall not apply to any firm, fixed-price
24 contract or subcontract, delivery order, or task
25 order that is—

1 (i) awarded on the basis of adequate
2 price competition, as determined by the
3 Commandant; or

4 (ii) for the acquisition of a commercial
5 item, as defined in section 4(12) of the Of-
6 fice of Federal Procurement Policy Act (41
7 U.S.C. 403(12)); and

8 (B) may include such additional exceptions
9 as the Commandant determines to be necessary
10 in the interest of the United States.

11 (e) EXCESSIVE PASS-THROUGH CHARGE DE-
12 FINED.—In this section the term “excessive pass-through
13 charge”, with respect to a contractor or subcontractor that
14 adds no, or negligible, value to a contract or subcontract,
15 means a charge to the Government by the contractor or
16 subcontractor that is for overhead or profit on work per-
17 formed by a lower-tier contractor or subcontractor, other
18 than reasonable charges for the direct costs of managing
19 lower-tier contractors and subcontracts and overhead and
20 profit based on such direct costs.

21 (d) APPLICATION OF GUIDANCE.—The guidance pre-
22 scribed under this section shall apply to contracts awarded
23 to a private entity acting as a lead systems integrator by
24 or on behalf of the Coast Guard on or after the date that
25 is 360 days after the date of enactment of this Act.

1 **TITLE VI—SHIPPING AND**
2 **NAVIGATION**

3 **SEC. 601. TECHNICAL AMENDMENTS TO CHAPTER 313 OF**
4 **TITLE 46, UNITED STATES CODE.**

5 (a) **IN GENERAL.**—Chapter 313 of title 46, United
6 States Code, is amended—

7 (1) by striking “of Transportation” in sections
8 31302, 31306, 31321, 31330, and 31343 each place
9 it appears;

10 (2) by striking “and” after the semicolon in
11 section 31301(5)(F);

12 (3) by striking “office.” in section 31301(6)
13 and inserting “office; and”; and

14 (4) by adding at the end of section 31301 the
15 following:

16 “(7) ‘Secretary’ means the Secretary of the De-
17 partment of Homeland Security, unless otherwise
18 noted.”.

19 (b) **SECRETARY AS MORTGAGEE.**—Section 31308 of
20 such title is amended by striking “When the Secretary of
21 Commerce or Transportation is a mortgagee under this
22 chapter, the Secretary” and inserting “The Secretary of
23 Commerce or Transportation, as a mortgagee under this
24 chapter,”.

1 (e) SECRETARY OF TRANSPORTATION.—Section
 2 31329(d) of such title is amended by striking “Secretary.”
 3 and inserting “Secretary of Transportation.”.

4 (d) MORTGAGEE.—

5 (1) Section 31330(a)(1) of such title, as amend-
 6 ed by subsection (a)(1) of this section, is amended—

7 (A) by inserting “or” after the semicolon
 8 in subparagraph (B);

9 (B) by striking “Secretary; or” in subpara-
 10 graph (C) and inserting “Secretary.”; and

11 (C) by striking subparagraph (D).

12 (2) Section 31330(a)(2) is amended—

13 (A) by inserting “or” after the semicolon
 14 in subparagraph (B);

15 (B) by striking “faith; or” in subpara-
 16 graph (C) and inserting “faith.”; and

17 (C) by striking subparagraph (D).

18 **SEC. 602. CLARIFICATION OF RULEMAKING AUTHORITY.**

19 (a) IN GENERAL.—Chapter 701 of title 46, United
 20 States Code, is amended by adding at the end the fol-
 21 lowing:

22 **“§ 70122. Regulations**

23 “Unless otherwise provided, the Secretary may issue
 24 regulations necessary to implement this chapter.”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 for chapter 701 of such title is amended by adding at the
3 end the following new item:

“70122. Regulations.”.

4 **SEC. 603. COAST GUARD TO MAINTAIN LORAN-C NAVIGA-**
5 **TION SYSTEM.**

6 (a) IN GENERAL.—The Secretary of Transportation
7 shall maintain the LORAN-C navigation system until
8 such time as the Secretary is authorized by statute, explic-
9 itly referencing this section, to cease operating the system
10 but expedite modernization projects necessary for transi-
11 tion to eLORAN technology.

12 (b) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated to the Secretary of
14 Transportation, in addition to funds authorized under sec-
15 tion 101 of this Act for the Coast Guard for operation
16 of the LORAN-C system and for the transition to
17 eLORAN, for capital expenses related to the LORAN-C
18 infrastructure and to modernize and upgrade the LORAN
19 infrastructure to provide eLORAN services, \$37,000,000
20 for each of fiscal years 2010 and 2011. The Secretary of
21 Transportation may transfer from the Federal Aviation
22 Administration and other agencies of the Department of
23 Transportation such funds as may be necessary to reim-
24 burse the Coast Guard for related expenses.

1 (e) ~~REPORT ON TRANSITION TO eLORAN TECH-~~
2 ~~NOLOGY.~~—No later than 6 months after the date of enact-
3 ment of this Act, the Secretary of Transportation, in co-
4 operation with the Secretary of the Department in which
5 the Coast Guard is operating, shall provide a report to
6 the Senate Committee on Commerce, Science, and Trans-
7 portation and the House of Representatives Committee on
8 Transportation and Infrastructure a detailed 5-year plan
9 for transition to eLORAN technology that includes—

10 (1) the timetable, milestones, projects, and fu-
11 ture funding required to complete the transition
12 from LORAN-C to eLORAN technology for provi-
13 sion of positioning, navigation, and timing services;
14 and

15 (2) the benefits of eLORAN for national trans-
16 portation safety, security, and economic growth.

17 **SEC. 604. ICEBREAKERS.**

18 (a) ~~ANALYSES.~~—Not later than 90 days after the
19 date of enactment of this Act or the date of completion
20 of the ongoing High Latitude Study to assess polar ice-
21 breaking mission requirements, which ever occurs later,
22 the Commandant of the Coast Guard shall—

23 (1) conduct a comparative cost-benefit analysis
24 of—

1 (A) rebuilding, renovating, or improving
2 the existing fleet of polar icebreakers for oper-
3 ation by the Coast Guard,

4 (B) constructing new polar icebreakers for
5 operation by the Coast Guard for operation by
6 the Coast Guard; and

7 (C) any combination of the activities de-
8 scribed in subparagraphs (A) and (B), to carry
9 out the missions of the Coast Guard; and

10 (2) conduct an analysis of the impact on mis-
11 sion capacity and the ability of the United States to
12 maintain a presence in the polar regions through the
13 year 2020 if recapitalization of the polar icebreaker
14 fleet, either by constructing new polar icebreakers or
15 rebuilding, renovating, or improving the existing
16 fleet of polar icebreakers, is not fully funded.

17 (b) REPORTS TO CONGRESS.—

18 (1) Not later than 90 days after the date of en-
19 actment of this Act or the date of completion of the
20 ongoing High Latitude Study to assess polar ice-
21 breaking mission requirements, which ever occurs
22 later, the Commandant of the Coast Guard shall
23 submit a report containing the results of the study,
24 together with recommendations the Commandant
25 deems appropriate under section 93(a)(24) of title

1 14, United States Code, to the Senate Committee on
 2 Commerce, Science, and Transportation and the
 3 House of Representatives Committee on Transpor-
 4 tation and Infrastructure.

5 (2) Not later than 1 year after the date of en-
 6 actment of this Act, the Commandant shall submit
 7 reports containing the results of the analyses re-
 8 quired under paragraphs (1) and (2) of subsection
 9 (a), together with recommendations the Com-
 10 mandant deems appropriate under section 93(a)(24)
 11 of title 14, United States Code, to the Senate Com-
 12 mittee on Commerce, Science, and Transportation
 13 and the House of Representatives Committee on
 14 Transportation and Infrastructure.

15 **SEC. 605. VESSEL SIZE LIMITS.**

16 (a) LENGTH, TONNAGE, AND HORSEPOWER.—Sec-
 17 tion 12113(d)(2) of title 46, United States Code, is
 18 amended—

19 (1) by inserting “and” after the semicolon at
 20 the end of subparagraph (A)(i);

21 (2) by striking “and” at the end of subpara-
 22 graph (A)(ii);

23 (3) by striking subparagraph (A)(iii);

24 (4) by striking the period at the end of sub-
 25 paragraph (B) and inserting “; or”; and

1 (5) by inserting at the end the following:

2 “(C) the vessel is either a rebuilt vessel or
3 a replacement vessel under section 208(g) of
4 the American Fisheries Act (title II of division
5 C of Public Law 105–277; 112 Stat. 2681–
6 627) and is eligible for a fishery endorsement
7 under this section.”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) VESSEL REBUILDING AND REPLACE-
10 MENT.—Section 208(g) of the American Fisheries
11 Act (title II of division C of Public Law 105–277;
12 112 Stat. 2681–627) is amended to read as follows:

13 “(g) VESSEL REBUILDING AND REPLACEMENT.—

14 “(1) IN GENERAL.—

15 “(A) REBUILD OR REPLACE.—Notwith-
16 standing any limitation to the contrary on re-
17 placing, rebuilding, or lengthening vessels or
18 transferring permits or licenses to a replace-
19 ment vessel contained in sections 679.2 and
20 679.4 of title 50, Code of Federal Regulations,
21 as in effect on the date of enactment of the
22 Coast Guard Authorization Act for Fiscal Years
23 2010 and 2011 and except as provided in para-
24 graph (4), the owner of a vessel eligible under
25 subsection (a), (b), (c), (d), or (e) (other than

1 paragraph (21)), in order to improve vessel
2 safety and operational efficiencies (including
3 fuel efficiency), may rebuild or replace that ves-
4 sel (including fuel efficiency) with a vessel docu-
5 mented with a fishery endorsement under sec-
6 tion 12113 of title 46, United States Code.

7 “(B) SAME REQUIREMENTS.—The rebuilt
8 or replacement vessel shall be eligible in the
9 same manner and subject to the same restric-
10 tions and limitations under such subsection as
11 the vessel being rebuilt or replaced.

12 “(C) TRANSFER OF PERMITS AND LI-
13 CENSES.—Each fishing permit and license held
14 by the owner of a vessel or vessels to be rebuilt
15 or replaced under subparagraph (A) shall be
16 transferred to the rebuilt or replacement vessel.

17 “(2) RECOMMENDATIONS OF NORTH PACIFIC
18 COUNCIL.—The North Pacific Council may rec-
19 ommend for approval by the Secretary such con-
20 servation and management measures, including size
21 limits and measures to control fishing capacity, in
22 accordance with the Magnuson-Stevens Act as it
23 considers necessary to ensure that this subsection
24 does not diminish the effectiveness of fishery man-

1 agement plans of the Bering Sea and Aleutian Is-
2 lands Management Area or the Gulf of Alaska.

3 ~~“(3) SPECIAL RULE FOR REPLACEMENT OF~~
4 ~~CERTAIN VESSELS.—~~

5 ~~“(A) IN GENERAL.—~~Notwithstanding the
6 requirements of subsections ~~(b)(2)~~, ~~(c)(1)~~, and
7 ~~(c)(2)~~ of section ~~12113~~ of title 46, United
8 States Code, a vessel that is eligible under sub-
9 section ~~(a)~~, ~~(b)~~, ~~(c)~~, ~~(d)~~, or ~~(e)~~ (other than
10 paragraph ~~(21)~~) and that qualifies to be docu-
11 mented with a fishery endorsement pursuant to
12 section ~~203(g)~~ or ~~213(g)~~ may be replaced with
13 a replacement vessel under paragraph ~~(1)~~ if the
14 vessel that is replaced is validly documented
15 with a fishery endorsement pursuant to section
16 ~~203(g)~~ or ~~213(g)~~ before the replacement vessel
17 is documented with a fishery endorsement
18 under section ~~12113~~ of title 46, United States
19 Code.

20 ~~“(B) APPLICABILITY.—~~A replacement ves-
21 sel under subparagraph ~~(A)~~ and its owner and
22 mortgagee are subject to the same limitations
23 under section ~~203(g)~~ or ~~213(g)~~ that are appli-
24 cable to the vessel that has been replaced and
25 its owner and mortgagee.

1 “(4) SPECIAL RULES FOR CERTAIN CATCHER
2 VESSELS.—

3 “(A) IN GENERAL.—A replacement for a
4 covered vessel described in subparagraph (B) is
5 prohibited from harvesting fish in any fishery
6 (except for the Pacific whiting fishery) managed
7 under the authority of any regional fishery
8 management council (other than the North Pa-
9 cific Council) established under section 302(a)
10 of the Magnuson-Stevens Act.

11 “(B) COVERED VESSELS.—A covered ves-
12 sel referred to in subparagraph (A) is—

13 “(i) a vessel eligible under subsection
14 (a), (b), or (c) that is replaced under para-
15 graph (1); or

16 “(ii) a vessel eligible under subsection
17 (a), (b), or (c) that is rebuilt to increase
18 its registered length, gross tonnage, or
19 shaft horsepower.

20 “(5) LIMITATION ON FISHERY ENDORSE-
21 MENTS.—Any vessel that is replaced under this sub-
22 section shall thereafter not be eligible for a fishery
23 endorsement under section 12113 of title 46, United
24 States Code, unless that vessel is also a replacement
25 vessel described in paragraph (1).

1 ~~“(6) GULF OF ALASKA LIMITATION.—Notwith-~~
2 ~~standing paragraph (1), the Secretary shall prohibit~~
3 ~~from participation in the groundfish fisheries of the~~
4 ~~Gulf of Alaska any vessel that is rebuilt or replaced~~
5 ~~under this subsection and that exceeds the maximum~~
6 ~~length overall specified on the license that authorizes~~
7 ~~fishing for groundfish pursuant to the license limita-~~
8 ~~tion program under part 679 of title 50, Code of~~
9 ~~Federal Regulations, as in effect on the date of en-~~
10 ~~actment of the Coast Guard Authorization Act for~~
11 ~~Fiscal Years 2010 and 2011.~~

12 ~~“(7) AUTHORITY OF PACIFIC COUNCIL.—Noth-~~
13 ~~ing in this section shall be construed to diminish or~~
14 ~~otherwise affect the authority of the Pacific Council~~
15 ~~to recommend to the Secretary conservation and~~
16 ~~management measures to protect fisheries under its~~
17 ~~jurisdiction (including the Pacific whiting fishery)~~
18 ~~and participants in such fisheries from adverse im-~~
19 ~~pacts caused by this Act.”.~~

20 ~~(2) EXEMPTION OF CERTAIN VESSELS.—See-~~
21 ~~tion 203(g) of the American Fisheries Act (title II~~
22 ~~of division C of Public Law 105-277, 112 Stat.~~
23 ~~2681-620) is amended—~~

24 ~~(A) by inserting “and” after “(United~~
25 ~~States official number 651041)”;~~

1 (B) by striking “, NORTHERN TRAV-
 2 ELER (United States official number 635986),
 3 and NORTHERN VOYAGER (United States
 4 official number 637398) (or a replacement ves-
 5 sel for the NORTHERN VOYAGER that com-
 6 plies with paragraphs (2), (5), and (6) of sec-
 7 tion 208(g) of this Act)”; and

8 (C) by striking “, in the case of the
 9 NORTHERN” and all that follows through
 10 “PHOENIX.”

11 (3) FISHERY COOPERATIVE EXIT PROVI-
 12 SIONS.—Section 210(b) of the American Fisheries
 13 Act (title II of division C of Public Law 105–277;
 14 112 Stat. 2681–629) is amended—

15 (A) by moving the matter beginning with
 16 “the Secretary shall” in paragraph (1) 2 ems to
 17 the right; and

18 (B) by adding at the end the following:

19 “(7) FISHERY COOPERATIVE EXIT PROVI-
 20 SIONS.—

21 “(A) FISHING ALLOWANCE DETERMINA-
 22 TION.—For purposes of determining the aggre-
 23 gate percentage of directed fishing allowances
 24 under paragraph (1), when a catcher vessel is
 25 removed from the directed pollock fishery, the

1 fishery allowance for pollock for the vessel being
2 removed—

3 “(i) shall be based on the catch his-
4 tory determination for the vessel made
5 pursuant to section 679.62 of title 50,
6 Code of Federal Regulations, as in effect
7 on the date of enactment of the Coast
8 Guard Authorization Act of 2008; and

9 “(ii) shall be assigned, for all pur-
10 poses under this title, in the manner speci-
11 fied by the owner of the vessel being re-
12 moved to any other catcher vessel or
13 among other catcher vessels participating
14 in the fishery cooperative if such vessel or
15 vessels remain in the fishery cooperative
16 for at least one year after the date on
17 which the vessel being removed leaves the
18 directed pollock fishery.

19 “(B) ELIGIBILITY FOR FISHERY ENDORSE-
20 MENT.—Except as provided in subparagraph
21 (C), a vessel that is removed pursuant to this
22 paragraph shall be permanently ineligible for a
23 fishery endorsement, and any claim (including
24 relating to catch history) associated with such
25 vessel that could qualify any owner of such ves-

1 sel for any permit to participate in any fishery
2 within the exclusive economic zone of the
3 United States shall be extinguished, unless such
4 removed vessel is thereafter designated to re-
5 place a vessel to be removed pursuant to this
6 paragraph.

7 “(C) LIMITATIONS ON STATUTORY CON-
8 STRUCTION.—Nothing in this paragraph shall
9 be construed—

10 “(i) to make the vessels ~~AJ~~ (United
11 States official number 905625), ~~DONA~~
12 ~~MARTITA~~ (United States official number
13 651751), ~~NORDIC EXPLORER~~ (United
14 States official number 678234), and
15 ~~PROVIDIAN~~ (United States official num-
16 ber 1062183) ineligible for a fishery en-
17 dorsement or any permit necessary to par-
18 ticipate in any fishery under the authority
19 of the New England Fishery Management
20 Council or the Mid-Atlantic Fishery Man-
21 agement Council established, respectively,
22 under subparagraphs (A) and (B) of sec-
23 tion 302(a)(1) of the Magnuson-Stevens
24 Act; or

1 “(ii) to allow the vessels referred to in
 2 clause (i) to participate in any fishery
 3 under the authority of the Councils re-
 4 ferred to in clause (i) in any manner that
 5 is not consistent with the fishery manage-
 6 ment plan for the fishery developed by the
 7 Councils under section 303 of the Magnu-
 8 son-Stevens Act.”.

9 **TITLE VII—VESSEL** 10 **CONVEYANCE**

11 **SEC. 701. SHORT TITLE.**

12 This title may be cited as the “Vessel Conveyance
 13 Act”.

14 **SEC. 702. CONVEYANCE OF COAST GUARD VESSELS FOR** 15 **PUBLIC PURPOSES.**

16 (a) **IN GENERAL.**—Whenever the transfer of owner-
 17 ship of a Coast Guard vessel to an eligible entity for use
 18 for educational, cultural, historical, charitable, rec-
 19 reational, or other public purposes is authorized by law,
 20 the Coast Guard shall transfer the vessel to the General
 21 Services Administration for conveyance to the eligible enti-
 22 ty.

23 (b) **CONDITIONS OF CONVEYANCE.**—The General
 24 Services Administration may not convey a vessel to an eli-

1 eligible entity as authorized by law unless the eligible entity
2 agrees—

3 (1) to provide the documentation needed by the
4 General Services Administration to process a request
5 for aircraft or vessels under section ~~102.37.225~~ of
6 title 41, Code of Federal Regulations;

7 (2) to comply with the special terms, conditions,
8 and restrictions imposed on aircraft and vessels
9 under section ~~102-37.460~~ of such title;

10 (3) to make the vessel available to the United
11 States Government if it is needed for use by the
12 Commandant of the Coast Guard in time of war or
13 a national emergency; and

14 (4) to hold the United States Government
15 harmless for any claims arising from exposure to
16 hazardous materials, including asbestos and poly-
17 chlorinated biphenyls, after conveyance of the vessel,
18 except for claims arising from use of the vessel by
19 the United States Government under paragraph (3).

20 (c) *ELIGIBLE ENTITY DEFINED.*—In this section, the
21 term “eligible entity” means a State or local government,
22 nonprofit corporation, educational agency, community de-
23 velopment organization, or other entity that agrees to
24 comply with the conditions established under this section.

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Coast Guard Authoriza-*
 3 *tion Act for Fiscal Years 2010 and 2011”.*

4 **SEC. 2. TABLE OF CONTENTS.**

5 *The table of contents for this Act is as follows:*

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—AUTHORIZATIONS

Sec. 101. Authorization of appropriations.

Sec. 102. Authorized levels of military strength and training.

TITLE II—ADMINISTRATION

Sec. 201. Authority to distribute funds through grants, cooperative agreements,
and contracts to maritime authorities and organizations.

Sec. 202. Assistance to foreign governments and maritime authorities.

Sec. 203. Cooperative agreements for industrial activities.

Sec. 204. Defining Coast Guard vessels and aircraft.

TITLE III—ORGANIZATION

Sec. 301. Vice commandant; vice admirals.

Sec. 302. Number and distribution of commissioned officers on the active duty
promotion list.

TITLE IV—PERSONNEL

Sec. 401. Leave retention authority.

Sec. 402. Legal assistance for Coast Guard reservists.

Sec. 403. Reimbursement for certain medical related expenses.

Sec. 404. Reserve commissioned warrant officer to lieutenant program.

Sec. 405. Enhanced status quo officer promotion system.

Sec. 406. Appointment of civilian Coast Guard judges.

Sec. 407. Coast Guard participation in the Armed Forces Retirement Home sys-
tem.

Sec. 408. Crew wages on passenger vessels.

TITLE V—ACQUISITION REFORM

Sec. 501. Chief Acquisition Officer.

Sec. 502. Acquisitions.

“CHAPTER 15—ACQUISITIONS

“SUBCHAPTER 1—GENERAL PROVISIONS

“Sec.

“561. Acquisition directorate

“562. Senior acquisition leadership team

“563. Improvements in Coast Guard acquisition management

“564. Recognition of Coast Guard personnel for excellence in acquisition

“565. *Prohibition on use of lead systems integrators*

“566. *Required contract terms*

“567. *Department of Defense consultation*

“568. *Undefinitized contractual actions*

“SUBCHAPTER 2—IMPROVED ACQUISITION PROCESS AND PROCEDURES

“Sec.

“571. *Identification of major system acquisitions*

“572. *Acquisition*

“573. *Preliminary development and demonstration*

“574. *Acquisition, production, deployment, and support*

“575. *Acquisition program baseline breach*

“SUBCHAPTER 3—DEFINITIONS

“Sec.

“581. *Definitions*”

Sec. 503. Report and guidance on excess pass-through charges.

TITLE VI—SHIPPING AND NAVIGATION

Sec. 601. Technical amendments to chapter 313 of title 46, United States Code.

Sec. 602. Clarification of rulemaking authority.

Sec. 603. Coast Guard maintenance of LORAN-C navigation system.

Sec. 604. Icebreakers.

Sec. 605. Vessel size limits.

Sec. 606. Phaseout of vessels supporting oil and gas development.

TITLE VII—VESSEL CONVEYANCE

Sec. 701. Short title.

Sec. 702. Conveyance of Coast Guard vessels for public purposes.

TITLE VIII—OIL POLLUTION PREVENTION

Sec. 801. Rulemakings.

Sec. 802. Oil spill response capability.

Sec. 803. Oil transfers from vessels.

Sec. 804. Improvements to reduce human error and near miss incidents.

Sec. 805. Olympic coast national marine sanctuary.

Sec. 806. Prevention of small oil spills.

Sec. 807. Improved coordination with tribal governments.

Sec. 808. Report on availability of technology to detect the loss of oil.

Sec. 809. Use of oil spill liability trust fund.

Sec. 810. International efforts on enforcement.

Sec. 811. Higher volume port area regulatory definition change.

Sec. 812. Tug escorts for laden oil tankers.

Sec. 813. Extension of financial responsibility.

Sec. 814. Oil spill liability trust fund investment amount.

Sec. 815. Liability for use of single-hull vessels.

TITLE IX—MISCELLANEOUS PROVISIONS

Sec. 901. Homeporting of the BIGELOW.

Sec. 902. Vessel determination.

Sec. 903. *Conveyance of the Presque Isle Light Station Fresnel Lens to Presque Isle Township, Michigan.*

Sec. 904. *Land conveyance, Coast Guard property in Marquette County, Michigan, to the city of Marquette, Michigan.*

Sec. 905. *Large offshore supply vessels.*

Sec. 906. *Conveyance of decommissioned Coast Guard cutters STORIS, IRIS, and PLANETREE.*

Sec. 907. *Access for personal watercraft.*

1 **TITLE I—AUTHORIZATIONS**

2 **SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

3 *Funds are authorized to be appropriated for necessary*
 4 *expenses of the Coast Guard for each of fiscal years 2010*
 5 *and 2011 as follows:*

6 (1) *For the operation and maintenance of the*
 7 *Coast Guard, \$6,556,188,000, of which \$24,500,000 is*
 8 *authorized to be derived from the Oil Spill Liability*
 9 *Trust Fund to carry out the purposes of section*
 10 *1012(a)(5) of the Oil Pollution Act of 1990.*

11 (2) *For the acquisition, construction, renovation,*
 12 *and improvement of aids to navigation, shore and off-*
 13 *shore facilities, vessels, and aircraft, including equip-*
 14 *ment related thereto, \$1,383,980,000, of which*
 15 *\$20,000,000 shall be derived from the Oil Spill Li-*
 16 *ability Trust Fund to carry out the purposes of sec-*
 17 *tion 1012(a)(5) of the Oil Pollution Act of 1990, to*
 18 *remain available until expended; such funds appro-*
 19 *priated for personnel compensation and benefits and*
 20 *related costs of acquisition, construction, and im-*
 21 *provements shall be available for procurement of serv-*

1 **(b) MILITARY TRAINING STUDENT LOADS.**—*The Coast*
 2 *Guard is authorized average military training student*
 3 *loads as follows:*

4 (1) *For recruit and special training, 2,500 stu-*
 5 *dent years for fiscal year 2010, and 2,625 student*
 6 *years for fiscal year 2011.*

7 (2) *For flight training, 170 student years for fis-*
 8 *cal year 2010 and 179 student years for fiscal year*
 9 *2011.*

10 (3) *For professional training in military and ci-*
 11 *vilian institutions, 350 student years for fiscal year*
 12 *2010 and 368 student years for fiscal year 2011.*

13 (4) *For officer acquisition, 1,300 student years*
 14 *for fiscal year 2010 and 1,365 student years for fiscal*
 15 *year 2011.*

16 **TITLE II—ADMINISTRATION**

17 **SEC. 201. AUTHORITY TO DISTRIBUTE FUNDS THROUGH** 18 **GRANTS, COOPERATIVE AGREEMENTS, AND** 19 **CONTRACTS TO MARITIME AUTHORITIES AND** 20 **ORGANIZATIONS.**

21 *Section 149 of title 14, United States Code, is amended*
 22 *by adding at the end the following:*

23 “(c) **GRANTS TO INTERNATIONAL MARITIME ORGANI-**
 24 **ZATIONS.**—*The Commandant may, after consultation with*
 25 *the Secretary of State, make grants to, or enter into cooper-*

1 *ative agreements, contracts, or other agreements with, inter-*
 2 *national maritime organizations for the purpose of acquir-*
 3 *ing information or data about merchant vessel inspections,*
 4 *security, safety and environmental requirements, classifica-*
 5 *tion, and port state or flag state law enforcement or over-*
 6 *sight.”.*

7 **SEC. 202. ASSISTANCE TO FOREIGN GOVERNMENTS AND**
 8 **MARITIME AUTHORITIES.**

9 *Section 149 of title 14, United States Code, as amend-*
 10 *ed by section 201, is further amended by adding at the end*
 11 *the following:*

12 *“(d) AUTHORIZED ACTIVITIES.—*

13 *“(1) The Commandant may transfer or expend*
 14 *funds from any appropriation available to the Coast*
 15 *Guard for—*

16 *“(A) the activities of traveling contact*
 17 *teams, including any transportation expense,*
 18 *translation services expense, or administrative*
 19 *expense that is related to such activities;*

20 *“(B) the activities of maritime authority li-*
 21 *aison teams of foreign governments making re-*
 22 *ciprocal visits to Coast Guard units, including*
 23 *any transportation expense, translation services*
 24 *expense, or administrative expense that is related*
 25 *to such activities;*

1 “(C) seminars and conferences involving
2 members of maritime authorities of foreign gov-
3 ernments;

4 “(D) distribution of publications pertinent
5 to engagement with maritime authorities of for-
6 eign governments; and

7 “(E) personnel expenses for Coast Guard ci-
8 vilian and military personnel to the extent that
9 those expenses relate to participation in an ac-
10 tivity described in subparagraph (C) or (D).

11 “(2) An activity may not be conducted under
12 this subsection with a foreign country unless the Sec-
13 retary of State approves the conduct of such activity
14 in that foreign country.”.

15 **SEC. 203. COOPERATIVE AGREEMENTS FOR INDUSTRIAL AC-**
16 **TIVITIES.**

17 Section 151 of title 14, United States Code, is amend-
18 ed—

19 (1) by inserting “(a) *IN GENERAL.*—” before
20 “All orders”; and

21 (2) by adding at the end the following:

22 “(b) *ORDERS AND AGREEMENTS FOR INDUSTRIAL AC-*
23 *TIVITIES.*—Under this section, the Coast Guard industrial
24 activities may accept orders and enter into reimbursable
25 agreements with establishments, agencies, and departments

1 *of the Department of Defense and the Department of Home-*
 2 *land Security.”.*

3 **SEC. 204. DEFINING COAST GUARD VESSELS AND AIR-**
 4 **CRAFT.**

5 (a) *IN GENERAL.*—Chapter 17 of title 14, United
 6 States Code, is amended by inserting after section 638 the
 7 following new section:

8 **“§ 638a. Coast Guard vessels and aircraft defined**

9 “For the purposes of sections 637 and 638 of this title,
 10 the term *Coast Guard vessels and aircraft* means—

11 “(1) any vessel or aircraft owned, leased, trans-
 12 ferred to, or operated by the Coast Guard and under
 13 the command of a Coast Guard member; or

14 “(2) any other vessel or aircraft under the tac-
 15 tical control of the Coast Guard on which one or more
 16 members of the Coast Guard are assigned and con-
 17 ducting Coast Guard missions.”.

18 (b) *CLERICAL AMENDMENT.*—The table of contents for
 19 chapter 17 of such title is amended by inserting after the
 20 item relating to section 638 the following:

“638a. Coast Guard vessels and aircraft defined.”.

21 **TITLE III—ORGANIZATION**

22 **SEC. 301. VICE COMMANDANT; VICE ADMIRALS.**

23 (a) *VICE COMMANDANT.*—The fourth sentence of sec-
 24 tion 47 of title 14, United States Code, is amended by strik-
 25 ing “vice admiral” and inserting “admiral”.

1 (b) *VICE ADMIRALS*.—Section 50 of such title is
2 amended to read as follows:

3 **“§ 50. Vice admirals**

4 “(a)(1) *The President may designate no more than 4*
5 *positions of importance and responsibility that shall be held*
6 *by officers who—*

7 “(A) *while so serving, shall have the grade of vice*
8 *admiral, with the pay and allowances of that grade;*
9 *and*

10 “(B) *shall perform such duties as the Com-*
11 *mandant may prescribe.*

12 “(2) *The President may appoint, by and with the ad-*
13 *vice and consent of the Senate, and reappoint, by and with*
14 *the advice and consent of the Senate, to any such position*
15 *an officer of the Coast Guard who is serving on active duty*
16 *above the grade of captain. The Commandant shall make*
17 *recommendations for such appointments.*

18 “(b)(1) *The appointment and the grade of vice admiral*
19 *shall be effective on the date the officer assumes that duty*
20 *and, except as provided in paragraph (2) of this subsection*
21 *or in section 51(d) of this title, shall terminate on the date*
22 *the officer is detached from that duty.*

23 “(2) *An officer who is appointed to a position des-*
24 *ignated under subsection (a) shall continue to hold the*
25 *grade of vice admiral—*

1 “(A) while under orders transferring the officer
2 to another position designated under subsection (a),
3 beginning on the date the officer is detached from that
4 duty and terminating on the date before the day the
5 officer assumes the subsequent duty, but not for more
6 than 60 days;

7 “(B) while hospitalized, beginning on the day of
8 the hospitalization and ending on the day the officer
9 is discharged from the hospital, but not for more than
10 180 days; and

11 “(C) while awaiting retirement, beginning on the
12 date the officer is detached from duty and ending on
13 the day before the officer’s retirement, but not for
14 more than 60 days.

15 “(c)(1) An appointment of an officer under subsection
16 (a) does not vacate the permanent grade held by the officer.

17 “(2) An officer serving in a grade above rear admiral
18 who holds the permanent grade of rear admiral (lower half)
19 shall be considered for promotion to the permanent grade
20 of rear admiral as if the officer was serving in the officer’s
21 permanent grade.

22 “(d) Whenever a vacancy occurs in a position des-
23 ignated under subsection (a), the Commandant shall inform
24 the President of the qualifications needed by an officer serv-

1 *ing in that position or office to carry out effectively the*
2 *duties and responsibilities of that position or office.”.*

3 (c) *REPEAL.—Section 50a of such title is repealed.*

4 (d) *CONFORMING AMENDMENTS.—Section 51 of such*
5 *title is amended—*

6 (1) *by striking subsections (a), (b), and (c) and*
7 *inserting the following:*

8 “(a) *An officer, other than the Commandant, who,*
9 *while serving in the grade of admiral or vice admiral, is*
10 *retired for physical disability shall be placed on the retired*
11 *list with the highest grade in which that officer served.*

12 “(b) *An officer, other than the Commandant, who is*
13 *retired while serving in the grade of admiral or vice admiral,*
14 *or who, after serving at least 2½ years in the grade*
15 *of admiral or vice admiral, is retired while serving in a*
16 *lower grade, may in the discretion of the President, be re-*
17 *tired with the highest grade in which that officer served.*

18 “(c) *An officer, other than the Commandant, who, after*
19 *-serving less than 2½ years in the grade of admiral or vice*
20 *admiral, is retired while serving in a lower grade, shall*
21 *be retired in his permanent grade.”; and*

22 (2) *by striking “Area Commander, or Chief of*
23 *Staff” in subsection (d)(2) and inserting “or Vice Ad-*
24 *miral”.*

25 (e) *CLERICAL AMENDMENTS.—*

1 (1) *The section caption for section 47 of such*
 2 *title is amended to read as follows:*

3 **“§47. Vice commandant; appointment”.**

4 (2) *The table of contents for chapter 3 of such*
 5 *title is amended—*

6 (A) *by striking the item relating to section*
 7 *47 and inserting the following:*

“47. *Vice Commandant; appointment.*”;

8 (B) *by striking the item relating to section*
 9 *50a; and*

10 (C) *by striking the item relating to section*
 11 *50 and inserting the following:*

“50. *Vice admirals.*”.

12 (f) *TECHNICAL CORRECTION.—Section 47 of such title*
 13 *is further amended by striking “subsection” in the fifth sen-*
 14 *tence and inserting “section”.*

15 (g) *TREATMENT OF INCUMBENTS; TRANSITION.—*

16 (1) *Notwithstanding any other provision of law,*
 17 *the officer who, on the date of enactment of this Act,*
 18 *is serving as Vice Commandant—*

19 (A) *shall continue to serve as Vice Com-*
 20 *mandant;*

21 (B) *shall have the grade of admiral with*
 22 *pay and allowances of that grade; and*

23 (C) *shall not be required to be reappointed*
 24 *by reason of the enactment of that Act.*

1 (2) *Notwithstanding any other provision of law,*
 2 *an officer who, on the date of enactment of this Act,*
 3 *is serving as Chief of Staff, Commander, Atlantic*
 4 *Area, or Commander, Pacific Area—*

5 (A) *shall continue to have the grade of vice*
 6 *admiral with pay and allowance of that grade*
 7 *until such time that the officer is relieved of his*
 8 *duties and appointed and confirmed to another*
 9 *position as a vice admiral or admiral; and*

10 (B) *for the purposes of transition, may con-*
 11 *tinue, for not more than 1 year after the date of*
 12 *enactment of this Act, to perform the duties of*
 13 *the officer's former position and any other such*
 14 *duties that the Commandant prescribes.*

15 **SEC. 302. NUMBER AND DISTRIBUTION OF COMMISSIONED**
 16 **OFFICERS ON THE ACTIVE DUTY PROMOTION**
 17 **LIST.**

18 (a) *IN GENERAL.—Section 42 of title 14, United*
 19 *States Code, is amended—*

20 (1) *by striking subsections (a), (b), and (c) and*
 21 *inserting the following:*

22 “(a) *The total number of Coast Guard commissioned*
 23 *officers on the active duty promotion list, excluding war-*
 24 *rant officers, shall not exceed 7,200. This total number may*
 25 *be temporarily increased up to 2 percent for no more than*

1 *the 60 days that follow the commissioning of a Coast Guard*
2 *Academy class.*

3 “(b) *The total number of commissioned officers author-*
4 *ized by this section shall be distributed in grade not to ex-*
5 *ceed the following percentages:*

6 “(1) *0.375 percent for rear admiral.*

7 “(2) *0.375 percent for rear admiral (lower half).*

8 “(3) *6.0 percent for captain.*

9 “(4) *15.0 percent for commander.*

10 “(5) *22.0 percent for lieutenant commander.*

11 *The Secretary shall prescribe the percentages applicable to*
12 *the grades of lieutenant, lieutenant (junior grade), and en-*
13 *sign. The Secretary may, as the needs of the Coast Guard*
14 *require, reduce any of the percentages set forth in para-*
15 *graphs (1) through (5) and apply that total percentage re-*
16 *duction to any other lower grade or combination of lower*
17 *grades.*

18 “(c) *The Secretary shall, at least once a year, compute*
19 *the total number of commissioned officers authorized to*
20 *serve in each grade by applying the grade distribution per-*
21 *centages of this section to the total number of commissioned*
22 *officers listed on the current active duty promotion list. In*
23 *making such calculations, any fraction shall be rounded to*
24 *the nearest whole number. The number of commissioned of-*
25 *ficers on the active duty promotion list serving with other*

1 *departments or agencies on a reimbursable basis or excluded*
 2 *under the provisions of section 324(d) of title 49, shall not*
 3 *be counted against the total number of commissioned offi-*
 4 *cers authorized to serve in each grade.”;*

5 *(2) by striking subsection (e) and inserting the*
 6 *following:*

7 *“(e) The number of officers authorized to be serving*
 8 *on active duty in each grade of the permanent commis-*
 9 *sioned teaching staff of the Coast Guard Academy and of*
 10 *the Reserve serving in connection with organizing, admin-*
 11 *istering, recruiting, instructing, or training the reserve*
 12 *components shall be prescribed by the Secretary.”; and*

13 *(3) by striking the caption of such section and*
 14 *inserting the following:*

15 **“§ 42. Number and distribution of commissioned offi-**
 16 **cers on the active duty promotion list”.**

17 *(b) CLERICAL AMENDMENT.—The table of contents for*
 18 *chapter 3 of such title is amended by striking the item relat-*
 19 *ing to section 42 and inserting the following:*

“42. Number and distribution of commissioned officers on the active duty pro-
motion list.”.

20 **TITLE IV—PERSONNEL**

21 **SEC. 401. LEAVE RETENTION AUTHORITY.**

22 *Section 701(f)(2) of title 10, United States Code, is*
 23 *amended by inserting “or a declaration of a major disaster*
 24 *or emergency by the President under the Robert T. Stafford*

1 *Disaster Relief and Emergency Assistance Act (Public Law*
2 *93–288, 42 U.S.C. 5121 et seq.)” after “operation”.*

3 **SEC. 402. LEGAL ASSISTANCE FOR COAST GUARD RESERV-**
4 **ISTS.**

5 *Section 1044(a)(4) of title 10, United States Code, is*
6 *amended—*

7 *(1) by striking “(as determined by the Secretary*
8 *of Defense),” and inserting “(as determined by the*
9 *Secretary of Defense and the Secretary of the depart-*
10 *ment in which the Coast Guard is operating, with re-*
11 *spect to the Coast Guard when it is not operating as*
12 *a service of the Navy),”; and*

13 *(2) by striking “prescribed by the Secretary of*
14 *Defense,” and inserting “prescribed by Secretary of*
15 *Defense and the Secretary of the department in which*
16 *the Coast Guard is operating, with respect to the*
17 *Coast Guard when it is not operating as a service of*
18 *the Navy,”.*

19 **SEC. 403. REIMBURSEMENT FOR CERTAIN MEDICAL-RE-**
20 **LATED TRAVEL EXPENSES.**

21 *Section 1074i(a) of title 10, United States Code, is*
22 *amended—*

23 *(1) by striking “IN GENERAL.—In” and insert-*
24 *ing “IN GENERAL.—(1) In”; and*

25 *(2) by adding at the end the following:*

1 “(2) *In any case in which a covered beneficiary resides*
2 *on an INCONUS island that lacks public access roads to*
3 *the mainland and is referred by a primary care physician*
4 *to a specialty care provider on the mainland who provides*
5 *services less than 100 miles from the location in which the*
6 *beneficiary resides, the Secretary shall reimburse the rea-*
7 *sonable travel expenses of the covered beneficiary, and, when*
8 *accompaniment by an adult is necessary, for a parent or*
9 *guardian of the covered beneficiary or another member of*
10 *the covered beneficiary’s family who is at least 21 years*
11 *of age.”.*

12 **SEC. 404. RESERVE COMMISSIONED WARRANT OFFICER TO**
13 **LIEUTENANT PROGRAM.**

14 *Section 214(a) of title 14, United States Code, is*
15 *amended to read as follows:*

16 “(a) *The President may appoint temporary commis-*
17 *sioned officers—*

18 “(1) *in the Regular Coast Guard in a grade, not*
19 *above lieutenant, appropriate to their qualifications,*
20 *experience, and length of service, as the needs of the*
21 *Coast Guard may require, from among the commis-*
22 *sioned warrant officers, warrant officers, and enlisted*
23 *members of the Coast Guard, and from licensed offi-*
24 *cers of the United States merchant marine; and*

1 “(E) *The Master Chief Petty Officer of the*
2 *Coast Guard.*”.

3 (b) *DEDUCTIONS.*—

4 (1) *Section 2772 of title 10, United States Code,*
5 *is amended—*

6 (A) *by striking “of the military depart-*
7 *ment” in subsection (a);*

8 (B) *by striking “Armed Forces Retirement*
9 *Home Board” in subsection (b) and inserting*
10 *“Chief Operating Officer of the Armed Forces*
11 *Retirement Home”; and*

12 (C) *by striking subsection (c).*

13 (2) *Section 1007(i) of title 37, United States*
14 *Code, is amended—*

15 (A) *by striking “Armed Forces Retirement*
16 *Home Board,” in paragraph (3) and inserting*
17 *“Chief Operating Officer of the Armed Forces*
18 *Retirement Home,”; and*

19 (B) *by striking “does not include the Coast*
20 *Guard when it is not operating as a service of*
21 *the Navy.” in paragraph (4) and inserting “has*
22 *the meaning given such term in section 101(4) of*
23 *title 10.”.*

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 2 *section shall take effect on the first day of the first pay pe-*
 3 *riod beginning on or after January 1, 2010.*

4 **SEC. 408. CREW WAGES ON PASSENGER VESSELS.**

5 (a) *FOREIGN AND INTERCOASTAL VOYAGES.*—

6 (1) *LIMITATIONS ON PENALTY WAGE CLAIMS.*—
 7 *Section 10313 of title 46, United States Code, is*
 8 *amended by adding at the end thereof the following:*

9 “*(j) CLASS ACTIONS.*—*A class action suit by seamen*
 10 *employed on a passenger vessel for wages under this sub-*
 11 *section may not be commenced more than 3 years after the*
 12 *date of the end of the last voyage for which the wages are*
 13 *claimed.”.*

14 (2) *DEPOSITS.*—*Section 10315 of such title is*
 15 *amended by adding at the end the following:*

16 “*(f) A seaman employed on a passenger vessel may au-*
 17 *thorize, by written request signed by the seaman, the mas-*
 18 *ter, owner, or operator of the vessel, or the employer of the*
 19 *seaman, to make deposits of wages of the seaman into a*
 20 *checking, savings, investment, or retirement account, or*
 21 *other account to secure a payroll or debit card for the sea-*
 22 *man if—*

23 “*(1) the wages designated by the seaman for such*
 24 *deposit are deposited in a United States or inter-*

1 *national financial institution designated by the sea-*
 2 *man;*

3 “(2) *such deposits in the financial institution*
 4 *are fully guaranteed under commonly accepted inter-*
 5 *national standards by the government of the country*
 6 *in which the financial institution is licensed;*

7 “(3) *a written wage statement or pay stub, in-*
 8 *cluding an accounting of any direct deposit, is deliv-*
 9 *ered to the seaman no less often than monthly; and*

10 “(4) *while on board the vessel on which the sea-*
 11 *man is employed, the seaman is able to arrange for*
 12 *withdrawal of all funds on deposit in the account in*
 13 *which the wages are deposited.”.*

14 (b) *COASTWISE VOYAGES.—*

15 (1) *LIMITATION ON PENALTY WAGE CLAIMS.—*

16 *Section 10504 of such title is amended by adding at*
 17 *the end thereof the following:—*

18 “(f) *CLASS ACTIONS.—A class action suit by seamen*
 19 *employed on a passenger vessel for wages under this sub-*
 20 *section may not be commenced more than 3 years after the*
 21 *date of the end of the last voyage for which the wages are*
 22 *claimed.”.*

23 (2) *DEPOSITS.—Section 10504 of such title is*
 24 *further amended by adding at the end the following:*

1 “(g) *DEPOSITS.*—A seaman employed on a passenger
2 vessel may authorize, by written request signed by the sea-
3 man, the master, owner, or operator of the vessel, or the
4 employer of the seaman, to make deposits of wages of the
5 seaman into a checking, savings, investment, or retirement
6 account, or other account to secure a payroll or debit card
7 for the seaman if—

8 “(1) the wages designated by the seaman for such
9 deposit are deposited in a United States or inter-
10 national financial institution designated by the sea-
11 man;

12 “(2) such deposits in the financial institution
13 are fully guaranteed under commonly accepted inter-
14 national standards by the government of the country
15 in which the financial institution is licensed;

16 “(3) a written wage statement or pay stub, in-
17 cluding an accounting of any direct deposit, is deliv-
18 ered to the seaman no less often than monthly; and

19 “(4) while on board the vessel on which the sea-
20 man is employed, the seaman is able to arrange for
21 withdrawal of all funds on deposit in the account in
22 which the wages are deposited.”.

1 **TITLE V—ACQUISITION REFORM**

2 **SEC. 501. CHIEF ACQUISITION OFFICER.**

3 (a) *IN GENERAL.*—Chapter 3 of title 14, United States
4 Code, is amended by adding at the end the following:

5 **“§55. Chief Acquisition Officer**

6 “(a) *IN GENERAL.*—There shall be in the Coast Guard
7 a Chief Acquisition Officer selected by the Commandant
8 who shall be a Rear Admiral or civilian from the Senior
9 Executive Service (career reserved). The Chief Acquisition
10 Officer shall serve at the Assistant Commandant level and
11 have acquisition management as that individual’s primary
12 duty.

13 “(b) *QUALIFICATIONS.*—The Chief Acquisition Officer
14 shall be an acquisition professional with a Level III certifi-
15 cation and must have at least 10 years experience in an
16 acquisition position, of which at least 4 years were spent
17 as—

18 “(1) the program executive officer;

19 “(2) the program manager of a Level 1 or Level
20 2 acquisition project or program;

21 “(3) the deputy program manager of a Level 1
22 or Level 2 acquisition; or

23 “(4) a combination of such positions.

1 “(c) *FUNCTIONS OF THE CHIEF ACQUISITION OFFI-*
2 *CER.—The functions of the Chief Acquisition Officer in-*
3 *clude—*

4 “(1) *monitoring the performance of programs*
5 *and projects on the basis of applicable performance*
6 *measurements and advising the Commandant,*
7 *through the chain of command, regarding the appro-*
8 *priate business strategy to achieve the missions of the*
9 *Coast Guard;*

10 “(2) *maximizing the use of full and open com-*
11 *petition at the prime contract and subcontract levels*
12 *in the acquisition of property, capabilities, and serv-*
13 *ices by the Coast Guard by establishing policies, pro-*
14 *cedures, and practices that ensure that the Coast*
15 *Guard receives a sufficient number of competitive*
16 *proposals from responsible sources to fulfill the Gov-*
17 *ernment’s requirements, including performance and*
18 *delivery schedules, at the lowest cost or best value con-*
19 *sidering the nature of the property or service pro-*
20 *cured;*

21 “(3) *making acquisition decisions in concurrence*
22 *with the technical authority, or technical authorities,*
23 *as appropriate, of the Coast Guard, as designated by*
24 *the Commandant, consistent with all other applicable*

1 *laws and decisions establishing procedures within the*
2 *Coast Guard;*

3 *“(4) ensuring the use of detailed performance*
4 *specifications in instances in which performance*
5 *based contracting is used;*

6 *“(5) managing the direction of acquisition policy*
7 *for the Coast Guard, including implementation of the*
8 *unique acquisition policies, regulations, and stand-*
9 *ards of the Coast Guard;*

10 *“(6) developing and maintaining an acquisition*
11 *career management program in the Coast Guard to*
12 *ensure that there is an adequate acquisition work-*
13 *force;*

14 *“(7) assessing the requirements established for*
15 *Coast Guard personnel regarding knowledge and skill*
16 *in acquisition resources and management and the*
17 *adequacy of such requirements for facilitating the*
18 *achievement of the performance goals established for*
19 *acquisition management;*

20 *“(8) developing strategies and specific plans for*
21 *hiring, training, and professional development; and*

22 *“(9) reporting to the Commandant, through the*
23 *chain of command, on the progress made in improv-*
24 *ing acquisition management capability.”.*

1 (b) *CLERICAL AMENDMENT.*—*The table of contents for*
 2 *chapter 3 of title 14, United States Code, is amended by*
 3 *adding at the end the following:*

“55. *Chief Acquisition Officer.*”.

4 (c) *SELECTION DEADLINE.*—*As soon as practicable*
 5 *after the date of enactment of this Act, but no later than*
 6 *October 1, 2011, the Commandant of the Coast Guard shall*
 7 *select a Chief Acquisition Officer under section 55 of title*
 8 *14, United States Code.*

9 **SEC. 502. ACQUISITIONS.**

10 (a) *IN GENERAL.*—*Part I of title 14, United States*
 11 *Code, is amended by inserting after chapter 13 the fol-*
 12 *lowing:*

13 “CHAPTER 15. ACQUISITIONS

 “SUBCHAPTER 1—GENERAL PROVISIONS

“Sec.

“561. *Acquisition directorate*

“562. *Senior acquisition leadership team*

“563. *Improvements in Coast Guard acquisition management*

“564. *Recognition of Coast Guard personnel for excellence in acquisition*

“565. *Prohibition on use of lead systems integrators*

“566. *Required contract terms*

“567. *Department of Defense consultation*

“568. *Undefinitized contractual actions*

 “SUBCHAPTER 2—IMPROVED ACQUISITION PROCESS AND PROCEDURES

“Sec.

“571. *Identification of major system acquisitions*

“572. *Acquisition*

“573. *Preliminary development and demonstration*

“574. *Acquisition, production, deployment, and support*

“575. *Acquisition program baseline breach*

 “SUBCHAPTER 3—DEFINITIONS

“Sec.

“581. *Definitions*

1 “SUBCHAPTER 1—GENERAL PROVISIONS

2 **“§ 561. Acquisition directorate**

3 “(a) *ESTABLISHMENT.*—*The Commandant of the*
4 *Coast Guard shall establish an acquisition directorate to*
5 *provide guidance and oversight for the implementation and*
6 *management of all Coast Guard acquisition processes, pro-*
7 *grams, and projects.*

8 “(b) *MISSION.*—*The mission of the acquisition direc-*
9 *torate is—*

10 “(1) *to acquire and deliver assets and systems*
11 *that increase operational readiness, enhance mission*
12 *performance, and create a safe working environment;*
13 *and*

14 “(2) *to assist in the development of a workforce*
15 *that is trained and qualified to further the Coast*
16 *Guard’s missions and deliver the best value products*
17 *and services to the Nation.*

18 **“§ 562. Senior acquisition leadership team**

19 “(a) *ESTABLISHMENT.*—*The Commandant shall estab-*
20 *lish a senior acquisition leadership team within the Coast*
21 *Guard comprised of—*

22 “(1) *the Vice Commandant;*

23 “(2) *the Deputy and Assistant Commandants;*

24 “(3) *appropriate senior staff members of each*
25 *Coast Guard directorate;*

1 “(4) appropriate senior staff members for each
2 assigned field activity or command; and

3 “(5) any other Coast Guard officer or employee
4 designated by the Commandant.

5 “(b) FUNCTION.—The senior acquisition leadership
6 team shall—

7 “(1) meet at the call of the Commandant at such
8 places and such times as the Commandant may re-
9 quire;

10 “(2) provide advice and information on oper-
11 ational and performance requirements of the Coast
12 Guard;

13 “(3) identify gaps and vulnerabilities in the
14 operational readiness of the Coast Guard;

15 “(4) make recommendations to the Commandant
16 and the Chief Acquisition Officer to remedy the iden-
17 tified gaps and vulnerabilities in the operational
18 readiness of the Coast Guard; and

19 “(5) contribute to the development of a profes-
20 sional, experienced acquisition workforce by providing
21 acquisition-experience tours of duty and educational
22 development for officers and employees of the Coast
23 Guard.

1 **“§ 563. Improvements in Coast Guard acquisition**
2 **management**

3 “(a) *PROJECT AND PROGRAM MANAGERS.*—

4 “(1) *PROJECT OR PROGRAM MANAGER DE-*
5 *FINED.*—*In this section, the term ‘project or program*
6 *manager’ means an individual designated—*

7 “(A) *to develop, produce, and deploy a new*
8 *asset to meet identified operational requirements;*
9 *and*

10 “(B) *to manage cost, schedule, and perform-*
11 *ance of the acquisition or project or program.*

12 “(2) *LEVEL 1 PROJECTS.*—*An individual may*
13 *not be assigned as the project or program manager for*
14 *a Level 1 acquisition unless the individual holds a*
15 *Level III acquisition certification as a program man-*
16 *ager.*

17 “(3) *LEVEL 2 PROJECTS.*—*An individual may*
18 *not be assigned as the project or program manager for*
19 *a Level 2 acquisition unless the individual holds a*
20 *Level II acquisition certification as a program man-*
21 *ager.*

22 “(b) *GUIDANCE ON TENURE AND ACCOUNTABILITY OF*
23 *PROGRAM AND PROJECT MANAGERS.*—*Not later than one*
24 *year after the date of enactment of the Coast Guard Author-*
25 *ization Act for Fiscal years 2010 and 2011, the Com-*
26 *mandant shall issue guidance to address the qualifications,*

1 *resources, responsibilities, tenure, and accountability of*
2 *program and project managers for the management of ac-*
3 *quisition programs and projects. The guidance shall ad-*
4 *dress, at a minimum—*

5 “(1) *the qualifications required for project or*
6 *program managers, including the number of years of*
7 *acquisition experience and the professional training*
8 *levels to be required of those appointed to project or*
9 *program management positions; and*

10 “(2) *authorities available to project or program*
11 *managers, including, to the extent appropriate, the*
12 *authority to object to the addition of new program re-*
13 *quirements that would be inconsistent with the pa-*
14 *rameters established for an acquisition program.*

15 “(c) *ACQUISITION WORKFORCE.—*

16 “(1) *IN GENERAL.—The Commandant shall des-*
17 *ignate a sufficient number of positions to be in the*
18 *Coast Guard’s acquisition workforce to perform acqui-*
19 *sition-related functions at Coast Guard headquarters*
20 *and field activities.*

21 “(2) *REQUIRED POSITIONS.—The Commandant*
22 *shall ensure that members of the acquisition workforce*
23 *have expertise, education, and training in at least 1*
24 *of the following acquisition career fields:*

25 “(A) *Acquisition logistics.*

1 “(B) *Auditing.*

2 “(C) *Business, cost estimating, and finan-*
3 *cial management.*

4 “(D) *Contracting.*

5 “(E) *Facilities engineering.*

6 “(F) *Industrial or contract property man-*
7 *agement.*

8 “(G) *Information technology.*

9 “(H) *Manufacturing, production, and qual-*
10 *ity assurance.*

11 “(I) *Program management.*

12 “(J) *Purchasing.*

13 “(K) *Science and technology.*

14 “(L) *Systems planning, research, develop-*
15 *ment, and engineering.*

16 “(M) *Test and evaluation.*

17 “(3) *ACQUISITION WORKFORCE EXPEDITED HIR-*
18 *ING AUTHORITY.—*

19 “(A) *IN GENERAL.—For purposes of sections*
20 *3304, 5333, and 5753 of title 5, the Com-*
21 *mandant may—*

22 “(i) *designate any category of acquisi-*
23 *tion positions within the Coast Guard as*
24 *shortage category positions; and*

1 “(ii) use the authorities in such sec-
2 tions to recruit and appoint highly quali-
3 fied person directly to positions so des-
4 ignated.

5 “(B) LIMITATION.—The Commandant may
6 not appoint a person to a position of employ-
7 ment under this paragraph after September 30,
8 2012.

9 “(d) MANAGEMENT INFORMATION SYSTEM.—

10 “(1) IN GENERAL.—The Commandant shall es-
11 tablish a management information system capability
12 to improve acquisition workforce management and re-
13 porting.

14 “(2) INFORMATION MAINTAINED.—Information
15 maintained with such capability shall include the fol-
16 lowing standardized information on individuals as-
17 signed to positions in the workforce:

18 “(A) Qualifications, assignment history,
19 and tenure of those individuals assigned to posi-
20 tions in the acquisition workforce or holding ac-
21 quisition-related certifications.

22 “(B) Promotion rates for officers and mem-
23 bers of the Coast Guard in the acquisition work-
24 force.

1 “(e) *CAREER PATHS.*—*To establish acquisition man-*
2 *agement as a core competency of the Coast Guard, the Com-*
3 *mandant shall—*

4 “(1) *ensure that career paths for officers, mem-*
5 *bers, and employees of the Coast Guard who wish to*
6 *pursue careers in acquisition are identified in terms*
7 *of the education, training, experience, and assign-*
8 *ments necessary for career progression of those offi-*
9 *cers, members, and employees to the most senior posi-*
10 *tions in the acquisition workforce; and*

11 “(2) *publish information on such career paths.*

12 “§ 564. ***Recognition of Coast Guard personnel for ex-***
13 ***cellence in acquisition***

14 “(a) *IN GENERAL.*—*Not later than 180 days after the*
15 *date of enactment of the Coast Guard Authorization Act for*
16 *Fiscal Years 2010 and 2011, the Commandant shall com-*
17 *mence implementation of a program to recognize excellent*
18 *performance by individuals and teams comprised of officers,*
19 *members, and employees of the Coast Guard that contrib-*
20 *uted to the long-term success of a Coast Guard acquisition*
21 *project or program.*

22 “(b) *ELEMENTS.*—*The program shall include—*

23 “(1) *specific award categories, criteria, and eli-*
24 *gibility and manners of recognition;*

1 “(2) procedures for the nomination by personnel
2 of the Coast Guard of individuals and teams com-
3 prised of officers, members, and employees of the
4 Coast Guard for recognition under the program; and

5 “(3) procedures for the evaluation of nomina-
6 tions for recognition under the program by one or
7 more panels of individuals from the Government, aca-
8 demia, and the private sector who have such expertise
9 and are appointed in such manner as the Com-
10 mandant shall establish for the purposes of this pro-
11 gram.

12 “(c) *AWARD OF CASH BONUSES.*—As part of the pro-
13 gram required by subsection (a), the Commandant, subject
14 to the availability of appropriations, may award to any
15 civilian employee recognized pursuant to the program a
16 cash bonus to the extent that the performance of such indi-
17 vidual so recognized warrants the award of such bonus.

18 **“§ 565. Prohibition on use of lead systems integrators**

19 “(a) *IN GENERAL.*—

20 “(1) *USE OF LEAD SYSTEMS INTEGRATOR.*—*Ex-*
21 *cept as provided in subsection (b), the Commandant*
22 *may not use a private sector entity as a lead systems*
23 *integrator for an acquisition contract awarded or de-*
24 *livery order or task order issued after the date of en-*

1 *actment of the Coast Guard Authorization Act for*
2 *Fiscal Years 2010 and 2011.*

3 “(2) *FULL AND OPEN COMPETITION.*—*The Com-*
4 *mandant and any lead systems integrator engaged by*
5 *the Coast Guard, pursuant to the exceptions described*
6 *in subsection (b), shall use full and open competition*
7 *for any acquisition contract awarded after the date of*
8 *enactment of that Act, unless otherwise excepted in*
9 *accordance with the Competition in Contracting Act*
10 *of 1984 (41 U.S.C. 251 note), the amendments made*
11 *by that Act, and the Federal Acquisition Regulations.*

12 “(3) *NO EFFECT ON SMALL BUSINESS ACT.*—
13 *Nothing in this subsection shall be construed to super-*
14 *sede or otherwise affect the authorities provided by*
15 *and under the Small Business Act (15 U.S.C. 631 et*
16 *seq.).*

17 “(b) *EXCEPTIONS.*—

18 “(1) *NATIONAL DISTRESS AND RESPONSE SYS-*
19 *TEM MODERNIZATION PROGRAM; NATIONAL SECURITY*
20 *CUTTERS 2 AND 3.*—*Notwithstanding subsection (a),*
21 *the Commandant may use a private sector entity as*
22 *a lead systems integrator for the Coast Guard to com-*
23 *plete the National Distress and Response System*
24 *Modernization Program, the C4ISR projects directly*
25 *related to the Integrated Deepwater Program, and*

1 *National Security Cutters 2 and 3 if the Secretary of*
2 *Homeland Security certifies that—*

3 *“(A) the acquisition is in accordance with*
4 *the Competition in Contracting Act of 1984 (41*
5 *U.S.C. 251 note), the amendments made by that*
6 *Act, and the Federal Acquisition Regulations;*
7 *and*

8 *“(B) the acquisition and the use of a pri-*
9 *vate sector entity as a lead systems integrator for*
10 *the acquisition is in the best interest of the Fed-*
11 *eral Government.*

12 *“(2) TERMINATION DATE FOR EXCEPTIONS.—Ex-*
13 *cept for the modification of delivery or task orders*
14 *pursuant to Parts 4 and 42 of the Federal Acquisi-*
15 *tion Regulations, the Commandant may not use a*
16 *private sector entity as a lead systems integrator after*
17 *the earlier of—*

18 *“(A) September 30, 2012; or*

19 *“(B) the date on which the Commandant*
20 *certifies in writing to the appropriate congress-*
21 *sional committees that the Coast Guard has*
22 *available and can retain sufficient contracting*
23 *personnel and expertise within the Coast Guard,*
24 *through an arrangement with other Federal*
25 *agencies, or through contracts or other arrange-*

1 *ments with private sector entities, to perform the*
2 *functions and responsibilities of the lead system*
3 *integrator in an efficient and cost-effective man-*
4 *ner.*

5 **“§ 566. Required contract terms**

6 “(a) *IN GENERAL.—The Commandant shall ensure*
7 *that a contract awarded or a delivery order or task order*
8 *issued for an acquisition of a capability or an asset with*
9 *an expected service life of 10 years and with a total acquisi-*
10 *tion cost that is equal to or exceeds \$10,000,000 awarded*
11 *or issued by the Coast Guard after the date of enactment*
12 *of the Coast Guard Authorization Act for Fiscal Years 2010*
13 *and 2011—*

14 “(1) *provides that all certifications for an end-*
15 *state capability or asset under such contract, delivery*
16 *order, or task order, respectively, will be conducted by*
17 *the Commandant or an independent third party, and*
18 *that self-certification by a contractor or subcontractor*
19 *is not allowed;*

20 “(2) *requires that the Commandant shall main-*
21 *tain the authority to establish, approve, and main-*
22 *tain technical requirements;*

23 “(3) *requires that any measurement of contractor*
24 *and subcontractor performance be based on the status*
25 *of all work performed, including the extent to which*

1 *the work performed met all performance, cost, and*
2 *schedule requirements;*

3 “(4) *specifies that, for the acquisition or upgrade*
4 *of air, surface, or shore capabilities and assets for*
5 *which compliance with TEMPEST certification is a*
6 *requirement, the standard for determining such com-*
7 *pliance will be the air, surface, or shore standard then*
8 *used by the Department of the Navy for that type of*
9 *capability or asset; and*

10 “(5) *for any contract awarded to acquire an Off-*
11 *shore Patrol Cutter, includes provisions specifying the*
12 *service life, fatigue life, and days underway in gen-*
13 *eral Atlantic and North Pacific Sea conditions, max-*
14 *imum range, and maximum speed the cutter will be*
15 *built to achieve.*

16 “(b) *PROHIBITED CONTRACT PROVISIONS.—The Com-*
17 *mandant shall ensure that any contract awarded or deliv-*
18 *ery order or task order issued by the Coast Guard after the*
19 *date of enactment of the Coast Guard Authorization Act for*
20 *Fiscal Years 2010 and 2011 does not include any provision*
21 *allowing for equitable adjustment that is not consistent with*
22 *the Federal Acquisition Regulations.*

23 “(c) *INTEGRATED PRODUCT TEAMS.—Integrated prod-*
24 *uct teams, and all teams that oversee integrated product*

1 *teams, shall be chaired by officers, members, or employees*
2 *of the Coast Guard.*

3 “(d) *DEEPWATER TECHNICAL AUTHORITIES.*—The
4 *Commandant shall maintain or designate the technical au-*
5 *thorities to establish, approve, and maintain technical re-*
6 *quirements. Any such designation shall be made in writing*
7 *and may not be delegated to the authority of the Chief Ac-*
8 *quisition Officer established by section 55 of this title.*

9 “§ 567. **Department of Defense consultation**

10 “(a) *IN GENERAL.*—The Commandant shall make ar-
11 *rangements as appropriate with the Secretary of Defense*
12 *for support in contracting and management of Coast Guard*
13 *acquisition programs. The Commandant shall also seek op-*
14 *portunities to make use of Department of Defense contracts,*
15 *and contracts of other appropriate agencies, to obtain the*
16 *best possible price for assets acquired for the Coast Guard.*

17 “(b) *INTER-SERVICE TECHNICAL ASSISTANCE.*—The
18 *Commandant shall seek to enter into a memorandum of un-*
19 *derstanding or a memorandum of agreement with the Sec-*
20 *retary of the Navy to obtain the assistance of the Office of*
21 *the Assistant Secretary of the Navy for Research, Develop-*
22 *ment, and Acquisition, including the Navy Systems Com-*
23 *mand, with the oversight of Coast Guard major acquisition*
24 *programs. The memorandum of understanding or memo-*
25 *randum of agreement shall, at a minimum, provide for—*

1 “(1) *the exchange of technical assistance and*
2 *support that the Assistant Commandants for Acquisi-*
3 *tion, Human Resources, Engineering, and Informa-*
4 *tion technology may identify;*

5 “(2) *the use, as appropriate, of Navy technical*
6 *expertise; and*

7 “(3) *the exchange of personnel between the Coast*
8 *Guard and the Office of the Assistant Secretary of the*
9 *Navy for Research, Development, and Acquisition, in-*
10 *cluding Naval Systems Commands, to facilitate the*
11 *development of organic capabilities in the Coast*
12 *Guard.*

13 “(c) *TECHNICAL REQUIREMENT APPROVAL PROCE-*
14 *DURES.—The Chief Acquisition Officer shall adopt, to the*
15 *extent practicable, procedures modeled after those used by*
16 *the Navy Senior Acquisition Official to approve all tech-*
17 *nical requirements.*

18 “§ 568. ***Undefinitized contractual actions***

19 “(a) *IN GENERAL.—The Coast Guard may not enter*
20 *into an undefinitized contractual action unless such action*
21 *is directly approved by the Head of Contracting Activity*
22 *of the Coast Guard.*

23 “(b) *REQUESTS FOR UNDEFINITIZED CONTRACTUAL*
24 *ACTIONS.—Any request to the Head of Contracting Activity*
25 *for approval of an undefinitized contractual action shall*

1 *include a description of the anticipated effect on require-*
 2 *ments of the Coast Guard if a delay is incurred for the*
 3 *purposes of determining contractual terms, specifications,*
 4 *and price before performance is begun under the contractual*
 5 *action.*

6 “(c) *REQUIREMENTS FOR UNDEFINITIZED CONTRAC-*
 7 *TUAL ACTIONS.—*

8 “(1) *DEADLINE FOR AGREEMENT ON TERMS,*
 9 *SPECIFICATIONS, AND PRICE.—A contracting officer of*
 10 *the Coast Guard may not enter into an undefinitized*
 11 *contractual action unless the contractual action pro-*
 12 *vides for agreement upon contractual terms, specifica-*
 13 *tion, and price by the earlier of—*

14 “(A) *the end of the 180-day period begin-*
 15 *ning on the date on which the contractor submits*
 16 *a qualifying proposal to definitize the contrac-*
 17 *tual terms, specifications, and price; or*

18 “(B) *the date on which the amount of funds*
 19 *obligated under the contractual action is equal to*
 20 *more than 50 percent of the negotiated overall*
 21 *ceiling price for the contractual action.*

22 “(2) *LIMITATION ON OBLIGATIONS.—*

23 “(A) *IN GENERAL.—Except as provided in*
 24 *subparagraph (B), the contracting officer for an*
 25 *undefinitized contractual action may not obli-*

1 *gate under such contractual action an amount*
2 *that exceeds 50 percent of the negotiated overall*
3 *ceiling price until the contractual terms, speci-*
4 *fications, and price are definitized for such con-*
5 *tractual action.*

6 “(B) *EXCEPTION.—Notwithstanding sub-*
7 *paragraph (A), if a contractor submits a quali-*
8 *fying proposal to definitize an undefinitized con-*
9 *tractual action before an amount that exceeds 50*
10 *percent of the negotiated overall ceiling price is*
11 *obligated on such action, the contracting officer*
12 *for such action may not obligate with respect to*
13 *such contractual action an amount that exceeds*
14 *75 percent of the negotiated overall ceiling price*
15 *until the contractual terms, specifications, and*
16 *price are definitized for such contractual action.*

17 “(3) *WAIVER.—The Commandant may waive the*
18 *application of this subsection with respect to a con-*
19 *tract if the Commandant determines that the waiver*
20 *is necessary to support—*

21 “(A) *a contingency operation (as that term*
22 *is defined in section 101(a)(13) of title 10);*

23 “(B) *operations to prevent or respond to a*
24 *transportation security incident (as defined in*
25 *section 70101(6) of title 46);*

1 “(C) *an operation in response to an emer-*
2 *gency that poses an unacceptable threat to*
3 *human health or safety or to the marine environ-*
4 *ment; or*

5 “(D) *an operation in response to a natural*
6 *disaster or major disaster or emergency des-*
7 *ignated by the President under the Robert T.*
8 *Stafford Disaster Relief and Emergency Assist-*
9 *ance Act (42 U.S.C. 5121 et seq.).*

10 “(4) *LIMITATION ON APPLICATION.—This sub-*
11 *section does not apply to an undefinitized contractual*
12 *action for the purchase of initial spares.*

13 “(d) *INCLUSION OF NONURGENT REQUIREMENTS.—*
14 *Requirements for spare parts and support equipment that*
15 *are not needed on an urgent basis may not be included in*
16 *an undefinitized contractual action by the Coast Guard for*
17 *spare parts and support equipment that are needed on an*
18 *urgent basis unless the Commandant approves such inclu-*
19 *sion as being—*

20 “(1) *good business practice; and*

21 “(2) *in the best interests of the United States.*

22 “(e) *MODIFICATION OF SCOPE.—The scope of an*
23 *undefinitized contractual action under which performance*
24 *has begun may not be modified unless the Commandant ap-*
25 *proves such modification as being—*

1 “(1) *good business practice; and*

2 “(2) *in the best interests of the United States.*

3 “(f) *ALLOWABLE PROFIT.—The Commandant shall en-*
4 *sure that the profit allowed on an undefinitized contractual*
5 *action for which the final price is negotiated after a sub-*
6 *stantial portion of the performance required is completed*
7 *reflects—*

8 “(1) *the possible reduced cost risk of the con-*
9 *tractor with respect to costs incurred during perform-*
10 *ance of the contract before the final price is nego-*
11 *tiated; and*

12 “(2) *the reduced cost risk of the contractor with*
13 *respect to costs incurred during performance of the re-*
14 *maining portion of the contract.*

15 “(g) *DEFINITIONS.—In this section:*

16 “(1) *UNDEFINITIZED CONTRACTUAL ACTION.—*

17 “(A) *IN GENERAL.—Except as provided in*
18 *subparagraph (B), the term ‘undefinitized con-*
19 *tractual action’ means a new procurement action*
20 *entered into by the Coast Guard for which the*
21 *contractual terms, specifications, or price are not*
22 *agreed upon before performance is begun under*
23 *the action.*

1 “(B) *EXCLUSION.*—*The term ‘undefinitized*
 2 *contractual action’ does not include contractual*
 3 *actions with respect to—*

4 “(i) *foreign military sales;*

5 “(ii) *purchases in an amount not in*
 6 *excess of the amount of the simplified acqui-*
 7 *sition threshold; or*

8 “(iii) *special access programs.*

9 “(2) *QUALIFYING PROPOSAL.*—*The term ‘quali-*
 10 *fying proposal’ means a proposal that contains suffi-*
 11 *cient information to enable complete and meaningful*
 12 *audits of the information contained in the proposal as*
 13 *determined by the contracting officer.*

14 “*SUBCHAPTER 2—IMPROVED ACQUISITION PROCESS AND*
 15 *PROCEDURES*

16 “§ **571. Identification of major system acquisitions**

17 “(a) *IN GENERAL.*—

18 “(1) *SUPPORT MECHANISMS.*—*The Commandant*
 19 *shall develop and implement mechanisms to support*
 20 *the establishment of mature and stable operational re-*
 21 *quirements for acquisitions under this subchapter.*

22 “(2) *MISSION ANALYSIS; AFFORDABILITY ASSESS-*
 23 *MENT.*—*The Commandant may not initiate a Level 1*
 24 *or Level 2 acquisition project or program until the*
 25 *Commandant—*

1 “(A) completes a mission analysis that—
2 “(i) identifies any gaps in capability;
3 and
4 “(ii) develops a clear mission need;
5 and
6 “(B) prepares a preliminary affordability
7 assessment for the project or program.

8 “(b) ELEMENTS.—

9 “(1) REQUIREMENTS.—The mechanisms required
10 by subsection (a) shall ensure the implementation of
11 a formal process for the development of a mission-
12 needs statement, concept-of-operations document, ca-
13 pability development plan, and resource proposal for
14 the initial project or program funding, and shall en-
15 sure the project or program is included in the Coast
16 Guard Capital Investment Plan.

17 “(2) ASSESSMENT OF TRADE-OFFS.—In con-
18 ducting an affordability assessment under subsection
19 (a)(2)(B), the Commandant shall develop and imple-
20 ment mechanisms to ensure that trade-offs among
21 cost, schedule, and performance are considered in the
22 establishment of preliminary operational require-
23 ments for development and production of new assets
24 and capabilities for Level 1 and Level 2 acquisitions
25 projects and programs.

1 “(c) *HUMAN RESOURCE CAPITAL PLANNING.*—The
 2 *Commandant shall develop staffing predictions, define*
 3 *human capital performance initiatives, and identify pre-*
 4 *liminary training needs for any such project or program.*

5 “(d) *DHS ACQUISITION APPROVAL.*—A Level 1 or
 6 *Level 2 acquisition project or program may not be imple-*
 7 *mented unless it is approved by the Department of Home-*
 8 *land Security Acquisition Review Board or the Joint Re-*
 9 *view Board.*

10 **“§ 572. Acquisition**

11 “(a) *IN GENERAL.*—The *Commandant may not estab-*
 12 *lish a Level 1 or Level 2 acquisition project or program*
 13 *approved under section 571(d) until the Commandant—*

14 “(1) *clearly defines the operational requirements*
 15 *for the project or program;*

16 “(2) *establishes the feasibility of alternatives;*

17 “(3) *develops an acquisition project or program*
 18 *baseline;*

19 “(4) *produces a life-cycle cost estimate; and*

20 “(5) *assesses the relative merits of alternatives to*
 21 *determine a preferred solution in accordance with the*
 22 *requirements of this section.*

23 “(b) *ANALYSIS OF ALTERNATIVES.*—

24 “(1) *IN GENERAL.*—The *Commandant shall con-*
 25 *duct an analysis of alternatives for the asset or capa-*

1 *bility to be acquired in an analyze and select phase*
2 *of the acquisition process.*

3 “(2) *REQUIREMENTS.—The analysis of alter-*
4 *natives shall be conducted by a federally funded re-*
5 *search and development center, a qualified entity of*
6 *the Department of Defense, or a similar independent*
7 *third party entity that has appropriate acquisition*
8 *expertise and has no substantial financial interest in*
9 *any part of the acquisition project or program that*
10 *is the subject of the analysis. At a minimum, the*
11 *analysis of alternatives shall include—*

12 “(A) *an assessment of the technical matu-*
13 *urity, and technical and other risks;*

14 “(B) *an examination of capability, inter-*
15 *operability, and other disadvantages;*

16 “(C) *an evaluation of whether different*
17 *combinations or quantities of specific assets or*
18 *capabilities could meet the Coast Guard’s overall*
19 *performance needs;*

20 “(D) *a discussion of key assumptions and*
21 *variables, and sensitivity to change in such as-*
22 *sumptions and variables;*

23 “(E) *when an alternative is an existing*
24 *asset or prototype, an evaluation of relevant safe-*
25 *ty and performance records and costs;*

1 “(F) a calculation of life-cycle costs includ-
2 ing—

3 “(i) an examination of likely research
4 and development costs and the levels of un-
5 certainty associated with such estimated
6 costs;

7 “(ii) an examination of likely produc-
8 tion and deployment costs and levels of un-
9 certainty associated with such estimated
10 costs;

11 “(iii) an examination of likely oper-
12 ating and support costs and the levels of
13 uncertainty associated with such estimated
14 costs;

15 “(iv) if they are likely to be signifi-
16 cant, an examination of likely disposal costs
17 and the levels of uncertainty associated with
18 such estimated costs; and

19 “(v) such additional measures as the
20 Commandant or the Secretary of Homeland
21 Security determines to be necessary for ap-
22 propriate evaluation of the asset; and

23 “(G) the business case for each viable alter-
24 native.

25 “(c) TEST AND EVALUATION MASTER PLAN.—

1 “(1) *IN GENERAL.*—*For any Level 1 or Level 2*
2 *acquisition project or program the Chief Acquisition*
3 *Officer shall approve a test and evaluation master*
4 *plan specific to the acquisition project or program for*
5 *the capability, asset, or subsystems of the capability*
6 *or asset and intended to minimize technical, cost, and*
7 *schedule risk as early as practicable in the develop-*
8 *ment of the project or program.*

9 “(2) *TEST AND EVALUATION STRATEGY.*—*The*
10 *master plan shall—*

11 “(A) *set forth an integrated test and evalua-*
12 *tion strategy that will verify that capability-level*
13 *or asset-level and subsystem-level design and de-*
14 *velopment, including performance and*
15 *supportability, have been sufficiently proven be-*
16 *fore the capability, asset, or subsystem of the ca-*
17 *pability or asset is approved for production; and*

18 “(B) *require that adequate developmental*
19 *tests and evaluations and operational tests and*
20 *evaluations established under subparagraph (A)*
21 *are performed to inform production decisions.*

22 “(3) *OTHER COMPONENTS OF THE MASTER*
23 *PLAN.*—*At a minimum, the master plan shall iden-*
24 *tify—*

1 “(A) the key performance parameters to be
2 resolved through the integrated test and evalua-
3 tion strategy;

4 “(B) critical operational issues to be as-
5 sessed in addition to the key performance pa-
6 rameters;

7 “(C) specific development test and evalua-
8 tion phases and the scope of each phase;

9 “(D) modeling and simulation activities to
10 be performed, if any, and the scope of such ac-
11 tivities;

12 “(E) early operational assessments to be
13 performed, if any, and the scope of such assess-
14 ments;

15 “(F) operational test and evaluation phases;

16 “(G) an estimate of the resources, including
17 funds, that will be required for all test, evalua-
18 tion, assessment, modeling, and simulation ac-
19 tivities; and

20 “(H) the Government entity or independent
21 entity that will perform the test, evaluation, as-
22 sessment, modeling, and simulation activities.

23 “(4) UPDATE.—The Chief Acquisition Officer
24 shall approve an updated master plan whenever there

1 *is a revision to project or program test and evalua-*
2 *tion strategy, scope, or phasing.*

3 *“(5) LIMITATION.—The Coast Guard may not—*

4 *“(A) proceed beyond that phase of the ac-*
5 *quisition process that entails approving the sup-*
6 *porting acquisition of a capability or asset before*
7 *the master plan is approved by the Chief Acqui-*
8 *sition Officer; or*

9 *“(B) award any production contract for a*
10 *capability, asset, or subsystem for which a mas-*
11 *ter plan is required under this subsection before*
12 *the master plan is approved by the Chief Acqui-*
13 *sition Officer.*

14 *“(d) LIFE-CYCLE COST ESTIMATES.—*

15 *“(1) IN GENERAL.—The Commandant shall im-*
16 *plement mechanisms to ensure the development and*
17 *regular updating of life-cycle cost estimates for each*
18 *Level 1 or Level 2 acquisition to ensure that these es-*
19 *timates are considered in decisions to develop or*
20 *produce new or enhanced capabilities and assets.*

21 *“(2) TYPES OF ESTIMATES.—In addition to life-*
22 *cycle cost estimates that may be developed by acquisi-*
23 *tion program offices, the Commandant shall require*
24 *that an independent life-cycle cost estimate be devel-*

1 *oped for each Level 1 or Level 2 acquisition project*
2 *or program.*

3 *“(3) REQUIRED UPDATES.—For each Level 1 or*
4 *Level 2 acquisition project or program the Com-*
5 *mandant shall require that life-cycle cost estimates*
6 *shall be updated before each milestone decision is con-*
7 *cluded and the project or program enters a new ac-*
8 *quisition phase.*

9 *“(e) DHS ACQUISITION APPROVAL.—A project or pro-*
10 *gram may not enter the obtain phase under section 573 un-*
11 *less the Department of Homeland Security Acquisition Re-*
12 *view Board or the Joint Review Board (or other entity to*
13 *which such responsibility is delegated by the Secretary of*
14 *Homeland Security) has approved the analysis of alter-*
15 *natives for the project. The Joint Review Board may also*
16 *approve the low rates initial production quantity for the*
17 *project or program if such an initial production quantity*
18 *is planned by the acquisition project or program and*
19 *deemed appropriate by the Joint Review Board.*

20 **“§ 573. Preliminary development and demonstration**

21 *“(a) IN GENERAL.—The Commandant shall ensure*
22 *that developmental test and evaluation, operational test and*
23 *evaluation, life cycle cost estimates, and the development*
24 *and demonstration requirements are met to confirm that*
25 *the projects or programs meet the requirements described*

1 *in the mission-needs statement and the operational-require-*
2 *ments document and the following development and dem-*
3 *onstration objectives:*

4 “(1) *To demonstrate that the most promising de-*
5 *sign, manufacturing, and production solution is based*
6 *upon a stable, producible, and cost-effective product*
7 *design.*

8 “(2) *To ensure that the product capabilities meet*
9 *contract specifications, acceptable operational per-*
10 *formance requirements, and system security require-*
11 *ments.*

12 “(3) *To ensure that the product design is mature*
13 *enough to commit to full production and deployment.*

14 “(b) *TESTS AND EVALUATIONS.—*

15 “(1) *IN GENERAL.—The Commandant shall en-*
16 *sure that the Coast Guard conducts developmental*
17 *tests and evaluations and operational tests and eval-*
18 *uations of a capability or asset and the subsystems of*
19 *the capability or asset for which a master plan has*
20 *been prepared under section 572(c)(1).*

21 “(2) *USE OF THIRD PARTIES.—The Com-*
22 *mandant shall ensure that the Coast Guard uses inde-*
23 *pendent third parties with expertise in testing and*
24 *evaluating the capabilities or assets and the sub-*
25 *systems of the capabilities or assets being acquired to*

1 *conduct developmental tests and evaluations and*
2 *operational tests and evaluations whenever the Coast*
3 *Guard lacks the capability to conduct the tests and*
4 *evaluations required by a master plan.*

5 “(3) *COMMUNICATION OF SAFETY CONCERNS.—*
6 *The Commandant shall require that safety concerns*
7 *identified during developmental or operational tests*
8 *and evaluations or through independent or Govern-*
9 *ment-conducted design assessments of capabilities or*
10 *assets and subsystems of capabilities or assets to be*
11 *acquired by the Coast Guard shall be communicated*
12 *as soon as practicable, but not later than 30 days*
13 *after the completion of the test or assessment event or*
14 *activity that identified the safety concern, to the pro-*
15 *gram manager for the capability or asset and the sub-*
16 *systems concerned and to the Chief Acquisition Offi-*
17 *cer.*

18 “(4) *ASSET ALREADY IN LOW, INITIAL, OR FULL-*
19 *RATE PRODUCTION.—If operational test and evalua-*
20 *tion on a capability or asset already in low, initial,*
21 *or full-rate production identifies a safety concern*
22 *with the capability or asset or any subsystems of the*
23 *capability or asset not previously identified during*
24 *developmental or operational test and evaluation, the*
25 *Commandant shall—*

1 “(A) notify the program manager and the
2 Chief Acquisition Officer of the safety concern as
3 soon as practicable, but not later than 30 days
4 after the completion of the test and evaluation
5 event or activity that identified the safety con-
6 cern; and

7 “(B) notify the Chief Acquisition Officer
8 and include in such notification—

9 “(i) an explanation of the actions that
10 will be taken to correct or mitigate the safe-
11 ty concern in all capabilities or assets and
12 subsystems of the capabilities or assets yet
13 to be produced, and the date by which those
14 actions will be taken;

15 “(ii) an explanation of the actions that
16 will be taken to correct or mitigate the safe-
17 ty concern in previously produced capabili-
18 ties or assets and subsystems of the capabili-
19 ties or assets, and the date by which those
20 actions will be taken; and

21 “(iii) an assessment of the adequacy of
22 current funding to correct or mitigate the
23 safety concern in capabilities or assets and
24 subsystems of the capabilities or assets and

1 *in previously produced capabilities or assets*
2 *and subsystems.*

3 “(c) *TECHNICAL CERTIFICATION.*—

4 “(1) *IN GENERAL.*—*The Commandant shall en-*
5 *sure that any Level 1 or Level 2 acquisition project*
6 *or program is certified by the technical authority of*
7 *the Coast Guard after review by an independent third*
8 *party with capabilities in the mission area, asset, or*
9 *particular asset component.*

10 “(2) *TEMPEST TESTING.*—*The Commandant*
11 *shall—*

12 “(A) *cause all electronics on all aircraft,*
13 *surface, and shore assets that require TEMPEST*
14 *certification and that are delivered after the date*
15 *of enactment of the Coast Guard Authorization*
16 *Act for Fiscal Years 2010 and 2011 to be tested*
17 *in accordance with master plan standards and*
18 *communications security standards by an inde-*
19 *pendent third party that is authorized by the*
20 *Federal Government to perform such testing; and*

21 “(B) *certify that the assets meet all applica-*
22 *ble TEMPEST requirements.*

23 “(3) *VESSEL CLASSIFICATION.*—*The Com-*
24 *mandant shall cause each cutter, other than the Na-*
25 *tional Security Cutter, acquired by the Coast Guard*

1 *and delivered after the date of enactment of the Coast*
2 *Guard Authorization Act for Fiscal Years 2010 and*
3 *2011 is to be classed by the American Bureau of*
4 *Shipping before final acceptance.*

5 “(d) *ACQUISITION DECISION.—The Commandant may*
6 *not proceed to full scale production, deployment, and sup-*
7 *port of a Level 1 or Level 2 acquisition project or program*
8 *unless the Department of Homeland Security Acquisition*
9 *Review Board has verified that the delivered asset or system*
10 *meets the project or program performance and cost goals.*

11 “§ 574. ***Acquisition, production, deployment, and sup-***
12 ***port***

13 “(a) *IN GENERAL.—The Commandant shall—*

14 “(1) *ensure there is a stable and efficient produc-*
15 *tion and support capability to develop an asset or*
16 *system;*

17 “(2) *conduct follow on testing to confirm and*
18 *monitor performance and correct deficiencies; and*

19 “(3) *conduct acceptance tests and trails upon the*
20 *delivery of each asset or system to ensure the delivered*
21 *asset or system achieves full operational capability.*

22 “(b) *ELEMENTS.—The Commandant shall—*

23 “(1) *execute the productions contracts;*

1 “(2) ensure the delivered products meet oper-
2 ational cost and schedules requirements established in
3 the acquisition program baseline;

4 “(3) validate manpower and training require-
5 ments to meet system needs to operate, maintain, sup-
6 port, and instruct the system; and

7 “(4) prepare a project or program transition
8 plan to enter into programmatic sustainment, oper-
9 ations, and support.

10 **“§ 575. Acquisition program baseline breach**

11 “(a) *IN GENERAL.*—The Commandant shall submit a
12 report to the appropriate congressional committees as soon
13 as possible, but not later than 30 days, after the Chief Ac-
14 quisition Officer of the Coast Guard becomes aware of the
15 breach of an acquisition program baseline for any Level 1
16 or Level 2 acquisition program, by—

17 “(1) a likely cost overrun greater than 15 per-
18 cent of the acquisition program baseline for that indi-
19 vidual capability or asset or a class of capabilities or
20 assets;

21 “(2) a likely delay of more than 180 days in the
22 delivery schedule for any individual capability or
23 asset or class of capabilities or assets; or

24 “(3) an anticipated failure for any individual
25 capability or asset or class of capabilities or assets to

1 *satisfy any key performance threshold or parameter*
2 *under the acquisition program baseline.*

3 “(b) *CONTENT.—The report submitted under sub-*
4 *section (a) shall include—*

5 “(1) *a detailed description of the breach and an*
6 *explanation of its cause;*

7 “(2) *the projected impact to performance, cost,*
8 *and schedule;*

9 “(3) *an updated acquisition program baseline*
10 *and the complete history of changes to the original ac-*
11 *quisition program baseline;*

12 “(4) *the updated acquisition schedule and the*
13 *complete history of changes to the original schedule;*

14 “(5) *a full life-cycle cost analysis for the capa-*
15 *bility or asset or class of capabilities or assets;*

16 “(6) *a remediation plan identifying corrective*
17 *actions and any resulting issues or risks; and*

18 “(7) *a description of how progress in the remedi-*
19 *ation plan will be measured and monitored.*

20 “(c) *SUBSTANTIAL VARIANCES IN COSTS OR SCHED-*
21 *ULE.—If a likely cost overrun is greater than 25 percent*
22 *or a likely delay is greater than 12 months from the costs*
23 *and schedule described in the acquisition program baseline*
24 *for any Level 1 or Level 2 acquisition project or program*
25 *of the Coast Guard, the Commandant shall include in the*

1 *report a written certification, with a supporting expla-*
 2 *nation, that—*

3 “(1) *the capability or asset or capability or asset*
 4 *class to be acquired under the project or program is*
 5 *essential to the accomplishment of Coast Guard mis-*
 6 *sions;*

7 “(2) *there are no alternatives to such capability*
 8 *or asset or capability or asset class which will provide*
 9 *equal or greater capability in both a more cost-effec-*
 10 *tive and timely manner;*

11 “(3) *the new acquisition schedule and estimates*
 12 *for total acquisition cost are reasonable; and*

13 “(4) *the management structure for the acquisi-*
 14 *tion program is adequate to manage and control per-*
 15 *formance, cost, and schedule.*

16 “SUBCHAPTER 3—DEFINITIONS

17 “§ 581. **Definitions**

18 *“In this chapter:*

19 “(1) *APPROPRIATE CONGRESSIONAL COMMIT-*
 20 *TEES.—The term ‘appropriate congressional commit-*
 21 *tees’ means the House of Representatives Committee*
 22 *on Transportation and Infrastructure and the Senate*
 23 *Committee on Commerce, Science, and Transpor-*
 24 *tation.*

1 “(2) *CHIEF ACQUISITION OFFICER.*—*The term*
2 *‘Chief Acquisition Officer’ means the officer appointed*
3 *under section 55 of this title.*

4 “(3) *COMMANDANT.*—*The term ‘Commandant’*
5 *means the Commandant of the Coast Guard.*

6 “(4) *JOINT REVIEW BOARD.*—*The term ‘Joint*
7 *Review Board’ means the Department of Homeland*
8 *Security’s Investment Review Board, Joint Require-*
9 *ments Council, or other entity within the Department*
10 *designated by the Secretary as the Joint Review*
11 *Board for purposes of this chapter.*

12 “(5) *LEVEL 1 ACQUISITION.*—*The term ‘Level 1*
13 *acquisition’ means—*

14 “(A) *an acquisition by the Coast Guard—*

15 “(i) *the estimated life-cycle costs of*
16 *which exceed \$1,000,000,000; or*

17 “(ii) *the estimated total acquisition*
18 *costs of which exceed \$300,000,000; or*

19 “(B) *any acquisition that the Chief Acquisi-*
20 *tion Officer of the Coast Guard determines to*
21 *have a special interest—*

22 “(i) *due to—*

23 “(I) *the experimental or tech-*
24 *nically immature nature of the asset;*

1 “(II) *the technological complexity*
2 *of the asset;*

3 “(III) *the commitment of re-*
4 *sources; or*

5 “(IV) *the nature of the capability*
6 *or set of capabilities to be achieved; or*

7 “(ii) *because such acquisition is a joint*
8 *acquisition.*

9 “(6) *LEVEL 2 ACQUISITION.*—*The term ‘Level 2*
10 *acquisition’ means an acquisition by the Coast*
11 *Guard—*

12 “(A) *the estimated life-cycle costs of which*
13 *are equal to or less than \$1,000,000,000, but*
14 *greater than \$300,000,000; or*

15 “(B) *the estimated total acquisition costs of*
16 *which are equal to or less than \$300,000,000,*
17 *but greater than \$100,000,000.*

18 “(7) *LIFE-CYCLE COST.*—*The term ‘life-cycle*
19 *cost’ means all costs for development, procurement,*
20 *construction, and operations and support for a par-*
21 *ticular capability or asset, without regard to funding*
22 *source or management control.*

23 “(8) *SAFETY CONCERN.*—*The term ‘safety con-*
24 *cern’ means any hazard associated with a capability*
25 *or asset or a subsystem of a capability or asset that*

1 *is likely to cause serious bodily injury or death to a*
2 *typical Coast Guard user in testing, maintaining, re-*
3 *pairing, or operating the capability, asset, or sub-*
4 *system or any hazard associated with the capability,*
5 *asset, or subsystem that is likely to cause major dam-*
6 *age to the capability, asset, or subsystem during the*
7 *course of its normal operation by a typical Coast*
8 *Guard user.”.*

9 (b) *CONFORMING AMENDMENT.—The part analysis for*
10 *part I of title 14, United States Code, is amended by insert-*
11 *ing after the item relating to chapter 13 the following:*

“15. Acquisitions561”.

12 **SEC. 503. REPORT AND GUIDANCE ON EXCESS PASS-**
13 **THROUGH CHARGES.**

14 (a) *COMPTROLLER GENERAL REPORT.—*

15 (1) *IN GENERAL.—Not later than 180 days after*
16 *the date of enactment of this Act, the Comptroller*
17 *General shall issue a report on pass-through charges*
18 *on contracts, subcontracts, delivery orders, and task*
19 *orders that were executed by a lead systems integrator*
20 *under contract to the Coast Guard during the 3 full*
21 *calendar years preceding the date of enactment of this*
22 *Act.*

23 (2) *MATTERS COVERED.—The report under this*
24 *subsection—*

1 (A) shall assess the extent to which the
2 Coast Guard paid excessive pass-through charges
3 to contractors or subcontractors that provided
4 little or no value to the performance of a con-
5 tract or the production of a procured asset; and

6 (B) shall assess the extent to which the
7 Coast Guard has been particularly vulnerable to
8 excessive pass-through charges on any specific
9 category of contracts or by any specific category
10 of contractors.

11 (b) *GUIDANCE REQUIRED.*—

12 (1) *IN GENERAL.*—Not later than 180 days after
13 the date of enactment of this Act, the Commandant
14 shall prescribe guidance to ensure that pass-through
15 charges on contracts, subcontracts, delivery orders,
16 and task orders that are executed with a private enti-
17 ty acting as a lead systems integrator by or on behalf
18 of the Coast Guard are not excessive in relation to the
19 cost of work performed by the relevant contractor or
20 subcontractor. The guidance shall, at a minimum—

21 (A) set forth clear standards for deter-
22 mining when no, or negligible, value has been
23 added to a contract by a contractor or subcon-
24 tractor;

1 (B) set forth procedures for preventing the
2 payment by the Government of excessive pass-
3 through charges; and

4 (C) identify any exceptions determined by
5 the Commandant to be in the best interest of the
6 Government.

7 (2) SCOPE OF GUIDANCE.—The guidance pre-
8 scribed under this subsection—

9 (A) shall not apply to any firm, fixed-price
10 contract or subcontract, delivery order, or task
11 order that is—

12 (i) awarded on the basis of adequate
13 price competition, as determined by the
14 Commandant; or

15 (ii) for the acquisition of a commercial
16 item, as defined in section 4(12) of the Of-
17 fice of Federal Procurement Policy Act (41
18 U.S.C. 403(12)); and

19 (B) may include such additional exceptions
20 as the Commandant determines to be necessary
21 in the interest of the United States.

22 (c) EXCESSIVE PASS-THROUGH CHARGE DEFINED.—
23 In this section the term “excessive pass-through charge”,
24 with respect to a contractor or subcontractor that adds no,
25 or negligible, value to a contract or subcontract, means a

1 *charge to the Government by the contractor or subcontractor*
 2 *that is for overhead or profit on work performed by a lower-*
 3 *tier contractor or subcontractor, other than reasonable*
 4 *charges for the direct costs of managing lower-tier contrac-*
 5 *tors and subcontracts and overhead and profit based on*
 6 *such direct costs.*

7 *(d) APPLICATION OF GUIDANCE.—The guidance pre-*
 8 *scribed under this section shall apply to contracts awarded*
 9 *to a private entity acting as a lead systems integrator by*
 10 *or on behalf of the Coast Guard on or after the date that*
 11 *is 360 days after the date of enactment of this Act.*

12 **TITLE VI—SHIPPING AND** 13 **NAVIGATION**

14 **SEC. 601. TECHNICAL AMENDMENTS TO CHAPTER 313 OF** 15 **TITLE 46, UNITED STATES CODE.**

16 *(a) IN GENERAL.—Chapter 313 of title 46, United*
 17 *States Code, is amended—*

18 *(1) by striking “of Transportation” in sections*
 19 *31302, 31306, 31321, 31330, and 31343 each place it*
 20 *appears;*

21 *(2) by striking “and” after the semicolon in sec-*
 22 *tion 31301(5)(F);*

23 *(3) by striking “office.” in section 31301(6) and*
 24 *inserting “office; and”; and*

1 (4) *by adding at the end of section 31301 the fol-*
2 *lowing:*

3 “(7) ‘Secretary’ means the Secretary of the De-
4 *partment of Homeland Security, unless otherwise*
5 *noted.*”.

6 (b) *SECRETARY AS MORTGAGEE.*—Section 31308 of
7 *such title is amended by striking “When the Secretary of*
8 *Commerce or Transportation is a mortgagee under this*
9 *chapter, the Secretary” and inserting “The Secretary of*
10 *Commerce or Transportation, as a mortgagee under this*
11 *chapter,”.*

12 (c) *SECRETARY OF TRANSPORTATION.*—Section
13 *31329(d) of such title is amended by striking “Secretary.”*
14 *and inserting “Secretary of Transportation.”.*

15 (d) *MORTGAGEE.*—

16 (1) *Section 31330(a)(1) of such title, as amended*
17 *by subsection (a)(1) of this section, is amended—*

18 (A) *by inserting “or” after the semicolon in*
19 *subparagraph (B);*

20 (B) *by striking “Secretary; or” in subpara-*
21 *graph (C) and inserting “Secretary.”; and*

22 (C) *by striking subparagraph (D).*

23 (2) *Section 31330(a)(2) is amended—*

24 (A) *by inserting “or” after the semicolon in*
25 *subparagraph (B);*

1 (B) by striking “faith; or” in subparagraph
2 (C) and inserting “faith.”; and
3 (C) by striking subparagraph (D).

4 **SEC. 602. CLARIFICATION OF RULEMAKING AUTHORITY.**

5 (a) *IN GENERAL*.—Chapter 701 of title 46, United
6 States Code, is amended by adding at the end the following:

7 **“§ 70122. Regulations**

8 “Unless otherwise provided, the Secretary may issue
9 regulations necessary to implement this chapter.”.

10 (b) *CLERICAL AMENDMENT*.—The table of contents for
11 chapter 701 of such title is amended by adding at the end
12 the following new item:

“70122. Regulations.”.

13 **SEC. 603. COAST GUARD TO MAINTAIN LORAN-C NAVIGA-**
14 **TION SYSTEM.**

15 (a) *IN GENERAL*.—The Secretary of Transportation
16 shall maintain the LORAN–C navigation system until such
17 time as the Secretary is authorized by statute, explicitly
18 referencing this section, to cease operating the system but
19 expedite modernization projects necessary for transition to
20 eLORAN technology.

21 (b) *AUTHORIZATION OF APPROPRIATIONS*.—There are
22 authorized to be appropriated to the Secretary of Transpor-
23 tation, in addition to funds authorized under section 101
24 of this Act for the Coast Guard for operation of the
25 LORAN–C system and for the transition to eLORAN, for

1 *capital expenses related to the LORAN–C infrastructure*
2 *and to modernize and upgrade the LORAN infrastructure*
3 *to provide eLORAN services, \$37,000,000 for each of fiscal*
4 *years 2010 and 2011. The Secretary of Transportation may*
5 *transfer from the Federal Aviation Administration and*
6 *other agencies of the Department of Transportation such*
7 *funds as may be necessary to reimburse the Coast Guard*
8 *for related expenses.*

9 (c) *REPORT ON TRANSITION TO ELORAN TECH-*
10 *NOLOGY.—No later than 6 months after the date of enact-*
11 *ment of this Act, the Secretary of Transportation, in co-*
12 *operation with the Secretary of the Department in which*
13 *the Coast Guard is operating, shall provide a report to the*
14 *Senate Committee on Commerce, Science, and Transpor-*
15 *tation and the House of Representatives Committee on*
16 *Transportation and Infrastructure a detailed 5-year plan*
17 *for transition to eLORAN technology that includes—*

18 (1) *the timetable, milestones, projects, and future*
19 *funding required to complete the transition from*
20 *LORAN–C to eLORAN technology for provision of*
21 *positioning, navigation, and timing services; and*

22 (2) *the benefits of eLORAN for national trans-*
23 *portation safety, security, and economic growth.*

1 **SEC. 604. ICEBREAKERS.**

2 (a) *ANALYSES.*—Not later than 90 days after the date
3 of enactment of this Act or the date of completion of the
4 ongoing High Latitude Study to assess polar ice-breaking
5 mission requirements, which ever occurs later, the Com-
6 mandant of the Coast Guard shall—

7 (1) *conduct a comparative cost-benefit analysis*
8 *of—*

9 (A) *rebuilding, renovating, or improving*
10 *the existing fleet of polar icebreakers for oper-*
11 *ation by the Coast Guard,*

12 (B) *constructing new polar icebreakers for*
13 *operation by the Coast Guard, and*

14 (C) *any combination of the activities de-*
15 *scribed in subparagraphs (A) and (B), to carry*
16 *out the missions of the Coast Guard; and*

17 (2) *conduct an analysis of the impact on mission*
18 *capacity and the ability of the United States to*
19 *maintain a presence in the polar regions through the*
20 *year 2020 if recapitalization of the polar icebreaker*
21 *fleet, either by constructing new polar icebreakers or*
22 *rebuilding, renovating, or improving the existing fleet*
23 *of polar icebreakers, is not fully funded.*

24 (b) *REPORTS TO CONGRESS.*—

25 (1) *Not later than 90 days after the date of en-*
26 *actment of this Act or the date of completion of the*

1 *ongoing High Latitude Study to assess polar ice-*
2 *breaking mission requirements, which ever occurs*
3 *later, the Commandant of the Coast Guard shall sub-*
4 *mit a report containing the results of the study, to-*
5 *gether with recommendations the Commandant deems*
6 *appropriate under section 93(a)(24) of title 14,*
7 *United States Code, to the Senate Committee on Com-*
8 *merce, Science, and Transportation and the House of*
9 *Representatives Committee on Transportation and*
10 *Infrastructure.*

11 *(2) Not later than 1 year after the date of enact-*
12 *ment of this Act, the Commandant shall submit re-*
13 *ports containing the results of the analyses required*
14 *under paragraphs (1) and (2) of subsection (a), to-*
15 *gether with recommendations the Commandant deems*
16 *appropriate under section 93(a)(24) of title 14,*
17 *United States Code, to the Senate Committee on Com-*
18 *merce, Science, and Transportation and the House of*
19 *Representatives Committee on Transportation and*
20 *Infrastructure.*

21 **SEC. 605. VESSEL SIZE LIMITS.**

22 *(a) LENGTH, TONNAGE, AND HORSEPOWER.—Section*
23 *12113(d)(2) of title 46, United States Code, is amended—*

24 *(1) by inserting “and” after the semicolon at the*
25 *end of subparagraph (A)(i);*

1 (2) by striking “and” at the end of subpara-
2 graph (A)(ii);

3 (3) by striking subparagraph (A)(iii);

4 (4) by striking the period at the end of subpara-
5 graph (B) and inserting “; or”; and

6 (5) by inserting at the end the following:

7 “(C) the vessel is either a rebuilt vessel or
8 a replacement vessel under section 208(g) of the
9 American Fisheries Act (title II of division C of
10 Public Law 105–277; 112 Stat. 2681–627) and
11 is eligible for a fishery endorsement under this
12 section.”.

13 (b) *CONFORMING AMENDMENTS.*—

14 (1) *VESSEL REBUILDING AND REPLACEMENT.*—
15 Section 208(g) of the American Fisheries Act (title II
16 of division C of Public Law 105–277; 112 Stat. 2681–
17 627) is amended to read as follows:

18 “(g) *VESSEL REBUILDING AND REPLACEMENT.*—

19 “(1) *IN GENERAL.*—

20 “(A) *REBUILD OR REPLACE.*—Notwith-
21 standing any limitation to the contrary on re-
22 placing, rebuilding, or lengthening vessels or
23 transferring permits or licenses to a replacement
24 vessel contained in sections 679.2 and 679.4 of
25 title 50, Code of Federal Regulations, as in effect

1 *on the date of enactment of the Coast Guard Au-*
2 *thorization Act for Fiscal Years 2010 and 2011*
3 *and except as provided in paragraph (4), the*
4 *owner of a vessel eligible under subsection (a),*
5 *(b), (c), (d), or (e) (other than paragraph (21)),*
6 *in order to improve vessel safety and operational*
7 *efficiencies (including fuel efficiency), may re-*
8 *build or replace that vessel (including fuel effi-*
9 *ciency) with a vessel documented with a fishery*
10 *endorsement under section 12113 of title 46,*
11 *United States Code.*

12 “(B) *SAME REQUIREMENTS.*—*The rebuilt or*
13 *replacement vessel shall be eligible in the same*
14 *manner and subject to the same restrictions and*
15 *limitations under such subsection as the vessel*
16 *being rebuilt or replaced.*

17 “(C) *TRANSFER OF PERMITS AND LI-*
18 *CENSES.*—*Each fishing permit and license held*
19 *by the owner of a vessel or vessels to be rebuilt*
20 *or replaced under subparagraph (A) shall be*
21 *transferred to the rebuilt or replacement vessel.*

22 “(2) *RECOMMENDATIONS OF NORTH PACIFIC*
23 *COUNCIL.*—*The North Pacific Council may rec-*
24 *ommend for approval by the Secretary such conserva-*
25 *tion and management measures, including size limits*

1 *and measures to control fishing capacity, in accord-*
2 *ance with the Magnuson-Stevens Act as it considers*
3 *necessary to ensure that this subsection does not di-*
4 *minish the effectiveness of fishery management plans*
5 *of the Bering Sea and Aleutian Islands Management*
6 *Area or the Gulf of Alaska.*

7 “(3) *SPECIAL RULE FOR REPLACEMENT OF CER-*
8 *TAIN VESSELS.*—

9 “(A) *IN GENERAL.*—*Notwithstanding the re-*
10 *quirements of subsections (b)(2), (c)(1), and*
11 *(c)(2) of section 12113 of title 46, United States*
12 *Code, a vessel that is eligible under subsection*
13 *(a), (b), (c), (d), or (e) (other than paragraph*
14 *(21)) and that qualifies to be documented with*
15 *a fishery endorsement pursuant to section 203(g)*
16 *or 213(g) may be replaced with a replacement*
17 *vessel under paragraph (1) if the vessel that is*
18 *replaced is validly documented with a fishery en-*
19 *dorsement pursuant to section 203(g) or 213(g)*
20 *before the replacement vessel is documented with*
21 *a fishery endorsement under section 12113 of*
22 *title 46, United States Code.*

23 “(B) *APPLICABILITY.*—*A replacement vessel*
24 *under subparagraph (A) and its owner and*
25 *mortgagee are subject to the same limitations*

1 *under section 203(g) or 213(g) that are applica-*
2 *ble to the vessel that has been replaced and its*
3 *owner and mortgagee.*

4 “(4) *SPECIAL RULES FOR CERTAIN CATCHER*
5 *VESSELS.—*

6 “(A) *IN GENERAL.—A replacement for a*
7 *covered vessel described in subparagraph (B) is*
8 *prohibited from harvesting fish in any fishery*
9 *(except for the Pacific whiting fishery) managed*
10 *under the authority of any regional fishery man-*
11 *agement council (other than the North Pacific*
12 *Council) established under section 302(a) of the*
13 *Magnuson-Stevens Act.*

14 “(B) *COVERED VESSELS.—A covered vessel*
15 *referred to in subparagraph (A) is—*

16 “(i) *a vessel eligible under subsection*
17 *(a), (b), or (c) that is replaced under para-*
18 *graph (1); or*

19 “(ii) *a vessel eligible under subsection*
20 *(a), (b), or (c) that is rebuilt to increase its*
21 *registered length, gross tonnage, or shaft*
22 *horsepower.*

23 “(5) *LIMITATION ON FISHERY ENDORSEMENTS.—*
24 *Any vessel that is replaced under this subsection shall*
25 *thereafter not be eligible for a fishery endorsement*

1 *under section 12113 of title 46, United States Code,*
2 *unless that vessel is also a replacement vessel de-*
3 *scribed in paragraph (1).*

4 “(6) *GULF OF ALASKA LIMITATION.*—*Notwith-*
5 *standing paragraph (1), the Secretary shall prohibit*
6 *from participation in the groundfish fisheries of the*
7 *Gulf of Alaska any vessel that is rebuilt or replaced*
8 *under this subsection and that exceeds the maximum*
9 *length overall specified on the license that authorizes*
10 *fishing for groundfish pursuant to the license limita-*
11 *tion program under part 679 of title 50, Code of Fed-*
12 *eral Regulations, as in effect on the date of enactment*
13 *of the Coast Guard Authorization Act for Fiscal Years*
14 *2010 and 2011.*

15 “(7) *AUTHORITY OF PACIFIC COUNCIL.*—*Nothing*
16 *in this section shall be construed to diminish or other-*
17 *wise affect the authority of the Pacific Council to rec-*
18 *ommend to the Secretary conservation and manage-*
19 *ment measures to protect fisheries under its jurisdic-*
20 *tion (including the Pacific whiting fishery) and par-*
21 *ticipants in such fisheries from adverse impacts*
22 *caused by this Act.”.*

23 (2) *EXEMPTION OF CERTAIN VESSELS.*—*Section*
24 *203(g) of the American Fisheries Act (title II of divi-*

1 *sion C of Public Law 105–277; 112 Stat. 2681–620)*
 2 *is amended—*

3 (A) *by inserting “and” after “(United*
 4 *States official number 651041)”;*

5 (B) *by striking “, NORTHERN TRAV-*
 6 *ELER (United States official number 635986),*
 7 *and NORTHERN VOYAGER (United States of-*
 8 *ficial number 637398) (or a replacement vessel*
 9 *for the NORTHERN VOYAGER that complies*
 10 *with paragraphs (2), (5), and (6) of section*
 11 *208(g) of this Act)”;* and

12 (C) *by striking “, in the case of the*
 13 *NORTHERN” and all that follows through*
 14 *“PHOENIX,”.*

15 (3) *FISHERY COOPERATIVE EXIT PROVISIONS.—*
 16 *Section 210(b) of the American Fisheries Act (title II*
 17 *of division C of Public Law 105–277; 112 Stat. 2681–*
 18 *629) is amended—*

19 (A) *by moving the matter beginning with*
 20 *“the Secretary shall” in paragraph (1) 2 ems to*
 21 *the right; and*

22 (B) *by adding at the end the following:*

23 *“(7) FISHERY COOPERATIVE EXIT PROVISIONS.—*

24 *“(A) FISHING ALLOWANCE DETERMINA-*
 25 *TION.—For purposes of determining the aggre-*

1 gate percentage of directed fishing allowances
2 under paragraph (1), when a catcher vessel is re-
3 moved from the directed pollock fishery, the fish-
4 ery allowance for pollock for the vessel being re-
5 moved—

6 “(i) shall be based on the catch history
7 determination for the vessel made pursuant
8 to section 679.62 of title 50, Code of Federal
9 Regulations, as in effect on the date of en-
10 actment of the Coast Guard Authorization
11 Act of 2008; and

12 “(ii) shall be assigned, for all purposes
13 under this title, in the manner specified by
14 the owner of the vessel being removed to any
15 other catcher vessel or among other catcher
16 vessels participating in the fishery coopera-
17 tive if such vessel or vessels remain in the
18 fishery cooperative for at least one year
19 after the date on which the vessel being re-
20 moved leaves the directed pollock fishery.

21 “(B) *ELIGIBILITY FOR FISHERY ENDORSE-*
22 *MENT.—Except as provided in subparagraph*
23 *(C), a vessel that is removed pursuant to this*
24 *paragraph shall be permanently ineligible for a*
25 *fishery endorsement, and any claim (including*

1 *relating to catch history) associated with such*
2 *vessel that could qualify any owner of such vessel*
3 *for any permit to participate in any fishery*
4 *within the exclusive economic zone of the United*
5 *States shall be extinguished, unless such removed*
6 *vessel is thereafter designated to replace a vessel*
7 *to be removed pursuant to this paragraph.*

8 “(C) *LIMITATIONS ON STATUTORY CON-*
9 *STRUCTION.—Nothing in this paragraph shall be*
10 *construed—*

11 “(i) *to make the vessels AJ (United*
12 *States official number 905625), DONA*
13 *MARTITA (United States official number*
14 *651751), NORDIC EXPLORER (United*
15 *States official number 678234), and*
16 *PROVIDIAN (United States official num-*
17 *ber 1062183) ineligible for a fishery en-*
18 *dorsement or any permit necessary to par-*
19 *ticipate in any fishery under the authority*
20 *of the New England Fishery Management*
21 *Council or the Mid-Atlantic Fishery Man-*
22 *agement Council established, respectively,*
23 *under subparagraphs (A) and (B) of section*
24 *302(a)(1) of the Magnuson-Stevens Act; or*

1 “(ii) to allow the vessels referred to in
2 clause (i) to participate in any fishery
3 under the authority of the Councils referred
4 to in clause (i) in any manner that is not
5 consistent with the fishery management
6 plan for the fishery developed by the Coun-
7 cils under section 303 of the Magnuson-Ste-
8 vens Act.”.

9 **SEC. 606. PHASEOUT OF VESSELS SUPPORTING OIL AND**
10 **GAS DEVELOPMENT.**

11 Section 705 of the Security and Accountability for
12 Every Port Act of 2006 (Public Law 109–347; 120 Stat.
13 1945) is amended to read as follows:

14 **“SEC. 705. PHASEOUT OF VESSELS SUPPORTING OIL AND**
15 **GAS DEVELOPMENT.**

16 “(a) *IN GENERAL.*—Notwithstanding section 12111(d)
17 of title 46, United States Code, a foreign-flag vessel may
18 be chartered by, or on behalf of, a lessee to be employed
19 for the setting, relocation, or recovery of anchors or other
20 mooring equipment of a mobile offshore drilling unit that
21 is located over the Outer Continental Shelf (as defined in
22 section 2(a) of the Outer Continental Shelf Lands Act (43
23 U.S.C. 1331(a)) for operations in support of exploration,
24 or flow-testing and stimulation of wells, for offshore mineral

1 *or energy resources in the Beaufort Sea or the Chukchi Sea*
2 *adjacent to Alaska—*

3 “(1) *until December 31, 2012, if the Secretary of*
4 *Transportation determines, after publishing notice in*
5 *the Federal Register, that insufficient vessels docu-*
6 *mented under section 12111(d) of title 46, United*
7 *States Code, are reasonably available and suitable for*
8 *these support operations and all such reasonably*
9 *available and suitable vessels are employed in support*
10 *of such operations; and*

11 “(2) *for an additional 2-year period beginning*
12 *January 1, 2013, if the Secretary of Transportation*
13 *determines—*

14 “(A) *that, as of December 31, 2012, the les-*
15 *see has entered into a binding agreement to em-*
16 *ploy a suitable vessel or vessels to be documented*
17 *under such section 12111(d) in sufficient num-*
18 *bers and with sufficient suitability to replace*
19 *any foreign-flag vessel or vessels operating under*
20 *this section; and*

21 “(B) *after publishing notice in the Federal*
22 *Register, that insufficient vessels documented*
23 *under such section 12111(d) are reasonably*
24 *available and suitable for these support oper-*
25 *ations and all such reasonably available and*

1 *suitable vessels are employed in support of such*
 2 *operations.*

3 “(b) *LESSEE DEFINED.*—*In this section, the term ‘les-*
 4 *see’ means the holder of a lease (defined in section 2(c) of*
 5 *the Outer Continental Shelf Lands Act (43 U.S.C. 1331(c)),*
 6 *who has entered into a binding agreement to employ a suit-*
 7 *able vessel documented or to be documented under section*
 8 *12111(d) of title 46, United States Code.*

9 “(c) *RULE OF CONSTRUCTION.*—*Nothing in subsection*
 10 *(a) shall be construed to authorize employment in the coast-*
 11 *wise trade of a vessel that does not meet the requirements*
 12 *set forth in section 12112 of title 46, United States Code.”.*

13 **TITLE VII—VESSEL CONVEYANCE**

14 **SEC. 701. SHORT TITLE.**

15 *This title may be cited as the “Vessel Conveyance Act”.*

16 **SEC. 702. CONVEYANCE OF COAST GUARD VESSELS FOR** 17 **PUBLIC PURPOSES.**

18 “(a) *IN GENERAL.*—*Whenever the transfer of ownership*
 19 *of a Coast Guard vessel to an eligible entity for use for edu-*
 20 *cational, cultural, historical, charitable, recreational, or*
 21 *other public purposes is authorized by law, the Coast Guard*
 22 *shall transfer the vessel to the General Services Administra-*
 23 *tion for conveyance to the eligible entity.*

24 “(b) *CONDITIONS OF CONVEYANCE.*—*The General Serv-*
 25 *ices Administration may not convey a vessel to an eligible*

1 *entity as authorized by law unless the eligible entity*
2 *agrees—*

3 (1) *to provide the documentation needed by the*
4 *General Services Administration to process a request*
5 *for aircraft or vessels under section 102.37.225 of title*
6 *41, Code of Federal Regulations;*

7 (2) *to comply with the special terms, conditions,*
8 *and restrictions imposed on aircraft and vessels under*
9 *section 102–37.460 of such title;*

10 (3) *to make the vessel available to the United*
11 *States Government if it is needed for use by the Com-*
12 *mandant of the Coast Guard in time of war or a na-*
13 *tional emergency; and*

14 (4) *to hold the United States Government harm-*
15 *less for any claims arising from exposure to haz-*
16 *ardous materials, including asbestos and poly-*
17 *chlorinated biphenyls, after conveyance of the vessel,*
18 *except for claims arising from use of the vessel by the*
19 *United States Government under paragraph (3).*

20 (c) *ELIGIBLE ENTITY DEFINED.—In this section, the*
21 *term “eligible entity” means a State or local government,*
22 *nonprofit corporation, educational agency, community de-*
23 *velopment organization, or other entity that agrees to com-*
24 *ply with the conditions established under this section.*

1 **TITLE VIII—OIL POLLUTION**
2 **PREVENTION**

3 **SEC. 801. RULEMAKINGS.**

4 (a) *STATUS REPORT.*—

5 (1) *IN GENERAL.*—Not later than 90 days after
6 the date of enactment of this Act, the Secretary shall
7 provide a report to the Senate Committee on Com-
8 merce, Science, and Transportation and the House of
9 Representatives Committee on Transportation and
10 Infrastructure on the status of all Coast Guard
11 rulemakings required (but for which no final rule has
12 been issued as of the date of enactment of this Act)
13 under section 311 of the Federal Water Pollution Con-
14 trol Act (33 U.S.C. 1321).

15 (2) *INFORMATION REQUIRED.*—The Secretary
16 shall include in the report required in paragraph
17 (1)—

18 (A) a detailed explanation with respect to
19 each such rulemaking as to—

20 (i) what steps have been completed;

21 (ii) what areas remain to be addressed;

22 and

23 (iii) the cause of any delays; and

24 (B) the date by which a final rule may rea-
25 sonably be expected to be issued.

1 (b) *FINAL RULES.*—*The Secretary shall issue a final*
2 *rule in each pending rulemaking described in subsection (a)*
3 *as soon as practicable, but in no event later than 18 months*
4 *after the date of enactment of this Act.*

5 (c) *TOWING VESSELS.*—*No later than 1 year after the*
6 *date of enactment of this Act, the Secretary shall issue a*
7 *notice of proposed rulemaking regarding inspection require-*
8 *ments for towing vessels required under section 3306(j) of*
9 *title 46, United States Code. The Secretary shall issue a*
10 *final rule pursuant to that rulemaking no later than 2*
11 *years after the date of enactment of this Act.*

12 **SEC. 802. OIL SPILL RESPONSE CAPABILITY.**

13 (a) *REDUCTION OF OIL SPILL RISK IN BUZZARDS*
14 *BAY.*—*Section 8502(g) of title 46, United States Code, is*
15 *amended by adding at the end thereof the following:*

16 “(3) *In any area of Buzzards Bay, Massachusetts,*
17 *where a single-hull tank vessel carrying 5,000 or more bar-*
18 *rels of oil or other hazardous material is required to be*
19 *under the direction and control of a pilot licensed under*
20 *section 7101 of this title, the pilot may not be a member*
21 *of the crew of that vessel and shall be a pilot licensed by*
22 *the Commonwealth of Massachusetts who is operating under*
23 *a Federal license.”.*

24 (b) *REPORTING.*—*The Secretary shall transmit an an-*
25 *nual report to the Senate Committee on Commerce, Science,*

1 *and Transportation and the House of Representatives Com-*
2 *mittee on Resources on the extent to which tank vessels in*
3 *Buzzards Bay, Massachusetts, are using routes rec-*
4 *ommended by the Coast Guard.*

5 **SEC. 803. OIL TRANSFERS FROM VESSELS.**

6 (a) *REGULATIONS.*—*Within 1 year after the date of*
7 *enactment of this Act, the Secretary shall promulgate regu-*
8 *lations to reduce the risks of oil spills in operations involv-*
9 *ing the transfer of oil from or to a tank vessel. The regula-*
10 *tions—*

11 (1) *shall focus on operations that have the high-*
12 *est risks of discharge, including operations at night*
13 *and in inclement weather;*

14 (2) *shall consider—*

15 (A) *requirements for the use of equipment,*
16 *such as putting booms in place for transfers,*
17 *safety, and environmental impacts;*

18 (B) *operational procedures such as man-*
19 *ning standards, communications protocols, and*
20 *restrictions on operations in high-risk areas; or*

21 (C) *both such requirements and operational*
22 *procedures; and*

23 (3) *shall take into account the safety of personnel*
24 *and effectiveness of available procedures and equip-*
25 *ment for preventing or mitigating transfer spills.*

1 (b) *APPLICATION WITH STATE LAWS.*—*The regulations*
 2 *promulgated under subsection (a) do not preclude the en-*
 3 *forcement of any State law or regulation the requirements*
 4 *of which are at least as stringent as requirements under*
 5 *the regulations (as determined by the Secretary) that—*

6 (1) *applies in State waters;*

7 (2) *does not conflict with, or interfere with the*
 8 *enforcement of, requirements and operational proce-*
 9 *dures under the regulations; and*

10 (3) *has been enacted or promulgated before the*
 11 *date of enactment of this Act.*

12 **SEC. 804. IMPROVEMENTS TO REDUCE HUMAN ERROR AND**
 13 **NEAR MISS INCIDENTS.**

14 (a) *REPORT.*—*Within 1 year after the date of enact-*
 15 *ment of this Act, the Secretary shall transmit a report to*
 16 *the Senate Committee on Commerce, Science, and Trans-*
 17 *portation and the House Committee on Transportation and*
 18 *Infrastructure that, using available data—*

19 (1) *identifies the types of human errors that,*
 20 *combined, account for over 50 percent of all oils spills*
 21 *involving vessels that have been caused by human*
 22 *error in the past 10 years;*

23 (2) *identifies the most frequent types of near-*
 24 *miss oil spill incidents involving vessels such as colli-*

1 *sions, allisions, groundings, and loss of propulsion in*
2 *the past 10 years;*

3 *(3) describes the extent to which there are gaps*
4 *in the data with respect to the information required*
5 *under paragraphs (1) and (2) and explains the rea-*
6 *son for those gaps; and*

7 *(4) includes recommendations by the Secretary*
8 *to address the identified types of errors and incidents*
9 *to address any such gaps in the data.*

10 *(b) MEASURES.—Based on the findings contained in*
11 *the report required by subsection (a), the Secretary shall*
12 *take appropriate action, both domestically and at the Inter-*
13 *national Maritime Organization, to reduce the risk of oil*
14 *spills caused by human error.*

15 *(c) CONFIDENTIALITY OF VOLUNTARILY SUBMITTED*
16 *INFORMATION.—The identity of a person making a vol-*
17 *untary disclosure under this section, and any information*
18 *obtained from any such voluntary disclosure, shall be treat-*
19 *ed as confidential.*

20 *(d) DISCOVERY OF VOLUNTARILY SUBMITTED INFOR-*
21 *MATION.—*

22 *(1) IN GENERAL.—Except as provided in this*
23 *subsection, a party in a judicial proceeding may not*
24 *use discovery to obtain information or data collected*

1 *or received by the Secretary for use in the report re-*
2 *quired in subsection (a).*

3 (2) *EXCEPTION.—*

4 (A) *Notwithstanding paragraph (1), a court*
5 *may allow discovery by a party in a judicial*
6 *proceeding of information or data described in*
7 *paragraph (1) if, after an in camera review of*
8 *the information or data, the court decides that*
9 *allowing such discovery is necessary to provide*
10 *the party with sufficient information for the*
11 *party to receive a fair trial.*

12 (B) *When a court allows discovery in a ju-*
13 *dicial proceeding as permitted under this para-*
14 *graph, the court shall issue a protective order—*

15 (i) *to limit the use of the information*
16 *or data to the judicial proceeding; and*

17 (ii) *to prohibit dissemination of the in-*
18 *formation or data to any person who does*
19 *not need access to the information or data*
20 *for the proceeding.*

21 (C) *A court may allow information or data*
22 *it has decided is discoverable under this para-*
23 *graph to be admitted into evidence in a judicial*
24 *proceeding only if the court places the informa-*
25 *tion or data under seal to prevent the use of the*

1 *information or data for a purpose other than for*
2 *the proceeding.*

3 (3) *APPLICATION.—Paragraph (1) shall not*
4 *apply to—*

5 (A) *any disclosure made with actual knowl-*
6 *edge that the disclosure was false, inaccurate, or*
7 *misleading; or*

8 (B) *any disclosure made with reckless dis-*
9 *regard as to the truth or falsity of that disclo-*
10 *sure.*

11 **SEC. 805. OLYMPIC COAST NATIONAL MARINE SANCTUARY.**

12 (a) *OLYMPIC COAST NATIONAL MARINE SANCTUARY*
13 *AREA TO BE AVOIDED.—The Secretary of the Department*
14 *in which the Coast Guard is operating and the Under Sec-*
15 *retary of Commerce for Oceans and Atmosphere shall revise*
16 *the area to be avoided off the coast of the State of Wash-*
17 *ington so that restrictions apply to all vessels required to*
18 *prepare a response plan pursuant to section 311(j) of the*
19 *Federal Water Pollution Control Act (33 U.S.C. 1321(j))*
20 *(other than fishing or research vessels while engaged in fish-*
21 *ing or research within the area to be avoided).*

22 (b) *EMERGENCY OIL SPILL DRILL.—*

23 (1) *IN GENERAL.—In cooperation with the Sec-*
24 *retary of the Department in which the Coast Guard*
25 *is operating, the Under Secretary of Commerce for*

1 *Oceans and Atmosphere shall conduct a Safe Seas oil*
2 *spill drill in the Olympic Coast National Marine*
3 *Sanctuary in fiscal year 2010. The Secretary of the*
4 *Department in which the Coast Guard is operating*
5 *and the Under Secretary of Commerce for Oceans and*
6 *Atmosphere jointly shall coordinate with other Fed-*
7 *eral agencies, State, local, and tribal governmental*
8 *entities, and other appropriate entities, in conducting*
9 *this drill.*

10 (2) *OTHER REQUIRED DRILLS.—Nothing in this*
11 *subsection supersedes any Coast Guard requirement*
12 *for conducting emergency oil spill drills in the Olym-*
13 *pic Coast National Marine Sanctuary. The Secretary*
14 *of the Department in which the Coast Guard is oper-*
15 *ating shall consider conducting regular field exercises,*
16 *such as National Preparedness for Response Exercise*
17 *Program in other national marine sanctuaries.*

18 (3) *AUTHORIZATION OF APPROPRIATIONS.—*
19 *There are authorized to be appropriated to the Under*
20 *Secretary of Commerce for Oceans and Atmosphere*
21 *for fiscal year 2010 \$700,000 to carry out this sub-*
22 *section.*

23 **SEC. 806. PREVENTION OF SMALL OIL SPILLS.**

24 (a) *IN GENERAL.—The Under Secretary of Commerce*
25 *for Oceans and Atmosphere, in consultation with the Sec-*

1 *retary of the Department in which the Coast Guard is oper-*
2 *ating and other appropriate agencies, shall establish an oil*
3 *spill prevention and education program for small vessels.*
4 *The program shall provide for assessment, outreach, and*
5 *training and voluntary compliance activities to prevent*
6 *and improve the effective response to oil spills from vessels*
7 *and facilities not required to prepare a vessel response plan*
8 *under the Federal Water Pollution Control Act (33 U.S.C.*
9 *1251 et seq.), including recreational vessels, commercial*
10 *fishing vessels, marinas, and aquaculture facilities. The*
11 *Under Secretary may provide grants to sea grant colleges*
12 *and institutes designated under section 207 of the National*
13 *Sea Grant College Program Act (33 U.S.C. 1126) and to*
14 *State agencies, tribal governments, and other appropriate*
15 *entities to carry out—*

16 (1) *regional assessments to quantify the source,*
17 *incidence and volume of small oil spills, focusing ini-*
18 *tially on regions in the country where, in the past 10*
19 *years, the incidence of such spills is estimated to be*
20 *the highest;*

21 (2) *voluntary, incentive-based clean marina pro-*
22 *grams that encourage marina operators, recreational*
23 *boaters, and small commercial vessel operators to en-*
24 *gage in environmentally sound operating and mainte-*
25 *nance procedures and best management practices to*

1 *prevent or reduce pollution from oil spills and other*
2 *sources;*

3 (3) *cooperative oil spill prevention education*
4 *programs that promote public understanding of the*
5 *impacts of spilled oil and provide useful information*
6 *and techniques to minimize pollution, including*
7 *methods to remove oil and reduce oil contamination*
8 *of bilge water, prevent accidental spills during main-*
9 *tenance and refueling and properly cleanup and dis-*
10 *pose of oil and hazardous substances; and*

11 (4) *support for programs, including outreach*
12 *and education to address derelict vessels and the*
13 *threat of such vessels sinking and discharging oil and*
14 *other hazardous substances, including outreach and*
15 *education to involve efforts to the owners of such ves-*
16 *sels.*

17 (b) *AUTHORIZATION OF APPROPRIATIONS.—There are*
18 *authorized to be appropriated to the Under Secretary of*
19 *Commerce for Oceans and Atmosphere to carry out this sec-*
20 *tion, \$10,000,000 for each of fiscal years 2010 through*
21 *2014.*

22 **SEC. 807. IMPROVED COORDINATION WITH TRIBAL GOV-**
23 **ERNMENTS.**

24 (a) *IN GENERAL.—Within 6 months after the date of*
25 *enactment of this Act, the Secretary of the Department in*

1 *which the Coast Guard is operating shall complete the devel-*
2 *opment of a tribal consultation policy, which recognizes and*
3 *protects to the maximum extent practicable tribal treaty*
4 *rights and trust assets in order to improve the Coast*
5 *Guard's consultation and coordination with the tribal gov-*
6 *ernments of federally recognized Indian tribes with respect*
7 *to oil spill prevention, preparedness, response and natural*
8 *resource damage assessment.*

9 **(b) INCLUSION OF TRIBAL GOVERNMENT.**—*The Sec-*
10 *retary of the Department in which the Coast Guard is oper-*
11 *ating shall ensure that, as soon as practicable after identi-*
12 *fying an oil spill that is likely to have a significant impact*
13 *on natural or cultural resources owned or directly utilized*
14 *by a federally recognized Indian tribe, the Coast Guard*
15 *will—*

16 (1) *ensure that representatives of the tribal gov-*
17 *ernment of the affected tribes are included as part of*
18 *the incident command system established by the Coast*
19 *Guard to respond to the spill;*

20 (2) *share information about the oil spill with the*
21 *tribal government of the affected tribe; and*

22 (3) *to the extent practicable, involve tribal gov-*
23 *ernments in deciding how to respond to such spill.*

24 **(c) COOPERATIVE ARRANGEMENTS.**—*The Coast Guard*
25 *may enter into memoranda of agreement and associated*

1 *protocols with Indian tribal governments in order to estab-*
2 *lish cooperative arrangements for oil pollution prevention,*
3 *preparedness, and response. Such memoranda may be en-*
4 *tered into prior to the development of the tribal consultation*
5 *and coordination policy to provide Indian tribes grant and*
6 *contract assistance. Such memoranda of agreement and as-*
7 *sociated protocols with Indian tribal governments may in-*
8 *clude—*

9 (1) *arrangements for the assistance of the tribal*
10 *government to participate in the development of the*
11 *National Contingency Plan and local Area Contingency*
12 *Plans to the extent they affect tribal lands, cul-*
13 *tural and natural resources;*

14 (2) *arrangements for the assistance of the tribal*
15 *government to develop the capacity to implement the*
16 *National Contingency Plan and local Area Contingency*
17 *Plans to the extent they affect tribal lands, cul-*
18 *tural and natural resources;*

19 (3) *provisions on coordination in the event of a*
20 *spill, including agreements that representatives of the*
21 *tribal government will be included as part of the re-*
22 *gional response team co-chaired by the Coast Guard*
23 *and the Environmental Protection Agency to establish*
24 *policies for responding to oil spills;*

1 (4) arrangements for the Coast Guard to provide
2 training of tribal incident commanders and spill re-
3 sponders for oil spill preparedness and response;

4 (5) demonstration projects to assist tribal gov-
5 ernments in building the capacity to protect tribal
6 treaty rights and trust assets from oil spills; and

7 (6) such additional measures the Coast Guard
8 determines to be necessary for oil pollution preven-
9 tion, preparedness, and response.

10 (d) *FUNDING FOR TRIBAL PARTICIPATION.*—Subject to
11 the availability of appropriations, the Commandant of the
12 Coast Guard shall provide assistance to participating tribal
13 governments in order to facilitate the implementation of co-
14 operative arrangements under subsection (c) and ensure the
15 participation of tribal governments in such arrangements.
16 There are authorized to be appropriated to the Com-
17 mandant \$500,000 for each of fiscal years 2010 through
18 2014 to be used to carry out this section.

19 **SEC. 808. REPORT ON AVAILABILITY OF TECHNOLOGY TO**
20 **DETECT THE LOSS OF OIL.**

21 Within 1 year after the date of enactment of this Act,
22 the Secretary of the Department in which the Coast Guard
23 is operating shall submit a report to the Senate Committee
24 on Commerce, Science, and Transportation and the House
25 of Representatives Committee on Energy and Commerce on

1 *the availability, feasibility, and potential cost of technology*
 2 *to detect the loss of oil carried as cargo or as fuel on tank*
 3 *and non-tank vessels greater than 400 gross tons.*

4 **SEC. 809. USE OF OIL SPILL LIABILITY TRUST FUND.**

5 *(a) IN GENERAL.—Section 1012(a)(5) of the Oil Pollu-*
 6 *tion Act of 1990 (33 U.S.C. 2712(a)(5)) is amended—*

7 *(1) by redesignating subparagraphs (B) and (C)*
 8 *as subparagraphs (C) and (D), respectively; and*

9 *(2) by inserting after subparagraph (A) the fol-*
 10 *lowing:*

11 *“(B) not more than \$15,000,000 in each fis-*
 12 *cal year shall be available to the Under Sec-*
 13 *retary of Commerce for Oceans and Atmosphere*
 14 *for expenses incurred by, and activities related*
 15 *to, response and damage assessment capabilities*
 16 *of the National Oceanic and Atmospheric Ad-*
 17 *ministration;”.*

18 *(b) AUDITS; ANNUAL REPORTS.—Section 1012 of the*
 19 *Oil Pollution Act of 1990 (33 U.S.C. 2712) is amended—*

20 *(1) by striking subsection (g) and inserting the*
 21 *following:*

22 *“(g) AUDITS.—*

23 *“(1) IN GENERAL.—The Comptroller General of*
 24 *the United States shall conduct an audit, including*

1 *a detailed accounting of each disbursement from the*
2 *Fund in excess of \$500,000 that is—*

3 *“(A) disbursed by the National Pollution*
4 *Fund Center; and*

5 *“(B) administered and managed by the re-*
6 *ceiving Federal agencies, including final pay-*
7 *ments made to agencies and contractors and, to*
8 *the extent possible, subcontractors.*

9 *“(2) FREQUENCY.—The audits shall be con-*
10 *ducted—*

11 *“(A) at least once every 3 years after the*
12 *date of enactment of the Coast Guard Authoriza-*
13 *tion Act for Fiscal Years 2010 and 2011 until*
14 *2016; and*

15 *“(B) at least once every 5 years after the*
16 *last audit conducted under subparagraph (A).*

17 *“(3) SUBMISSION OF RESULTS.—The Comp-*
18 *troller shall submit the results of each audit conducted*
19 *under paragraph (1) to—*

20 *“(A) the Senate Committee on Commerce,*
21 *Science, and Transportation;*

22 *“(B) the House of Representatives Com-*
23 *mittee on Transportation and Infrastructure;*
24 *and*

1 “(C) the Secretary or Administrator of each
2 agency referred to in paragraph (1)(B).”; and
3 (2) by adding at the end thereof the following:

4 “(h) *REPORTS.*—

5 “(1) *IN GENERAL.*—Within one year after the
6 date of enactment of the Coast Guard Authorization
7 Act for Fiscal Years 2010 and 2011, and annually
8 thereafter, the President, through the Secretary of the
9 Department in which the Coast Guard is operating,
10 shall—

11 “(A) provide a report on disbursements for
12 the preceding fiscal year from the Fund, regard-
13 less of whether those disbursements were subject
14 to annual appropriations, to—

15 “(i) the Senate Committee on Com-
16 merce, Science, and Transportation; and

17 “(ii) the House of Representatives
18 Committee on Transportation and Infra-
19 structure; and

20 “(B) make the report available to the public
21 on the National Pollution Funds Center Internet
22 website.

23 “(2) *CONTENTS.*—The report shall include—

1 “(A) a list of each disbursement of \$250,000
2 or more from the Fund during the preceding fis-
3 cal year; and

4 “(B) a description of how each such use of
5 the Fund meets the requirements of subsection
6 (a).

7 “(3) AGENCY RECORDKEEPING.—Each Federal
8 agency that receives amounts from the Fund shall
9 maintain records describing the purposes for which
10 such funds were obligated or expended in such detail
11 as the Secretary may require for purposes of the re-
12 port required under paragraph (1).

13 “(i) AUTHORIZATIONS.—There are authorized to be
14 appropriated such sums as may be necessary to carry out
15 subsections (g) and (h).”.

16 **SEC. 810. INTERNATIONAL EFFORTS ON ENFORCEMENT.**

17 *The Secretary, in consultation with the heads of other*
18 *appropriate Federal agencies, shall ensure that the Coast*
19 *Guard pursues stronger enforcement in the International*
20 *Maritime Organization of agreements related to oil dis-*
21 *charges, including joint enforcement operations, training,*
22 *and stronger compliance mechanisms.*

1 **SEC. 811. HIGHER VOLUME PORT AREA REGULATORY DEFINITION CHANGE.**
2

3 (a) *IN GENERAL.*—Within 30 days after the date of
4 enactment of this Act, notwithstanding subchapter 5 of title
5 5, United States Code, the Commandant shall modify the
6 definition of the term “higher volume port area” in section
7 155.1020 of the Coast Guard regulations (33 C.F.R.
8 155.1020) by striking “Port Angeles, WA” in paragraph
9 (13) of that section and inserting “Cape Flattery, WA”
10 without initiating a rulemaking proceeding.

11 (b) *EMERGENCY RESPONSE PLAN REVIEWS.*—Within
12 5 years after the date of enactment of this Act, the Coast
13 Guard shall complete its review of any changes to emer-
14 gency response plans under the Federal Water Pollution
15 Control Act (33 U.S.C. 1251 et seq.) resulting from the
16 modification of the higher volume port area definition re-
17 quired by subsection (a).

18 **SEC. 812. TUG ESCORTS FOR LADEN OIL TANKERS.**

19 (a) *IN GENERAL.*—Within 1 year after the date of en-
20 actment of this Act, the Secretary of State, in consultation
21 with the Commandant, shall enter into negotiations with
22 the Government of Canada to ensure that tugboat escorts
23 are required for all tank ships with a capacity over 40,000
24 deadweight tons in the Strait of Juan de Fuca, Strait of
25 Georgia, and in Haro Strait. The Commandant shall con-
26 sult with the State of Washington and affected tribal gov-

1 *ernments during negotiations with the Government of Can-*
2 *ada.*

3 **(b) DUAL TUG ESCORTS.**—*Within 1 year after the*
4 *date of enactment of this Act, the Secretary of the depart-*
5 *ment in which the Coast Guard is operating shall transmit*
6 *a report to the Senate Committee on Commerce, Science,*
7 *and Transportation and the House of Representatives Com-*
8 *mittee on Transportation and Infrastructure on the costs*
9 *and benefits to require escort, by at least two towing vessels,*
10 *for vessels over 5,000 gross tons transporting oil in bulk*
11 *in Rosario Strait and Puget Sound, Washington (including*
12 *those portions of the Strait of Juan de Fuca east of Port*
13 *Angeles, Haro Strait, and the Strait of Georgia subject to*
14 *United States jurisdiction).*

15 **SEC. 813. EXTENSION OF FINANCIAL RESPONSIBILITY.**

16 *Section 1016(a) of the Oil Pollution Act of 1990 (33*
17 *U.S.C. 2716(a)) is amended—*

18 *(1) by striking “or” after the semicolon in para-*
19 *graph (1);*

20 *(2) by inserting “or” after the semicolon in*
21 *paragraph (2); and*

22 *(3) by inserting after paragraph (2) the fol-*
23 *lowing:*

24 *“(3) any tank vessel over 100 gross tons (except*
25 *a non-self-propelled vessel that does not carry oil as*

1 cargo) using any place subject to the jurisdiction of
 2 the United States;”.

3 **SEC. 814. OIL SPILL LIABILITY TRUST FUND INVESTMENT**
 4 **AMOUNT.**

5 Within 30 days after the date of enactment of this Act,
 6 the Secretary of the Treasury shall increase the amount in-
 7 vested in income producing securities under section 5006(b)
 8 of the Oil Pollution Act of 1990 (33 U.S.C. 2736(b)) by
 9 \$12,851,340.

10 **SEC. 815. LIABILITY FOR USE OF SINGLE-HULL VESSELS.**

11 Section 1001(32)(A) of the Oil Pollution Act of 1990
 12 (33 U.S.C. 2701(32)(A)) is amended by inserting “In the
 13 case of a vessel, the term ‘responsible party’ also includes
 14 the owner of oil being transported in a tank vessel with
 15 a single hull after December 31, 2010 (other than a vessel
 16 described in section 3703a(b)(3) of title 46, United States
 17 Code).” after “vessel.”.

18 **TITLE IX—MISCELLANEOUS**
 19 **PROVISIONS**

20 **SEC. 901. HOMEPORTING OF THE BIGELOW.**

21 (a) *IN GENERAL.*—Within 90 days after the date of
 22 enactment of this Act, the Administrator of the National
 23 Oceanic and Atmospheric Administration shall submit a
 24 progress report to the Senate Committee on Commerce,
 25 Science, and Transportation and the House of Representa-

1 *tives Committee on Natural Resources, on the Administra-*
2 *tion's determination of a homeport for the FSV HENRY*
3 *B BIGELOW.*

4 (b) *FACTORS CONSIDERED.*—*In making its decision,*
5 *the Administration shall give special consideration to—*

6 (1) *the use of existing agency-owned infrastruc-*
7 *ture;*

8 (2) *the proximity of the proposed homeport to*
9 *Federal research facilities and programs that directly*
10 *benefit from the vessel's research, including the Ad-*
11 *ministration's Northeast Fisheries Science Center;*

12 (3) *the proximity of the proposed homeport to*
13 *non-federal fisheries research partners and vessel and*
14 *equipment repair and support infrastructure;*

15 (4) *the prior homeport location of the FSV AL-*
16 *BATROSS, which the FSV HENRY B BIGELOW is*
17 *replacing; and*

18 (5) *the historical and cultural significance of*
19 *having a Federal fisheries research vessel presence in*
20 *Woods Hole for over 100 years.*

21 (c) *FINAL DETERMINATION.*—

22 (1) *ADVANCE NOTICE.*—*Not less than 45 days be-*
23 *fore implementing a final decision with respect to the*
24 *homeport for the FSV HENRY B BIGELOW, the Ad-*
25 *ministrator shall—*

1 (A) notify the Committees of the Adminis-
2 tration's proposed final decision; and

3 (B) provide an explanation to the Commit-
4 tees of the rationale for the homeport selected in
5 the proposed final decision that addresses the fac-
6 tors described in subsection (b).

7 (2) *FINAL DECISION.*—The National Oceanic and
8 Atmospheric Administration shall make a final deci-
9 sion on the homeport for the FSV HENRY B
10 BIGELOW no later than December 31, 2009.

11 **SEC. 902. VESSEL DETERMINATION.**

12 (a) *VESSELS DEEMED TO BE NEW VESSELS.*—The
13 vessel with United States official number 981472 and the
14 vessel with United States official number 988333 shall each
15 be deemed to be a new vessel effective upon the date of deliv-
16 ery after January 1, 2008, from a privately-owned United
17 States shipyard if no encumbrances are on record with the
18 United States Coast Guard at the time of the issuance of
19 the new vessel certificate of documentation for such vessel

20 (b) *SAFETY INSPECTION.*—Each vessel shall be subject
21 to the vessel safety and inspection requirements of title 46,
22 United States Code, applicable to any such vessel as of the
23 day before the date of enactment of this Act.

1 **SEC. 903. CONVEYANCE OF THE PRESQUE ISLE LIGHT STA-**
 2 **TION FRESNEL LENS TO PRESQUE ISLE**
 3 **TOWNSHIP, MICHIGAN.**

4 (a) *CONVEYANCE OF LENS AUTHORIZED.*—

5 (1) *TRANSFER OF POSSESSION.*—*Notwith-*
 6 *standing any other provision of law, the Com-*
 7 *mandant of the Coast Guard may transfer to Presque*
 8 *Isle Township, a township in Presque Isle County in*
 9 *the State of Michigan (in this section referred to as*
 10 *the “Township”), possession of the Historic Fresnel*
 11 *Lens (in this section referred to as the “Lens”) from*
 12 *the Presque Isle Light Station Lighthouse, Michigan*
 13 *(in this section referred to as the “Lighthouse”).*

14 (2) *CONDITION.*—*As a condition of the transfer*
 15 *of possession authorized by paragraph (1), the Town-*
 16 *ship shall, not later than one year after the date of*
 17 *transfer, install the Lens in the Lighthouse for the*
 18 *purpose of operating the Lens and Lighthouse as a*
 19 *Class I private aid to navigation pursuant to section*
 20 *85 of title 14, United States Code, and the applicable*
 21 *regulations under that section.*

22 (3) *CONVEYANCE OF LENS.*—*Upon the certifi-*
 23 *cation of the Commandant that the Township has in-*
 24 *stalled the Lens in the Lighthouse and is able to oper-*
 25 *ate the Lens and Lighthouse as a private aid to navi-*
 26 *gation as required by paragraph (2), the Com-*

1 *mandant shall convey to the Township all right, title,*
2 *and interest of the United States in and to the Lens.*

3 (4) *CESSATION OF UNITED STATES OPERATIONS*
4 *OF AIDS TO NAVIGATION AT LIGHTHOUSE.*—*Upon the*
5 *making of the certification described in paragraph*
6 *(3), all active Federal aids to navigation located at*
7 *the Lighthouse shall cease to be operated and main-*
8 *tained by the United States.*

9 (b) *REVERSION.*—

10 (1) *REVERSION FOR FAILURE OF AID TO NAVIGA-*
11 *TION.*—*If the Township does not comply with the con-*
12 *dition set forth in subsection (a)(2) within the time*
13 *specified in that subsection, the Township shall, ex-*
14 *cept as provided in paragraph (2), return the Lens to*
15 *the Commandant at no cost to the United States and*
16 *under such conditions as the Commandant may re-*
17 *quire.*

18 (2) *EXCEPTION FOR HISTORICAL PRESERVA-*
19 *TION.*—*Notwithstanding the lack of compliance of the*
20 *Township as described in paragraph (1), the Town-*
21 *ship may retain possession of the Lens for installa-*
22 *tion as an artifact in, at, or near the Lighthouse*
23 *upon the approval of the Commandant. The Lens*
24 *shall be retained by the Township under this para-*
25 *graph under such conditions for the preservation and*

1 *conservation of the Lens as the Commandant shall*
2 *specify for purposes of this paragraph. Installation of*
3 *the Lens under this paragraph shall occur, if at all,*
4 *not later than two years after the date of the transfer*
5 *of the Lens to the Township under subsection (a)(1).*

6 (3) *REVERSION FOR FAILURE OF HISTORICAL*
7 *PRESERVATION.—If retention of the Lens by the*
8 *Township is authorized under paragraph (2) and the*
9 *Township does not install the Lens in accordance*
10 *with that paragraph within the time specified in that*
11 *paragraph, the Township shall return the lens to the*
12 *Coast Guard at no cost to the United States and*
13 *under such conditions as the Commandant may re-*
14 *quire.*

15 (c) *CONVEYANCE OF ADDITIONAL PERSONAL PROP-*
16 *ERTY.—*

17 (1) *TRANSFER AND CONVEYANCE OF PERSONAL*
18 *PROPERTY.—Notwithstanding any other provision of*
19 *law, the Commandant may transfer to the Township*
20 *any additional personal property of the United States*
21 *related to the Lens that the Commandant considers*
22 *appropriate for conveyance under this section. If the*
23 *Commandant conveys the Lens to the Township under*
24 *subsection (a)(3), the Commandant may convey to the*

1 *Township any personal property previously trans-*
2 *ferred to the Township under this subsection.*

3 (2) *REVERSION.*—*If the Lens is returned to the*
4 *Coast Guard pursuant to subsection (b), the Township*
5 *shall return to the Coast Guard all personal property*
6 *transferred or conveyed to the Township under this*
7 *subsection except to the extent otherwise approved by*
8 *the Commandant.*

9 (d) *CONVEYANCE WITHOUT CONSIDERATION.*—*The*
10 *conveyance of the Lens and any personal property under*
11 *this section shall be without consideration.*

12 (e) *DELIVERY OF PROPERTY.*—*The Commandant shall*
13 *deliver property conveyed under this section—*

14 (1) *at the place where such property is located*
15 *on the date of the conveyance;*

16 (2) *in condition on the date of conveyance; and*

17 (3) *without cost to the United States.*

18 (f) *MAINTENANCE OF PROPERTY.*—*As a condition of*
19 *the conveyance of any property to the Township under this*
20 *section, the Commandant shall enter into an agreement*
21 *with the Township under which the Township agrees—*

22 (1) *to operate the Lens as a Class I private aid*
23 *to navigation under section 85 of title 14, United*
24 *States Code, and application regulations under that*
25 *section; and*

1 (2) *to hold the United States harmless for any*
2 *claim arising with respect to personal property con-*
3 *veyed under this section.*

4 (g) *LIMITATION ON FUTURE CONVEYANCE.—The in-*
5 *struments providing for the conveyance of property under*
6 *this section shall—*

7 (1) *require that any further conveyance of an in-*
8 *terest in such property may not be made without the*
9 *advance approval of the Commandant; and*

10 (2) *provide that, if the Commandant determines*
11 *that an interest in such property was conveyed with-*
12 *out such approval—*

13 (A) *all right, title, and interest in such*
14 *property shall revert to the United States, and*
15 *the United States shall have the right to imme-*
16 *diate possession of such property; and*

17 (B) *the recipient of such property shall pay*
18 *the United States for costs incurred by the*
19 *United States in recovering such property.*

20 (h) *ADDITIONAL TERMS AND CONDITIONS.—The Com-*
21 *mandant may require such additional terms and conditions*
22 *in connection with the conveyances authorized by this sec-*
23 *tion as the Commandant considers appropriate to protect*
24 *the interests of the United States.*

1 **SEC. 904. LAND CONVEYANCE, COAST GUARD PROPERTY IN**
2 **MARQUETTE COUNTY, MICHIGAN, TO THE**
3 **CITY OF MARQUETTE, MICHIGAN.**

4 (a) *CONVEYANCE AUTHORIZED.*—*The Commandant of*
5 *the Coast Guard may convey, without consideration, to the*
6 *City of Marquette, Michigan (in this section referred to as*
7 *the “City”), all right, title, and interest of the United States*
8 *in and to a parcel of real property, together with any im-*
9 *provements thereon, located in Marquette County, Michi-*
10 *gan, that is under the administrative control of the Coast*
11 *Guard, consists of approximately 5.5 acres, and is com-*
12 *monly identified as Coast Guard Station Marquette and*
13 *Lighthouse Point.*

14 (b) *RETENTION OF CERTAIN EASEMENTS.*—*In con-*
15 *veying the property under subsection (a), the Commandant*
16 *of the Coast Guard may retain such easements over the*
17 *property as the Commandant considers appropriate for ac-*
18 *cess to aids to navigation.*

19 (c) *LIMITATIONS.*—*The property to be conveyed by*
20 *subsection (a) may not be conveyed under that subsection*
21 *until—*

22 (1) *the Coast Guard has relocated Coast Guard*
23 *Station Marquette to a newly constructed station;*

24 (2) *any environmental remediation required*
25 *under Federal law with respect to the property has*
26 *been completed; and*

1 (3) *the Commandant of the Coast Guard deter-*
2 *mines that retention of the property by the United*
3 *States is not required to carry out Coast Guard mis-*
4 *sions or functions.*

5 (d) *CONDITIONS OF TRANSFER.—All conditions placed*
6 *within the deed of title of the property to be conveyed under*
7 *subsection (a) shall be construed as covenants running with*
8 *the land.*

9 (e) *INAPPLICABILITY OF SCREENING OR OTHER RE-*
10 *QUIREMENTS.—The conveyance of property authorized by*
11 *subsection (a) shall be made without regard to the following:*

12 (1) *Section 2696 of title 10, United States Code.*

13 (2) *Chapter 5 of title 40, United States Code.*

14 (3) *Any other provision of law relating to the*
15 *screening, evaluation, or administration of excess or*
16 *surplus Federal property prior to conveyance by the*
17 *Administrator of General Services.*

18 (f) *EXPIRATION OF AUTHORITY.—The authority in*
19 *subsection (a) shall expire on the date that is five years*
20 *after the date of the enactment of this Act.*

21 (g) *DESCRIPTION OF PROPERTY.—The exact acreage*
22 *and legal description of the property to be conveyed under*
23 *subsection (a) shall be determined by a survey satisfactory*
24 *to the Commandant of the Coast Guard. The cost of the*
25 *survey shall be borne by the United States.*

1 (h) *ADDITIONAL TERMS AND CONDITIONS.*—*The Com-*
2 *mandant of the Coast Guard may require such additional*
3 *terms and conditions in connection with the conveyance au-*
4 *thorized by subsection (a) as the Commandant considers ap-*
5 *propriate to protect the interests of the United States.*

6 **SEC. 905. LARGE OFFSHORE SUPPLY VESSELS.**

7 *Within 1 year after the date of enactment of this Act,*
8 *the Commandant of the Coast Guard shall submit a report*
9 *to the Senate Committee on Commerce, Science, and Trans-*
10 *portation and the House of Representatives Committee on*
11 *Transportation and Infrastructure on the design, inspec-*
12 *tion, certification, manning, operation, and credentialing*
13 *requirements of offshore supply vessels greater than 500*
14 *gross tons as measured under section 14502 of title 46,*
15 *United States Code, or an alternate tonnage measured*
16 *under section 14302 of that title as prescribed by the Sec-*
17 *retary under section 14104 of that title. In developing the*
18 *report, the Commandant may request the participation of*
19 *senior representatives of any other Federal department or*
20 *agency, as appropriate, and shall consider all applicable*
21 *provisions of United States law and international conven-*
22 *tions and agreements.*

1 **SEC. 906. CONVEYANCE OF DECOMMISSIONED COAST**
2 **GUARD CUTTERS STORIS, IRIS, AND**
3 **PLANETREE.**

4 (a) *COAST GUARD CUTTER STORIS.*—Upon the de-
5 commissioning of the Coast Guard Cutter *STORIS*, the
6 Commandant of the Coast Guard shall convey, without con-
7 sideration, all right, title, and interest owned by the United
8 States in the Coast Guard Cutter *STORIS* to the *Storis*
9 Museum, a nonprofit entity of Juneau, Alaska, if the head
10 of the *Storis* Museum agrees—

11 (1) *to use the vessel as a historic memorial and*
12 *to make the United States Coast Guard Cutter*
13 *STORIS* *available to the public as a museum and to*
14 *work cooperatively with other museums to provide*
15 *education and memorialize the maritime heritage of*
16 *the United States Coast Guard Cutter STORIS and*
17 *other maritime activities in Alaska, the Pacific*
18 *Northwest, the Arctic Ocean, and adjacent oceans and*
19 *seas;*

20 (2) *not to use the vessel for commercial transpor-*
21 *tation purposes;*

22 (3) *to make the vessel available to the United*
23 *States Government if needed for use by the Com-*
24 *mandant in time of war or a national emergency or*
25 *based on the critical needs of the United States Coast*
26 *Guard;*

1 (4) to hold the Government harmless for any
2 claims arising from exposure to hazardous materials,
3 including asbestos and polychlorinated biphenyls
4 (PCBs), except for claims arising from the use of the
5 United States Coast Guard Cutter *STORIS* by the
6 Government; and

7 (5) to any other conditions the Commandant
8 considers appropriate.

9 (b) *COAST GUARD CUTTERS IRIS AND*
10 *PLANETREE*.—Upon the decommissioning of the Coast
11 *Guard Cutters IRIS and PLANETREE*, the Commandant
12 of the Coast Guard shall convey, without consideration, all
13 right, title, and interest owned by the United States in the
14 *Coast Guard Cutters IRIS and PLANETREE* to *The An-*
15 *chor Program*, a nonprofit entity of Richmond, California,
16 if the head of *The Anchor Program* agrees—

17 (1) to use the vessels as job training sites pri-
18 marily in San Francisco Bay and Puget Sound, lead-
19 ing to employment in the merchant marine and asso-
20 ciated shore-side occupations, including to certified
21 training programs combining classroom instruction
22 and vocational training related to shipboard safety,
23 personal survival, marine firefighting, basic marine
24 engineering, basic seamanship skills, and marine
25 steward skills, that is modeled after the Maritime

1 *Training Program at the Tongue Point Job Corps*
2 *Center in Astoria, Oregon;*

3 (2) *not to use the vessel for commercial transpor-*
4 *tation purposes;*

5 (3) *to make the vessels available to the United*
6 *States Government if needed for use by the Com-*
7 *mandant in time of war or a national emergency or*
8 *based on the critical needs of the United States Coast*
9 *Guard;*

10 (4) *to hold the United States Government harm-*
11 *less for any claims arising from exposure to haz-*
12 *ardous materials, including asbestos and poly-*
13 *chlorinated biphenyls, except for claims arising from*
14 *the use of the United States Coast Guard Cutters*
15 *IRIS or PLANETREE by the United States Govern-*
16 *ment; and*

17 (5) *to any other conditions the Commandant*
18 *considers appropriate.*

19 (c) *OTHER EXCESS EQUIPMENT.*—*The Commandant*
20 *of the Coast Guard may convey to the recipient of a vessel*
21 *under this section any excess equipment or parts from other*
22 *decommissioned Coast Guard vessels for use to enhance the*
23 *vessel's operability and function for purposes of a public*
24 *museum and historical display.*

1 **SEC. 907. ACCESS FOR PERSONAL WATERCRAFT.**

2 (a) *PERSONAL WATERCRAFT.*—

3 (1) *IN GENERAL.*—*Notwithstanding any other*
4 *provision of law, personal watercraft shall have equal*
5 *access to the Atlantic Intracoastal Waterway as all*
6 *other vessels and rafts permitted in the Waterway.*

7 (2) *EFFECTIVE DATE.*—*Paragraph (1) shall take*
8 *effect on the date that is 150 days after the date of*
9 *enactment of this Act and shall remain in effect un-*
10 *less and until the Commandant of the United States*
11 *Coast Guard, after public hearing, concludes that per-*
12 *sonal watercraft have an environmental impact on*
13 *the Atlantic Intracoastal Waterway that is more dis-*
14 *parate than all other vessels and rafts permitted in*
15 *the Waterway.*

16 (b) *ESTABLISHMENT OF PERSONAL WATERCRAFT AT-*
17 *LANTIC INTRACOASTAL WATERWAY WORKING GROUP.*—

18 (1) *IN GENERAL.*—*The Commandant of the*
19 *United States Coast Guard, in consultation with the*
20 *Director of the National Park Service, shall establish*
21 *a 7-person Atlantic Intracoastal Waterway Working*
22 *Group with representatives from the United States*
23 *Coast Guard, National Park Service, State and local*
24 *law enforcement agencies, representatives from the*
25 *fishing, personal watercraft, and other parties with*
26 *an interest in access to the Waterway.*

1 (2) *DUTIES OF WORKING GROUP.*—Not later
2 than 60 days after the date of enactment of this Act,
3 the Working Group shall develop recommendations
4 concerning reasonable requirements for granting per-
5 mits for access to the Waterway. The Commandant of
6 the United States Coast Guard, in consultation with
7 the Director of the National Park Service, shall issue
8 requirements and specific guidelines for personal
9 watercraft access to the Atlantic Intracoastal Water-
10 way within 150 days after the date of enactment of
11 this Act, upon completion of the environmental assess-
12 ment by the Coast Guard.

13 (c) *SAFETY REGULATIONS.*—Nothing in this section
14 shall affect the authority of the United States Coast Guard
15 to enforce safety regulations, or limit the ability of the Na-
16 tional Park Service or the Department of the Interior to
17 ensure that watercraft observe all boating safety and other
18 marine mammal protections.

19 (d) *DEADLINE FOR ENVIRONMENTAL ASSESSMENT.*—
20 The Commandant of the Coast Guard shall complete the en-
21 vironmental assessment under this section within 150 days
22 after the date of enactment of this Act.

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[Report No. 111-95]

A BILL

To reauthorize the Coast Guard for fiscal years
2010 and 2011, and for other purposes.

OCTOBER 30, 2009

Reported with an amendment