

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 6999

---

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27 (legislative day, SEPTEMBER 17), 2008

Received

---

## AN ACT

To restructure the Coast Guard Integrated Deepwater  
Program, 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,*

1                   **TITLE I—INTEGRATED**  
2                   **DEEPWATER PROGRAM**

3 **SEC. 101. SHORT TITLE.**

4           This title may be cited as the “Integrated Deepwater  
5 Program Reform Act of 2008”.

6 **SEC. 102. PROCUREMENT STRUCTURE.**

7           (a) IN GENERAL.—

8                   (1) USE OF LEAD SYSTEMS INTEGRATOR.—Ex-  
9           cept as provided in subsection (b), the Secretary  
10          may not use a private sector entity as a lead systems  
11          integrator for acquisitions under, or in support of,  
12          the Integrated Deepwater Program after the end of  
13          the 180-day period beginning on the date of enact-  
14          ment of this Act.

15                  (2) FULL AND OPEN COMPETITION.—The Sec-  
16          retary and the lead systems integrator for the Inte-  
17          grated Deepwater Program shall utilize full and  
18          open competition for any acquisition for which an  
19          outside contractor is used under, or in support of,  
20          the Integrated Deepwater Program after the date of  
21          enactment of this Act, unless otherwise excepted in  
22          accordance with the Competition in Contracting Act  
23          of 1984 and the Federal Acquisition Regulation.

24                  (3) NO EFFECT ON SMALL BUSINESS ACT.—  
25          Nothing in this subsection shall be construed to su-

1       persede or otherwise affect the authorities provided  
2       by and under the Small Business Act (15 U.S.C.  
3       631 et seq.).

4       (b) EXCEPTIONS.—

5             (1) COMPLETION OF ACQUISITIONS BY LEAD  
6       SYSTEMS INTEGRATOR.—Notwithstanding subsection  
7       (a), the Secretary may use a private sector entity as  
8       a lead systems integrator for the Coast Guard—

9             (A) to complete any delivery order or task  
10       order that was issued to the lead systems inte-  
11       grator on or before the date that is 180 days  
12       after the date of enactment of this Act without  
13       any change in the quantity of assets or the spe-  
14       cific type of assets covered by the order;

15            (B) for acquisitions after the date that is  
16       180 days after the date of enactment of this  
17       Act of, or in support of, the HC-130J aircraft,  
18       the HH-65 aircraft, and the C4ISR system if  
19       the requirements of subsection (c) are met with  
20       respect to such acquisitions;

21            (C) for acquisitions after the date that is  
22       180 days after the date of enactment of this  
23       Act of, or in support of, National Security Cut-  
24       ters or Maritime Patrol Aircraft under contract  
25       or order for construction as of the date that is

1 180 days after the date of enactment of this  
2 Act, if the requirements of subsection (c) are  
3 met with respect to such acquisitions; and

4 (D) for the acquisition, or in support, of  
5 additional National Security Cutters or Mari-  
6 time Patrol Aircraft if the Secretary determines  
7 that—

8 (i) the acquisition is in accordance  
9 with the Competition in Contracting Act of  
10 1984 and the Federal Acquisition Regula-  
11 tion;

12 (ii) the acquisition and the use of a  
13 private sector entity as a lead systems inte-  
14 grator for the acquisition is in the best in-  
15 terest of the Federal Government; and

16 (iii) the requirements of subsection (c)  
17 are met with respect to such acquisition.

18 (2) AWARDS TO TIER 1 SUBCONTRACTORS.—

19 The Secretary may award to any Tier 1 subcon-  
20 tractor or subcontractor below the Tier 1 level any  
21 acquisition that the Secretary could award to a lead  
22 systems integrator under paragraph (1).

23 (3) REPORT ON DECISION-MAKING PROCESS.—

24 If the Secretary determines under paragraph (1)(B),  
25 (1)(C), or (1)(D) that the Coast Guard will use a

1 private sector lead systems integrator for an acquisi-  
2 tion, the Secretary shall notify in writing the appro-  
3 priate congressional committees of the Secretary's  
4 determination and shall provide a detailed rationale  
5 for the determination, at least 30 days before the  
6 award of a contract, delivery order, or task order  
7 using a private sector lead systems integrator, in-  
8 cluding a comparison of the cost of the acquisition  
9 through the private sector lead systems integrator  
10 with the expected cost if the acquisition were award-  
11 ed directly to the manufacturer or shipyard.

12 (c) LIMITATION ON LEAD SYSTEMS INTEGRATORS.—

13 Neither an entity performing lead systems integrator func-  
14 tions for an acquisition under, or in support of, the Inte-  
15 grated Deepwater Program, nor a Tier 1 subcontractor,  
16 for any acquisition described in subsection (b)(1)(B),  
17 (b)(1)(C), or (b)(1)(D) may have a financial interest in  
18 a subcontractor below the tier 1 subcontractor level un-  
19 less—

20 (1) the subcontractor was selected by the Sec-  
21 retary through full and open competition for such  
22 procurement;

23 (2) the procurement was awarded by the lead  
24 systems integrator or a subcontractor through full  
25 and open competition;

1           (3) the procurement was awarded by a subcon-  
2           tractor through a process over which the lead sys-  
3           tems integrator or a Tier 1 subcontractor exercised  
4           no control; or

5           (4) the Secretary has determined that the pro-  
6           curement was awarded in a manner consistent with  
7           the Competition in Contracting Act of 1984 and the  
8           Federal Acquisition Regulation.

9           (d) **RULE OF CONSTRUCTION.**—The limitation in  
10          subsection (b)(1)(A) on the quantity and specific type of  
11          assets to which subsection (b) applies shall not be con-  
12          strued to apply to the modification of the number or type  
13          of any subsystems or other components of a vessel or air-  
14          craft described in subsection (b)(1)(B), (C), or (D).

15          (e) **TERMINATION DATE FOR EXCEPTIONS.**—Not-  
16          withstanding subsection (b), the Secretary may not use a  
17          private sector entity as a lead systems integrator for ac-  
18          quisitions under, or in support of, the Integrated Deep-  
19          water Program after the earlier of—

20                 (1) September 30, 2011; or

21                 (2) the date on which the Secretary certifies in  
22          writing to the appropriate congressional committees  
23          that the Coast Guard has available and can retain  
24          sufficient contracting personnel and expertise within  
25          the Coast Guard, through an arrangement with

1 other Federal agencies, or through contracts or  
2 other arrangements with private sector entities, to  
3 perform the functions and responsibilities of the lead  
4 system integrator in an efficient and cost-effective  
5 manner.

6 **SEC. 103. REQUIRED CONTRACT TERMS.**

7 (a) IN GENERAL.—The Secretary shall ensure that  
8 any contract, delivery order, or task order for an acquisi-  
9 tion under, or in support of, the Integrated Deepwater  
10 Program executed by the Secretary after the date of enact-  
11 ment of this Act—

12 (1) provides that all certifications for Inte-  
13 grated Deepwater Program procurements will be  
14 conducted by the Secretary or an independent third  
15 party, and that self-certification by the contractor or  
16 subcontractor is not allowed;

17 (2) provides that the Commandant shall con-  
18 duct a technical review of all proposed designs, de-  
19 sign changes, and engineering changes and requires  
20 that the contractor address all design and engineer-  
21 ing concerns identified in the technical reviews;

22 (3) requires that the Commandant shall main-  
23 tain the authority to establish, approve, and main-  
24 tain technical requirements;

1           (4) requires that any measurement of con-  
2           tractor and subcontractor performance be based on  
3           the status of all work performed, including the ex-  
4           tent to which the work performed met all cost,  
5           schedule, and mission performance requirements;

6           (5) specifies that, for the acquisition or upgrade  
7           of air, surface, or shore assets for which compliance  
8           with TEMPEST certification is a requirement, the  
9           standard for determining such compliance will be the  
10          air, surface, or shore asset standard then used by  
11          the Department of the Navy for that type of asset;  
12          and

13          (6) for any contract issued to acquire an Off-  
14          shore Patrol Cutter, includes provisions specifying  
15          the service life, fatigue life, and days underway in  
16          general Atlantic and North Pacific Sea conditions,  
17          maximum range, and maximum speed the cutter will  
18          be built to achieve.

19          (b) PROHIBITED CONTRACT PROVISIONS.—The Sec-  
20          retary shall ensure that any contract, delivery order, or  
21          task order for acquisition under, or in support of, the Inte-  
22          grated Deepwater Program executed by the Secretary  
23          after the date of enactment of this Act does not include—

24                 (1) provisions that commit the Secretary with-  
25                 out express written approval by the Secretary; or



1           (2) any provision allowing for equitable adjust-  
2           ment that differs from the Federal Acquisition Reg-  
3           ulation.

4           (c) EXTENSION OF PROGRAM.—Any contract, con-  
5           tract modification, or award term extending the existing  
6           Integrated Deepwater Program contract term, as signed  
7           in May 2006 and modified in June 2007—

8           (1) shall not include any minimum require-  
9           ments for the purchase of a given or determinable  
10          number of specific assets; and

11          (2) shall be reviewed by the Under Secretary of  
12          Defense for Acquisition, Technology, and Logistics  
13          through the Defense Acquisition University and the  
14          results of that review shall be submitted to the ap-  
15          propriate congressional committees at least 60 days  
16          prior to the award of the contract, contract modi-  
17          fication, or award term.

18 **SEC. 104. TESTING AND CERTIFICATION.**

19          (a) EARLY OPERATIONAL ASSESSMENT.—

20          (1) For any major asset type acquired for the  
21          Coast Guard after the date of enactment of this Act  
22          other than the National Security Cutter and the  
23          Maritime Patrol Aircraft, the Secretary shall cause  
24          an early operational assessment to be completed on  
25          the design for that asset type.

1           (2) The early operational assessment shall be  
2 conducted by an independent third party with rel-  
3 evant expertise in conducting early operational as-  
4 sessments on the asset type for which the assess-  
5 ment is being performed or by the Coast Guard act-  
6 ing in collaboration with an independent third party  
7 with relevant expertise in conducting early oper-  
8 ational assessments on the asset type for which the  
9 assessment is being performed.

10           (3) The result of this assessment shall be sub-  
11 mitted to the appropriate congressional committees  
12 at least 90 days prior to the initiation of any con-  
13 struction activity utilizing the proposed design.

14           (4) The Secretary shall also submit a report de-  
15 scribing the steps taken to mitigate the risks identi-  
16 fied by the early operational assessment conducted  
17 under this section in the design on which construc-  
18 tion is to begin at least 30 days prior to the initi-  
19 ation of any construction utilizing the proposed de-  
20 sign.

21 (b) ASSESSMENT OF OPERATIONAL CAPABILITY.—

22           (1) The Secretary shall cause the first in class  
23 of a major asset acquisition of a cutter or an air-  
24 craft by the Coast Guard to be subjected to an as-  
25 sessment of operational capability conducted by an

1 independent third party with relevant expertise in  
2 the asset type or by the Coast Guard in collabora-  
3 tion with an independent third party with relevant  
4 expertise in the asset type.

5 (2) The result of the assessment conducted  
6 under this subsection shall be submitted to the ap-  
7 propriate congressional committees at least 45 days  
8 prior to acceptance of the asset.

9 (c) CUTTER CLASSIFICATION.—The Secretary shall  
10 cause each cutter, other than a National Security Cutter,  
11 acquired by the Coast Guard and delivered after the date  
12 of enactment of this Act to be classed by the American  
13 Bureau of Shipping, before acceptance of delivery.

14 (d) TEMPEST TESTING.—The Secretary shall cause  
15 all electronics on all aircraft, surface, and shore assets  
16 that require TEMPEST certification and that are deliv-  
17 ered after the date of enactment of this Act to be tested  
18 in accordance with TEMPEST standards and communica-  
19 tion security (COMSEC) standards by an independent  
20 third party that is authorized by the Federal Government  
21 to perform such testing and certify that the asset meets  
22 all applicable TEMPEST requirements.

23 (e) NATIONAL SECURITY CUTTER.—The Secretary  
24 shall cause the design and construction of each National  
25 Security Cutter, other than National Security Cutter 1

1 and 2, to be certified by an independent third party with  
2 expertise in vessel design and construction certification.

3 (f) AIRCRAFT AIRWORTHINESS.—The Secretary shall  
4 cause all aircraft and aircraft engines acquired by the  
5 Coast Guard and delivered after the date of enactment  
6 of this Act to be certified for airworthiness by an inde-  
7 pendent third party with expertise in aircraft and aircraft  
8 engine certification, before acceptance of delivery.

9 (g) CERTIFICATIONS.—

10 (1) After the date of enactment of this Act, a  
11 contract, delivery order, or task order exceeding  
12 \$10,000,000 for an acquisition under, or in support  
13 of, the Coast Guard’s Integrated Deepwater Pro-  
14 gram may not be executed by the Coast Guard until  
15 the Secretary certifies that—

16 (A) appropriate market research has been  
17 conducted prior to technology development to  
18 reduce duplication of existing technology and  
19 products;

20 (B) the technology has been demonstrated  
21 to the maximum extent practicable in a relevant  
22 environment;

23 (C) the technology demonstrates a high  
24 likelihood of accomplishing its intended mission;

1 (D) funding is available to execute the con-  
2 tract, delivery order, or task order; and

3 (E) the technology complies with all rel-  
4 evant policies, regulations, and directives of the  
5 Coast Guard.

6 (2) The Secretary shall transmit a copy of each  
7 certification required under subsection (g) to the ap-  
8 propriate congressional committees within 30 days  
9 after the completion of the certification.

10 (h) LIMITATION.—Nothing in this section shall pre-  
11 vent the Secretary from executing contracts or issuing de-  
12 livery orders or task orders for research and development  
13 or technology demonstrations under, or in support of, the  
14 Integrated Deepwater Program.

15 **SEC. 105. NATIONAL SECURITY CUTTER.**

16 Not later than 90 days before the Coast Guard signs  
17 any contract, delivery order, or task order to strengthen  
18 the hull of either of National Security Cutter 1 or 2 to  
19 resolve the structural design and performance issues iden-  
20 tified in the Department of Homeland Security Inspector  
21 General's report OIG-07-23 dated January 2007, the  
22 Secretary shall submit to the appropriate congressional  
23 committees all results of an assessment of the proposed  
24 hull strengthening design conducted by the Coast Guard,

1 in conjunction with the Naval Surface Warfare Center,  
2 Carderock Division, including—

3 (1) a description in detail of the extent to which  
4 the hull strengthening measures to be implemented  
5 on those cutters will enable the cutters to meet con-  
6 tract and performance requirements;

7 (2) a cost benefit analysis of the proposed hull  
8 strengthening measures for National Security Cut-  
9 ters 1 and 2; and

10 (3) a description of any operational restrictions  
11 that would have to be applied to either National Se-  
12 curity Cutters 1 or 2 if the proposed hull strength-  
13 ening measures were not implemented on either cut-  
14 ter.

15 **SEC. 106. IMPROVEMENTS IN COAST GUARD MANAGEMENT.**

16 (a) **INTEGRATED PRODUCT TEAMS.**—Integrated  
17 product teams, and all teams that oversee integrated prod-  
18 uct teams, shall be chaired by officers, members, or em-  
19 ployees of the Coast Guard.

20 (b) **DEEPWATER TECHNICAL AUTHORITY.**—The  
21 Commandant shall maintain or designate the technical au-  
22 thority to establish, approve, and maintain technical re-  
23 quirements for the Integrated Deepwater Program. Any  
24 such designation shall be given in writing and may not  
25 be delegated to the authority of the Chief Acquisition Offi-

1 cer established by section 55 of title 14, United States  
2 Code.

3 (c) ENSURING ADEQUATE PERSONNEL.—The Sec-  
4 retary shall ensure that sufficient contracting officers,  
5 contracting specialists, and technical and financial man-  
6 agement specialists (including earned value experts) are  
7 available to execute each contract issued under the Inte-  
8 grated Deepwater Program.

9 (d) ACQUISITIONS WORKFORCE POLICY.—The Sec-  
10 retary shall review all policies established for the Coast  
11 Guard’s acquisitions workforce to ensure that they are de-  
12 signed to provide for the selection of the best qualified  
13 individual for a position, consistent with other applicable  
14 law, and promote the establishment and maintenance of  
15 a balanced workforce in which women and members of ra-  
16 cial and ethnic minority groups are appropriately rep-  
17 resented in Government service.

18 (e) CAREER PATHS.—The Secretary shall ensure that  
19 appropriate career paths for civilian and military per-  
20 sonnel who wish to pursue careers in acquisitions are iden-  
21 tified in terms of the education, training, experience, and  
22 assignments necessary for career progression of civilians  
23 and members of the Coast Guard to the most senior acqui-  
24 sitions positions. The Secretary shall make available pub-  
25 lished information on such career paths.

1 (f) BALANCED WORKFORCE POLICY.—In the devel-  
2 opment of acquisition workforce policies with respect to  
3 any civilian employees or applicants for employment, the  
4 Secretary shall, consistent with the merit system prin-  
5 ciples set out in paragraphs (1) and (2) of section 2301(b)  
6 of title 5, United States Code, promote a balanced work-  
7 force in which women and members of racial and ethnic  
8 minority groups are appropriately represented in Govern-  
9 ment service.

10 (g) GUIDANCE ON TENURE AND ACCOUNTABILITY OF  
11 PROGRAM MANAGERS.—

12 (1) ISSUANCE OF GUIDANCE.—Not later than  
13 one year after the date of the enactment of this Act,  
14 the Secretary shall issue guidance for major systems  
15 acquisition programs to address the qualifications,  
16 resources, responsibilities, tenure, and accountability  
17 of program managers for the management of major  
18 systems acquisitions. The guidance issued pursuant  
19 to this subsection shall address, at a minimum—

20 (A) the qualifications that shall be required  
21 of program managers, including the number of  
22 years of acquisitions experience and the profes-  
23 sional training levels to be required of those ap-  
24 pointed to program management positions;



1           (B) authorities available to the program  
2 manager, including, to the extent appropriate,  
3 the authority to object to the addition of new  
4 program requirements that would be incon-  
5 sistent with the parameters established for an  
6 acquisitions program; and

7           (C) the extent to which a program man-  
8 ager who initiates a new program will continue  
9 in management of that program without inter-  
10 ruption until the delivery of the first production  
11 units of the program.

12       (2) STRATEGY.—

13           (A) IN GENERAL.—Not later than 18  
14 months after the date of enactment of this Act,  
15 the Secretary shall develop a comprehensive  
16 strategy for enhancing the role of Coast Guard  
17 program managers in developing and carrying  
18 out acquisition programs.

19           (B) MATTERS TO BE ADDRESSED.—The  
20 strategy required by this section shall address,  
21 at a minimum—

22           (i) the creation of a specific career  
23 path and career opportunities for program  
24 managers, including the rotational assign-

1           ments that will be provided to program  
2           managers;

3           (ii) the provision of enhanced training  
4           and educational opportunities for program  
5           managers;

6           (iii) the provision of mentoring sup-  
7           port to current and future program man-  
8           agers by experienced senior executives and  
9           program managers within the Coast  
10          Guard, including through rotational as-  
11          signments to the Department of Defense;

12          (iv) the methods by which the Coast  
13          Guard will collect and disseminate best  
14          practices and lessons learned on systems  
15          acquisitions to enhance program manage-  
16          ment throughout the Coast Guard;

17          (v) the templates and tools that will  
18          be used to support improved data gath-  
19          ering and analysis for program manage-  
20          ment and oversight purposes, including the  
21          metrics that will be utilized to assess the  
22          effectiveness of Coast Guard program  
23          managers in managing systems acquisi-  
24          tions efforts;

1 (vi) a description in detail of how the  
2 Coast Guard will promote a balanced work-  
3 force in which women and members of ra-  
4 cial and ethnic minority groups are appro-  
5 priately represented in Government service;  
6 and

7 (vii) the methods by which the ac-  
8 countability of program managers for the  
9 results of acquisition programs will be in-  
10 creased.

11 (3) REPORT BY COMPTROLLER GENERAL.—Not  
12 later than 2 years after the date of enactment of  
13 this Act, the Comptroller General shall submit to the  
14 appropriate congressional committees a report on  
15 the actions taken by the Secretary to implement the  
16 requirements of this subsection, including the strate-  
17 gies that are required to be developed by this sub-  
18 section.

19 **SEC. 107. CHIEF ACQUISITION OFFICER.**

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

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

24 “(a) ESTABLISHMENT OF AGENCY CHIEF ACQUI-  
25 SION OFFICER.—There shall be in the Coast Guard a

1 Chief Acquisitions Officer selected by the Commandant  
2 who shall be a Rear Admiral or civilian from the Senior  
3 Executive Service (career reserved) and who meets the  
4 qualifications set forth under subsection (b). The Chief  
5 Acquisitions Officer shall serve at the Assistant Com-  
6 mandant level and have acquisition management as that  
7 individual's primary duty.

8       “(b) QUALIFICATIONS.—The Chief Acquisition Offi-  
9 cer shall be a certified acquisition professional with a pro-  
10 gram manager level III certification and must have at  
11 least 10 years experience in an acquisition position.

12       “(c) AUTHORITY AND FUNCTIONS OF THE CHIEF AC-  
13 QUISTION OFFICER.—The functions of the Chief Acquisi-  
14 tion Officer shall include—

15               “(1) monitoring the performance of programs  
16 on the basis of applicable performance measure-  
17 ments and advising the Commandant, through the  
18 Vice Commandant of the Coast Guard, regarding  
19 the appropriate business strategy to achieve the mis-  
20 sions of the Coast Guard;

21               “(2) increasing the use of full and open com-  
22 petition in the acquisition of property and services  
23 by the Coast Guard by establishing policies, proce-  
24 dures, and practices that ensure that the Coast  
25 Guard receives a sufficient number of sealed bids or

1 competitive proposals from responsible sources to  
2 fulfill the Government's requirements, including per-  
3 formance and delivery schedules, at the lowest cost  
4 or best value considering the nature of the property  
5 or service procured;

6 “(3) making acquisition decisions in concur-  
7 rence with the technical authority of the Coast  
8 Guard, as designated by the Commandant, and con-  
9 sistent with all other applicable laws and decisions  
10 establishing procedures within the Coast Guard;

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

14 “(5) making acquisition decisions consistent  
15 with all applicable laws and decision making proce-  
16 dures within the Coast Guard;

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

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

1           “(8) as part of the strategic planning and per-  
2           formance evaluation process required under section  
3           306 of title 5 and sections 1105(a)(28), 1115, 1116,  
4           10 and 9703 of title 31—

5                   “(A) assessing the requirements estab-  
6                   lished for Coast Guard personnel regarding  
7                   knowledge and skill in acquisition resources and  
8                   management and the adequacy of such require-  
9                   ments for facilitating the achievement of the  
10                  performance goals established for acquisition  
11                  management;

12                   “(B) in order to rectify any deficiency in  
13                   meeting such requirements, developing strate-  
14                   gies and specific plans for hiring, training, and  
15                   professional development; and

16                   “(C) reporting to the Commandant,  
17                   through the Vice Commandant, on the progress  
18                   made in improving acquisition management ca-  
19                   pability.”.

20           (b) APPLICATION OF QUALIFICATION REQUIRE-  
21           MENT.—Section 55(b) of title 46, United States Code, as  
22           amended by this section, shall apply beginning October 1,  
23           2011.

1 (c) CLERICAL AMENDMENT.—The table of sections  
2 at the beginning of such chapter is amended by adding  
3 at the end the following:

“55. Chief Acquisition Officer.”.

4 (d) SPECIAL RATE SUPPLEMENTS.—

5 (1) REQUIREMENT TO ESTABLISH.—Not later  
6 than 1 year after the date of enactment of this Act  
7 and in accordance with part 9701.333 of title 5,  
8 Code of Federal Regulations, the Secretary shall es-  
9 tablish special rate supplements that provide higher  
10 pay levels for employees necessary to carry out the  
11 amendment made by this section.

12 (2) SUBJECT TO APPROPRIATIONS.—The re-  
13 quirement under paragraph (1) is subject to the  
14 availability of appropriations.

15 **SEC. 108. INTEGRATED DEEPWATER PROGRAM PLANS.**

16 (a) IN GENERAL.—

17 (1) REVISED INTEGRATED DEEPWATER PRO-  
18 GRAM PLANS AND ACQUISITION PROGRAM.—The  
19 Secretary shall—

20 (A) revise and update the Integrated Deep-  
21 water Program’s project management plan  
22 within 180 days after the date of enactment of  
23 this Act, in accordance with the requirements of  
24 subsection (d);

1 (B) issue new or updated acquisition plans  
2 and acquisition program baselines for each  
3 asset class under the Integrated Deepwater  
4 Program, in accordance with the requirements  
5 of subsection (e); and

6 (C) transmit copies thereof to the appro-  
7 priate congressional committees.

8 (2) USE OF ALTERNATIVES ANALYSIS.—The  
9 Secretary shall base the revisions and plans on the  
10 February 2008 Integrated Deepwater System Alter-  
11 natives Analysis prepared for the United States  
12 Coast Guard by an independent consulting organiza-  
13 tion.

14 (b) ALTERNATIVES ANALYSES.—

15 (1) IN GENERAL.—No acquisition of an experi-  
16 mental, technically immature, or first-in-class major  
17 asset may be made under the Integrated Deepwater  
18 Program unless an alternatives analysis was con-  
19 ducted for such asset during the concept and tech-  
20 nology development phase. Such analyses shall be  
21 conducted by a federally funded research and devel-  
22 opment center, a qualified entity of the Department  
23 of Defense, or a similar independent third party en-  
24 tity that has appropriate acquisition expertise. Such  
25 alternatives analyses shall include—



1 (A) an examination of capability, inter-  
2 operability, and other advantages and disadvan-  
3 tages;

4 (B) an evaluation of whether different  
5 quantities of specific assets could meet the  
6 Coast Guard's overall performance needs;

7 (C) a discussion of key assumptions and  
8 variables, and sensitivity to changes in such as-  
9 sumptions and variables;

10 (D) an assessment of technology risk and  
11 maturity;

12 (E) an evaluation of relevant safety and  
13 performance records;

14 (F) a calculation of costs, including life  
15 cycle costs;

16 (G) a business case of viable alternatives;

17 (H) an examination of likely research and  
18 development costs and the levels of uncertainty  
19 associated with such estimated costs;

20 (I) an examination of likely production and  
21 deployment costs and the levels of uncertainty  
22 associated with such estimated costs;

23 (J) an examination of likely operating and  
24 support costs and the levels of uncertainty asso-  
25 ciated with such estimated costs;

1           (K) if they are likely to be significant, an  
2           examination of likely disposal costs and the lev-  
3           els of uncertainty associated with such esti-  
4           mated costs;

5           (L) an analysis of the risks to production  
6           cost, schedule, and life-cycle cost resulting from  
7           the experimental, technically immature nature  
8           of the systems under consideration; and

9           (M) such additional measures the Sec-  
10          retary determines to be necessary for appro-  
11          priate evaluation of the asset.

12       (c) FUTURE REVISIONS.—The Secretary shall—

13           (1) notify each of the appropriate congressional  
14           committees whenever an alternatives analysis or re-  
15           vision of an alternatives analysis under the Inte-  
16           grated Deepwater Program are initiated under this  
17           title;

18           (2) transmit a copy of the Integrated Deep-  
19           water Program’s project management plan, acquisi-  
20           tion plans, or acquisition program baselines to each  
21           of the appropriate congressional committees when-  
22           ever any such document is created or revised; and

23           (3) maintain a historical file containing, and  
24           make available to each of the appropriate congres-

1 sional committees, upon request, copies of each  
2 version of those documents as they are revised.

3 (d) PROJECT MANAGEMENT PLAN.—The revised  
4 project management plan required by subsection (a)(1)  
5 shall include the following:

6 (1) An analysis and risk assessment of the tech-  
7 nology risks and level of maturity for major tech-  
8 nologies used on all classes of asset acquisitions  
9 under the Integrated Deepwater Program, including  
10 the National Security Cutter, fast response cutter,  
11 offshore patrol cutter, the vertical unmanned aerial  
12 vehicle, maritime patrol aircraft, HC-130J aircraft,  
13 and C4ISR systems.

14 (2) A description of how the Coast Guard plans  
15 to utilize arrangements with the Department of De-  
16 fense for support in contracting and management of  
17 acquisitions under the Integrated Deepwater Pro-  
18 gram and to seek opportunities to leverage off of  
19 Department of Defense contracts, and contracts of  
20 other appropriate agencies, to obtain the best pos-  
21 sible price for Integrated Deepwater Program assets.

22 (3) A life-cycle cost estimate for the Integrated  
23 Deepwater Program which shall include asset acqui-  
24 sition and logistics support decisions and planned  
25 operational tempo and locations.

1           (4) Any other information the Secretary deems  
2 necessary.

3 (e) ACQUISITION PROGRAM BASELINE.—

4           (1) IN GENERAL.—The new acquisition pro-  
5 gram baselines required by subsection (a)(1) shall  
6 include—

7           (A) a plan for the acquisition, and the  
8 schedule and costs for delivery of such acquisi-  
9 tions;

10           (B) a lifecycle cost estimate that includes  
11 asset acquisition and logistics support decisions  
12 and planned operational tempo and locations;  
13 and

14           (C) such other information as the Sec-  
15 retary deems necessary.

16           (2) OFFSHORE PATROL CUTTER.—When an ac-  
17 quisition program baseline is completed for the off-  
18 shore patrol cutter following an alternatives analysis  
19 for that asset class, the acquisition program baseline  
20 shall include a detailed statement of the service life,  
21 fatigue life, maximum range, maximum speed, and  
22 number of days underway under general Atlantic  
23 and North Pacific Sea conditions the cutter will be  
24 built to achieve. The offshore patrol cutter's acquisi-  
25 tion program baseline shall be completed and trans-

1       mitted to each of the appropriate congressional com-  
2       mittees not less than 90 days before the Secretary  
3       issues a request for proposals for construction of an  
4       offshore patrol cutter.

5 **SEC. 109. REPORTS.**

6       (a) ANNUAL REPORT.—

7           (1) IN GENERAL.—Within 45 days after the  
8       end of each fiscal year, the Secretary shall submit  
9       a comprehensive annual report on the progress of  
10      the Integrated Deepwater Program to the appro-  
11      priate congressional committees.

12          (2) SCOPE.—At a minimum, the report shall in-  
13      clude—

14           (A) an outline and description of all  
15      changes to the Integrated Deepwater Program’s  
16      project management plan during the previous  
17      fiscal year;

18           (B) an outline and description of all  
19      changes to acquisition plans and acquisition  
20      program baselines for all Integrated Deepwater  
21      Program asset acquisitions during the previous  
22      fiscal year, including all updates to life cycle  
23      cost estimates, acquisition cost estimates,  
24      schedule changes, and changes in asset per-  
25      formance requirements;

1 (C) a summary of findings of all alter-  
2 natives analyses completed or revised during the  
3 previous fiscal year under the Integrated Deep-  
4 water Program;

5 (D) an updated development schedule for  
6 each asset and asset class, including estimated  
7 annual costs until development is completed;

8 (E) an updated acquisition schedule for  
9 each asset and asset class, including estimated  
10 annual costs and units to be procured until ac-  
11 quisition is completed;

12 (F) an updated projection of the remaining  
13 operational lifespan of each legacy asset and  
14 projected costs for sustaining such assets;

15 (G) a breakdown of the percentage of the  
16 total amount of funds expended on acquisitions  
17 under the Integrated Deepwater Program dur-  
18 ing the previous fiscal year that has been paid  
19 to each of small businesses, socially and eco-  
20 nomically disadvantaged small business con-  
21 cerns eligible for assistance under section 8(a)  
22 of the Small Business Act (15 U.S.C. 637(a)),  
23 minority-owned businesses, women-owned busi-  
24 nesses, and service disabled veteran-owned busi-  
25 nesses;

1           (H) information on the status of agree-  
2           ments and progress of other arrangements with  
3           the Department of Defense for support in con-  
4           tracting and management of acquisitions under  
5           the Integrated Deepwater Program required by  
6           section 110 of this Act and the updated project  
7           management plan as required by section 108(a)  
8           of this Act;

9           (I) an update on the Secretary's progress  
10          in meeting goals for the development of the ac-  
11          quisition program described in the Blueprint for  
12          Acquisition Reform, and required by this title,  
13          including staffing levels and professional devel-  
14          opment;

15          (J) a financial accounting of the Inte-  
16          grated Deepwater Program as of the end of the  
17          fiscal year, which shall include a balance sheet,  
18          statement of net cost, statement of changes in  
19          net position, and statement of budgetary re-  
20          sources of the Program;

21          (K) an update on the status of efforts to  
22          enhance the role of Coast Guard program man-  
23          agers in developing and carrying out acquisi-  
24          tions programs and efforts to promote a bal-  
25          anced workforce in which women and members

1 of racial and ethnic minority groups are appro-  
2 priately represented in Government service; and

3 (L) such additional information as the Sec-  
4 retary deems necessary for updating Congress  
5 on the progress of the Integrated Deepwater  
6 Program.

7 (b) COST OVERRUNS AND DELAYS.—

8 (1) IN GENERAL.—The Secretary shall submit  
9 a report to the appropriate congressional committees  
10 as soon as possible, but not later than 30 days, after  
11 the Deepwater Program Executive Officer becomes  
12 aware of the breach of an acquisition program base-  
13 line under the Integrated Deepwater Program by—

14 (A) a likely cost overrun greater than 8  
15 percent of the acquisition program baseline  
16 total acquisition cost for that individual asset or  
17 a class of assets;

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

21 (C) an anticipated failure for any indi-  
22 vidual asset or class of assets to satisfy any key  
23 performance threshold or parameter under the  
24 Integrated Deepwater Program acquisition pro-  
25 gram baseline.



1           (2) CONTENT.—The report submitted under  
2 paragraph (1) shall include

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

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

7           (C) an updated total acquisition cost and  
8 the complete history of changes to the original  
9 cost estimate described in the plan submitted  
10 under section 108(e);

11           (D) the updated acquisition schedule and  
12 the complete history of changes to the original  
13 schedule described in the plan submitted under  
14 section 108(e);

15           (E) a full life-cycle cost analysis for the  
16 asset or class of assets;

17           (F) a remediation plan identifying correc-  
18 tive actions and any resulting issues or risks;  
19 and

20           (G) a description of how progress in the  
21 remediation plan will be measured and mon-  
22 itored.

23           (3) SUBSTANTIAL VARIANCES IN COSTS OR  
24 SCHEDULE.—If a likely cost overrun is greater than  
25 20 percent or a likely delay is greater than 12

1 months from the schedule and costs described in the  
2 acquisition program baseline total acquisition cost  
3 for that individual asset or class of assets, the Sec-  
4 retary shall include in the report a written certifi-  
5 cation, with a supporting explanation, that—

6 (A) the asset or asset class is essential to  
7 the accomplishment of Coast Guard missions;

8 (B) there are no alternatives to such asset  
9 or asset class which will provide equal or great-  
10 er capability in both a more cost-effective and  
11 timely manner;

12 (C) the new acquisition schedule and esti-  
13 mates for total acquisition cost are reasonable;  
14 and

15 (D) the management structure for the ac-  
16 quisition program is adequate to manage and  
17 control costs, schedule, and performance.

18 (4) CERTIFIED ASSETS AND ASSET CLASSES.—

19 If the Secretary certifies an asset or asset class  
20 under paragraph (3), the requirements of this sub-  
21 section shall be met based on the new estimates of  
22 cost and schedule contained in that certification.

23 (c) REPORT ON INTEGRATED DEEPWATER PROGRAM  
24 C4ISR.—

1           (1) INDEPENDENT ASSESSMENT.—Not later  
2 than 3 months after the date of enactment of this  
3 Act, the Secretary shall enter into an arrangement  
4 with the National Research Council of the National  
5 Academy of Sciences to conduct a study to assess  
6 the Coast Guard’s Integrated Deepwater Program  
7 C4ISR systems and acquisition plans. This study  
8 shall include an examination of—

9           (A) the Coast Guard’s current and planned  
10 Integrated Deepwater Program C4ISR capabili-  
11 ties and architecture;

12           (B) the adequacy of the Integrated Deep-  
13 water Program C4ISR acquisition’s Informa-  
14 tion Technology requirements;

15           (C) whether the planned Integrated Deep-  
16 water Program C4ISR systems are sufficiently  
17 adaptable to meet the needs of the Coast  
18 Guard’s mission requirements;

19           (D) whether the planned Integrated Deep-  
20 water Program C4ISR systems facilitate future  
21 upgrades as C4ISR technology advances; and

22           (E) the adequacy of the Coast Guard’s or-  
23 ganizational, personnel, and training systems  
24 for acquiring, utilizing, and sustaining Inte-  
25 grated Deepwater Program C4ISR systems.

1 (d) PATROL BOAT REPORT.—Not later than 120  
2 days after the date of enactment of this Act, the Secretary  
3 shall submit to the appropriate congressional committees  
4 a report on how the Coast Guard plans to manage the  
5 annual readiness gap of lost time for 110-foot patrol boats  
6 from fiscal year 2009 through fiscal year 2015. The report  
7 shall include—

8 (1) a description of the mission performance  
9 gap detailing the geographic regions and Coast  
10 Guard capabilities affected;

11 (2) a summary of the patrol hours that will be  
12 lost due to delays in replacing the 110-foot cutters  
13 and lost capabilities of the 110-foot cutters that  
14 have been converted;

15 (3) an analysis of factors affecting the mission  
16 performance gap that are unrelated to the Inte-  
17 grated Deepwater Program, including deployment of  
18 Coast Guard assets overseas and continuous vessel  
19 shortages;

20 (4) an identification of assets that are being  
21 used or may be used to alleviate the annual readi-  
22 ness gap of lost time for such patrol boats, including  
23 any acquisition or lease considered and the reasons  
24 they were not pursued;

1           (5) in cases where Coast Guard assets are used  
2           more heavily to alleviate the readiness gap, an as-  
3           sessment of the estimated additional maintenance  
4           costs incurred and asset lifespan lost due to the in-  
5           creased use of such assets;

6           (6) a projection of the remaining operational  
7           lifespan of the 110-foot patrol boat fleet;

8           (7) a description of how extending through fis-  
9           cal year 2015 the transfer agreement between the  
10          Coast Guard and the United States Navy for 3 Cy-  
11          clone class 179-foot patrol coastal ships would affect  
12          the annual readiness gap of lost time for 110-foot  
13          patrol boats; and

14          (8) an estimate of the cost to extend the oper-  
15          ational lifespan of the 110-foot patrol boat fleet for  
16          each of fiscal years 2008 through 2015.

17          (e) ACQUISITIONS WORKFORCE REPORT.—Within 4  
18          months after the date of enactment of this Act, the Sec-  
19          retary shall report on the development of the acquisitions  
20          office within the Coast Guard, describing the specific  
21          staffing structure for that directorate, including—

22                (1) identification of all acquisitions positions  
23                proposed as part of the office, the functions that  
24                each managerial position will fill, and the number of  
25                employees each manager will supervise; and

1           (2) a formal organizational chart and identifica-  
2           tion of when managerial positions are to be filled.

3           (f) ELEVATION OF DISPUTES TO THE CHIEF ACQUI-  
4           SITION OFFICER.—Within 30 days after the elevation to  
5           the Chief Acquisition Officer of any design or other dis-  
6           pute regarding the Integrated Deepwater Program con-  
7           tract or an item to be acquired under that contract, the  
8           Secretary shall provide to the appropriate congressional  
9           committees a detailed description of the issue and the ra-  
10          tionale underlying the decision taken by the Chief Acquisi-  
11          tion Officer to resolve the issue.

12          (g) AMENDMENT OF 2006 ACT.—Section 408(a) of  
13          the Coast Guard and Maritime Transportation Act of  
14          2006 is amended—

15                 (1) by striking paragraphs (1) and (3); and

16                 (2) by redesignating paragraphs (2) and (4)  
17                 through (8) as paragraphs (1) through (6), respec-  
18                 tively.

19          **SEC. 110. DEPARTMENT OF DEFENSE CONSULTATION.**

20          (a) IN GENERAL.—The Secretary shall make ar-  
21          rangements as appropriate with the Secretary of Defense  
22          for support in contracting and management of acquisitions  
23          under the Integrated Deepwater Program. The Coast  
24          Guard shall also seek opportunities to leverage off of De-  
25          partment of Defense contracts, and contracts of other ap-

1 appropriate agencies, to obtain the best possible price for  
2 Integrated Deepwater Program assets.

3 (b) INTER-SERVICE TECHNICAL ASSISTANCE.—The  
4 Secretary may enter into a memorandum of understanding  
5 or a memorandum of agreement with the Secretary of the  
6 Navy to obtain the assistance of the Office of the Assistant  
7 Secretary of the Navy for Research, Development, and Ac-  
8 quisition, including the Navy Systems Commands, with  
9 the oversight of Coast Guard major acquisition programs.  
10 Such memorandum of understanding or memorandum of  
11 agreement shall, at a minimum, provide for—

12 (1) the exchange of technical assistance and  
13 support that the Coast Guard Chief Acquisition Offi-  
14 cer, Coast Guard Chief Engineer, and the Coast  
15 Guard Chief Information Officer may identify;

16 (2) the use, as appropriate, of Navy technical  
17 expertise; and

18 (3) the temporary assignment or exchange of  
19 personnel between the Coast Guard and the Office  
20 of the Assistant Secretary of the Navy for Research,  
21 Development, and Acquisition, including Naval Sys-  
22 tems Commands, to facilitate the development of or-  
23 ganic capabilities in the Coast Guard.

24 (c) TECHNICAL AUTHORITIES.—The technical au-  
25 thority established under section 106(b) shall adopt, to the

1 extent practicable, procedures that are similar to those  
2 used by the Navy Senior Acquisition Official to approve  
3 all technical requirements.

4 (d) ASSESSMENT.—Within 180 days after the date  
5 of enactment of this Act, the Comptroller General shall  
6 transmit a report to the appropriate congressional com-  
7 mittees that—

8 (1) contains an assessment of current Coast  
9 Guard acquisition and management capabilities to  
10 manage acquisitions under or in support of the Inte-  
11 grated Deepwater Program;

12 (2) includes recommendations as to how the  
13 Coast Guard can improve its acquisition manage-  
14 ment, either through internal reforms or by seeking  
15 acquisition expertise from the Department of De-  
16 fense; and

17 (3) addresses specifically the question of wheth-  
18 er the Coast Guard can better leverage Department  
19 of Defense or other agencies' contracts that would  
20 meet the needs of the Integrated Deepwater Pro-  
21 gram in order to obtain the best possible price.

22 **SEC. 111. DEFINITIONS.**

23 In this title, the following definitions apply:

24 (1) APPROPRIATE CONGRESSIONAL COMMIT-  
25 TEES.—The term “appropriate congressional com-



1       mittees” means the Committees on Transportation  
2       and Infrastructure and Homeland Security of the  
3       House of Representatives and the Committee on  
4       Commerce, Science, and Transportation of the Sen-  
5       ate.

6               (2) INTEGRATED DEEPWATER PROGRAM.—The  
7       term “Integrated Deepwater Program” means the  
8       Integrated Deepwater Systems Program described  
9       by the Coast Guard in its Report to Congress on Re-  
10      vised Deepwater Implementation Plan, dated March  
11      25, 2005, including any subsequent modifications,  
12      revisions, or restatements of the Program. The Inte-  
13      grated Deepwater Program includes the procure-  
14      ment, development, production, sustainment, modi-  
15      fication, conversion, and missionization of C4ISR  
16      and of cutter and aviation assets that operate more  
17      than 50 miles offshore.

18              (3) LIFE-CYCLE COST.—The term “life-cycle  
19      cost” means all costs for development, procurement,  
20      construction, and operations and support for a par-  
21      ticular asset, without regard to funding source or  
22      management control.

23              (4) SECRETARY.—The term “Secretary” means  
24      the Secretary of the department in which the Coast  
25      Guard is operating.

1 **SEC. 112. ELIGIBLE EMPLOYEES IN THE RECREATIONAL**  
2 **MARINE INDUSTRY.**

3 Section 2(3)(F) of the Longshore and Harbor Work-  
4 ers' Compensation Act (33 U.S.C. 902(3)(F)) is amend-  
5 ed—

6 (1) by striking “, repair or dismantle”; and

7 (2) by striking the semicolon and inserting “, or  
8 individuals employed to repair any recreational ves-  
9 sel, or to dismantle any part of a recreational vessel  
10 in connection with the repair of such vessel;”.

11 **TITLE II—SUBMERSIBLE VES-**  
12 **SELS AND SEMI-SUBMERS-**  
13 **IBLE VESSELS**

14 **SEC. 201. SHORT TITLE.**

15 This title may be cited as the “Drug Trafficking Ves-  
16 sel Interdiction Act of 2008”.

17 **Subtitle A—Criminal Prohibition**

18 **SEC. 211. FINDINGS AND DECLARATIONS.**

19 Congress finds and declares that operating or em-  
20 barking in a submersible vessel or semi-submersible vessel  
21 without nationality and on an international voyage is a  
22 serious international problem, facilitates transnational  
23 crime, including drug trafficking, and terrorism, and pre-  
24 sents a specific threat to the safety of maritime navigation  
25 and the security of the United States.

1 **SEC. 212. OPERATION OF SUBMERSIBLE VESSEL OR SEMI-**  
2 **SUBMERSIBLE VESSEL WITHOUT NATION-**  
3 **ALITY.**

4 (a) IN GENERAL.—Chapter 111 of title 18, United  
5 States Code, is amended by adding at the end the fol-  
6 lowing new section:

7 **“§ 2285. Operation of submersible vessel or semi-sub-**  
8 **mersible vessel without nationality**

9 “(a) OFFENSE.—Whoever knowingly operates, or at-  
10 tempts or conspires to operate, by any means, or embarks  
11 in any submersible vessel or semi-submersible vessel that  
12 is without nationality and that is navigating or has navi-  
13 gated into, through, or from waters beyond the outer limit  
14 of the territorial sea of a single country or a lateral limit  
15 of that country’s territorial sea with an adjacent country,  
16 with the intent to evade detection, shall be fined under  
17 this title, imprisoned not more than 15 years, or both.

18 “(b) EVIDENCE OF INTENT TO EVADE DETEC-  
19 TION.—For purposes of subsection (a), the presence of  
20 any of the indicia described in paragraph (1)(A), (E), (F),  
21 or (G), or in paragraph (4), (5), or (6), of section  
22 70507(b) of title 46 may be considered, in the totality of  
23 the circumstances, to be prima facie evidence of intent to  
24 evade detection.

25 “(c) EXTRATERRITORIAL JURISDICTION.—There is  
26 extraterritorial Federal jurisdiction over an offense under

1 this section, including an attempt or conspiracy to commit  
2 such an offense.

3 “(d) CLAIM OF NATIONALITY OR REGISTRY.—A  
4 claim of nationality or registry under this section includes  
5 only—

6 “(1) possession on board the vessel and produc-  
7 tion of documents evidencing the vessel’s nationality  
8 as provided in article 5 of the 1958 Convention on  
9 the High Seas;

10 “(2) flying its nation’s ensign or flag; or

11 “(3) a verbal claim of nationality or registry by  
12 the master or individual in charge of the vessel.

13 “(e) AFFIRMATIVE DEFENSES.—

14 “(1) IN GENERAL.—It is an affirmative defense  
15 to a prosecution for a violation of subsection (a),  
16 which the defendant has the burden to prove by a  
17 preponderance of the evidence, that the submersible  
18 vessel or semi-submersible vessel involved was, at the  
19 time of the offense—

20 “(A) a vessel of the United States or law-  
21 fully registered in a foreign nation as claimed  
22 by the master or individual in charge of the ves-  
23 sel when requested to make a claim by an offi-  
24 cer of the United States authorized to enforce  
25 applicable provisions of United States law;

1           “(B) classed by and designed in accord-  
2           ance with the rules of a classification society;

3           “(C) lawfully operated in government-regu-  
4           lated or licensed activity, including commerce,  
5           research, or exploration; or

6           “(D) equipped with and using an operable  
7           automatic identification system, vessel moni-  
8           toring system, or long range identification and  
9           tracking system.

10          “(2) PRODUCTION OF DOCUMENTS.—The af-  
11          firmative defenses provided by this subsection are  
12          proved conclusively by the production of—

13               “(A) government documents evidencing the  
14               vessel’s nationality at the time of the offense, as  
15               provided in article 5 of the 1958 Convention on  
16               the High Seas;

17               “(B) a certificate of classification issued by  
18               the vessel’s classification society upon comple-  
19               tion of relevant classification surveys and valid  
20               at the time of the offense; or

21               “(C) government documents evidencing li-  
22               censure, regulation, or registration for com-  
23               merce, research, or exploration.

24          “(f) FEDERAL ACTIVITIES EXCEPTED.—Nothing in  
25          this section applies to lawfully authorized activities carried

1 out by or at the direction of the United States Govern-  
2 ment.

3 “(g) APPLICABILITY OF OTHER PROVISIONS.—Sec-  
4 tions 70504 and 70505 of title 46 apply to offenses under  
5 this section in the same manner as they apply to offenses  
6 under section 70503 of such title.

7 “(h) DEFINITIONS.—In this section, the terms ‘sub-  
8 mersible vessel’, ‘semi-submersible vessel’, ‘vessel of the  
9 United States’, and ‘vessel without nationality’ have the  
10 meaning given those terms in section 70502 of title 46.”.

11 (b) CLERICAL AMENDMENT.—The chapter analysis  
12 for chapter 111 of title 18, United States Code, is amend-  
13 ed by inserting after the item relating to section 2284 the  
14 following:

“2285. Operation of submersible vessel or semi-submersible vessel without na-  
tionality.”.

15 **SEC. 213. SENTENCING GUIDELINES.**

16 (a) IN GENERAL.—Pursuant to its authority under  
17 section 994(p) of title 28, United States Code, and in ac-  
18 cordance with this section, the United States Sentencing  
19 Commission shall promulgate sentencing guidelines (in-  
20 cluding policy statements) or amend existing sentencing  
21 guidelines (including policy statements) to provide ade-  
22 quate penalties for persons convicted of knowingly oper-  
23 ating by any means or embarking in any submersible ves-

1 sel or semi-submersible vessel in violation of section 2285  
2 of title 18, United States Code.

3 (b) REQUIREMENTS.—In carrying out this section,  
4 the United States Sentencing Commission shall—

5 (1) ensure that the sentencing guidelines and  
6 policy statements reflect the serious nature of the of-  
7 fense described in section 2285 of title 18, United  
8 States Code, and the need for deterrence to prevent  
9 such offenses;

10 (2) account for any aggravating or mitigating  
11 circumstances that might justify exceptions, includ-  
12 ing—

13 (A) the use of a submersible vessels or  
14 semi-submersible vessels described in section  
15 2285 of title 18, United States Code, to facili-  
16 tate other felonies;

17 (B) the repeated use of a submersible ves-  
18 sel or semi-submersible vessel described in sec-  
19 tion 2285 of title 18, United States Code, to fa-  
20 cilitate other felonies, including whether such  
21 use is part of an ongoing criminal organization  
22 or enterprise;

23 (C) whether the use of such a vessel in-  
24 volves a pattern of continued and flagrant viola-

1           tions of section 2285 of title 18, United States  
2           Code;

3           (D) whether the persons operating or em-  
4           barking in a submersible vessel or semi-sub-  
5           mersible vessel willfully caused, attempted to  
6           cause, or permitted the destruction or damage  
7           of such vessel or failed to heave to when di-  
8           rected by law enforcement officers; and

9           (E) circumstances for which the sentencing  
10          guidelines (and policy statements) provide sen-  
11          tencing enhancements;

12          (3) ensure reasonable consistency with other  
13          relevant directives, other sentencing guidelines and  
14          policy statements, and statutory provisions;

15          (4) make any necessary and conforming  
16          changes to the sentencing guidelines and policy  
17          statements; and

18          (5) ensure that the sentencing guidelines and  
19          policy statements adequately meet the purposes of  
20          sentencing set forth in section 3553(a)(2) of title 18,  
21          United States Code.



1           **Subtitle B—Civil Prohibition**

2   **SEC. 221. OPERATION OF SUBMERSIBLE VESSEL OR SEMI-**  
3                   **SUBMERSIBLE VESSEL WITHOUT NATION-**  
4                   **ALITY.**

5           (a) FINDING AND DECLARATION.—Section 70501 of  
6 title 46, United States Code, is amended—

7                   (1) by inserting “(1)” after “that”; and

8                   (2) by striking “States.” and inserting “States  
9           and (2) operating or embarking in a submersible  
10          vessel or semi-submersible vessel without nationality  
11          and on an international voyage is a serious inter-  
12          national problem, facilitates transnational crime, in-  
13          cluding drug trafficking, and terrorism, and presents  
14          a specific threat to the safety of maritime navigation  
15          and the security of the United States.”.

16   **SEC. 222. OPERATION PROHIBITED.**

17           (a) IN GENERAL.—Chapter 705 of title 46, United  
18 States Code, is amended by adding at the end thereof the  
19 following:

20   **“§ 70508. Operation of submersible vessel or semi-**  
21                   **submersible vessel without nationality**

22           “(a) IN GENERAL.—An individual may not operate  
23 by any means or embark in any submersible vessel or  
24 semi-submersible vessel that is without nationality and  
25 that is navigating or has navigated into, through, or from

1 waters beyond the outer limit of the territorial sea of a  
2 single country or a lateral limit of that country's territorial  
3 sea with an adjacent country, with the intent to evade de-  
4 tection.

5       “(b) EVIDENCE OF INTENT TO EVADE DETEC-  
6 TION.—In any civil enforcement proceeding for a violation  
7 of subsection (a), the presence of any of the indicia de-  
8 scribed in paragraph (1)(A), (E), (F), or (G), or in para-  
9 graph (4), (5), or (6), of section 70507(b) may be consid-  
10 ered, in the totality of the circumstances, to be prima facie  
11 evidence of intent to evade detection.

12       “(c) DEFENSES.—

13           “(1) IN GENERAL.—It is a defense in any civil  
14 enforcement proceeding for a violation of subsection  
15 (a) that the submersible vessel or semi-submersible  
16 vessel involved was, at the time of the violation—

17           “(A) a vessel of the United States or law-  
18 fully registered in a foreign nation as claimed  
19 by the master or individual in charge of the ves-  
20 sel when requested to make a claim by an offi-  
21 cer of the United States authorized to enforce  
22 applicable provisions of United States law;

23           “(B) classed by and designed in accord-  
24 ance with the rules of a classification society;

1           “(C) lawfully operated in government-regu-  
2           lated or licensed activity, including commerce,  
3           research, or exploration; or

4           “(D) equipped with and using an operable  
5           automatic identification system, vessel moni-  
6           toring system, or long range identification and  
7           tracking system.

8           “(2) PRODUCTION OF DOCUMENTS.—The de-  
9           fenses provided by this subsection are proved conclu-  
10          sively by the production of—

11           “(A) government documents evidencing the  
12          vessel’s nationality at the time of the offense, as  
13          provided in article 5 of the 1958 Convention on  
14          the High Seas;

15           “(B) a certificate of classification issued by  
16          the vessel’s classification society upon comple-  
17          tion of relevant classification surveys and valid  
18          at the time of the offense; or

19           “(C) government documents evidencing li-  
20          censure, regulation, or registration for research  
21          or exploration.

22          “(d) CIVIL PENALTY.—A person violating this sec-  
23          tion shall be liable to the United States for a civil penalty  
24          of not more than \$1,000,000.”

25          (b) CONFORMING AMENDMENTS.—

1           (1) The chapter analysis for chapter 705 of title  
2           46, United States Code, is amended by inserting  
3           after the item relating to section 70507 the fol-  
4           lowing:

          “70508. Operation of submersible vessel or semi-submersible vessel without na-  
          tionality.”.

5           (2) Section 70504(b) of title 46, United States  
6           Code, is amended by inserting “or 70508” after  
7           “70503”.

8           (3) Section 70505 of title 46, United States  
9           Code, is amended by striking “this title” and insert-  
10          ing “this title, or against whom a civil enforcement  
11          proceeding is brought under section 70508,”.

12 **SEC. 223. SUBMERSIBLE VESSEL AND SEMI-SUBMERSIBLE**  
13 **VESSEL DEFINED.**

14          Section 70502 of title 46, United States Code, is  
15          amended by adding at the end thereof the following:

16          “(f) SEMI-SUBMERSIBLE VESSEL; SUBMERSIBLE  
17          VESSEL.—In this chapter:

18                 “(1) SEMI-SUBMERSIBLE VESSEL.—The term  
19                 ‘semi-submersible vessel’ means any watercraft con-  
20                 structed or adapted to be capable of operating with  
21                 most of its hull and bulk under the surface of the  
22                 water, including both manned and unmanned  
23                 watercraft.

1           “(2) SUBMERSIBLE VESSEL.—The term ‘sub-  
2           mersible vessel’ means a vessel that is capable of op-  
3           erating completely below the surface of the water,  
4           including both manned and unmanned watercraft.”.  
          Passed the House of Representatives September 27,  
2008.

Attest:

LORRAINE C. MILLER,

*Clerk.*