

APPENDIX G

Federal Laws and Conventions Authorizing U.S. Coast Guard Activities

APPENDIX G

FEDERAL LAWS AND CONVENTIONS AUTHORIZING U.S. COAST GUARD ACTIVITIES

The various operations performed by the USCG are essential for the protection of human health, property, and the marine environment; enforcement of state, Federal, and international laws; and to ensure the security of the United States.

Coast Guard Missions & General Law Enforcement Authority

The Coast Guard's primary missions are articulated in 14 USC 2: (the cite in parentheses following each mission are statutes which may elaborate on the CG authority)

1. enforce or assist in enforcement of all applicable Federal laws on, under, and over the high seas and waters subject to U.S. jurisdiction; (14 USC 89)
2. engage in maritime air surveillance or interdiction efforts to enforce or assist in enforcing laws of the U.S.;
3. administer laws, promulgate and enforce regulations for the promotion of safety of life and property on and under the high seas and waters subject to U.S. jurisdiction (covering matters not specifically delegated to another executive agency); (14 USC 88)
4. develop, establish, maintain and operate aids to maritime navigation, icebreaking facilities, and rescue facilities; (14 USC 83- 86)
5. engage in oceanographic research on high seas and waters subject to U.S. jurisdiction; and,
6. maintain a state of readiness to function as part of Navy in time of war. (14 USC 3, 4)

General Law Enforcement Authority:

14 U.S.C. 89: The Coast Guard's primary law enforcement authority is derived from 14 USC 89 which states in part, "The Coast Guard may make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas and waters over which the United States has jurisdiction, for the prevention detection, and suppression of violations of the laws of the United States." 14 USC 89 (a). When Coast Guard officers are enforcing any law of the United States pursuant to the authority in 14 USC 89, the law deems those officers to be "acting as agents of the particular executive department or independent establishment charged with the administration of the particular law. . ." 14 USC 89(b)(1). Therefore, unless the Coast Guard has independent authority to regulate activities, the Coast Guard generally enforces laws administered by other U.S. agencies.

14 USC 141: Another significant statutes concerning Coast Guard law enforcement authority is 14 USC 141 which allows the Coast Guard to assist other agencies and other agencies to assist the Coast Guard.

Migrant Interdiction: In addition to the general CG authority to enforce provisions of the Immigration and Naturalization Act through 14 USC 89, the CG has been tasked with interdicting vessels believed to be engaged in the irregular transport of people beyond U.S. territorial seas under Executive Order 12807.

Drug Interdiction: CG 14 USC 89 authority is used in conjunction with 46 USC 1901, which specifically makes the possession and distribution of drugs illegal on the high seas and waters subject to U.S. jurisdiction, to interdict drugs on the water.

Coast Guard Authority to Control Vessel Movement

Ports and Waterways Safety Act (PWSA) Authority (33 USC 1221 et seq.): The PWSA authorizes the Coast Guard to control vessel traffic in areas subject to the jurisdiction of the United States which are determined to be hazardous or under other hazardous circumstances. 33 USC 1223(a)(4). This authority is intended to protect the marine environment, including the navigable waters of the U.S. and the land and resources therein and thereunder. The implementing regulations for the PWSA are in 33 CFR Subchapter P. The requirements for the establishment of regulated navigation areas and limited access areas are contained in 33 CFR 165. It is under this authority that safety zones and vessel operational restrictions could be established.

The jurisdictional scope of the PWSA authority is constrained to “waters subject to the jurisdiction of the United States.” That phrase includes the navigable waters of the United States, 33 CFR 2.05-30, and the seaward extent of those waters is the territorial sea, 33 CFR 2.05-25(a). Historically, international law and the United States has recognized the territorial sea of a nation to extend 3 nautical miles from defined baseline (usually low mean water). In 1988, President Reagan issued Presidential Proclamation No. 5928, which declared that the U.S. territorial sea was 12 nautical miles for international law purposes. However, the Proclamation specifically stated that nothing in that Proclamation extended the geographic application of any domestic statutes beyond 3 nautical miles. This action was in part prompted by language in the 1982 United Nations Convention on the Law of the Sea (LOS) which stated in article 3 that the breadth of the territorial sea is 12 nautical miles from the baseline. Though the United States is a signatory to the LOS Convention, the treaty has not been ratified by the U.S. and therefore is not considered U.S. law. Therefore, the Coast Guard has consistently interpreted the geographic limits of the authority in the PWSA to control vessel traffic to be limited to the three nautical mile territorial sea. A limited exception exists in situations in which there is an international agreement or convention which applies (such as a designation by the International Maritime Organization (IMO) of particularly sensitive sea areas, traffic separation schemes, or areas to be avoided). In order to extend the application of the PWSA (or any other domestic statute which currently applies to the territorial sea) to 12 nautical miles, Congress would have to pass legislation specifically amending the jurisdictional scope of the statute.

Therefore, the Coast Guard authority to issue regulations and to control vessel traffic is limited by the PWSA to the geographic area of the territorial sea (3 nautical miles). That means, that although U.S. flag vessels are subject to U.S. jurisdiction wherever they operate, regulations issued under the PWSA are only enforceable against U.S. vessels within the territorial sea and not beyond. Additionally, the PWSA limits the use of its authority against foreign flagged vessels (absent an international treaty or agreement) by stating that the PWSA does not apply to foreign flagged vessels that are not destined for, or departing from, a port or place [within 3 nautical miles] and that are in innocent passage within the territorial seas of the U.S. or in transit through navigable waters of the U.S. which form part of an international strait. 33 USC 1223(d). (Article 19 of the LOS defines innocent passage as any passage that is not prejudicial to the peace, good order or security of the coastal state.)

Major Marine Resource Protection Statutes Enforced by the Coast Guard

Magnuson Act (16 USC 1801 et seq.): The Magnuson Fishery Conservation and Management Act of 1976 (Magnuson Act) establishes the legislative framework for the overall fisheries management and conservation activities of the United States. The National Marine Fisheries Service (NMFS) as the lead U.S. agency for managing fishery resources promulgates regulations under the Magnuson act authority while the Coast Guard is charged with the enforcement of the statute and regulations. The jurisdictional reach of the Magnuson Act is the United States Exclusive Economic Zone (EEZ) which extends out to 200 nautical miles from the U.S. baseline.

Endangered Species Act 16 USC 1536 et seq.): The Endangered Species Act (ESA) establishes the legislative framework for the conservation and management of endangered species. NMFS is the agency responsible for promulgating regulations under the ESA, while the Coast Guard has authority under section 11 to enforce violations of the Endangered Species Act.

Marine Mammal Protection Act (16 USC 1361 et seq.): The Marine Mammal Protection Act (MMPA) establishes the legislative framework for the conservation and management of marine mammals. NMFS is the lead U.S. agency for managing marine mammals and has the authority for promulgating regulations under the Act. The Coast Guard can enforce the provisions of the Act under 14 U.S.C. 141. The jurisdictional reach of the MMPA is the United States Exclusive Economic Zone (EEZ) which extends out to 200 nautical miles from the U.S. baseline.

OTHER COAST GUARD MISSIONS

Mission areas of the USCG that may result in interactions (both positive or negative) or produce a risk of disturbance or harm to endangered species of whales and sea turtles in U.S. waters of the Atlantic Ocean include the following:

- Engineering
- Marine Environmental Protection
- Marine Safety
- Coast Guard Aviation
- Law Enforcement
- Search and Rescue
- Aids to Navigation
- Traffic Separation Schemes
- Vessel Traffic Services

The Engineering Directorate provides support in aeronautical, civil, and naval engineering for the USCG. Authorities for the activities of the Engineering Directorate are derived primarily from the authorities given under Congressional appropriations and the authorities outlined by the Commandant in COMDTINST M5400.7D.

The Marine Environmental Protection Program activities collectively contribute to broad national environmental interests. The USCG receives authority to perform these activities from several Federal laws and acts, and several international conventions. The principal laws providing the basis for this program are:

- The Ports and Waterways Safety Act (PWSA) of 1972: as amended, provides a basis for USCG regulatory actions, and general management of ports and waterways to minimize deaths, injuries, property damage, and environmental damage.

- **The Clean Water Act (CWA):** as amended by the Oil Pollution Act of 1990, provides the basic statutory authority for USCG pollution prevention, contingency planning, and response activities within the 200-mile Exclusive Economic Zone (EEZ), for oil and hazardous substances.
- **The Act to Prevent Pollution from Ships:** implements the MARPOL Convention (Annexes I, II, and V) in U.S. law and authorizes the development of implementing regulations. Annex I covers discharges of petroleum; Annex II regulates discharges of noxious liquid substances; and Annex V prohibits dumping of plastic trash anywhere in the ocean or in navigable waters of the United States.
- **The Nonindigenous Species Aquatic Nuisance Prevention and Control Act of 1990:** provides the USCG with authority to control biological contamination of ballast water in ships visiting U.S. ports.
- **The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA):** also known as Superfund, extends response provisions of the CWA to a wide range of chemical pollutants and hazardous materials.
- **The Hazardous Materials Transportation Act:** provides the USCG with authority for regulating the transportation and handling of hazardous materials in maritime waters.
- **The Magnuson Act of 1976:** tasks the Secretary of Commerce and CG with implementing fisheries conservation and management for the United States.
- **The Intervention on the High Seas Act:** authorizes the USCG to take actions to prevent or eliminate danger to the U.S. coastline from pollution due to a casualty on the high seas, including authority to remove or destroy a vessel or its cargo.
- **The Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA):** regulates ocean dumping activities.
- **The Shore Protection Act:** addresses the transportation and handling of municipal and commercial waste by vessels and shoreside facilities.

The principal international agreements that underlie the USCG environmental protection activities and many USCG statutory authorities include the following:

- **Safety of Life at Sea (SOLAS):** establishes international safety standards for certain categories of commercial vessels engaged in international voyages. These standards are addressed through the International Maritime Organization (IMO).
- **International Convention for the Prevention of Pollution from Ships 73/78 (MARPOL):** regulates discharges of several types of wastes from ships at sea and in coastal waters.
- **Standards for Training, Certification, and Watchkeeping (STCW):** sets international standards for training and certification of crews of ships.
- **International Convention on Load Lines, 1966 (ICLL 66):** sets guidelines for loading of ships, ensuring that they are not overloaded.

- The Oil Pollution Preparedness and Response Cooperation (OPRC): establishes a global framework for cooperation among nations in preparing for and combating oil and hazardous materials spills.

The Marine Safety Program performs operations essential to minimize threats to the safety and security of U.S. citizens, vessels, port facilities, or national assets. The Coast Guard Captain of the Port (COTP) administers the multi-mission Marine Safety and Security and Marine Environmental Protection Programs through the following statutory authorities:

- Ports and Waterways Safety Act (PWSA) of 1972: provides for the establishment, operation, and maintenance of vessel traffic services, control of vessel movement, establishment of requirements for vessel operation, and other port safety controls.
- Title 46 Shipping Laws: provide a broad basis for vessel and maritime personnel standards, inspection and examination, issuance of certificates and licenses, casualty investigations, and personnel actions.
- Port and Tanker Safety Act (PTSA) of 1978: amends the PWSA and provides the USCG with broader, more extensive, and explicitly stated authority in the supervision and control of all types of vessels, foreign and domestic, operating in U.S. navigable waters, and in the safety of all tank vessels, foreign and domestic, that transport and transfer oil and hazardous cargos in U.S. ports.
- The Oil Pollution Act of 1990 (OPA 90): imposes new requirements on the operation of oil tank vessels in U.S. waters, and enhances the authority of the USCG to effectively regulate the conduct of tank vessels and merchant marine personnel in U.S. waters.
- The Act to Prevent Pollution from Ships (APPS): implements MARPOL 73/78 which limits the operational discharges of oil and oily wastewater from ships through equipment and operational requirements, and provides reception facilities to receive wastes that cannot be discharge at sea.
- The Marine Plastic Pollution Research and Control Act of 1987: amended APPS, authorizing the USCG to enforce Annex V of MARPOL which prohibits disposal of plastics and garbage at sea.
- The Magnuson Act of 1950: tasks the Secretary of Commerce and CG with implementing fisheries conservation and management for the United States.
- Title IF of Public Law 99-399, 33 USC 1226: authorizes the USCG to carry out measures to prevent or respond to an act of terrorism against an individual, vessel, or commercial structure that is subject to the jurisdiction of the U.S. and located within or adjacent to the marine environment or a vessel of the U.S. or an individual on board a vessel.

The principal international agreements that underlie this USCG activity include the following:

- Safety of Life at Sea (SOLAS): establishes international safety standards for certain categories of commercial vessels engaged in international voyages. These standards are addressed through the International Maritime Organization (IMO).
- Standards for Training, Certification, and Watchkeeping (STCW): sets international standards for training and certification of crews of ships.

In addition, there are several regulatory authorities that provide the USCG with authority to perform its various missions in marine safety and security.

The Aviation Program of the USCG provides essential air support for the various missions of other programs in the USCG. The basic authority for the operation of USCG aircraft is contained in Title 14 of the U.S. Code. This authority is further delegated through OMB Circular A-126, Improving the Management and Use of Government Aircraft; 41 CFR Part 101-137; DOT Order 6050.1 (series), Management and Use of Department of Transportation Aircraft; and COMDTINST 3710.1 (series).

USCG Law Enforcement provides essential services to the U.S. by enforcing the full range of applicable Federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States. The Enforcement of Laws and Treaties (ELT) Program focuses primarily on protecting fisheries and other living resources, combating illicit drug trafficking, and interdicting illegal migrants at sea. The U.S. Congress has provided the USCG with statutory authority to perform law enforcement activities in these three areas.

Several statutes direct the USCG to enforce laws dealing with living marine resources in state, Federal and EEZ waters of the Atlantic Ocean. These include:

- The Magnuson Fishery Conservation and Management Act of 1976
- The Lacey Act
- The Atlantic Tunas Convention
- The Atlantic Salmon Convention
- The Marine Mammal Protection Act
- The Endangered Species Act
- The Marine Protection, Research, and Sanctuaries Act
- The High Seas Driftnet Fisheries Enforcement Act
- The Whaling Convention Act
- The Fish and Wildlife Conservation Act
- The Atlantic Striped Bass Act
- The Sponge Act

Statutory authority for the USCG to perform drug interdiction activities on the high seas is contained in the following statutes:

- 14 USC Sections 2, 89, and 141 - USCG Establishment, Duties, Organization is the basis for USCG enforcement authority upon the high seas and waters over which the United States has jurisdiction for the prevention, detection, and suppression of violations of laws of the United States.
- 46 USC App. 1901 et seq. - The Maritime Drug Law Enforcement Act.
- Presidential Decision Directive 14. PDD-14 presents the national policy statement of the administration for the conduct of drug interdiction operations in the western hemisphere beyond U.S. borders.

Statutory authority for the USCG to enforce U.S. immigration laws and related international agreements at sea are derived from the following laws:

- 14 USC 89, 141

- Title 8 USC - Aliens and Nationality
- Presidential Decision Directive (PDD/NSC-9) identifies and authorizes the USCG to perform at-sea interdiction of Asian criminal syndicate smuggling attempts.
- Executive Order 12908 dated 24 May 1992 specifically instructs the USCG to interdict undocumented migrants at sea by stopping and boarding defined vessels, making inquiries and, if warranted, returning the vessel and passengers to the country from which it came, or to another country.

The USCG also has general statutory authority to perform law enforcement operations on the high seas and waters under the jurisdiction of the United States. This general law enforcement authority is derived from:

- Title 14 USC - CG Establishment, Duties, Organization
- Title 19 USC - U.S. Customs Authority and Duties
- Title 21 USC - Food and Drug (Abuse)
- Title 26 USC - IRS Law and Enforcement
- Title 31 USC - Money and Finance
- Title 33 USC - Navigation and Navigable Waters
- Title 46 USC - Shipping (Maritime Safety, Inspection)

The Search and Rescue (SAR) Program of the USCG provides essential services to the U.S. people. The primary objective of SAR is to minimize loss of life, personnel injury, and property loss and damage in the maritime environment. The statutory authority for the SAR Program is contained in Title 14, Sections 2, 88, and 141 of the U.S. Code. USCG SAR responsibility is defined further by the National Search and Rescue Plan (Appendix A of the National SAR Manual; COMDTINST M16120.5), an interagency agreement originally signed in 1956 and most recently updated in 1991, that delineates three SAR regions: inland, maritime, and overseas. The USCG is the maritime SAR coordinator.

In its Aids to Navigation Program, the USCG maintains thousands of aids to navigation along the U.S. Atlantic coast. These aids to navigation provide essential assistance to mariners by acting as road signs on the waterway or marking the location of an isolated danger. Statutory authority for the USCG to perform its Aids to Navigation missions is contained in 14 USC 81, The Ports and Waterways Safety Act of 1972, as amended by the Port and Tanker Safety Act of 1978.

The Vessel Traffic Services Program of the USCG provides essential services to mariners by facilitating the safe and efficient movement of vessel traffic, preventing collisions, groundings, and environmental or economic losses or consequences of these accidents. Initial statutory authority for the VTS activities is derived from Title 14 USC which requires the USCG to safeguard the nation's ports, waterways, port facilities, vessels, persons and property in the vicinity of the port, from accidental or intentional destruction, damage, loss, or injury. Further statutory authority for the Vessel Traffic Services Control Program is derived from the Ports and Waterways Safety Act (PWSA) of 1972, as amended by the Port and Tanker Safety Act of 1978 and the Oil Pollution Act of 1990.