



COAST GUARD AUTHORIZATION ACT OF 2010 INCLUDES CHANGES

AFFECTING CIVIL PENALTIES.

Written by Robert Bruce

On October 15, 2010, President Obama signed the Coast Guard Authorization Act of 2010, Public Law 111-281, into law. This new law contains many provisions on a wide variety of subjects related to the Coast Guard. Three of the provisions provide new authority to assess civil penalties or increase the amount of the civil penalty that may be assessed.

Section 301 of the Authorization Act amends 33 U.S.C. § 471 which authorizes the Coast Guard to establish and regulate anchorages. Among other things, the maximum civil penalty for violating an anchorage regulation is increased from \$100 to \$10,000. This appears to be the first change to the civil penalty amount since the \$100 maximum penalty was enacted in 1915. Clearly, in some circumstances, the old \$100 maximum penalty was too small to be a serious factor in obtaining compliance with anchorage regulations. As a result, in at least one instance, the Coast Guard turned to its Ports and Waterways Safety Act authority, which is backed up by a civil penalty of up to \$40,000, for enforcement of anchorage regulations. See 33 C.F.R. §§ 109.07 and 110.1a (anchorages included within the Port of New York). The new maximum civil penalty for violating anchorage regulations should provide a stronger incentive for mariners to comply with those regulations.

Section 302 of the Authorization Act amends 46 U.S.C. 70506, part of the Maritime Drug Law Enforcement Act, to add a \$5,000 civil penalty for simple possession of a controlled substance on a vessel subject to the jurisdiction of the United States. Before the enactment of this provision, only criminal penalties were available for simple possession of controlled substances. Many of these cases occur in areas of concurrent state and federal jurisdiction. Generally, state laws have provisions that can adequately deal with infractions of this nature. As a result, cases involving simple possession of personal use quantities of controlled substances have routinely been turned

over to state authorities for prosecution. Some unusual circumstances that created a strong federal interest in the case would have typically been present to justify bringing such a criminal case in federal court. With the new authority to assess civil penalties for simple possession of controlled substances, there is likely to be less reluctance to pursue federal action. In fact, as we frequently see with boating while intoxicated cases, there may often be cases where both the state authorities and the Coast Guard will commence actions based on the same incident. Although Coast Guard Hearing Officers will consider the results of state actions for the same incident when acting on a civil penalty case, they are not bound by state action and there is no bar to assessing a Coast Guard civil penalty even after an individual has been sentenced by a state court for the same violation.

Finally, Title X of the Authorization Act implements the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001, and Section 1042 of the Authorization Act creates civil penalties to enforce the new law. The maximum penalty for a violation of 33 U.S.C. Chapter 38 or implementing regulations is \$37,500, except that, for a recreational vessel the maximum is \$5,000. There is also a civil penalty of up to \$50,000 for false statements or representations related to these requirements.

The National Oceanic and Atmospheric Administration's General Counsel website includes this information on the Harmful Anti-Fouling Systems ("AFS") Convention:

"The International Convention on the Control of Harmful Anti-Fouling Systems on Ships entered into force on September 17, 2008. Adopted under the auspices of the International Maritime Organization on October 5, 2001, the AFS Convention was signed by the United States on December 12, 2002, and President Bush transmitted it to the Senate for its advice and consent on January 23, 2008. The Senate Foreign Relations Committee reported a proposed resolution of ratification with two declarations on July 29, 2008, and the full Senate approved the proposed resolution of ratification on September 26, 2008. The Convention, which NOAA played an important role in negotiating and developing, bans the application or use of tributyltin (an anti-fouling agent used on the hulls of ships to prevent the growth of marine organisms), calls for its removal from existing anti-fouling systems by January 1, 2008, and establishes a detailed and science-based framework for considering future restrictions on antifouling systems."

Certain vessels, of at least 400 gross tons or of at least 24 meters in length, will be required to have documentation attesting that their anti-fouling system is not harmful.