

111TH CONGRESS
1ST SESSION

S. 1194

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, and Mrs. HUTCHISON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 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. 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.

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
15 which \$20,000,000 shall be derived from the Oil
16 Spill Liability Trust Fund to carry out the purposes
17 of section 1012(a)(5) of the Oil Pollution Act of
18 1990, to remain available until expended; such funds
19 appropriated for personnel compensation and bene-

1 fits and related costs of acquisition, construction,
2 and improvements shall be available for procurement
3 of services necessary to carry out the Integrated
4 Deepwater Systems program.

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

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

15 (5) For research, development, test, and evalua-
16 tion programs related to maritime technology,
17 \$19,745,000.

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

20 **SEC. 102. AUTHORIZED LEVELS OF MILITARY STRENGTH**
21 **AND TRAINING.**

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

1 (b) MILITARY TRAINING STUDENT LOADS.—The
2 Coast Guard is authorized average military training stu-
3 dent 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
8 fiscal year 2010 and 179 student years for fiscal
9 year 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 fis-
15 cal 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
22 amended by adding at the end the following:

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

1 cooperative agreements, contracts, or other agreements
2 with, international maritime organizations for the purpose
3 of acquiring information or data about merchant vessel in-
4 spections, security, safety and environmental require-
5 ments, classification, and port state or flag state law en-
6 forcement or oversight.”.

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

9 Section 149 of title 14, United States Code, as
10 amended by section 201, is further amended by adding
11 at the end 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 re-
25 lated 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
8 civilian and military personnel to the extent
9 that those expenses relate to participation in an
10 activity described in subparagraph (C) or (D).

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

15 **SEC. 203. COOPERATIVE AGREEMENTS FOR INDUSTRIAL**
16 **ACTIVITIES.**

17 Section 151 of title 14, United States Code, is
18 amended—

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
23 ACTIVITIES.—Under this section, the Coast Guard indus-
24 trial activities may accept orders and enter into reimburs-
25 able agreements with establishments, agencies, and de-

1 partments of the Department of Defense and the Depart-
2 ment of Homeland 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
10 title, 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
16 more members of the Coast Guard are assigned and
17 conducting Coast Guard missions.”.

18 (b) CLERICAL AMENDMENT.—The table of contents
19 for chapter 17 of such title is amended by inserting after
20 the 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
25 striking “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
5 4 positions of importance and responsibility that shall be
6 held by officers who—

7 “(A) while so serving, shall have the grade of
8 vice admiral, with the pay and allowances of that
9 grade; 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
16 duty above the grade of captain. The Commandant shall
17 make recommendations for such appointments.

18 “(b)(1) The appointment and the grade of vice admi-
19 ral shall be effective on the date the officer assumes that
20 duty and, except as provided in paragraph (2) of this sub-
21 section or in section 51(d) of this title, shall terminate
22 on the date 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
4 that duty and terminating on the date before the
5 day the officer assumes the subsequent duty, but not
6 for more 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
10 than 180 days; and

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

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

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

23 “(d) Whenever a vacancy occurs in a position des-
24 ignated under subsection (a), the Commandant shall in-
25 form the President of the qualifications needed by an offi-

1 cer serving in that position or office to carry out effectively
2 the 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
17 retired with the highest grade in which that officer served.

18 “(c) An officer, other than the Commandant, who,
19 after serving less than 2½ years in the grade of admiral
20 or vice admiral, is retired while serving in a lower grade,
21 shall 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
24 Admiral”.

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
13 title is further amended by striking “subsection” in the
14 fifth sentence 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
18 Act, 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
11 continue, for not more than 1 year after the
12 date of enactment of this Act, to perform the
13 duties of the officer's former position and any
14 other such duties that the Commandant pre-
15 scribes.

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

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

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

23 “(a) The total number of Coast Guard commissioned
24 officers on the active duty promotion list, excluding war-
25 rant officers, shall not exceed 7,200. This total number

1 may be temporarily increased up to 2 percent for no more
2 than the 60 days that follow the commissioning of a Coast
3 Guard Academy class.

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

7 “(1) 0.375 percent for rear admiral.

8 “(2) 0.375 percent for rear admiral (lower
9 half).

10 “(3) 6.0 percent for captain.

11 “(4) 15.0 percent for commander.

12 “(5) 22.0 percent for lieutenant commander.

13 The Secretary shall prescribe the percentages applicable
14 to the grades of lieutenant, lieutenant (junior grade), and
15 ensign. The Secretary may, as the needs of the Coast
16 Guard require, reduce any of the percentages set forth in
17 paragraphs (1) through (5) and apply that total percent-
18 age reduction to any other lower grade or combination of
19 lower grades.

20 “(c) The Secretary shall, at least once a year, com-
21 pute the total number of commissioned officers authorized
22 to serve in each grade by applying the grade distribution
23 percentages of this section to the total number of commis-
24 sioned officers listed on the current active duty promotion
25 list. In making such calculations, any fraction shall be

1 rounded to the nearest whole number. The number of com-
2 missioned officers on the active duty promotion list serving
3 with other departments or agencies on a reimbursable
4 basis or excluded under the provisions of section 324(d)
5 of title 49, shall not be counted against the total number
6 of commissioned officers authorized to serve in each
7 grade.”;

8 (2) by striking subsection (e) and inserting the
9 following:

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

16 (3) by striking the caption of such section and
17 inserting the following:

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

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

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

1 **TITLE IV—PERSONNEL**

2 **SEC. 401. LEAVE RETENTION AUTHORITY.**

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

9 **SEC. 402. LEGAL ASSISTANCE FOR COAST GUARD RESERV-**
10 **ISTS.**

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

13 (1) by striking “(as determined by the Sec-
14 retary of Defense),” and inserting “(as determined
15 by the Secretary of Defense and the Secretary of the
16 department in which the Coast Guard is operating,
17 with respect to the Coast Guard when it is not oper-
18 ating as a service of the Navy),”; and

19 (2) by striking “prescribed by the Secretary of
20 Defense,” and inserting “prescribed by Secretary of
21 Defense and the Secretary of the department in
22 which the Coast Guard is operating, with respect to
23 the Coast Guard when it is not operating as a serv-
24 ice of the Navy,”.

1 **SEC. 403. REIMBURSEMENT FOR CERTAIN MEDICAL-RE-**
2 **LATED TRAVEL EXPENSES.**

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

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

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

8 “(2) In any case in which a covered beneficiary re-
9 sides on an INCONUS island that lacks public access
10 roads to the mainland and is referred by a primary care
11 physician to a specialty care provider on the mainland who
12 provides services less than 100 miles from the location in
13 which the beneficiary resides, the Secretary shall reim-
14 burse the reasonable travel expenses of the covered bene-
15 ficiary, and, when accompaniment by an adult is nec-
16 essary, for a parent or guardian of the covered beneficiary
17 or another member of the covered beneficiary’s family who
18 is at least 21 years of age.”.

19 **SEC. 404. RESERVE COMMISSIONED WARRANT OFFICER TO**
20 **LIEUTENANT PROGRAM.**

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

23 “(a) The President may appoint temporary commis-
24 sioned officers—

25 “(1) in the Regular Coast Guard in a grade,
26 not above lieutenant, appropriate to their qualifica-

1 tions, experience, and length of service, as the needs
2 of the Coast Guard may require, from among the
3 commissioned warrant officers, warrant officers, and
4 enlisted members of the Coast Guard, and from li-
5 censed officers of the United States merchant ma-
6 rine; and

7 “(2) in the Coast Guard Reserve in a grade,
8 not above lieutenant, appropriate to their qualifica-
9 tions, experience, and length of service, as the needs
10 of the Coast Guard may require, from among the
11 commissioned warrant officers of the Coast Guard
12 Reserve.”.

13 **SEC. 405. ENHANCED STATUS QUO OFFICER PROMOTION**
14 **SYSTEM.**

15 (a) Section 253(a) of title 14, United States Code,
16 is amended—

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

18 (2) by striking “consideration, and the number
19 of officers the board may recommend for promotion”
20 and inserting “consideration”.

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

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

23 and

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

1 “(b) In addition to the information provided pursuant
2 to subsection (a), the Secretary may furnish the selection
3 board—

4 “(1) specific direction relating to the needs of
5 the service for officers having particular skills, in-
6 cluding direction relating to the need for a minimum
7 number of officers with particular skills within a
8 specialty; and

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

12 Selections made based on the direction and guidance pro-
13 vided under this subsection shall not exceed the maximum
14 percentage of officers who may be selected from below the
15 announced promotion zone at any given selection board
16 convened under section 251 of this title.”.

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

23 (d) Section 260(b) of such title is amended by insert-
24 ing “to meet the needs of the service (as noted in the spe-

1 cific direction furnished the board under section 258 of
2 this title)” after “qualified for promotion”.

3 **SEC. 406. APPOINTMENT OF CIVILIAN COAST GUARD**
4 **JUDGES.**

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

7 (1) by redesignating subsection (c) as sub-
8 section (d); and

9 (2) by inserting after subsection (b) the fol-
10 lowing:

11 “(c) APPOINTMENT OF JUDGES.—The Secretary may
12 appoint civilian employees of the Department of Homeland
13 Security as appellate military judges, available for assign-
14 ment to the Coast Guard Court of Criminal Appeals as
15 provided for in section 866(a) of title 10, United States
16 Code.”.

17 **SEC. 407. COAST GUARD PARTICIPATION IN THE ARMED**
18 **FORCES RETIREMENT HOME SYSTEM.**

19 (a) ELIGIBILITY UNDER THE ARMED FORCES RE-
20 TIREMENT HOME ACT.—Section 1502 of the Armed
21 Forces Retirement Home Act of 1991 (24 U.S.C. 401)
22 is amended—

23 (1) by striking “does not include the Coast
24 Guard when it is not operating as a service of the
25 Navy.” in paragraph (4) and inserting “has the

1 meaning given such term in section 101(4) of title
2 10.”;

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

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

6 (4) by adding at the end of paragraph (5) the
7 following:

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

10 (5) by adding at the end of paragraph (6) the
11 following:

12 “(E) The Master Chief Petty Officer of the
13 Coast Guard.”.

14 (b) DEDUCTIONS.—

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

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

19 (B) by striking “Armed Forces Retirement
20 Home Board” in subsection (b) and inserting
21 “Chief Operating Officer of the Armed Forces
22 Retirement Home”; and

23 (C) by striking subsection (c).

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

1 (A) by striking “Armed Forces Retirement
 2 Home Board,” in paragraph (3) and inserting
 3 “Chief Operating Officer of the Armed Forces
 4 Retirement Home,”; and

5 (B) by striking “does not include the Coast
 6 Guard when it is not operating as a service of
 7 the Navy.” in paragraph (4) and inserting “has
 8 the meaning given such term in section 101(4)
 9 of title 10.”.

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

13 **TITLE V—ACQUISITION REFORM**

14 **SEC. 501. CHIEF ACQUISITION OFFICER.**

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

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

19 “(a) IN GENERAL.—There shall be in the Coast
 20 Guard a Chief Acquisition Officer selected by the Com-
 21 mandant who shall be a Rear Admiral or civilian from the
 22 Senior Executive Service (career reserved). The Chief Ac-
 23 quisition Officer shall serve at the Assistant Commandant
 24 level and have acquisition management as that individual’s
 25 primary duty.

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

6 “(1) the program executive officer;

7 “(2) the program manager of a Level 1 or
8 Level 2 acquisition project or program;

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

11 “(4) a combination of such positions.

12 “(c) FUNCTIONS OF THE CHIEF ACQUISITION OFFI-
13 CER.—The functions of the Chief Acquisition Officer in-
14 clude—

15 “(1) monitoring the performance of programs
16 and projects on the basis of applicable performance
17 measurements and advising the Commandant,
18 through the chain of command, regarding the appro-
19 priate business strategy to achieve the missions of
20 the Coast Guard;

21 “(2) maximizing the use of full and open com-
22 petition at the prime contract and subcontract levels
23 in the acquisition of property, capabilities, and serv-
24 ices by the Coast Guard by establishing policies, pro-
25 cedures, and practices that ensure that the Coast

1 Guard receives a sufficient number of competitive
2 proposals from responsible sources to fulfill the Gov-
3 ernment's requirements, including performance and
4 delivery schedules, at the lowest cost or best value
5 considering the nature of the property or service
6 procured;

7 “(3) making acquisition decisions in concur-
8 rence with the technical authority, or technical au-
9 thorities, as appropriate, of the Coast Guard, as des-
10 ignated by the Commandant, consistent with all
11 other applicable laws and decisions establishing pro-
12 cedures within the Coast Guard;

13 “(4) ensuring the use of detailed performance
14 specifications in instances in which performance
15 based contracting is used;

16 “(5) managing the direction of acquisition pol-
17 icy for the Coast Guard, including implementation of
18 the unique acquisition policies, regulations, and
19 standards of the Coast Guard;

20 “(6) developing and maintaining an acquisition
21 career management program in the Coast Guard to
22 ensure that there is an adequate acquisition work-
23 force;

24 “(7) assessing the requirements established for
25 Coast Guard personnel regarding knowledge and

1 skill in acquisition resources and management and
 2 the adequacy of such requirements for facilitating
 3 the achievement of the performance goals established
 4 for acquisition management;

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

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

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

“55. Chief Acquisition Officer.”.

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

18 **SEC. 502. ACQUISITIONS.**

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

22 “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

1 Guard's missions and deliver the best value products
2 and services to the Nation.

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

4 “(a) ESTABLISHMENT.—The Commandant shall es-
5 tablish a senior acquisition leadership team within the
6 Coast Guard comprised of—

7 “(1) the Vice Commandant;

8 “(2) the Deputy and Assistant Commandants;

9 “(3) appropriate senior staff members of each
10 Coast Guard directorate;

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

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

15 “(b) FUNCTION.—The senior acquisition leadership
16 team shall—

17 “(1) meet at the call of the Commandant at
18 such places and such times as the Commandant may
19 require;

20 “(2) provide advice and information on oper-
21 ational and performance requirements of the Coast
22 Guard;

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

1 “(4) make recommendations to the Com-
 2 mandant and the Chief Acquisition Officer to rem-
 3 edy the identified gaps and vulnerabilities in the
 4 operational readiness of the Coast Guard; and

5 “(5) contribute to the development of a profes-
 6 sional, experienced acquisition workforce by pro-
 7 viding acquisition-experience tours of duty and edu-
 8 cational development for officers and employees of
 9 the Coast Guard.

10 **“§ 563. Improvements in Coast Guard acquisition**
 11 **management**

12 “(a) PROJECT AND PROGRAM MANAGERS.—

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

16 “(A) to develop, produce, and deploy a new
 17 asset to meet identified operational require-
 18 ments; and

19 “(B) to manage cost, schedule, and per-
 20 formance of the acquisition or project or pro-
 21 gram.

22 “(2) LEVEL 1 PROJECTS.— An individual may
 23 not be assigned as the project or program manager
 24 for a Level 1 acquisition unless the individual holds

1 a Level III acquisition certification as a program
2 manager.

3 “(3) LEVEL 2 PROJECTS.—An individual may
4 not be assigned as the project or program manager
5 for a Level 2 acquisition unless the individual holds
6 a Level II acquisition certification as a program
7 manager.

8 “(b) GUIDANCE ON TENURE AND ACCOUNTABILITY
9 OF PROGRAM AND PROJECT MANAGERS.—Not later than
10 one year after the date of enactment of the Coast Guard
11 Authorization Act for Fiscal years 2010 and 2011, the
12 Commandant shall issue guidance to address the qualifica-
13 tions, resources, responsibilities, tenure, and account-
14 ability of program and project managers for the manage-
15 ment of acquisition programs and projects. The guidance
16 shall address, at a minimum—

17 “(1) the qualifications required for project or
18 program managers, including the number of years of
19 acquisition experience and the professional training
20 levels to be required of those appointed to project or
21 program management positions; and

22 “(2) authorities available to project or program
23 managers, including, to the extent appropriate, the
24 authority to object to the addition of new program

1 requirements that would be inconsistent with the pa-
2 rameters established for an acquisition program.

3 “(c) ACQUISITION WORKFORCE.—

4 “(1) IN GENERAL.—The Commandant shall
5 designate a sufficient number of positions to be in
6 the Coast Guard’s acquisition workforce to perform
7 acquisition-related functions at Coast Guard head-
8 quarters and field activities.

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

13 “(A) Acquisition logistics.

14 “(B) Auditing.

15 “(C) Business, cost estimating, and finan-
16 cial management.

17 “(D) Contracting.

18 “(E) Facilities engineering.

19 “(F) Industrial or contract property man-
20 agement.

21 “(G) Information technology.

22 “(H) Manufacturing, production, and qual-
23 ity assurance.

24 “(I) Program management.

25 “(J) Purchasing.

1 “(K) Science and technology.

2 “(L) Systems planning, research, develop-
3 ment, and engineering.

4 “(M) Test and evaluation.

5 “(3) ACQUISITION WORKFORCE EXPEDITED
6 HIRING AUTHORITY.—

7 “(A) IN GENERAL.—For purposes of sec-
8 tions 3304, 5333, and 5753 of title 5, the Com-
9 mandant may—

10 “(i) designate any category of acqui-
11 sition positions within the Coast Guard as
12 shortage category positions; and

13 “(ii) use the authorities in such sec-
14 tions to recruit and appoint highly quali-
15 fied person directly to positions so des-
16 ignated.

17 “(B) LIMITATION.—The Commandant may
18 not appoint a person to a position of employ-
19 ment under this paragraph after September 30,
20 2012.

21 “(d) MANAGEMENT INFORMATION SYSTEM.—

22 “(1) IN GENERAL.—The Commandant shall es-
23 tablish a management information system capability
24 to improve acquisition workforce management and
25 reporting.

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

5 “(A) Qualifications, assignment history,
6 and tenure of those individuals assigned to posi-
7 tions in the acquisition workforce or holding ac-
8 quisition-related certifications.

9 “(B) Promotion rates for officers and
10 members of the Coast Guard in the acquisition
11 workforce.

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

15 “(1) ensure that career paths for officers, mem-
16 bers, and employees of the Coast Guard who wish to
17 pursue careers in acquisition are identified in terms
18 of the education, training, experience, and assign-
19 ments necessary for career progression of those offi-
20 cers, members, and employees to the most senior po-
21 sitions in the acquisition workforce; and

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

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

3 “(a) IN GENERAL.—Not later than 180 days after
4 the date of enactment of the Coast Guard Authorization
5 Act for Fiscal Years 2010 and 2011, the Commandant
6 shall commence implementation of a program to recognize
7 excellent performance by individuals and teams comprised
8 of officers, members, and employees of the Coast Guard
9 that contributed to the long-term success of a Coast Guard
10 acquisition project or program.

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

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

14 “(2) procedures for the nomination by per-
15 sonnel of the Coast Guard of individuals and teams
16 comprised of officers, members, and employees of
17 the Coast Guard for recognition under the program;
18 and

19 “(3) procedures for the evaluation of nomina-
20 tions for recognition under the program by one or
21 more panels of individuals from the Government,
22 academia, and the private sector who have such ex-
23 pertise and are appointed in such manner as the
24 Commandant shall establish for the purposes of this
25 program.

1 “(c) AWARD OF CASH BONUSES.—As part of the pro-
2 gram required by subsection (a), the Commandant, sub-
3 ject to the availability of appropriations, may award to any
4 civilian employee recognized pursuant to the program a
5 cash bonus to the extent that the performance of such in-
6 dividual so recognized warrants the award of such bonus.

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

8 “(a) IN GENERAL.—

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

10 Except as provided in subsection (b), the Com-
11 mandant may not use a private sector entity as a
12 lead systems integrator for an acquisition contract
13 awarded or delivery order or task order issued after
14 the date of enactment of the Coast Guard Author-
15 ization Act for Fiscal Years 2010 and 2011.

16 “(2) FULL AND OPEN COMPETITION.—The

17 Commandant and any lead systems integrator en-
18 gaged by the Coast Guard, pursuant to the excep-
19 tions described in subsection (b), shall use full and
20 open competition for any acquisition contract award-
21 ed after the date of enactment of that Act, unless
22 otherwise excepted in accordance with the Competi-
23 tion in Contracting Act of 1984 (41 U.S.C. 251
24 note), the amendments made by that Act, and the
25 Federal Acquisition Regulations.

1 “(3) NO EFFECT ON SMALL BUSINESS ACT.—
2 Nothing in this subsection shall be construed to su-
3 persede or otherwise affect the authorities provided
4 by and under the Small Business Act (15 U.S.C.
5 631 et seq.).

6 “(b) EXCEPTIONS.—

7 “(1) NATIONAL DISTRESS AND RESPONSE SYS-
8 TEM MODERNIZATION PROGRAM; NATIONAL SECUR-
9 ITY CUTTERS 2 AND 3.—Notwithstanding sub-
10 section (a), the Commandant may use a private sec-
11 tor entity as a lead systems integrator for the Coast
12 Guard to complete the National Distress and Re-
13 sponse System Modernization Program, the C4ISR
14 projects directly related to the Integrated Deepwater
15 Program, and National Security Cutters 2 and 3 if
16 the Secretary of Homeland Security certifies that—

17 “(A) the acquisition is in accordance with
18 the Competition in Contracting Act of 1984 (41
19 U.S.C. 251 note), the amendments made by
20 that Act, and the Federal Acquisition Regula-
21 tions; and

22 “(B) the acquisition and the use of a pri-
23 vate sector entity as a lead systems integrator
24 for the acquisition is in the best interest of the
25 Federal Government.

1 “(2) TERMINATION DATE FOR EXCEPTIONS.—
2 Except for the modification of delivery or task or-
3 ders pursuant to Parts 4 and 42 of the Federal Ac-
4 quisition Regulations, the Commandant may not use
5 a private sector entity as a lead systems integrator
6 after the earlier of—

7 “(A) September 30, 2012; or

8 “(B) the date on which the Commandant
9 certifies in writing to the appropriate congress-
10 sional committees that the Coast Guard has
11 available and can retain sufficient contracting
12 personnel and expertise within the Coast
13 Guard, through an arrangement with other
14 Federal agencies, or through contracts or other
15 arrangements with private sector entities, to
16 perform the functions and responsibilities of the
17 lead system integrator in an efficient and cost-
18 effective manner.

19 **“§ 566. Required contract terms**

20 “(a) IN GENERAL.—The Commandant shall ensure
21 that a contract awarded or a delivery order or task order
22 issued for an acquisition of a capability or an asset with
23 an expected service life of 10 years and with a total acqui-
24 sition cost that is equal to or exceeds \$10,000,000 award-
25 ed or issued by the Coast Guard after the date of enact-

1 ment of the Coast Guard Authorization Act for Fiscal
2 Years 2010 and 2011—

3 “(1) provides that all certifications for an end-
4 state capability or asset under such contract, deliv-
5 ery order, or task order, respectively, will be con-
6 ducted by the Commandant or an independent third
7 party, and that self-certification by a contractor or
8 subcontractor is not allowed;

9 “(2) requires that the Commandant shall main-
10 tain the authority to establish, approve, and main-
11 tain technical requirements;

12 “(3) requires that any measurement of con-
13 tractor and subcontractor performance be based on
14 the status of all work performed, including the ex-
15 tent to which the work performed met all perform-
16 ance, cost, and schedule requirements;

17 “(4) specifies that, for the acquisition or up-
18 grade of air, surface, or shore capabilities and assets
19 for which compliance with TEMPEST certification
20 is a requirement, the standard for determining such
21 compliance will be the air, surface, or shore standard
22 then used by the Department of the Navy for that
23 type of capability or asset; and

24 “(5) for any contract awarded to acquire an
25 Offshore Patrol Cutter, includes provisions speci-

1 fying the service life, fatigue life, and days underway
2 in general Atlantic and North Pacific Sea conditions,
3 maximum range, and maximum speed the cutter will
4 be built to achieve.

5 “(b) PROHIBITED CONTRACT PROVISIONS.—The
6 Commandant shall ensure that any contract awarded or
7 delivery order or task order issued by the Coast Guard
8 after the date of enactment of the Coast Guard Authoriza-
9 tion Act for Fiscal Years 2010 and 2011 does not include
10 any provision allowing for equitable adjustment that is not
11 consistent with the Federal Acquisition Regulations.

12 “(c) INTEGRATED PRODUCT TEAMS.—Integrated
13 product teams, and all teams that oversee integrated prod-
14 uct teams, shall be chaired by officers, members, or em-
15 ployees of the Coast Guard.

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

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

23 “(a) IN GENERAL.—The Commandant shall make ar-
24 rangements as appropriate with the Secretary of Defense
25 for support in contracting and management of Coast

1 Guard acquisition programs. The Commandant shall also
2 seek opportunities to make use of Department of Defense
3 contracts, and contracts of other appropriate agencies, to
4 obtain the best possible price for assets acquired for the
5 Coast Guard.

6 “(b) INTER-SERVICE TECHNICAL ASSISTANCE.—The
7 Commandant shall seek to enter into a memorandum of
8 understanding or a memorandum of agreement with the
9 Secretary of the Navy to obtain the assistance of the Of-
10 fice of the Assistant Secretary of the Navy for Research,
11 Development, and Acquisition, including the Navy Sys-
12 tems Command, with the oversight of Coast Guard major
13 acquisition programs. The memorandum of understanding
14 or memorandum of agreement shall, at a minimum, pro-
15 vide for—

16 “(1) the exchange of technical assistance and
17 support that the Assistant Commandants for Acqui-
18 sition, Human Resources, Engineering, and Infor-
19 mation technology may identify;

20 “(2) the use, as appropriate, of Navy technical
21 expertise; and

22 “(3) the exchange of personnel between the
23 Coast Guard and the Office of the Assistant Sec-
24 retary of the Navy for Research, Development, and
25 Acquisition, including Naval Systems Commands, to

1 facilitate the development of organic capabilities in
2 the Coast Guard.

3 “(c) TECHNICAL REQUIREMENT APPROVAL PROCE-
4 DURES.—The Chief Acquisition Officer shall adopt, to the
5 extent practicable, procedures modeled after those used by
6 the Navy Senior Acquisition Official to approve all tech-
7 nical requirements.

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

9 “(a) IN GENERAL.—The Coast Guard may not enter
10 into an undefinitized contractual action unless such action
11 is directly approved by the Head of Contracting Activity
12 of the Coast Guard.

13 “(b) REQUESTS FOR UNDEFINITIZED CONTRACTUAL
14 ACTIONS.—Any request to the Head of Contracting Activ-
15 ity for approval of an undefinitized contractual action
16 shall include a description of the anticipated effect on re-
17 quirements of the Coast Guard if a delay is incurred for
18 the purposes of determining contractual terms, specifica-
19 tions, and price before performance is begun under the
20 contractual action.

21 “(c) REQUIREMENTS FOR UNDEFINITIZED CONTRAC-
22 TUAL ACTIONS.—

23 “(1) DEADLINE FOR AGREEMENT ON TERMS,
24 SPECIFICATIONS, AND PRICE.—A contracting officer
25 of the Coast Guard may not enter into an

1 undefined contractual action unless the contrac-
2 tual action provides for agreement upon contractual
3 terms, specification, and price by the earlier of—

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

8 “(B) the date on which the amount of
9 funds obligated under the contractual action is
10 equal to more than 50 percent of the negotiated
11 overall ceiling price for the contractual action.

12 “(2) LIMITATION ON OBLIGATIONS.—

13 “(A) IN GENERAL.—Except as provided in
14 subparagraph (B), the contracting officer for an
15 undefined contractual action may not obli-
16 gate under such contractual action an amount
17 that exceeds 50 percent of the negotiated over-
18 all ceiling price until the contractual terms,
19 specifications, and price are definitized for such
20 contractual action.

21 “(B) EXCEPTION.—Notwithstanding sub-
22 paragraph (A), if a contractor submits a quali-
23 fying proposal to definitize an undefined
24 contractual action before an amount that ex-
25 ceeds 50 percent of the negotiated overall ceil-

1 ing price is obligated on such action, the con-
2 tracting officer for such action may not obligate
3 with respect to such contractual action an
4 amount that exceeds 75 percent of the nego-
5 tiated overall ceiling price until the contractual
6 terms, specifications, and price are definitized
7 for such contractual action.

8 “(3) WAIVER.—The Commandant may waive
9 the application of this subsection with respect to a
10 contract if the Commandant determines that the
11 waiver is necessary to support—

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

14 “(B) operations to prevent or respond to a
15 transportation security incident (as defined in
16 section 70101(6) of title 46);

17 “(C) an operation in response to an emer-
18 gency that poses an unacceptable threat to
19 human health or safety or to the marine envi-
20 ronment; or

21 “(D) an operation in response to a natural
22 disaster or major disaster or emergency des-
23 ignated by the President under the Robert T.
24 Stafford Disaster Relief and Emergency Assist-
25 ance Act (42 U.S.C. 5121 et seq.).

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

4 “(d) INCLUSION OF NONURGENT REQUIREMENTS.—
5 Requirements for spare parts and support equipment that
6 are not needed on an urgent basis may not be included
7 in an undefinitized contractual action by the Coast Guard
8 for spare parts and support equipment that are needed
9 on an urgent basis unless the Commandant approves such
10 inclusion as being—

11 “(1) good business practice; and

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

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

17 “(1) good business practice; and

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

19 “(f) ALLOWABLE PROFIT.—The Commandant shall
20 ensure that the profit allowed on an undefinitized contrac-
21 tual action for which the final price is negotiated after
22 a substantial portion of the performance required is com-
23 pleted reflects—

24 “(1) the possible reduced cost risk of the con-
25 tractor with respect to costs incurred during per-

1 performance of the contract before the final price is ne-
2 gotiated; and

3 “(2) the reduced cost risk of the contractor
4 with respect to costs incurred during performance of
5 the remaining portion of the contract.

6 “(g) DEFINITIONS.—In this section:

7 “(1) UNDEFINITIZED CONTRACTUAL ACTION.—

8 “(A) IN GENERAL.—Except as provided in
9 subparagraph (B), the term ‘undefinitized con-
10 tractual action’ means a new procurement ac-
11 tion entered into by the Coast Guard for which
12 the contractual terms, specifications, or price
13 are not agreed upon before performance is
14 begun under the action.

15 “(B) EXCLUSION.—The term
16 ‘undefinitized contractual action’ does not in-
17 clude contractual actions with respect to—

18 “(i) foreign military sales;

19 “(ii) purchases in an amount not in
20 excess of the amount of the simplified ac-
21 quisition threshold; or

22 “(iii) special access programs.

23 “(2) QUALIFYING PROPOSAL.—The term ‘quali-
24 fying proposal’ means a proposal that contains suffi-
25 cient information to enable complete and meaningful

1 audits of the information contained in the proposal
2 as determined by the contracting officer.

3 “SUBCHAPTER 2—IMPROVED ACQUISITION PROCESS
4 AND PROCEDURES

5 **“§ 571. Identification of major system acquisitions**

6 “(a) IN GENERAL.—

7 “(1) SUPPORT MECHANISMS.—The Com-
8 mandant shall develop and implement mechanisms
9 to support the establishment of mature and stable
10 operational requirements for acquisitions under this
11 subchapter.

12 “(2) MISSION ANALYSIS; AFFORDABILITY AS-
13 SESSMENT.—The Commandant may not initiate a
14 Level 1 or Level 2 acquisition project or program
15 until the Commandant—

16 “(A) completes a mission analysis that—

17 “(i) identifies any gaps in capability;

18 and

19 “(ii) develops a clear mission need;

20 and

21 “(B) prepares a preliminary affordability
22 assessment for the project or program.

23 “(b) ELEMENTS.—

24 “(1) REQUIREMENTS.—The mechanisms re-
25 quired by subsection (a) shall ensure the implemen-

1 tation of a formal process for the development of a
2 mission-needs statement, concept-of-operations docu-
3 ment, capability development plan, and resource pro-
4 posal for the initial project or program funding, and
5 shall ensure the project or program is included in
6 the Coast Guard Capital Investment Plan.

7 “(2) ASSESSMENT OF TRADE-OFFS.—In con-
8 ducting an affordability assessment under subsection
9 (a)(2)(B), the Commandant shall develop and imple-
10 ment mechanisms to ensure that trade-offs among
11 cost, schedule, and performance are considered in
12 the establishment of preliminary operational require-
13 ments for development and production of new assets
14 and capabilities for Level 1 and Level 2 acquisitions
15 projects and programs.

16 “(c) HUMAN RESOURCE CAPITAL PLANNING.—The
17 Commandant shall develop staffing predictions, define
18 human capital performance initiatives, and identify pre-
19 liminary training needs for any such project or program.

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

1 **“§ 572. Acquisition**

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

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

7 “(2) establishes the feasibility of alternatives;

8 “(3) develops an acquisition project or program
9 baseline;

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

11 “(5) assesses the relative merits of alternatives
12 to determine a preferred solution in accordance with
13 the requirements of this section.

14 “(b) ANALYSIS OF ALTERNATIVES.—

15 “(1) IN GENERAL.—The Commandant shall
16 conduct an analysis of alternatives for the asset or
17 capability to be acquired in an analyze and select
18 phase of the acquisition process.

19 “(2) REQUIREMENTS.—The analysis of alter-
20 natives shall be conducted by a federally funded re-
21 search and development center, a qualified entity of
22 the Department of Defense, or a similar independent
23 third party entity that has appropriate acquisition
24 expertise and has no substantial financial interest in
25 any part of the acquisition project or program that

1 is the subject of the analysis. At a minimum, the
2 analysis of alternatives shall include—

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

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

7 “(C) an evaluation of whether different
8 combinations or quantities of specific assets or
9 capabilities could meet the Coast Guard’s over-
10 all performance needs;

11 “(D) a discussion of key assumptions and
12 variables, and sensitivity to change in such as-
13 sumptions and variables;

14 “(E) when an alternative is an existing
15 asset or prototype, an evaluation of relevant
16 safety and performance records and costs;

17 “(F) a calculation of life-cycle costs includ-
18 ing—

19 “(i) an examination of likely research
20 and development costs and the levels of un-
21 certainty associated with such estimated
22 costs;

23 “(ii) an examination of likely produc-
24 tion and deployment costs and levels of un-

1 certainty associated with such estimated
2 costs;

3 “(iii) an examination of likely oper-
4 ating and support costs and the levels of
5 uncertainty associated with such estimated
6 costs;

7 “(iv) if they are likely to be signifi-
8 cant, an examination of likely disposal
9 costs and the levels of uncertainty associ-
10 ated with such estimated costs; and

11 “(v) such additional measures as the
12 Commandant or the Secretary of Home-
13 land Security determines to be necessary
14 for appropriate evaluation of the asset; and

15 “(G) the business case for each viable al-
16 ternative.

17 “(c) TEST AND EVALUATION MASTER PLAN.—

18 “(1) IN GENERAL.—For any Level 1 or Level
19 2 acquisition project or program the Chief Acquisi-
20 tion Officer shall approve a test and evaluation mas-
21 ter plan specific to the acquisition project or pro-
22 gram for the capability, asset, or subsystems of the
23 capability or asset and intended to minimize tech-
24 nical, cost, and schedule risk as early as practicable
25 in the development of the project or program.

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

3 “(A) set forth an integrated test and eval-
4 uation strategy that will verify that capability-
5 level or asset-level and subsystem-level design
6 and development, including performance and
7 supportability, have been sufficiently proven be-
8 fore the capability, asset, or subsystem of the
9 capability or asset is approved for production;
10 and

11 “(B) require that adequate developmental
12 tests and evaluations and operational tests and
13 evaluations established under subparagraph (A)
14 are performed to inform production decisions.

15 “(3) OTHER COMPONENTS OF THE MASTER
16 PLAN.—At a minimum, the master plan shall iden-
17 tify—

18 “(A) the key performance parameters to be
19 resolved through the integrated test and evalua-
20 tion strategy;

21 “(B) critical operational issues to be as-
22 sessed in addition to the key performance pa-
23 rameters;

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

1 “(D) modeling and simulation activities to
2 be performed, if any, and the scope of such ac-
3 tivities;

4 “(E) early operational assessments to be
5 performed, if any, and the scope of such assess-
6 ments;

7 “(F) operational test and evaluation
8 phases;

9 “(G) an estimate of the resources, includ-
10 ing funds, that will be required for all test,
11 evaluation, assessment, modeling, and simula-
12 tion activities; and

13 “(H) the Government entity or inde-
14 pendent entity that will perform the test, eval-
15 uation, assessment, modeling, and simulation
16 activities.

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

21 “(5) LIMITATION.—The Coast Guard may
22 not—

23 “(A) proceed beyond that phase of the ac-
24 quisition process that entails approving the sup-
25 porting acquisition of a capability or asset be-

1 fore the master plan is approved by the Chief
2 Acquisition Officer; or

3 “(B) award any production contract for a
4 capability, asset, or subsystem for which a mas-
5 ter plan is required under this subsection before
6 the master plan is approved by the Chief Acqui-
7 sition Officer.

8 “(d) LIFE-CYCLE COST ESTIMATES.—

9 “(1) IN GENERAL.—The Commandant shall im-
10 plement mechanisms to ensure the development and
11 regular updating of life-cycle cost estimates for each
12 Level 1 or Level 2 acquisition to ensure that these
13 estimates are considered in decisions to develop or
14 produce new or enhanced capabilities and assets.

15 “(2) TYPES OF ESTIMATES.—In addition to
16 life-cycle cost estimates that may be developed by ac-
17 quisition program offices, the Commandant shall re-
18 quire that an independent life-cycle cost estimate be
19 developed for each Level 1 or Level 2 acquisition
20 project or program.

21 “(3) REQUIRED UPDATES.—For each Level 1
22 or Level 2 acquisition project or program the Com-
23 mandant shall require that life-cycle cost estimates
24 shall be updated before each milestone decision is

1 concluded and the project or program enters a new
2 acquisition phase.

3 “(e) DHS ACQUISITION APPROVAL.—A project or
4 program may not enter the obtain phase under section 573
5 unless the Department of Homeland Security Acquisition
6 Review Board or the Joint Review Board (or other entity
7 to which such responsibility is delegated by the Secretary
8 of Homeland Security) has approved the analysis of alter-
9 natives for the project. The Joint Review Board may also
10 approve the low rates initial production quantity for the
11 project or program if such an initial production quantity
12 is planned by the acquisition project or program and
13 deemed appropriate by the Joint Review Board.

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

15 “(a) IN GENERAL.—The Commandant shall ensure
16 that developmental test and evaluation, operational test
17 and evaluation, life cycle cost estimates, and the develop-
18 ment and demonstration requirements are met to confirm
19 that the projects or programs meet the requirements de-
20 scribed in the mission-needs statement and the oper-
21 ational-requirements document and the following develop-
22 ment and demonstration objectives:

23 “(1) To demonstrate that the most promising
24 design, manufacturing, and production solution is

1 based upon a stable, producible, and cost-effective
2 product design.

3 “(2) To ensure that the product capabilities
4 meet contract specifications, acceptable operational
5 performance requirements, and system security re-
6 quirements.

7 “(3) To ensure that the product design is ma-
8 ture enough to commit to full production and de-
9 ployment.

10 “(b) TESTS AND EVALUATIONS.—

11 “(1) IN GENERAL.—The Commandant shall en-
12 sure that the Coast Guard conducts developmental
13 tests and evaluations and operational tests and eval-
14 uations of a capability or asset and the subsystems
15 of the capability or asset for which a master plan
16 has been prepared under section 572(c)(1).

17 “(2) USE OF THIRD PARTIES.—The Com-
18 mandant shall ensure that the Coast Guard uses
19 independent third parties with expertise in testing
20 and evaluating the capabilities or assets and the
21 subsystems of the capabilities or assets being ac-
22 quired to conduct developmental tests and evalua-
23 tions and operational tests and evaluations whenever
24 the Coast Guard lacks the capability to conduct the
25 tests and evaluations required by a master plan.

1 “(3) COMMUNICATION OF SAFETY CONCERNS.—
2 The Commandant shall require that safety concerns
3 identified during developmental or operational tests
4 and evaluations or through independent or Govern-
5 ment-conducted design assessments of capabilities or
6 assets and subsystems of capabilities or assets to be
7 acquired by the Coast Guard shall be communicated
8 as soon as practicable, but not later than 30 days
9 after the completion of the test or assessment event
10 or activity that identified the safety concern, to the
11 program manager for the capability or asset and the
12 subsystems concerned and to the Chief Acquisition
13 Officer.

14 “(4) ASSET ALREADY IN LOW, INITIAL, OR
15 FULL-RATE PRODUCTION.—If operational test and
16 evaluation on a capability or asset already in low,
17 initial, or full-rate production identifies a safety con-
18 cern with the capability or asset or any subsystems
19 of the capability or asset not previously identified
20 during developmental or operational test and evalua-
21 tion, the Commandant shall—

22 “(A) notify the program manager and the
23 Chief Acquisition Officer of the safety concern
24 as soon as practicable, but not later than 30
25 days after the completion of the test and eval-

1 uation event or activity that identified the safe-
2 ty concern; and

3 “(B) notify the Chief Acquisition Officer
4 and include in such notification—

5 “(i) an explanation of the actions that
6 will be taken to correct or mitigate the
7 safety concern in all capabilities or assets
8 and subsystems of the capabilities or as-
9 sets yet to be produced, and the date by
10 which those actions will be taken;

11 “(ii) an explanation of the actions
12 that will be taken to correct or mitigate
13 the safety concern in previously produced
14 capabilities or assets and subsystems of
15 the capabilities or assets, and the date by
16 which those actions will be taken; and

17 “(iii) an assessment of the adequacy
18 of current funding to correct or mitigate
19 the safety concern in capabilities or assets
20 and subsystems of the capabilities or as-
21 sets and in previously produced capabilities
22 or assets and subsystems.

23 “(c) TECHNICAL CERTIFICATION.—

24 “(1) IN GENERAL.—The Commandant shall—
25 ensure that any Level 1 or Level 2 acquisition

1 project or program is certified by the technical au-
2 thority of the Coast Guard after review by an inde-
3 pendent third party with capabilities in the mission
4 area, asset, or particular asset component.

5 “(2) TEMPEST TESTING.—The Commandant
6 shall—

7 “(A) cause all electronics on all aircraft,
8 surface, and shore assets that require TEM-
9 PEST certification and that are delivered after
10 the date of enactment of the Coast Guard Au-
11 thorization Act for Fiscal Years 2010 and 2011
12 to be tested in accordance with master plan
13 standards and communications security stand-
14 ards by an independent third party that is au-
15 thorized by the Federal Government to perform
16 such testing; and

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

19 “(3) VESSEL CLASSIFICATION.—The Com-
20 mandant shall cause each cutter, other than the Na-
21 tional Security Cutter, acquired by the Coast Guard
22 and delivered after the date of enactment of the
23 Coast Guard Authorization Act for Fiscal Years
24 2010 and 2011 is to be classed by the American Bu-
25 reau of Shipping before final acceptance.

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

8 **“§ 574. Acquisition, production, deployment, and sup-
9 port**

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

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

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

16 “(3) conduct acceptance tests and trails upon
17 the delivery of each asset or system to ensure the
18 delivered asset or system achieves full operational
19 capability.

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

21 “(1) execute the productions contracts;

22 “(2) ensure the delivered products meet oper-
23 ational cost and schedules requirements established
24 in the acquisition program baseline;

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

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

7 **“§ 575. Acquisition program baseline breach**

8 “(a) IN GENERAL.—The Commandant shall submit
9 a report to the appropriate congressional committees as
10 soon as possible, but not later than 30 days, after the
11 Chief Acquisition Officer of the Coast Guard becomes
12 aware of the breach of an acquisition program baseline
13 for any Level 1 or Level 2 acquisition program, by—

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

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

21 “(3) an anticipated failure for any individual
22 capability or asset or class of capabilities or assets
23 to satisfy any key performance threshold or param-
24 eter under the acquisition program baseline.

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

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

5 “(2) the projected impact to performance, cost,
6 and schedule;

7 “(3) an updated acquisition program baseline
8 and the complete history of changes to the original
9 acquisition program baseline;

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

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

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

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

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

1 “(1) the capability or asset or capability or
2 asset class to be acquired under the project or pro-
3 gram is essential to the accomplishment of Coast
4 Guard missions;

5 “(2) there are no alternatives to such capability
6 or asset or capability or asset class which will pro-
7 vide equal or greater capability in both a more cost-
8 effective and timely manner;

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

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

14 “SUBCHAPTER 3—DEFINITIONS

15 **“§ 581. Definitions**

16 “In this chapter:

17 “(1) APPROPRIATE CONGRESSIONAL COMMIT-
18 TEES.—The term ‘appropriate congressional com-
19 mittees’ means the House of Representatives Com-
20 mittee on Transportation and Infrastructure and the
21 Senate Committee on Commerce, Science, and
22 Transportation.

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

1 “(3) COMMANDANT.—The term ‘Commandant’
2 means the Commandant of the Coast Guard.

3 “(4) JOINT REVIEW BOARD.—The term ‘Joint
4 Review Board’ means the Department of Homeland
5 Security’s Investment Review Board, Joint Require-
6 ments Council, or other entity within the Depart-
7 ment designated by the Secretary as the Joint Re-
8 view Board for purposes of this chapter.

9 “(5) LEVEL 1 ACQUISITION.—The term ‘Level 1
10 acquisition’ means—

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

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

14 “(ii) the estimated total acquisition
15 costs of which exceed \$300,000,000; or

16 “(B) any acquisition that the Chief Acqui-
17 sition Officer of the Coast Guard determines to
18 have a special interest—

19 “(i) due to—

20 “(I) the experimental or tech-
21 nically immature nature of the asset;

22 “(II) the technological complexity
23 of the asset;

24 “(III) the commitment of re-
25 sources; or

1 “(IV) the nature of the capability
2 or set of capabilities to be achieved; or
3 “(ii) because such acquisition is a
4 joint acquisition.

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

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

11 “(B) the estimated total acquisition costs
12 of which are equal to or less than
13 \$300,000,000, but greater than \$100,000,000.

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

19 “(8) SAFETY CONCERN.—The term ‘safety con-
20 cern’ means any hazard associated with a capability
21 or asset or a subsystem of a capability or asset that
22 is likely to cause serious bodily injury or death to a
23 typical Coast Guard user in testing, maintaining, re-
24 pairing, or operating the capability, asset, or sub-
25 system or any hazard associated with the capability,

1 asset, or subsystem that is likely to cause major
 2 damage to the capability, asset, or subsystem during
 3 the course of its normal operation by a typical Coast
 4 Guard user.”.

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

“15. Acquisitions561”.

9 **SEC. 503. REPORT AND GUIDANCE ON EXCESS PASS-**
 10 **THROUGH CHARGES.**

11 (a) COMPTROLLER GENERAL REPORT.—

12 (1) IN GENERAL.—Not later than 180 days
 13 after the date of enactment of this Act, the Comp-
 14 troller General shall issue a report on pass-through
 15 charges on contracts, subcontracts, delivery orders,
 16 and task orders that were executed by a lead sys-
 17 tems integrator under contract to the Coast Guard
 18 during the 3 full calendar years preceding the date
 19 of enactment of this Act.

20 (2) MATTERS COVERED.—The report under this
 21 subsection—

22 (A) shall assess the extent to which the
 23 Coast Guard paid excessive pass-through
 24 charges to contractors or subcontractors that
 25 provided little or no value to the performance of

1 a contract or the production of a procured
2 asset; and

3 (B) shall assess the extent to which the
4 Coast Guard has been particularly vulnerable to
5 excessive pass-through charges on any specific
6 category of contracts or by any specific category
7 of contractors.

8 (b) GUIDANCE REQUIRED.—

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

19 (A) set forth clear standards for deter-
20 mining when no, or negligible, value has been
21 added to a contract by a contractor or subcon-
22 tractor;

23 (B) set forth procedures for preventing the
24 payment by the Government of excessive pass-
25 through charges; and

1 (C) identify any exceptions determined by
2 the Commandant to be in the best interest of
3 the Government.

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

6 (A) shall not apply to any firm, fixed-price
7 contract or subcontract, delivery order, or task
8 order that is—

9 (i) awarded on the basis of adequate
10 price competition, as determined by the
11 Commandant; or

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

16 (B) may include such additional exceptions
17 as the Commandant determines to be necessary
18 in the interest of the United States.

19 (c) EXCESSIVE PASS-THROUGH CHARGE DE-
20 FINED.—In this section the term “excessive pass-through
21 charge”, with respect to a contractor or subcontractor that
22 adds no, or negligible, value to a contract or subcontract,
23 means a charge to the Government by the contractor or
24 subcontractor that is for overhead or profit on work per-
25 formed by a lower-tier contractor or subcontractor, other

1 than reasonable charges for the direct costs of managing
 2 lower-tier contractors and subcontracts and overhead and
 3 profit based on such direct costs.

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

9 **TITLE VI—SHIPPING AND**
 10 **NAVIGATION**

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

13 (a) IN GENERAL.—Chapter 313 of title 46, United
 14 States Code, is amended—

15 (1) by striking “of Transportation” in sections
 16 31302, 31306, 31321, 31330, and 31343 each place
 17 it appears;

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

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

22 (4) by adding at the end of section 31301 the
 23 following:

1 “(7) ‘Secretary’ means the Secretary of the De-
2 partment of Homeland Security, unless otherwise
3 noted.”.

4 (b) SECRETARY AS MORTGAGEE.—Section 31308 of
5 such title is amended by striking “When the Secretary of
6 Commerce or Transportation is a mortgagee under this
7 chapter, the Secretary” and inserting “The Secretary of
8 Commerce or Transportation, as a mortgagee under this
9 chapter,”.

10 (c) SECRETARY OF TRANSPORTATION.—Section
11 31329(d) of such title is amended by striking “Secretary.”
12 and inserting “Secretary of Transportation.”.

13 (d) MORTGAGEE.—

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

16 (A) by inserting “or” after the semicolon
17 in subparagraph (B);

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

20 (C) by striking subparagraph (D).

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

22 (A) by inserting “or” after the semicolon
23 in subparagraph (B);

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

1 (C) by striking subparagraph (D).

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

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

6 **“§ 70122. Regulations**

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

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

“70122. Regulations.”.

12 **SEC. 603. COAST GUARD TO MAINTAIN LORAN-C NAVIGA-**
13 **TION SYSTEM.**

14 (a) IN GENERAL.—The Secretary of Transportation
15 shall maintain the LORAN–C navigation system until
16 such time as the Secretary is authorized by statute, explic-
17 itly referencing this section, to cease operating the system
18 but expedite modernization projects necessary for transi-
19 tion to eLORAN technology.

20 (b) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to the Secretary of
22 Transportation, in addition to funds authorized under sec-
23 tion 101 of this Act for the Coast Guard for operation
24 of the LORAN–C system and for the transition to
25 eLORAN, for capital expenses related to the LORAN–C

1 infrastructure and to modernize and upgrade the LORAN
2 infrastructure to provide eLORAN services, \$37,000,000
3 for each of fiscal years 2010 and 2011. The Secretary of
4 Transportation may transfer from the Federal Aviation
5 Administration and other agencies of the Department of
6 Transportation such funds as may be necessary to reim-
7 burse the Coast Guard for related expenses.

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

17 (1) the timetable, milestones, projects, and fu-
18 ture funding required to complete the transition
19 from LORAN-C to eLORAN technology for provi-
20 sion of positioning, navigation, and timing services;
21 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
3 date of enactment of this Act or the date of completion
4 of the ongoing High Latitude Study to assess polar ice-
5 breaking mission requirements, which ever occurs later,
6 the Commandant 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 for operation by
14 the Coast Guard, and

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

18 (2) conduct an analysis of the impact on mis-
19 sion capacity and the ability of the United States to
20 maintain a presence in the polar regions through the
21 year 2020 if recapitalization of the polar icebreaker
22 fleet, either by constructing new polar icebreakers or
23 rebuilding, renovating, or improving the existing
24 fleet of polar icebreakers, is not fully funded.

25 (b) REPORTS TO CONGRESS.—

1 (1) Not later than 90 days after the date of en-
2 actment of this Act or the date of completion of the
3 ongoing High Latitude Study to assess polar ice-
4 breaking mission requirements, which ever occurs
5 later, the Commandant of the Coast Guard shall
6 submit a report containing the results of the study,
7 together with recommendations the Commandant
8 deems appropriate under section 93(a)(24) of title
9 14, United States Code, to the Senate Committee on
10 Commerce, Science, and Transportation and the
11 House of Representatives Committee on Transpor-
12 tation and Infrastructure.

13 (2) Not later than 1 year after the date of en-
14 actment of this Act, the Commandant shall submit
15 reports containing the results of the analyses re-
16 quired under paragraphs (1) and (2) of subsection
17 (a), together with recommendations the Com-
18 mandant deems appropriate under section 93(a)(24)
19 of title 14, United States Code, to the Senate Com-
20 mittee on Commerce, Science, and Transportation
21 and the House of Representatives Committee on
22 Transportation and Infrastructure.

1 **SEC. 605. VESSEL SIZE LIMITS.**

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

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

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

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

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

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

13 “(C) the vessel is either a rebuilt vessel or
14 a replacement vessel under section 208(g) of
15 the American Fisheries Act (title II of division
16 C of Public Law 105–277; 112 Stat. 2681–
17 627) and is eligible for a fishery endorsement
18 under this section.”.

19 (b) **CONFORMING AMENDMENTS.**—

20 (1) **VESSEL REBUILDING AND REPLACE-**
21 **MENT.**—Section 208(g) of the American Fisheries
22 Act (title II of division C of Public Law 105–277;
23 112 Stat. 2681–627) is amended to read as follows:

24 “(g) **VESSEL REBUILDING AND REPLACEMENT.**—

25 “(1) **IN GENERAL.**—

1 “(A) REBUILD OR REPLACE.—Notwith-
2 standing any limitation to the contrary on re-
3 placing, rebuilding, or lengthening vessels or
4 transferring permits or licenses to a replace-
5 ment vessel contained in sections 679.2 and
6 679.4 of title 50, Code of Federal Regulations,
7 as in effect on the date of enactment of the
8 Coast Guard Authorization Act for Fiscal Years
9 2010 and 2011 and except as provided in para-
10 graph (4), the owner of a vessel eligible under
11 subsection (a), (b), (c), (d), or (e) (other than
12 paragraph (21)), in order to improve vessel
13 safety and operational efficiencies (including
14 fuel efficiency), may rebuild or replace that ves-
15 sel (including fuel efficiency) with a vessel docu-
16 mented with a fishery endorsement under sec-
17 tion 12113 of title 46, United States Code.

18 “(B) SAME REQUIREMENTS.—The rebuilt
19 or replacement vessel shall be eligible in the
20 same manner and subject to the same restric-
21 tions and limitations under such subsection as
22 the vessel being rebuilt or replaced.

23 “(C) TRANSFER OF PERMITS AND LI-
24 CENSES.—Each fishing permit and license held
25 by the owner of a vessel or vessels to be rebuilt

1 or replaced under subparagraph (A) shall be
2 transferred to the rebuilt or replacement vessel.

3 “(2) RECOMMENDATIONS OF NORTH PACIFIC
4 COUNCIL.—The North Pacific Council may rec-
5 ommend for approval by the Secretary such con-
6 servation and management measures, including size
7 limits and measures to control fishing capacity, in
8 accordance with the Magnuson-Stevens Act as it
9 considers necessary to ensure that this subsection
10 does not diminish the effectiveness of fishery man-
11 agement plans of the Bering Sea and Aleutian Is-
12 lands Management Area or the Gulf of Alaska.

13 “(3) SPECIAL RULE FOR REPLACEMENT OF
14 CERTAIN VESSELS.—

15 “(A) IN GENERAL.—Notwithstanding the
16 requirements of subsections (b)(2), (c)(1), and
17 (c)(2) of section 12113 of title 46, United
18 States Code, a vessel that is eligible under sub-
19 section (a), (b), (c), (d), or (e) (other than
20 paragraph (21)) and that qualifies to be docu-
21 mented with a fishery endorsement pursuant to
22 section 203(g) or 213(g) may be replaced with
23 a replacement vessel under paragraph (1) if the
24 vessel that is replaced is validly documented
25 with a fishery endorsement pursuant to section

1 203(g) or 213(g) before the replacement vessel
2 is documented with a fishery endorsement
3 under section 12113 of title 46, United States
4 Code.

5 “(B) APPLICABILITY.—A replacement ves-
6 sel under subparagraph (A) and its owner and
7 mortgagee are subject to the same limitations
8 under section 203(g) or 213(g) that are appli-
9 cable to the vessel that has been replaced and
10 its owner and mortgagee.

11 “(4) SPECIAL RULES FOR CERTAIN CATCHER
12 VESSELS.—

13 “(A) IN GENERAL.—A replacement for a
14 covered vessel described in subparagraph (B) is
15 prohibited from harvesting fish in any fishery
16 (except for the Pacific whiting fishery) managed
17 under the authority of any regional fishery
18 management council (other than the North Pa-
19 cific Council) established under section 302(a)
20 of the Magnuson-Stevens Act.

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

23 “(i) a vessel eligible under subsection
24 (a), (b), or (c) that is replaced under para-
25 graph (1); or

1 “(ii) a vessel eligible under subsection
2 (a), (b), or (c) that is rebuilt to increase
3 its registered length, gross tonnage, or
4 shaft horsepower.

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

11 “(6) GULF OF ALASKA LIMITATION.—Notwith-
12 standing paragraph (1), the Secretary shall prohibit
13 from participation in the groundfish fisheries of the
14 Gulf of Alaska any vessel that is rebuilt or replaced
15 under this subsection and that exceeds the maximum
16 length overall specified on the license that authorizes
17 fishing for groundfish pursuant to the license limita-
18 tion program under part 679 of title 50, Code of
19 Federal Regulations, as in effect on the date of en-
20 actment of the Coast Guard Authorization Act for
21 Fiscal Years 2010 and 2011.

22 “(7) AUTHORITY OF PACIFIC COUNCIL.—Noth-
23 ing in this section shall be construed to diminish or
24 otherwise affect the authority of the Pacific Council
25 to recommend to the Secretary conservation and

1 management measures to protect fisheries under its
2 jurisdiction (including the Pacific whiting fishery)
3 and participants in such fisheries from adverse im-
4 pacts caused by this Act.”.

5 (2) EXEMPTION OF CERTAIN VESSELS.—Sec-
6 tion 203(g) of the American Fisheries Act (title II
7 of division C of Public Law 105–277; 112 Stat.
8 2681–620) is amended—

9 (A) by inserting “and” after “(United
10 States official number 651041)”;

11 (B) by striking “, NORTHERN TRAV-
12 ELER (United States official number 635986),
13 and NORTHERN VOYAGER (United States
14 official number 637398) (or a replacement ves-
15 sel for the NORTHERN VOYAGER that com-
16 plies with paragraphs (2), (5), and (6) of sec-
17 tion 208(g) of this Act)”;

18 (C) by striking “, in the case of the
19 NORTHERN” and all that follows through
20 “PHOENIX,”.

21 (3) FISHERY COOPERATIVE EXIT PROVI-
22 SIONS.—Section 210(b) of the American Fisheries
23 Act (title II of division C of Public Law 105–277;
24 112 Stat. 2681–629) is amended—

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

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

5 “(7) FISHERY COOPERATIVE EXIT PROVI-
6 SIONS.—

7 “(A) FISHING ALLOWANCE DETERMINA-
8 TION.—For purposes of determining the aggre-
9 gate percentage of directed fishing allowances
10 under paragraph (1), when a catcher vessel is
11 removed from the directed pollock fishery, the
12 fishery allowance for pollock for the vessel being
13 removed—

14 “(i) shall be based on the catch his-
15 tory determination for the vessel made
16 pursuant to section 679.62 of title 50,
17 Code of Federal Regulations, as in effect
18 on the date of enactment of the Coast
19 Guard Authorization Act of 2008; and

20 “(ii) shall be assigned, for all pur-
21 poses under this title, in the manner speci-
22 fied by the owner of the vessel being re-
23 moved to any other catcher vessel or
24 among other catcher vessels participating
25 in the fishery cooperative if such vessel or

1 vessels remain in the fishery cooperative
2 for at least one year after the date on
3 which the vessel being removed leaves the
4 directed pollock fishery.

5 “(B) ELIGIBILITY FOR FISHERY ENDORSE-
6 MENT.—Except as provided in subparagraph
7 (C), a vessel that is removed pursuant to this
8 paragraph shall be permanently ineligible for a
9 fishery endorsement, and any claim (including
10 relating to catch history) associated with such
11 vessel that could qualify any owner of such ves-
12 sel for any permit to participate in any fishery
13 within the exclusive economic zone of the
14 United States shall be extinguished, unless such
15 removed vessel is thereafter designated to re-
16 place a vessel to be removed pursuant to this
17 paragraph.

18 “(C) LIMITATIONS ON STATUTORY CON-
19 STRUCTION.—Nothing in this paragraph shall
20 be construed—

21 “(i) to make the vessels AJ (United
22 States official number 905625), DONA
23 MARTITA (United States official number
24 651751), NORDIC EXPLORER (United
25 States official number 678234), and

1 PROVIDIAN (United States official num-
2 ber 1062183) ineligible for a fishery en-
3 dorsement or any permit necessary to par-
4 ticipate in any fishery under the authority
5 of the New England Fishery Management
6 Council or the Mid-Atlantic Fishery Man-
7 agement Council established, respectively,
8 under subparagraphs (A) and (B) of sec-
9 tion 302(a)(1) of the Magnuson-Stevens
10 Act; or

11 “(ii) to allow the vessels referred to in
12 clause (i) to participate in any fishery
13 under the authority of the Councils re-
14 ferred to in clause (i) in any manner that
15 is not consistent with the fishery manage-
16 ment plan for the fishery developed by the
17 Councils under section 303 of the Magnu-
18 son-Stevens Act.”.

19 **TITLE VII—VESSEL** 20 **CONVEYANCE**

21 **SEC. 701. SHORT TITLE.**

22 This title may be cited as the “Vessel Conveyance
23 Act”.

1 **SEC. 702. CONVEYANCE OF COAST GUARD VESSELS FOR**
2 **PUBLIC PURPOSES.**

3 (a) IN GENERAL.—Whenever the transfer of owner-
4 ship of a Coast Guard vessel to an eligible entity for use
5 for educational, cultural, historical, charitable, rec-
6 reational, or other public purposes is authorized by law,
7 the Coast Guard shall transfer the vessel to the General
8 Services Administration for conveyance to the eligible enti-
9 ty.

10 (b) CONDITIONS OF CONVEYANCE.—The General
11 Services Administration may not convey a vessel to an eli-
12 gible entity as authorized by law unless the eligible entity
13 agrees—

14 (1) to provide the documentation needed by the
15 General Services Administration to process a request
16 for aircraft or vessels under section 102.37.225 of
17 title 41, Code of Federal Regulations;

18 (2) to comply with the special terms, conditions,
19 and restrictions imposed on aircraft and vessels
20 under section 102–37.460 of such title;

21 (3) to make the vessel available to the United
22 States Government if it is needed for use by the
23 Commandant of the Coast Guard in time of war or
24 a national emergency; and

25 (4) to hold the United States Government
26 harmless for any claims arising from exposure to

1 hazardous materials, including asbestos and poly-
2 chlorinated biphenyls, after conveyance of the vessel,
3 except for claims arising from use of the vessel by
4 the United States Government under paragraph (3).

5 (c) ELIGIBLE ENTITY DEFINED.—In this section, the
6 term “eligible entity” means a State or local government,
7 nonprofit corporation, educational agency, community de-
8 velopment organization, or other entity that agrees to
9 comply with the conditions established under this section.

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