^{110TH CONGRESS} 2D SESSION **S. 3351**

To enhance drug trafficking interdiction by creating a Federal felony for operating or embarking in a submersible or semi-submersible vessel without nationality and on an international voyage.

IN THE SENATE OF THE UNITED STATES

JULY 28, 2008

Mr. BIDEN (for himself, Mr. GRASSLEY, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

- To enhance drug trafficking interdiction by creating a Federal felony for operating or embarking in a submersible or semi-submersible vessel without nationality and on an international voyage.
 - 1 Be it enacted by the Senate and House of Representa-
 - 2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Drug Trafficking5 Interdiction Assistance Act of 2008".

6 SEC. 2. FINDINGS.

7 Congress finds and declares that operating or em-8 barking in a submersible or semi-submersible vessel without nationality and on an international voyage is a serious
 international problem, facilitates transnational crime, in cluding drug trafficking, and terrorism, and presents a
 specific threat to the safety of maritime navigation and
 the security of the United States.

6 SEC. 3. OPERATION OF SUBMERSIBLE OR SEMI-SUBMERS7 IBLE VESSEL WITHOUT NATIONALITY.

8 (a) IN GENERAL.—Chapter 111 of title 18 is amend-9 ed by adding at the end the following new section:

10 "SEC. 2285. OPERATION OF SUBMERSIBLE OR SEMI-SUB-11 MERSIBLE VESSEL WITHOUT NATIONALITY.

12 "(a) Offenses.—

13 "(1) IN GENERAL.—Whoever knowingly or in-14 tentionally operates by any means or embarks in any 15 submersible or semi-submersible vessel that is with-16 out nationality and that is navigating or has navi-17 gated into, through, or from waters beyond the outer 18 limit of the territorial sea of a single country or a 19 lateral limit of that country's territorial sea with an 20 adjacent country, with the intent to evade detection, 21 shall be punished as prescribed in subsection (h).

22 "(2) ATTEMPTS AND CONSPIRACIES.—Whoever
23 attempts or conspires to violate this section shall be
24 punished as prescribed in subsection (h).

25 "(b) DEFINITIONS.—In this section:

"(1) SEMI-SUBMERSIBLE VESSEL.—The term
 'semi-submersible vessel' means any watercraft con structed or adapted to be capable of operating with
 most of its hull and bulk under the surface of the
 water, including both manned and unmanned
 watercraft.

7 "(2) SUBMERSIBLE VESSEL.—The term 'sub8 mersible vessel' means a watercraft that is capable
9 of operating completely below the surface of the
10 water, including both manned and unmanned
11 watercraft.

"(3) VESSEL WITHOUT NATIONALITY.—The
term 'vessel without nationality' has the same meaning as section 70502(d) of title 46, United States
Code.

"(4) EVADE DETECTION.—The term 'evade detection' includes the indicia in section 70507
(b)(1)(A), (E), (F), (G), (b)(4), (b)(5), and (b)(6) of
title 46, United States Code.

20 "(c) EXTRATERRITORIAL JURISDICTION.—There is
21 extraterritorial Federal jurisdiction over the offenses de22 scribed in this section, including an attempt or conspiracy
23 to commit such offense.

1	"(d) Claim of Nationality or Registry.—A
2	claim of nationality or registry under this section includes
3	only—
4	((1) possession on board the vessel and produc-
5	tion of documents evidencing the vessel's nationality
6	as provided in article 5 of the 1958 Convention on
7	the High Seas;
8	"(2) flying its nation's ensign or flag; or
9	"(3) a verbal claim of nationality or registry by
10	the master or individual in charge of the vessel.
11	"(e) Affirmative Defense.—
12	"(1) IN GENERAL.—It is an affirmative defense
13	to a prosecution under this section, which the de-
14	fendant shall prove by a preponderance of the evi-
15	dence, that any submersible or semi-submersible ves-
16	sel that the defendant operated by any means or em-
17	barked, at the time of the offense—
18	"(A) was a vessel of the United States or
19	lawfully registered in a foreign nation as
20	claimed by the master or individual in charge of
21	the vessel when requested to make a claim by
22	an officer of the United States authorized to
23	enforce applicable provisions of United States
24	law;

1	"(B) was classed by and designed in ac-
2	cordance with the rules of a classification soci-
3	ety;
4	"(C) was lawfully operated in a govern-
5	ment-regulated or -licensed activity, including
6	commerce, research, or exploration; or
7	"(D) was equipped with and using an op-
8	erable automatic identification system vessel
9	monitoring system, or long range identification
10	and tracking system.
11	"(2) Production of documents.—The af-
12	firmative defenses provided by this subsection are
13	proved conclusively by the production of—
14	"(A) government documents evidencing the
15	vessel's nationality at the time of the offense as
16	provided in article 5 of the 1958 Convention on
17	the High Seas;
18	"(B) a certificate of classification issued by
19	the vessel's classification society upon comple-
20	tion of relevant classification surveys and valid
21	at the time of the offense; or
22	"(C) government documents evidencing li-
23	censure, regulation, or registration for research
24	or exploration.

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"(f) FEDERAL ACTIVITIES.—Nothing in this section
 applies to lawfully authorized activities carried out by, or
 at the direction of, the United States Government.

4 "(g) APPLICABILITY OF OTHER PROVISIONS.—Sec5 tions 70504 and 70505 of title 46, United States Code,
6 apply to this section.

7 "(h) PENALTIES.—A person violating this section
8 shall be fined under this title, imprisoned not more than
9 15 years, or both.".

10 (b) CONFORMING AMENDMENT.—The table of sec11 tions for chapter 111 of title 18, United States Code, is
12 amended by adding at the end the following:

13 SEC. 4. DIRECTIVE TO THE UNITED STATES SENTENCING 14 COMMISSION.

15 (a) IN GENERAL.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in ac-16 cordance with this section, the United States Sentencing 17 Commission shall promulgate sentencing guidelines (in-18 19 cluding policy statements) or amend existing sentencing 20 guidelines (including policy statements) to provide ade-21 quate penalties for persons convicted of knowingly or in-22 tentionally operating by any means or embarking in any 23 submersible or semi-submersible vessel as defined in sec-24 tion 3.

[&]quot;Sec. 2285. Operation of submersible or semi-submersible vessel without nationality.".

1	(b) REQUIREMENTS.—In carrying out this section,
2	the United States Sentencing Commission shall—
3	(1) ensure that the sentencing guidelines and
4	policy statements reflect the serious nature of the of-
5	fenses described in section 3 and the need for deter-
6	rence to prevent such offenses;
7	(2) account for any aggravating or mitigating
8	circumstances that might justify exceptions, includ-
9	ing—
10	(A) the use of a submersible or semi-sub-
11	mersible vessels described in section 3 to facili-
12	tate other felonies;
13	(B) the repeated use of submersible or
14	semi-submersible vessel described in section 3
15	to facilitate other felonies, including whether
16	such use is part of an ongoing commercial orga-
17	nization or enterprise;
18	(C) whether the use of submersible or
19	semi-submersible vessel involves a pattern of
20	continued and flagrant violations;
21	(D) whether the persons operating or em-
22	barking in a submersible or semi-submersible
23	vessel willfully caused, attempted to cause, or
24	permitted the destruction or damage of such

1	vessel or failed to heave to when directed by law
2	enforcement officers; and
3	(E) circumstances for which the sentencing
4	guidelines (and policy statements) currently
5	provide sentencing enhancements;
6	(3) ensure reasonable consistency with other
7	relevant directives, other sentencing guidelines and
8	policy statements, and statutory provisions;
9	(4) make any necessary and conforming
10	changes to the sentencing guidelines and policy
11	statements; and
12	(5) ensure that the sentencing guidelines and
13	policy statements adequately meet the purposes of
14	sentencing set forth in section 3553(a)(2) of title 18,
15	United States Code.

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