

UNITED STATES MARINER AND VESSEL PROTECTION ACT
OF 2009

DECEMBER 19, 2009.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. OBERSTAR, from the Committee on Transportation and
Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 3376]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 3376) to amend title 46, United States Code, to ensure the traditional right of self-defense of United States mariners against acts of piracy, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

H.R. 3376, the “United States Mariner and Vessel Protection Act of 2009”, amends title 46, United States Code, to ensure the traditional right of self-defense of United States mariners against acts of piracy, and for other purposes.

BACKGROUND AND NEED FOR THE LEGISLATION

In July 2009, the International Maritime Bureau Piracy Reporting Centre reported the number of worldwide piracy attacks doubled to 240 attacks in the first six months of 2009 compared to 114 for the same period in 2008.¹ The report also stated that in the majority of the incidents the attackers were heavily armed and vio-

¹ICC International Maritime Bureau, *Piracy Doubles in First Six Months of 2009* (July 15, 2009).

lence against the crewmembers continues to rise. Piracy activity in the Gulf of Aden contributed significantly to this upward trend.²

As of September 2009, there were a total of 306 incidents worldwide, with 114 vessels boarded, 88 fired upon and 34 hijacked. Of the hijackings, approximately 661 crewmembers were taken hostage, 12 were kidnapped, six were killed and eight are missing. Somali pirates account for 32 of the 34 hijacked vessels.³

On April 8, 2009, the U.S.-flagged container ship *MV Maersk Alabama* was attacked and seized by pirates approximately 250 nautical miles southeast of Somalia. The vessel, manned by 20 U.S. crewmembers, was carrying U.S. government food aid to the Kenyan port of Mombasa when it was attacked. The ship's captain was subsequently taken hostage by the pirates. Special Forces sharpshooters stationed on the USS *Bainbridge* killed the captain's captors, securing his release.

On April 14, 2009, the U.S.-flagged vessel, *MV Liberty Sun*, with 20 U.S. crewmembers, was attacked by pirates approximately 285 miles southeast of the Somali capital of Mogadishu as it was on its way to deliver U.S. government food aid to destinations along the east coast of Africa. The vessel had unloaded part of its food aid cargo at Port Sudan and was en route to Mombasa, Kenya, at the time of the attack. Pirates fired on the vessel with rocket propelled grenades and AK-47s. The crewmembers successfully thwarted the attack, and the *Liberty Sun* continued on its voyage to Kenya.

After the attack on the *Liberty Sun*, a pirate named Abdi Garad told a news agency that Somali pirates had intended to destroy the vessel and its crew. He stated that the pirates attacking U.S.-flagged vessels were no longer after ransom but instead were seeking revenge for the deaths of those pirates who had held the *MV Maersk Alabama's* captain.⁴ There has been a growing fear among the U.S. merchant fleet that the use of deadly force by the U.S. military against Somali pirates has the potential to cause any future piracy incidents against U.S.-flagged vessels to be associated with a level of pre-meditated and intentional violence that has not heretofore been typical of Somali pirate attacks. Increased use of force may also lead Somali pirates to increase the level of force they employ in their attacks on merchant vessels.⁵

The majority of the U.S.-flagged vessels that transit through the Gulf of Aden area carry cargo to support Department of Defense operations and supply U.S. aid to Somalia and neighboring countries.

This legislation will ensure that U.S. mariners who respond to these violent acts of piracy are not held liable for the injury or death of a pirate. This includes a mariner who uses force or authorizes the use of force to defend a U.S.-flagged vessel from piracy.

²ICC International Maritime Bureau, *Piracy and Armed Robbery Against Ships Annual Report* (January 1, 2008).

³ICC International Maritime Bureau, *Unprecedented Increase In Somali Pirate Activity* (October 21, 2009).

⁴*French Warship Captures Pirates*, BBC (April, 15, 2009).

⁵See report cited *supra* note 2.

SUMMARY OF THE LEGISLATION

Section 1. Short title

Section 1 specifies that the Act may be cited as the “United States Mariner and Vessel Protection Act of 2009”.

Sec. 2. Use force against piracy

Section 2 amends chapter 81 of title 46 by adding a new section 8107 entitled “Use of force against piracy”. This section provides that an owner, operator, master, mariner, or time charterer who uses or authorizes the use of force to defend a U.S.-flagged vessel against an act of piracy shall not be liable for any injury or death caused by that use of force to any person that participated in the act of piracy.

Sec. 3. Agreements

Section 3 states that the Secretary of the department of which the Coast Guard is operating shall work through the International Maritime Organization to establish agreements with flag- and port-states that will promote a coordinated action to protect against, deter, and rapidly respond to acts of piracy against the vessels of those states and in the waters under their jurisdictions. In addition, the section states that the Secretary shall work to ensure that limitations of liability are established similar to those limitations in 46 U.S.C. § 8107, as amended by this Act.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

In the 111th Congress, on February 4, 2009, the Subcommittee on Coast Guard and Maritime Transportation held a hearing to receive testimony regarding international piracy. The purpose of this hearing was to gather information on the causes and extent of piracy and to understand its effect on international shipping. As of that date, no U.S.-flagged vessels had been attacked or seized by pirates. However, the expansion of international piracy—particularly in the Horn of Africa region—threatened to raise the costs of transporting goods and threatened ships’ crews through that highly traveled region at a time of significant distress in the world economy.

On May 20, 2009, the Subcommittee held a follow-up hearing to receive testimony regarding recent acts of piracy against U.S.-flagged vessels and the lessons to be learned from these attacks.

On July 29, 2009, Representative Frank LoBiondo introduced H.R. 3376. On July 30, 2009, the Committee on Transportation and Infrastructure met in open session to consider H.R. 3376 and ordered the bill reported favorably to the House by voice vote with a quorum present.

RECORD VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with consideration of H.R. 3376,

or ordering the bill reported. A motion to order H.R. 3376 reported favorably to the House was agreed to by voice vote with a quorum present.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and section 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included in the report.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objective of this legislation are to provide U.S.-citizen merchant mariners protection from liability arising from their attempts to protect themselves from pirates.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 3376 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 13, 2009.

Hon. JAMES L. OBERSTAR,
Chairman, Committee on Transportation, and Infrastructure,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3376, the United States Mariner and Vessel Protection Act of 2009.

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

Sincerely,

ROBERT A. SUNSHINE
(for Douglas W. Elmendorf, Director).

Enclosure.

H.R. 3376—United States Mariner and Vessel Protection Act of 2009

H.R. 3376 would provide that owners, operators, or crew who use (or authorize) force to defend a U.S. flag vessel against piracy shall not be liable for any resulting injury or death to anyone participating in that piracy. The bill would direct the U.S. Coast Guard to work with the International Maritime Organization to promote coordinated actions against piracy.

CBO estimates that implementing H.R. 3376 would have no impact on the federal budget. The United States already works with other nations to address piracy and related security issues that affect commercial shipping. Based on information provided by the Coast Guard, we estimate that the workload of federal agencies would not change as a result of this legislation.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Deborah Reis. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH HOUSE RULE XXI

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of congressional earmarks, limited tax benefits, or limited tariff benefits, as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives. H.R. 3376 does not contain any earmarks, limited tax benefits, or limited tariff benefits under clause 9(e), 9(f), or 9(g) of rule XXI.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (P.L. 104-4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 3376 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (P.L. 104–1).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 46, UNITED STATES CODE

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PART F—MANNING OF VESSELS

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CHAPTER 81—GENERAL

Sec.
8101. Complement of inspected vessels.

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8107. *Use of force against piracy.*

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§8107. Use of force against piracy

An owner, operator, time charterer, master, or mariner who uses force, or authorizes the use of force, to defend a vessel of the United States against an act of piracy shall not be liable for any injury or death caused by such force to any person participating in the act of piracy.

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