

# H.R. 4251, THE MARITIME TRANSPORTATION AMENDMENTS OF 2004

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(108-65)

HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
COAST GUARD AND MARTIME TRANSPORTATION  
OF THE  
COMMITTEE ON  
TRANSPORTATION AND  
INFRASTRUCTURE  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED EIGHTH CONGRESS  
SECOND SESSION

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## **H.R. 4251, THE MARITIME TRANSPORTATION AMENDMENTS OF 2004**

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**Thursday, May 6, 2004**

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

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

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

The subcommittee is meeting today to hear testimony on H.R. 3241, the Maritime Transportation Amendments of 2004.

I have an opening statement and to alert everyone, we are going to have some action on the conference report. I am going to be covering for Chairman Young on the floor and Mr Gilchrest has agreed to chair the hearing. After my opening statement, I will beg your leave.

The subcommittee is meeting today to consider H.R. 4251, the Maritime Transportation Amendments of 2004. The bill was introduced by our full committee Chairman, Mr. Young, and is co-sponsored by the full committee Ranking Member, Mr. Oberstar and subcommittee Ranking Member, Mr. Filner and myself.

The bill will amend existing authorizing statutes to improve the Coast Guard's oversight of marine transportation and to increase the Coast Guard's capabilities in enforcing port security regulations issued under the Maritime Transportation Security Act.

The events of September 11, the Coast Guard has been charged with increased responsibilities for securing the safety of America's ports. These port security missions often require the Coast Guard to enforce Federal regulations on land in addition to the Service's traditional missions on U.S. waters. This bill strengthens the enforcement capabilities of the Service to carry out these shoreside missions.

Since the establishment of the Coast Guard, one of the Service's primary duties has been to promote and protect the safety of life and property at sea. H.R. 4251 includes a number of provisions that will enhance the Coast Guard's ability to ensure marine safety. For instance, H.R. 4251 adds towing vessels to the classes of vessels that are required to be regularly inspected. I am pleased to hear that this provision has the support of the industry trade organizations, specifically the American Waterways Organization. This bill will enhance the Coast Guard's ability to carry out its impor-

tant missions and protect the safety and security of America's coasts. I urge the members of the subcommittee to support this bill.

I want to thank Rear Admiral Crowley for appearing before us today to testify and also thank Congressman Gilchrest for agreeing to chair the hearing. Admiral Crowley, thank you very much and thank you, Mr. Gilchrest.

Mr. GILCHREST [ASSUMING CHAIR]. Good morning, Admiral.

Admiral CROWLEY. Good morning, sir.

Mr. GILCHREST. You may begin, sir.

**TESTIMONY OF REAR ADMIRAL JOHN E. CROWLEY, JUDGE  
ADVOCATE GENERAL, UNITED STATES COAST GUARD**

Admiral CROWLEY. Good morning, Mr. Gilchrest.

I am Rear Admiral John Crowley and thank you for giving me and the Coast Guard an opportunity to appear before you today. I certainly want to thank the Chairman and Representative Filner for their support and sponsorship of H.R. 4251, the Maritime Transportation Amendments Act of 2004 that was introduced.

The recent loss of Petty Officer Nathan Bruckenthal from Smithtown, New York in the waters off Iraq reminds us of the dangers that Coast Guard men and women face each day. While we grieve his loss, we are inspired by his commitment and dedication to the Coast Guard and our great Nation.

I would like today to highlight some of H.R. 4251's key provisions that will give the Coast Guard the authorities needed to accomplish our many missions. The Maritime Transportation Security Act of 2002 and other statutes give the Coast Guard responsibility to secure our Nation's waterfront facilities. Coast Guard members regularly patrol our ports, both on land and on water. Our authority in the water is clear but a Coast Guard member does not have clear authority to make an arrest on a shoreside patrol. Typically, he or she must detain a suspect and wait for another Federal law enforcement officer, a court later could void that arrest and suppress evidence. Not only could that compromise a prosecution but the Coast Guard member could face allegations of unlawful arrest and personal liability.

A trained and qualified Coast Guard member who observes a Federal offense while performing their official duties should have authority to take law enforcement action. Section 201 of 4251 would give clear arrest authority at maritime facilities. We ask the subcommittee to review the Administration's proposal which would also give arrest authority during transits to or from those same maritime facilities. This would ensure that Coast Guard members performing their official duties under the law and carrying out our statutory responsibilities have that authority which is needed to respond to Federal crimes.

Since September 11, 2001, Coast Guard Captains of the Port have established over 300 security zones around vessels and maritime facilities. Many State and local authorities provide vital assistance to the Coast Guard. However, some of those officials have questioned their authority to enforce the security zones. Section 201 would remove any doubt about whether State officials may enforce Coast Guard security zones if they are otherwise authorized to enforce Federal law.



H.R. 4251 would also allow us to better carry out our many traditional missions. According to the Army Corps of Engineers, over 5,000 towing vessels operate on U.S. waters. These vessels are currently inspected by the Coast Guard. Section 207 would enhance maritime safety by making towing vessels subject to Coast Guard inspection and by allowing the Secretary to establish a safety management system for towing vessels. A major towing industry association has expressed its support for this provision.

I would also like to briefly address two provisions from last year's Coast Guard authorization bill as you go to conference with the Senate. As you know, the Department strongly objects to the provision that would require submission and approval of all foreign vessel security plans. We believe that acceptance of plans approved under an international shipping facility security code with aggressive Coast Guard verification and enforcement better achieves our national maritime security objectives.

Second, I want to express the Coast Guard and Department support for permanently increasing the Coast Guard's Officer Corps to 7,100. The Coast Guard, with your support, has grown significantly in the past three years with the majority of growth in enlisted and civilian work forces. However, many functions are best performed by commissioned officers and the authorized number of officers has not increased since 1993. A one year waiver does not allow for proper management of the Coast Guard Officer Corps.

Sir, the men and women of the United States Coast Guard face challenges every day as they carry out our homeland security missions and perform our traditional missions as well. My written statement discusses these issues in more depth and I ask that it be included in the record for your consideration.

Thank you again for your efforts to enact a Coast Guard authorization bill and most especially for the opportunity to appear before you today. I will be happy to answer any questions you may have.

Mr. GILCHREST. Thank you very much, Admiral.

I am going to ask a few questions. I wasn't prepared to take this hearing today but I am just going to fire away. You have peaked my curiosity.

The proposed legislation will make some changes in Coast Guard personnel's ability to make arrests and carry firearms. You described it a bit in your testimony and I was unaware of this, but right now on shore Coast Guard personnel cannot carry weapons?

Admiral CROWLEY. Today, our authority is quite clear when we talk about that which is wet and 14 U.S.C. 89 has great authority to carry arms, make arrests with warrants or warrantless arrests, use force and to enforce all U.S. law. At this point in time, other than our inherent right to carry arms as an armed service, we do not have the specified authority that we have on the water on the beach. That is what we wish to address with this year's proposal.

Mr. GILCHREST. This proposal would give you the same authority on land that you have in the water?

Admiral CROWLEY. It would give us authority and the Administration's proposal is with respect to maritime facilities, those that are characterized under various sections of the law which by mission we are required to conduct.

Mr. GILCHREST. What would be maritime facilities, ports and things like that?

Admiral CROWLEY. Certainly ports, container facilities, passenger vessel facilities, lightering facilities, all of the things that we would be inspected, we would be ensuring security plans are in place we are to contribute to the security of the waterfront and the area adjacent to the maritime environment.

Mr. GILCHREST. So if you are on the waterfront or a dock or a facility that receives cruise ships, right now a Coast Guard person does not have the same arrest authority or authority to carry a weapon on that dock that he does in the water?

Admiral CROWLEY. Yes, sir, that is correct. Today, we would pursue someone from the ship onto the dock and have to stop them and wait for a Federal law enforcement officer with the designated authorities to conduct the arrest. If called upon to use force in the pursuit of the individual, the law is not clear as to the protections afforded to that sailor.

Mr. GILCHREST. The law is not clear if he jumped off that ship and got on a dock, if somebody picked him up in a pickup and he drove away and the Coast Guard person was the only one there but he had access to a jeep, he couldn't chase him down and apprehend him? You are saying the law is not clear on that?

Admiral CROWLEY. The law is not clear, and I would like to focus immediately on just the moving into the waterfront facility. I think as we go beyond the waterfront facility, as you portray into the truck and into further inland reaches, then we have moved the gray zone into that area. Last year's proposal would have given us authority throughout the land of the United States' jurisdiction. There were concerns from the committee as I understand that broadened our mission beyond which the Coast Guard was intended to pursue. The discussion that ensues is that the authority then certainly can be constrained by policy so that we don't increase our mission scope but allow protection of the law enforcement officer to exercise their responsibilities as such.

In good conversations with the staff, with the Department of Justice, I think the Administration has a very sound proposal this year that is currently, with the exception of transport between facilities and to and from facilities, that really addresses the core of what we need to be thinking about and that is a very significant presence on the waterfront both on the wet side and on the dry side.

Mr. GILCHREST. So right now you just have it on the wet side?

Admiral CROWLEY. Yes, sir.

Mr. GILCHREST. This makes a distinction between you and what the Army, the Navy or the Marine Corps can do as far as law enforcement capabilities are concerned?

Admiral CROWLEY. As I said there are many distinctions as you are aware between our other armed services. Certainly in defense of the country and if we go back to many of the older statutes that gave us authority in the Espionage Act and other places, we are thinking more as an armed force and we are thinking of national defense and our Title 10 authorities which I would like to think are not in question here.

As we shift to having law enforcement authority, the only armed force that has Federal law enforcement authority by statute and

additionally the other services constrained by posse comitatus, that this addresses our authority that is explicitly laid out within Title 14 and our other mission oriented statutes in 33 and 46.

Mr. GILCHREST. So this expands your arrest authority?

Admiral CROWLEY. Yes, sir, and not our mission authority.

Mr. GILCHREST. Not your mission authority, but your arrest authority?

Admiral CROWLEY. Yes, sir. It makes it more clear.

Mr. GILCHREST. So you can arrest that guy that jumped off the cruise ship on the dock?

Admiral CROWLEY. That is what is not clear today.

Mr. GILCHREST. That is what is not clear right now but that is what gets cleared up in the legislation?

Admiral CROWLEY. Yes, sir.

Mr. GILCHREST. Does the legislation define where you have arrest authority on land?

Admiral CROWLEY. It uses the term waterfront facility which is a term that is used in many of the other sections. Currently we look at the MTSA and Title 46 that talked about facilities, we look at Title 33 and we look at facilities adjacent to the water and other places where we see that term of art used. So that is what we are looking at in terms of the definitional constraints and our proposal would include transit to and from those facilities.

Mr. GILCHREST. Will Coast Guard personnel be able to carry firearms for all marine facilities, regardless of what the port is?

Admiral CROWLEY. All marine facilities, yes, sir.

Mr. GILCHREST. So if there is an oil spill and you are checking out the oil spill, you would be able to carry the firearm.

So right now you are saying it is gray or unclear arrest authority or when to carry a firearm?

Admiral CROWLEY. Yes, sir.

Mr. GILCHREST. For the Coast Guard, and this pretty well clears it up.

Admiral CROWLEY. Some would argue that without the authority, the arrest cannot be made and the use of force would create liability. I would like to say it is gray and it needs to provide the needed support to our people in the field.

Mr. GILCHREST. There was an incident, there were probably many incidents but this is one example. This doesn't specifically address this legislation but there was a boat docked on a little dock on one of the tidal estuaries to the Chesapeake Bay a few years ago where people were suspicious of the activity but not suspicious enough for the local sheriff's department to get a warrant to get on board the boat, so they called the Coast Guard and the Coast Guard came over from Baltimore and boarded the boat. Apparently they had that clear authority. What they found was a large amount of anti-American Government rhetoric including computers and the man on board was not an escaped felon but he did not appear at an arraignment in New York where he was charged with beating up a State judge. As a result of apparent clear authority to board a boat on the wet side, the Coast Guard just uncovered all of that where otherwise it would have been near impossible to determine.

Now under those circumstances, the Coast Guard could drive there I guess from Baltimore. In that particular incident, if the

Coast Guard is on the dock, thinking off the top of my head now, and that boat is tied up to the dock, can the Coast Guard step off the dock on that boat and did the same thing they did when they came in on a boat?

Admiral CROWLEY. Yes, sir. Throughout your question, and I very much appreciate your attention to great examples of Coast Guard sailors paying attention to the detail of our security and our laws in the maritime environment, but you hit upon this both in terms of addressing an environmental issue as well as starting out on the dock and whether you can go on the vessel.

The proposal clearly envisioned that law enforcement officers in the Coast Guard and by law they are petty officers and officers of the organization, by policy we train and particularly equip boarding officers but they carry the authority to conduct all of the mission profiles that the Coast Guard has whether it be environmental, security, counter drug and so on and they would also carry the authority to arrest and to use force if necessary to compel compliance again across all missions and would not be particular to one officer or another or one assignment depending on what they initially started out for, a very necessary flexibility recognized early on the wet side for the Coast Guard to have the full sweep of authorities and increasing recognized as a requirement, as a need on the dry side of the maritime world.

Mr. GILCHREST. This was a cement sailboat.

Admiral CROWLEY. Another interesting topic.

Mr. GILCHREST. The sailboat was cement. I don't know any other way to describe it. I don't know how it floated and he brought it down there from Maine. I think after a little while, I heard that he was on his way to Florida I guess after they fixed all that arraignment problem.

I think this is a good idea and I think it is a good common sense, logical proposal and we will do what we can to get this thing through the maze of the political process as prudently as possible.

Admiral CROWLEY. Thank you, sir.

Mr. GILCHREST. You mentioned something about towing vessels as far as your inspection authority or jurisdiction. I am not sure I understood what you were referring to. I guess I was under the assumption that towing vessels were inspected by the Coast Guard.

Admiral CROWLEY. Today, generally speaking, towing vessels are not. Towing vessels may be regulated, in some cases there may be regulated equipment aboard, but they are not inspected for compliance.

Mr. GILCHREST. When you say towing vessels, are you talking about the vessels being towed or the vessel like a tug boat that tows those barges?

Admiral CROWLEY. The towing vessel.

Mr. GILCHREST. The towing vessel is not inspected by the Coast Guard?

Admiral CROWLEY. With a crew and machinery on board with all the same vestiges of a vessel in any other operation but by conducting the towing mission are not part of the class today that are inspected by the Coast Guard.

Mr. GILCHREST. That is inspected by the State then?

Admiral CROWLEY. No, sir. They are uninspected today. There has been over the last ten years a voluntary program.

Mr. GILCHREST. What is a towing vessel? Can you describe that to me?

Admiral CROWLEY. I think you have referenced the right thing. You are talking about the tug boat, the vessel that is configured for towing barges.

Mr. GILCHREST. Is there a reason tug boats aren't inspected? I guess there's not been that many accidents with tug boats. The tug boats are not inspected?

Mr. GILCHREST. That is right. We have recorded about 150 casualties over the last approximately 10 years, about 4 million gallons of fuel spilled over the same time and there have been several fairly notorious cases of collisions with bridges and causing disruption to local communities as well. So this is something the industry has first addressed in terms of voluntary programs. The Coast Guard has tried to help with voluntary inspections but with the press of other business, has not actively been able to follow that.

Here we would be able to create a management system where we require the appropriate regularity of inspections by the correct expertise to ensure adherence to a set of standards.

Mr. GILCHREST. I just find that incredible. I had no idea. I think that is another good part of this legislation.

There are various pilot associations around the country. Have they weighed in on this particular part of that bill?

Admiral CROWLEY. The Chairman referenced the support of a particular waterways operator group that recognizes probably half or slightly greater than half of the operators and they have expressed their support for this bill.

Mr. GILCHREST. I am curious as to the genesis of this provision. Did it come from the tug boat operators that want to be inspected?

Admiral CROWLEY. I think it has been a partnership of some sort in that the Coast Guard has been attentive to the safety record over a number of years, that we have not had regulation to enforce. The industry has been equally attentive and so we have both been looking at the safety record for different reasons, the Government's interest as well as the business' interest. We are today at a point where we both see a good result in having an inspection regime to require better compliance.

Mr. GILCHREST. I think that is a great idea, maybe long over due. I am glad it is happening.

You also made some comments about inspection of foreign vessels. Apparently there is a system in place now and I am assuming that system is probably or has been ratified in some way by the IMO and there is some recommendation to change that so those foreign vessels which might be inspected in a foreign port meet the IMO or international standards, there is some recommendation that you still make periodic inspections on those foreign vessels here in this country?

Admiral CROWLEY. The issue is who certifies the plan and you are absolutely correct that IMO in the ISBS Code which is an amendment to the Safety of Life at Sea Convention, has established requirements for governing organizations of the flag state to review and approve and certify each flag state's plan, the vessel's

plans. That would include the U.S. Coast Guard approving U.S. documented vessel plans.

There are those that have argued that for vessels calling upon U.S. ports, the U.S. should approve those plans as well. The Coast Guard's position has been and at the very outset pushing through IMO, this regime immediately after 9/11, that what we wanted to do for the best increase of security was to raise the water level of security worldwide. To do that, it is important to have the responsibility throughout the world to do that.

When you ask the question specifically about inspection of those vessels, it is also quite clear that under the law and the Coast Guard intention is to board under our port State control program, particularly after July 1, every foreign vessel that is first called to ensure that they do have a certification from their recognized certifying office as well as their complying with the requirements.

Mr. GILCHREST. You said the U.S. Coast Guard is going to board every vessel?

Admiral CROWLEY. Every foreign vessel first calling upon the United States after July 1.

Mr. GILCHREST. To see if they have been certified?

Admiral CROWLEY. Yes, sir.

Mr. GILCHREST. I guess I am not sure. So what is the disagreement and where is the disagreement as far as—if you see the certification then that means you feel it has been inspected, it has met the plan, so then you don't go through to inspect the ship if it has that certification, but some people want you to also inspect that ship even if they have the certification?

Admiral CROWLEY. There are those that would want us to inspect the plan and approve the plan prior to the vessel calling on our port. Our inspection of the vessel will go beyond looking at the certificate. We will ask a series of questions, about a dozen, that are going to be standard questions. The first signal will be, is our boarding party met as required under the ISBS code by someone. Can they identify a security officer? Do they know where their plan is? Have they exercised it? There will be a number of questions that will elicit whether the vessel not only has a certificate but complies with the plan that they had drafted for themselves.

Mr. GILCHREST. Where does that happen?

Admiral CROWLEY. That happens prior to their entrance to the port and each port will be different in terms of exactly where that will happen and under what mechanism, taking into consideration the various risks.

Mr. GILCHREST. Where does that happen in the Chesapeake Bay? If somebody is coming to the Port of Baltimore, where do you board the vessel to look at that inspection certificate?

Admiral CROWLEY. Today, in the Port State Control Program, those vessels, some would be boarded outside the Chesapeake Bay, some would be boarded in the Inner Harbor, depending on the risk assessment of the particular vessel.

Mr. GILCHREST. Does it matter whether they come up the Bay or through the C&D Canal?

Admiral CROWLEY. That would be part of the risk assessment, absolutely.

Mr. GILCHREST. So we are now talking about, because I haven't read the legislation, do you agree with the language in the legislation dealing with inspection of vessels? Is that mentioned in the legislation before us?

Admiral CROWLEY. This is last year's bill that is still pending.

Mr. GILCHREST. I see. So do you have a feeling about the language that is now being discussed in the conference?

Admiral CROWLEY. We have conflicting provisions. The Senate has a provision and the House does. The Administration disagrees with the House provision which would require approval of foreign vessel plans by the U.S. Coast Guard. The Administration's position is really twofold, one, that doesn't adhere to our international obligations and diminishes the value of having the international regime as well as second of all creating an incredible additional workload upon the Coast Guard to approve those plans. We had an all hands evolution to approve our own vessel plans and are confident that we will be on time for July 1 and the vessels really have a pretty good showing today as to their level of approval through the system.

Mr. GILCHREST. The House side would double your workload?

Admiral CROWLEY. Yes, sir, roughly speaking.

Mr. GILCHREST. We agreed to that? We are going to conference. I will have to mention that to some of my colleagues.

I don't know if I have any other questions for you, Admiral. A fun fact for the day from the Coast Guard Committee staff. In World War I, the U.S. built a series of cement ships—maybe this was one of them—in Kennedyville. Several of them are grounded off Virginia on the Eastern Shore and serve as breakwaters to prevent shoreline erosion. Very good, John.

Admiral CROWLEY. They continue to serve the maritime environment.

Mr. GILCHREST. Yes, that is right. Do you have anything else you want to tell us, Admiral? Any recommendation that would be good for the order that we can take to my colleagues?

Admiral CROWLEY. Sir, I would just like to thank you and the subcommittee again for holding this hearing. The Coast Guard very much appreciates it and Admiral Collins has expressed this personally, that the opportunity to speak about our authorization bill as he was given the opportunity last year, is a great thing and we very much appreciate that opportunity and the time you take to pay attention to us in that regard.

Mr. GILCHREST. Thank you and I will take the message to my colleagues on the conference committee.

Thank you very much, Admiral.

The hearing is adjourned.

[Whereupon, at 10:35 a.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

DEPARTMENT OF HOMELAND SECURITY  
UNITED STATES COAST GUARD  
STATEMENT OF  
REAR ADMIRAL JOHN E. CROWLEY, Jr.<sup>1</sup>  
ON THE  
MARITIME TRANSPORTATION AMENDMENTS OF 2004  
BEFORE THE  
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
U. S. HOUSE OF REPRESENTATIVES  
MAY 6, 2004

**Introduction**

Good morning, Mr. Chairman and distinguished members of the Subcommittee. Thank you for providing this opportunity to talk with you about the Maritime Transportation Amendments of 2004. This is the second consecutive year that the Subcommittee has invited the Coast Guard to appear to discuss our authorizing legislation. We appreciate this opportunity to tell the story of the men and women of the Coast Guard, and to assist the Committee in crafting this critical piece of legislation for the Coast Guard and the American people.

As the members of this Subcommittee are well aware, the Coast Guard is a military, multi-mission, maritime service. We were all reminded of the dangers our men and women face, being part of one of the five armed services of the United States, by the loss last week in Iraq of one of our own, Damage Controlman Third Class Nathan B. Bruckenthal, from Smithtown, New York. While we grieve his loss, we take inspiration from his example of commitment and dedication to the Coast Guard and our Nation.

The Coast Guard is the lead Federal agency for Maritime Homeland Security, a vital and grave responsibility following September 11th. At the same time, we have continued to maintain the high levels of performance long expected of us in our other mission areas such as fisheries enforcement, search and rescue, and marine environmental protection.

As Vice Admiral Barrett, our Vice Commandant, testified before you last week, although the men and women of the Coast Guard are long accustomed to doing more with less, it is our collective duty to properly equip those at the tip of the spear with the tools needed to accomplish their mission. The Coast Guard Authorization Act is an important part of that effort, and provides new and improved tools designed to help the Coast Guard accomplish its many missions.

I would like to highlight some of the key provisions.

**Law Enforcement Authority**

In the aftermath of September 11<sup>th</sup> 2001, the Coast Guard's port security activities have increased significantly. A number of statutes, such as the Ports and Waterways Safety Act and the Espionage Act, give the President or the Secretary, and by delegation, the Coast Guard, broad

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<sup>1</sup> RADM Crowley appears before the Committee on behalf the Commandant to testify on USCG policy and programs relevant to the Administration's proposed Coast Guard Authorization Act of 2004. He does not appear or offer testimony in his capacity as the Judge Advocate General of the Coast Guard.



authority to protect waterfront facilities and other shore installations. This authority includes establishment of safety and security zones and searches and seizures of property while enforcing those zones. Additionally, the Maritime Transportation Security Act directed the Secretary to establish Maritime Safety and Security Teams with shore-side responsibilities. However, there is no express authority for a Coast Guard member to arrest a person who commits a Federal offense on shore. Under current law, a Coast Guard member who detects a violation of Federal law during an authorized shore-side patrol must detain the suspect and wait until another Federal law enforcement agent arrives and makes an arrest, unless that Coast Guard member has been cross designated or deputized by another Federal agency. If a court later found that a detention by a Coast Guard member was for too long a period of time, it could void the arrest and suppress any evidence obtained. Additionally, the Coast Guard member could face allegations of unlawful arrest with potential personal liability.

A similar situation exists for the authority for carrying a firearm. Although authority for a Coast Guard member to carry a firearm in the performance of official duties is inherent within the Coast Guard's status as an armed service, there is no express statutory authority to do so while enforcing domestic laws.

The Administration's proposal, developed in close cooperation with the Department of Justice, addresses both of these shortfalls in current statute by giving Coast Guard members clear authority to arrest for violations of Federal law, and clear authority to carry a firearm in the performance of official duties. The authority would be exercised under guidelines to be jointly developed by the Attorney General and the Secretary of Homeland Security. Last year, we submitted a proposal to give Coast Guard members general Federal arrest authority. After discussions with the Subcommittee staff regarding concerns over mission creep, we revised the provision, limiting it to maritime facilities and transits to and from those facilities. To reinforce the authority's nexus to maritime security, this year's proposal would amend the new Title 46 port security chapter rather than Title 14, general Coast Guard authorities. This authority would allow the Coast Guard to better accomplish its existing missions. It would not create any new missions, nor expand our existing missions, but simply provide a better tool to accomplish them.

The second part of this provision would allow, but not require, State and local law enforcement personnel to make warrantless arrests for felony violations of Coast Guard security zone regulations. In most ports, State and local authorities have overlapping or concurrent jurisdiction over many actions that would constitute a violation of a Coast Guard security zone. Additionally, laws in many States authorize State officers to arrest for violation of Federal law. However, some State officers have questioned their authority to enforce a Coast Guard security zone if a violation is not also a violation of State law. This amendment will provide State and local law enforcement personnel the authority to detain and, if necessary, arrest those suspected of violating a Coast Guard security zone regulation. It will remove the possibility of State or local officers facing the question of "detention tantamount to arrest" in the limited circumstances when the actions violate a Federal order but do not violate State law. Since the Coast Guard's resources are limited, State and local authorities provide vital assistance to the Coast Guard and are force multipliers in enforcing security zones nationwide. A similar proposal was submitted last year to grant State and local officers arrest authority under the Espionage and Magnuson Acts. The Committee expressed Federalism concerns and the Administration revised this provision accordingly to narrow it to State and local authority to enforce duly promulgated Coast Guard security zones, a duty which many of these law enforcement personnel are already performing under State law. We also added a specific clause to make clear that the new provision does not affect other existing powers.

These provisions would clarify our law enforcement authority ashore and allow State and local law enforcement agencies to help us by enforcing Coast Guard security zones. The authorities will help protect America by leveraging scarce resources and partnering with local law enforcement, and have been carefully considered by all elements of the Administration.

#### **Inspection Of Towing Vessels**

While new authorities to help the Coast Guard carry out our expanded homeland security mission are critical, we believe that no less critical are enhanced authorities in the Coast Guard's traditional mission areas. One such vital and ongoing mission area is maritime safety. To enhance maritime safety the Administration's bill includes a proposal to allow the Secretary to implement mandatory inspection requirements and a safety management system for towing vessels to reduce casualties.

This section would enhance maritime safety in two significant ways. First, it would reduce casualties due to structural, equipment, and maintenance failures by making towing vessels subject to Coast Guard inspection. Second, it would reduce casualties caused by human error and other human factors by allowing the Secretary to establish an appropriate safety management system for towing vessels.

According to the U.S. Army Corps of Engineers, 5,150 towing vessels owned by approximately 1,200 firms operate in U.S. waters. From 1994 to 2001, Coast Guard data indicates that towing vessel casualties resulted in approximately 150 fatalities and discharge of over four million gallons of oil. Analysis of these casualties indicates that some were caused by structural or equipment failures, but many were due to human error. Members of the Committee no doubt recall, in 1993, the towboat M/V Mauvilla struck the Big Bayou Canot railroad bridge, causing the derailment of Amtrak's Sunset Limited and the death of 47 passengers and crew. Following that accident, some towing vessel owners voluntarily adopted safety management systems to improve performance and reduce accidents. These voluntary measures have significantly improved towing vessel safety, but casualties resulting in injury, death, and environmental damage continue to occur. A prime example includes the incident involving a towing vessel that spilled 55,000 gallons of fuel oil into Buzzards Bay last April. This section would allow the Secretary to implement mandatory inspection requirements and a safety management system for towing vessels to reduce these casualties.

It is also worth noting that the American Waterways Operators, a group representing a large portion of the towing vessel industry, has expressed to the Coast Guard its support for this proposal.

#### **Continuing Priorities**

When he appeared before you at the Coast Guard and Maritime Transportation Act of 2003 hearing last year, Admiral Collins identified his and the Administration's priorities for Coast Guard Authorization legislation. We appreciate the Committee's willingness to work with us to advance those priorities. As discussed above, we have resubmitted some of those provisions after changing them to address concerns raised by the Committee.

I'd also like to briefly mention three provisions that are included in last year's bill that you are about to conference with the Senate. The Administration has expressed its position on these provisions in Views Letters on both the House and Senate bills, but I thought it important to

mention them here as well. First, the provision that would require submission and approval of foreign vessel security plans. The Department strongly objects to the House version of this provision because of our concerns that it would violate our international obligations, invite reciprocation from foreign governments, thus potentially undermining national security, and prove a significant resource drain on the Coast Guard's efforts with critical elements of homeland security and other non-homeland security missions. Second, the provision raising the Coast Guard's officer cap. Although we have grown significantly, especially since September 11<sup>th</sup>, the authorized number of officers has not been increased since 1993. Enacting only a one-year waiver would make it difficult or impossible to manage the Coast Guard officer corps in a long-term manner and would adversely affect the Coast Guard's ability to plan to meet our many operational requirements in future years. And, third, the provisions amending the Oil Pollution Act of 1990. We appreciate inclusion of some of the Administration's requests and ask the Committee consider the additional Administration proposals: to allow the Coast Guard to access the Oil Spill Liability Trust Fund (OSLTF) Emergency Fund for Federal enforcement costs related to oil spills; to clarify that certain costs of adjudicating oil spill claims may be drawn from the OSLTF; and to allow recovery of Federal enforcement costs.

In addition, the Department opposes Section 219 of the House-passed bill, which by providing for direct recommendations to Congress by the Commandant of the Coast Guard raises constitutional concerns related to the President's authority to manage the Executive Branch. The Department also notes our support of the President's budget request for Fiscal Year 2005 which we believe provides the Coast Guard the necessary resources to fulfill our missions.

#### **Conclusion**

America and the Coast Guard face many challenges in the maritime arena. We strive every day to carry out our homeland security missions, maintain a high level of performance of our traditional missions, and retain and expand our skilled workforce. The Administration's proposed Coast Guard Authorization Act reflects a careful balance between these priorities and builds upon the existing foundation to help the Coast Guard maintain operational excellence across all mission areas. On the enclosed document, I have listed and described all the provisions of the Administration's Bill, which hopefully you will find useful in your consideration of the bill.

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

**ENCLOSURE**

**§ 201 (H.R. 4251 § 201) - ENFORCEMENT**

- This proposal would amend the port security chapter of Title 46 USC to give Coast Guard members clear authority to carry firearms while performing official duties and authority to arrest for violations of Federal law while performing official duties on maritime facilities and during transits to/from maritime facilities.
- This proposal would also allow, but not require, State/local law enforcement officers to make warrantless arrests for violations of security zone regulations issued by Coast Guard officials.

**§ 202 (H.R. 4251 § 202) – IN REM LIABILITY FOR CIVIL PENALTIES**

- This proposal would establish *in rem* liability for civil penalties imposed under the port security chapter of Title 46, U.S. Code or under the Espionage/Magnuson Act (50 USC 191).
- It would allow the Secretary to arrest a vessel to ensure payment of a civil penalty or require the vessel owner to obtain a bond or other surety for payment of the penalty. It would also allow the Secretary to refuse or revoke the vessel's clearance.

**§ 203 (H.R. 4251 § 203) – DELEGATION OF PORT SECURITY AUTHORITY**

This proposal would expressly authorize the President to delegate authority to the Secretary of Homeland Security to issue port security regulations under the Espionage/Magnuson Act (50 USC 191).

**§ 204 (H.R. 4251 § 204) – NOTIFICATION OF DEFICIENCIES**

This proposal would remove the requirement that the Coast Guard notify a vessel owner in writing of defects discovered during a Coast Guard inspection, and ensure that the vessel owner is responsible for promptly correcting any discrepancies.

**§ 205 (NOT IN H.R. 4251) – INSPECTIONS AND EXAMINATIONS**

This proposal would:

- Remove rigid inspection requirements and allow the Secretary to establish an inspection cycle that is tailored to a vessel's condition and operating history.
- Allow the Secretary to extend the inspection interval for inspected vessels by up to 36 months;
- Allow the Secretary to issue a certificate of compliance for foreign tank vessels for a period of up to 36 months;
- Extend the period of inspection for tank vessels from 1 year to 3 years;
- Give the Secretary discretion to revoke or suspend a certificate of inspection or compliance if a defect does not substantially affect a vessel's safety; and
- Remove the requirement that crew accommodations be examined monthly.

**ENCLOSURE****§206 (H.R. 4251 § 103) – CONFIDENTIAL INVESTIGATIVE EXPENSES**

This change will allow the Coast Guard Investigative Service (CGIS) and the Coast Guard National Intelligence Element to more effectively carry out their authorized missions using confidential informants and operations by removing the 1974 cap on such expenditures. H.R. 4251, § 103 increases the cap from \$15,000 to \$45,000 each fiscal year.

**§207 (H.R. 4251 § 205) – DRUG TESTING REPORTING**

This section will require Federal Agencies operating public vessels employing Coast Guard credentialed mariners to report all positive drug tests or drug test violations to the Coast Guard for possible action on the credentials held by the mariner.

**§208 (H.R. 4251 § 206) – JUDICIAL REVIEW OF NATIONAL TRANSPORTATION SAFETY BOARD FINAL ORDERS**

This section clarifies the Coast Guard's authority to appeal National Transportation Safety Board (NTSB) final orders in maritime cases.

**§209 (H.R. 4251 § 207) – INSPECTION OF TOWING VESSELS**

This section would enhance maritime safety in two significant ways:

- It would reduce casualties due to structural, equipment, and maintenance failures by making towing vessels subject to Coast Guard inspection.
- It would reduce casualties caused by human error and other human factors by allowing the Secretary to establish an appropriate safety management system for towing vessels.

**§301 (H.R. 4251 § 101) – CONTINGENT EXPENSES**

The Administration's proposal would make reception and representation funding subject to funds appropriated for such purposes, without a statutory ceiling. H.R. 4251 § 101 raises the limit on contingent expenses from \$7,500 to \$50,000.

**§302 (H.R. 4251 § 102) – MAXIMUM SERVICE IN AN ACTIVE STATUS FOR RESERVE REAR ADMIRALS**

This section will allow a reserve officer selected for rear admiral or rear admiral (lower half) to serve a full four years in an active status while also maintaining precedence based upon an administrative date of rank that does not create an entitlement to pay and does not reduce the time during which the officer may serve in an active status following actual promotion to rear admiral (lower half).

**ENCLOSURE**

**§303 (NOT IN H.R. 4251) – COAST GUARD EXCHANGE SYSTEM**

This proposal would amend section 487 of Title 14 to provide parity with the Department of Defense exchange systems. It would allow the Coast Guard to continue to use funds generated by its vending facilities to support its non-appropriated fund activities by requiring it to be treated as authorized under Title 10 for purposes of the Randolph-Sheppard Act.

**§304 (NOT IN H.R. 4251) – COAST GUARD YARD**

This proposal would assure the preservation of the Yard and other specialized industrial facilities. This provision authorizes the Coast Guard Yard and other specialized facilities to enter into public-private partnerships.

**SECTIONS IN H.R. 4251 NOT PROPOSED BY THE  
ADMINISTRATION IN ITS CY 2004 BILL**

**H.R. 4251 § 208 – WESTLAKE CHEMICAL BARGE DOCUMENTATION**

This provision provides the Secretary authority to issue a certificate of documentation with coastwise trade endorsement to numerous barges.

**H.R. 4251 § 209 – CONVEYANCES**

This provision requires the Commandant to transfer CG44345 to the city of Ludington, Michigan and a decommissioned "Balsam Class" 180-foot cutter to CAS Foundation, Inc. if certain conditions are met.

**H.R. 4251 § 210 – AUTHORITY TO SETTLE**

This provision, proposed in the CY03 Administration Bill, provides authority to settle OPA 90 claims less than \$500,000 without referral to the Attorney General. The Attorney General must approve in writing settlements for claims in excess of \$500,000.

**STATEMENT OF  
THE AMERICAN WATERWAYS OPERATORS  
TO THE  
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
REGARDING  
H.R. 4251, THE MARITIME TRANSPORTATION AMENDMENTS OF 2004**

**May 6, 2004**

The American Waterways Operators (AWO) appreciates the opportunity to submit this statement on H.R. 4251, The Maritime Transportation Amendments of 2004, for the May 6 hearing record. AWO is the national trade association representing America's inland and coastal tugboat, towboat, and barge industry, the largest segment of the U.S.-flag domestic maritime fleet. AWO's 400 member companies include the owners and operators of tugboats, towboats, and barges that move more than 800 million tons of the nation's cargo every year, including dry, liquid, containerized and specialty cargoes on the inland river system, the Atlantic, Pacific, and Gulf coasts, and the Great Lakes.

The United States Coast Guard is seeking in Section 207 of H.R. 4251 the authority from Congress to establish an inspection program for towing vessels, thereby altering a policy that has existed for over 80 years. AWO supports this historic change. AWO has worked with the Coast Guard under the auspices of the Coast Guard-AWO Safety Partnership to design a new approach to the regulation of towing vessels that further promotes three important shared objectives: safety, security, and environmental protection. Using a modern, 21st Century model of a safety management system, the new program will accomplish these objectives while recognizing the limitations on Coast Guard and industry resources and leveraging them in efficient, creative ways.

**Why Now?**

The towing industry has made great strides in enhancing industry safety in recent years. Significant improvements have been made in reducing the number and volume of oil spills, vessel casualties, crew fatalities and chemical spills. However, statistics also show that industry safety would benefit by extending an enhanced safety management system - required by federal regulation and backed up by Coast Guard oversight - to all towing vessels. As an example:

- **Crew fatalities** statistics since 1994 show a flat pattern. The majority of crew fatalities occur among non-AWO companies, which are not currently required to have a safety management system in place. Extending safety management standards to all towing companies could help save lives.

- **Oil spills** have declined 87% since the Oil Pollution Act of 1990 was enacted. While the amount of oil spilled in recent years has been low by historical standards, industry, Congress, and the public demand zero oil spills. Even small spills can have large consequences. Additional intervention is needed to move toward this zero spill goal.
- **Vessel casualties** have shown a downward trend since a peak in 1996. Most vessel casualties are minor incidents, but some have had catastrophic consequences. Since 2001, two bridge allisions resulted in the deaths of 22 motorists. A concerted, industry-wide effort is needed to continue and accelerate the improvements made in casualty reductions in recent years.
- **Chemical spill** statistics show that the industry is capable of, and has achieved, great performance in the safe transportation of chemicals. Sustaining this level of performance requires an enhanced safety effort.

Enacting a new towing vessel inspection regime now has the added benefit of allowing the Coast Guard to combine its safety and security responsibilities, since the agency will soon be required to expand its oversight of towing vessels in order to enforce new security regulations. This provides both a natural opportunity and a time-sensitive reason to enact this program as soon as possible. Implementing a new towing vessel safety program after the new security enforcement system is already in effect would be much less efficient, and would unnecessarily delay the achievement of important safety and security benefits.

The 2004 Coast Guard Authorization bill offers the best near-term opportunity to enact this program. Otherwise, enhancing safety in the towing industry may have to wait for the next Coast Guard authorization legislation in 2006, with full regulatory implementation as late as 2008.

#### **Why Make This Program Mandatory?**

- The National Transportation Safety Board recommended in its September 2000 report on the *m/v Anne Holly* accident that all towing vessels operate with a safety management system, and cited the AWO Responsible Carrier Program as an example of the kind of system needed.
- The Coast Guard-AWO Bridge Allision Work Group report released in May 2003 concluded that human error was the predominant factor in towing vessel bridge allisions. Extending a safety management system to all towing companies would bring an extensive array of crew competency requirements to bear to reduce human error accidents.
- Any new program to enhance safety cannot be fully effective unless it applies to the entire industry. While AWO members comply with the Responsible Carrier Program, not all towing companies are members of AWO. These companies are under no



requirement to operate their vessels using approved safety management system principles. In order to set the safety bar at the same high level for all operators, it is important that safety standards apply consistently to all towing companies.

- In the wake of several fatal accidents involving towboats and barges, there is a moral imperative to ensure that all towing companies are operating as safely as possible, under the same set of rules, and employing the industry's "best practices." A governmental role is needed to ensure nationwide compliance.

#### **What Are the Cost Efficiencies?**

- The new inspection program will not only benefit safety, but will increase environmental protection and enhance security on America's rivers and coasts, and in its harbors, wherever towing vessels operate.
- The new inspection program will allow the Coast Guard to fulfill both its safety and security missions at the same time. The Maritime Transportation Security Act already requires an enhanced Coast Guard presence on towing vessels. The new safety program will allow the agency to "piggyback" inspections conducted for safety and security purposes, thereby having a minimal effect on Coast Guard resources.
- The program maximizes targeted use of uniformed Coast Guard resources by providing a central role for Coast Guard-approved third-party auditors.
- The costs of the program will largely be borne by industry. The program extends safety, security and environmental protection benefits to the entire towing industry using the modern mechanism of a safety management system, drawing on private sector and corporate resources for implementing and auditing the system.
- An added benefit of giving the Coast Guard this authority will be the cost savings and efficiencies realized by other federal agencies and state and local governments, which will have no need to implement or maintain duplicative programs to ensure safety, security and environmental protection on towing vessels.

Thank you again for the opportunity to present this statement for the hearing record. AWO looks forward to working with the Coast Guard and members of the Subcommittee, full Committee and Conference Committee to ensure enactment of this important towing industry safety proposal in the 2004 Coast Guard Authorization bill.

*For the Record 5-6-04  
CMT Hearing*



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ASBA

**Testimony for the Hearing on Maritime Transportation Amendments on May 6, 2004  
 Transportation & Infrastructure Committee**

**Submitted by: The Association of Ship Brokers & Agents (U.S.A.), Inc. (ASBA)**

Thank you for this opportunity to submit testimony regarding H.R. 4251, Maritime Transportation Amendments of 2004. ASBA represents ship agents and brokers throughout the United States since 1934. Our members are represented in all major ports in the United States. ASBA is also a founding member of the National Association of Maritime Organizations (NAMO) whose membership includes port based associations and maritime exchanges in the United States. This testimony is also being submitted on behalf of the member organizations of NAMO.

We have noted that a provision in Senate Bill 2279 has been omitted from H.R. 4251. (Note that the omissions from the S. 2279 have been italicized)

Sec. 70117 IN REM LIABILITY FOR CIVIL PENALTIES *and Certain Costs*

(b) *Reimbursable Costs –*

- (1) *IN GENERAL – Any vessel subject to the provisions of this chapter shall be liable in rem for the reimbursable costs incurred by any valid claimant related to implementation and enforcement of this chapter with respect to the vessel, including port authorities, facility or terminal operators, shipping agents, Federal, State, or local government agencies, and other persons to whom the management of the vessel at the port of supply is entrusted, and any fine or penalty relating to reporting requirements of the vessel or its cargo, crew, or passengers, and may be proceeded against in the United States district court for any district in which such vessel may be found.*
- (2) *REIMBURSABLE COSTS DEFINED – In this subsection the term 'reimbursable costs' means costs incurred by any service provider, including port authorities, facility or terminal operators, shipping agents, Federal, State, or local government agencies, and other persons to whom the management of the vessel at the port is entrusted, for –*

*(A) vessel crew on board, or in transit to or from, the vessel under lawful order, including accommodation, detention, transportation, and medical expenses; and*

*(B) required handling under lawful order of cargo or other items on board the vessel.*

Our members believe this provision is critical to insure the protection of American companies, who service foreign flag vessels, from exposure to significant cost outlays resulting from lawful orders to secure our borders. These cost outlays include securing around-the-clock armed security guards for detained crew or special handling of high risk cargo which in most cases cannot be anticipated prior to the submission of the agent's pro-forma bill stipulating the port costs for the vessel call. Unexpected security measure, fines and/or penalties can not be collected in advance leaving the service provider vulnerable. This provision will establishing an "in rem" liability for these service providers allowing them to pursue collection of the outstanding costs through legal measures by establishing a maritime lien.

All too often, over the years, American owned companies have suffered enormous financial losses in the course of providing service to foreign flag vessels at our ports. This bill, without inclusion of "in rem" liability for service providers, places an even greater exposure to financial risk for our members. ASBA would very much appreciate House consideration of this testimony. Please contact Jeanne L. Cardona, Executive Director, at 201-569-2882 if you have questions.