

**NOMINATIONS TO THE U.S. COAST GUARD AND  
THE CONSUMER PRODUCT SAFETY COMMISSION**

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**HEARING**

BEFORE THE

**COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE**

**ONE HUNDRED THIRTEENTH CONGRESS**

**SECOND SESSION**

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**APRIL 8, 2014**  
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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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**NOMINATIONS TO THE U.S. COAST GUARD  
AND THE CONSUMER PRODUCT SAFETY  
COMMISSION**

**TUESDAY, APRIL 8, 2014**

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:35 p.m. in room SR-253, Russell Senate Office Building, Hon. John D. Rockefeller IV, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV,  
U.S. SENATOR FROM WEST VIRGINIA**

The CHAIRMAN. All right.

This hearing will come to order. And we have our candidate before us but we also have Senator Mary Landrieu before us. She wants very much to speak. And Senator Thune and I just sort of faded into the background as soon as we heard that.

**STATEMENT OF HON. MARY LANDRIEU,  
U.S. SENATOR FROM LOUISIANA**

Senator LANDRIEU. Do not believe that.

The CHAIRMAN.—of your eloquent—what you want to say.

So, please proceed.

Senator LANDRIEU. Thank you, Mr. Chairman.

And I appreciate the opportunity to present to the Committee today, Vice Admiral Paul Zukunft, to be the President's nominee to be the next Commandant of the U.S. Coast Guard.

Before we get too far along, I want to also recognize that the Admiral's wife has joined us, Fran, and other relatives in the audience; and they're welcome. And I'm sure he appreciates them being here for their support.

As you all know, because you have held these hearings many times, the role of the Commandant is a very, very important position for all of our states and as a model for the country. But as Chair of Homeland Security Appropriations and as senior Senator from Louisiana, I became particularly impressed with this nominee's ability, his leadership ability, in the aftermath of the oil spill which was about 4 years ago.

When this leader was asked to step in and to help organize all Federal assets in the aftermath of this terrible, terrible accident that claimed a dozen lives, injured over 30 men offshore, and spilled almost 5 million barrels of oil into the Gulf, he'd been given

the job of Federal On-Scene Coordinator, which is no easy job. Our government was working night and day, 24/7, compiling the assets we needed to stop the flow of oil to manage government assets, private assets, and the politics that went along with all of that. And he just did beautifully.

He commanded 47,000 first responders, 6,500 vessels, and 180 aircraft during the largest spill in our nation's history. He's a graduate, of course, of the Coast Guard Academy, but he began and he grew up in the Coast Guard starting as a cutterman, as an operator. He's someone that not only can serve at the highest levels, but I believe has demonstrated his understanding and empathy and sympathy for people working at all levels of the Coast Guard.

He was promoted to the rank of Flag Officer in 2006. He served in numerous senior roles including, I'll say this in quotes, a "hardship" post in Hawaii.

[Laughter.]

Senator LANDRIEU. But then he earned his real stripes in the Gulf Coast, hot, mosquito infested, at our oil spill. But he served all over the world.

I've been very fortunate to develop strong relations with the Coast Guard. Of course, Senator Nelson from Florida has similar experience with the Coast Guard. It's the people of Louisiana's favorite Federal agency because we depend on them literally morning, noon, and night for so much of the work that we do in our state. So we get to know our leaders well.

Rear Admiral Thad Allen, one of our favorites, said, "You'd like to think that every Admiral's got a four-star potential because he's got an extraordinary operational background, extraordinary personality, and he's a terrific leader."

I think that describes the gentleman that's before us. And it's without hesitation and strong recommendation that I submit his credentials to this committee.

The CHAIRMAN. Thank you, Senator Landrieu.

I'm going to make an opening statement now and then Ranking Member Thune will do the same. And then it'll be all yours.

And I hope there'll be more people coming. There are several other large committees that are meeting at this point but that never works for me.

Of all of the executive nominations that the Commerce Committee considers when you look at the whole picture, perhaps the most important is the one we'll be discussing today which is you. That is the nomination for Commandant of the United States Coast Guard.

President Obama recently nominated Vice President Paul Zukunft to serve as the twenty-fifth Commandant of the Coast Guard. And, Admiral, I congratulate you on your nomination. I welcome you to this friendly for the most part committee. Friendly for you.

Here, this little speech I find here, here's why this job is so important to me. First of all, the Coast Guard is a branch of our Armed Forces. It's interesting. Sometimes it's sort of like the National Guard. Not everybody recognizes that. The 43,000 men and women of the Coast Guard defend our country; they protect our ports; they protect our waterways; they protect our open seas

against threats to our national security. And there are not that many of them; 43,000. Not that many. But they also help American citizens live better and safer lives. They enforce our environmental and safety laws. They answer the call when lives are in danger on the water. They have had a lot to do with the subject that we've discussed a lot here and that is cruise ships. Even when that means putting their own lives at risk.

On an average day, the men and women of the Coast Guard: save 11 lives; respond to 57 search-and-rescue cases; keep 455 pounds of cocaine off the streets; investigate 12 marine accidents; respond to and investigate nine pollution incidents; conduct security inspections of five high-interest vessels; screen nearly 1,300 vessels prior to their arrival at a U.S. port; interdicts seven undocumented migrants seeking to unlawfully enter the United States; and ensure compliance of 15 fishing vessels with our fisheries laws.

But the truth is that you perform all of these things with a budget which is just a small fraction of what you need and a small fraction of the other military services. And the Coast Guard does it in boats and aircraft that, in some cases, have been in service since the Vietnam Era. We have always asked the Coast Guard to do a lot. And since the 9/11 attacks and the creation of the Department of Homeland Security, we have asked them to do even more.

But the truth is that, in recent years, we have not given the Coast Guard the resources it really needs to do this work. Now, you know, that floats right by most people but it's sort of the heart of your problem. We need to be honest about our expectations of the Coast Guard if we continue to underfund it year, after year, after year.

Admiral Zukunft and I had a chance to talk in private about these challenges and how he intends to lead the Coast Guard. Leading the Coast Guard without the resources to do so becomes a difficult—you have to make choices.

I'm confident he's going to do a great job. I support him in absolute terms and I look forward to his testimony today.

Ranking Member Thune.

**STATEMENT OF HON. JOHN THUNE,  
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Thank you, Mr. Chairman, for holding this hearing to consider the nomination of Vice Admiral Paul Zukunft to be the twenty-fifth Commandant of the U.S. Coast Guard.

I also want to thank the Vice Admiral along with his wife, Fran, who sacrifices greatly on behalf of our nation. And so, thank you to her and to their family for that sacrifice and for that service.

As this committee knows well, the Coast Guard's overall mission is to ensure the safety, security, and stewardship of our nation's waters, which is a massive mission that it performs admirably on a daily basis. For some perspective it's worth noting the Coast Guard's entire annual budget of about \$9 billion is less than the cost to build one aircraft carrier for the Navy, which is around \$13 billion.

Vice Admiral Zukunft has a long and distinguished career in the Coast Guard and served with distinction during some of the most

complex disasters in our nation's history, the *Deepwater Horizon* Spill of 2010. During that disaster, Admiral Zukunft served as the Federal On-Scene Coordinator leading more than 47,000 Federal, state, local, and private sector responders to contain and clean up the devastating spill.

Currently, Vice Admiral Zukunft is the Operational Commander of the Coast Guard's Pacific Area. This is an area of responsibility that spans half the globe touching 71 nations and six of the seven continents. In that capacity he has dealt with transnational criminal activity, increased human activity in the Arctic, and global competition for dwindling fish stocks among other issues. He has worked with nations like Russia, China, Japan, Canada, and South Korea while conducting combined operations against illegal fishing activity in the Western Pacific Ocean. And he has worked to coordinate the efforts of Customs and Border Protection, Immigration and Customs Enforcement, the Department of Justice, and local law enforcement agencies at the Coast Guard's Sector in San Diego creating a model of interagency cooperation in the fight against transnational criminal operations along the nation's maritime Southwest border.

Vice Admiral Zukunft also serves on the Coast Guard's Leadership Council, comprised of the Commandant and the service's five Vice Admirals, where he has tackled some of the toughest challenges the Coast Guard faces ranging from budget issues to workforce matters. He currently serves on the Coast Guard's Investment Review Board that finalizes the allocation of funds across the service's acquisition, operations, and personnel accounts.

Clearly, Vice Admiral Zukunft is highly qualified, deeply experienced, and prepared to lead the Coast Guard. And I look forward to supporting Vice Admiral Zukunft's nomination. And I again want to express my appreciation for his willingness to continue to serve the Nation as the next Commandant of the Coast Guard.

Mr. Chairman, I note that we have a deadline to act on this nomination, as Admiral Papp's term as Commandant concludes in May. And I hope that we can act in a timely fashion to have Vice Admiral Zukunft in place by that time.

We will also be hearing testimony today on a later panel from two nominees to the Consumer Product Safety Commission. They're Elliot Kaye, who was nominated to be the next Chairman of the CPSC, and Joseph Mohorovic, who is nominated to be a Commissioner at the CPSC. Currently, the CPSC has three Commissioners, and should these two nominees be confirmed, they'll have a full complement of five Commissioners here very soon.

The CPSC is a creature of Congress created in 1972 by the Consumer Product Safety Act. As such, its authority is very carefully bounded by the law. It is an independent agency that has the important responsibility of protecting the public from unreasonable risks of injury or death associated with more than 15,000 consumer products such as household products, toys and sporting goods. The CPSC fulfills its statutory responsibilities by developing voluntary standards with industry, banning products if necessary, and informing and educating consumers among other things.

The Commission, as defined by the CPSIA, does not have jurisdiction over certain products, such as tobacco and tobacco products,

or firearms and ammunition among other items. Other Federal agencies and commissions have jurisdiction over these types of products. This is important because I'm always concerned about efforts by agencies to expand their authority, and it's crucial that agencies remain within the jurisdictional procedural boundaries that were mandated by the Congress. Depending on timing with this afternoon's panels, I plan on asking our two CPSC nominees about their views on some of these jurisdictional procedural boundaries for the CPSC.

Mr. Chairman, thank you for holding this hearing and I look forward to testimony from our nominees today.

The CHAIRMAN. Vice Admiral, you may proceed.

**STATEMENT OF VICE ADMIRAL PAUL ZUKUNFT,  
COMMANDANT-DESIGNATE, UNITED STATES COAST GUARD**

Admiral ZUKUNFT. Good afternoon.

First, I wish to thank Senator Landrieu for her very kind introduction.

Chairman Rockefeller, Ranking Member Thune, distinguished members of the Committee and Subcommittee, good afternoon. I am honored to appear before you today and I am humbled to have the confidence of Secretary Johnson and President Obama to be the President's nominee to serve as the twenty-fifth Commandant of the United States Coast Guard. I am blessed to have my wife, Fran, who is sitting behind me, join me in this endeavor.

I am very grateful to our Commandant, Admiral Bob Papp, who leads our service with extraordinary devotion, skill and integrity. If confirmed, I stand ready to ensure the Coast Guard remains focused; focused on our mission; focused on our people, their well-being and their proficiency; and focused on our efficiency and effectiveness. I respectfully submit my written testimony for the record and request to make a brief opening statement.

For almost 37 years, I have dedicated my life to serving our nation with Coast Guard men and women. I've had the honor of leading and commanding at every tier in our organization from strategy, policy, budget, and acquisition efforts in Washington, D.C., to frontline operations across the Atlantic, Gulf of Mexico, Pacific, Arctic, and to Antarctic. I've seen firsthand the value the Coast Guard provides to the Nation and I know what is required to sustain this level of commitment of our homeland well into the future.

If confirmed, I look forward to working with each of you to ensure that the United States Coast Guard is *semper paratus*, always ready to serve our nation. And I thank you, Chairman, and members of this committee for your personal commitment to our people and their families; the heart and soul of our Coast Guard.

A twenty-first century Coast Guard must be prepared to respond to the full spectrum of twenty-first century threats and challenges that include cyber and direct attacks on our coastal infrastructure. These challenges are reflected in Secretary Johnson's commitment to protecting America's enduring national security interest through the execution of the department's five missions.

If confirmed, I will tirelessly work with the Administration, Congress, this committee, and our interagency partners to support unity of effort and collaboration across the Departments of Home-

land Security, Defense, State, Transportation, Justice, and Interior, among others. And I will continue to develop and enhance partnerships at the Federal, state, local, tribal, and territorial levels to build community resilience and ensure America is prepared to prevent and respond to crises in the maritime domain.

The success of our Coast Guard for over 223 years resides in the character and competency of the men and women who serve our nation. Our character can be summed up in three words: Service before self. Our proficiency competency is the foundation on which the Coast Guard serves the American people. A proficient and experienced workforce is intrinsic to sustained operational excellence as our missions become more expansive and complex. In order to achieve this excellence, our people deserve a workplace that is free from sexual assault and free from discrimination. I will work to ensure our demographics and diversity better reflect the Nation we serve.

My wife, Fran, who has served as a career professional and single parent during my numerous deployments, fully appreciates the many challenges facing our military families. If confirmed, we will work together to ensure we provide the best possible care for our Coast Guard men and women and their families.

Regardless of the fiscal environment, the demand for our Coast Guard missions will continue to grow. Though will be challenging, I am focused and committed to taking decisive action to manage our resources strategically continuing the recapitalization of our assets with an emphasis upon affordability. And seizing the opportunities for efficiencies to ensure we meet our responsibilities to the Nation.

If confirmed, I realize the enormous responsibility that rests squarely upon my shoulders and the judicious allocation of our limited resources while applying a broad array of unique authorities in a prevent, respond, and enforce set of capabilities that our nation values.

Chairman Rockefeller, Ranking Member Thune, and members of the Committee, I know our challenges are great but I am truly excited and optimistic about the future of the United States Coast Guard.

Thank you for the opportunity to testify today and I look forward to your questions.

[The prepared statement and biographical information of Admiral Zukunft follow:]

PREPARED STATEMENT OF VADM PAUL F. ZUKUNFT, COMMANDANT-DESIGNATE,  
U.S. COAST GUARD

### **Introduction**

Good afternoon, Chairman Rockefeller, Ranking Member Thune and distinguished members of the Committee. It is a privilege to appear before you today. I am humbled by the opportunity and grateful for the confidence of President Obama and Secretary Johnson in nominating me to be the 25th Commandant of the United States Coast Guard. I would also like to thank Admiral Bob Papp, our current Commandant, for the opportunity to serve as the Coast Guard's Pacific Area Commander.

In my nearly 37 years in the Coast Guard, I have had the privilege of serving alongside a remarkable team of dedicated public servants. I have held command in nearly every pay grade, in addition to leading the front-line response to the largest oil spill in U.S. history. I have responded to mass migrations in the Caribbean,

interdicted drugs on the high seas, and saved commercial fishermen in the Bering Sea. These experiences have taught me the importance of decisive action in harsh conditions, and have also prepared me to serve as Commandant. I am grateful for the opportunity to discuss my priorities and objectives, as well as to provide a brief overview of how, if confirmed, I will lead the Service.

#### **Overview of the Coast Guard**

The United States Coast Guard is America's maritime first responder. This year will mark our 224th year of protecting those on the sea, protecting the Nation from threats delivered by sea, and protecting the sea itself. With important authorities for maritime safety, security, and environmental protection, today's Coast Guard is a versatile, adaptive organization that provides tremendous service to the public. Every day, Coast Guard operations include search and rescue, safeguarding and facilitating maritime commerce, protecting against and preparing to respond to maritime acts of terrorism, interdicting drug and migrant smugglers, enforcing fisheries laws, responding to oil and hazardous material spills, maintaining aids to navigation, screening commercial ships and crews entering U.S. ports, inspecting U.S.-flagged vessels, examining cargo containers, investigating marine accidents, training international partners, credentialing merchant mariners, and supporting defense operations. These critical functions promote environmental stewardship while keeping our Nation secure and economy vibrant.

America is a maritime nation. More than 90 percent of all U.S. trade enters or leaves this Nation through our ports and waterways as part of the global supply chain. With broad responsibility for maritime safety, security, and environmental stewardship, the Coast Guard's work is a fundamental part of security, resilience, and economic growth throughout the Nation and the world. Across the nation, the Coast Guard is on watch in our ports, along our coasts, on our major rivers and the Great Lakes, and far offshore with an agile mix of aircraft, cutters, small boats, and shore-based units which are crewed by highly trained, proficient, and motivated Coast Guard men and women. We are locally based, nationally deployed, and globally connected.

#### **Vision for the Future**

The Coast Guard's success is made possible by the personal support of the Secretary of the Department of Homeland Security (DHS), comprehensive collaboration with other DHS components, and unity of effort across all levels of our Service. Under the leadership of Secretary Johnson, the Department has five enduring missions:

- Preventing terrorism and enhancing security;
- Securing and managing our borders;
- Enforcing and administering our immigration laws;
- Safeguarding and securing cyberspace; and
- Ensuring resilience to disasters.

I am fully committed to these priorities. If confirmed, I will work tirelessly with the Administration, DHS, Congress, and our interagency partners to continue pursuing excellence in these missions.

The maritime operating environment is increasingly dynamic and complex. We are facing adaptive transnational criminal organizations that, if left unchecked, will erode maritime governance, rule of law, and regional stability along maritime frontiers. The threat of a cyber attack on critical maritime infrastructure is real and growing. Meanwhile, international maritime trade is on the rise and competition for dwindling fish stocks and natural resources threaten the sovereignty of remote corners of our Exclusive Economic Zones. While it is impossible to predict when the next natural or manmade disaster such as Super Storm Sandy, Hurricane Katrina, or BP Oil Spill will occur, the Coast Guard stands ready to surge forces to uphold homeland security objectives while mitigating the impact of a disaster and facilitating recovery.

I believe that in order to meet current and future mission requirements, the Coast Guard must continually and efficiently build upon our network of joint service, international, federal, state, local, tribal, and territorial partnerships while maintaining dynamic and transparent interactions with stakeholders in the private sector. If confirmed, I am committed to ensuring that we leverage the Maritime Operational Threat Response protocols, memorandums of agreement, bilateral agreements and treaties, combined operating guidelines, and DHS policies to instill unity of effort in planning and executing maritime operations for safety and security. We must emphasize and demonstrate proficiency in the Incident Command System as

the universal language among first responders for establishing unity of effort and coordinating operations during crises. Finally, it is imperative we exploit existing and emerging technologies, such as unmanned aerial systems, to bolster operational effectiveness and efficiency.

If confirmed, I will continue to have the Coast Guard maintain operational focus on search and rescue, illicit narcotics and human trafficking interdiction, illegal fisheries enforcement, maritime homeland security, preparedness, prevention, and crisis response. We will promote the efficient flow of legitimate commerce while protecting and securing American interests across the global supply chain. Our efforts will enhance the ability of our Nation to manage maritime risks by strengthening our layered defense, addressing threats as early as possible, and bolstering a system that can prevent and respond to disruptions caused by natural and manmade disasters.

### **Sustaining Operational Excellence**

Sound fiscal management will underpin Coast Guard and DHS operational planning and execution over the course of the next four years. I believe we must lead decisively to continue delivering critical services to the public. As our missions grow more complex and competencies more specialized, we must continually assess the proficiency of our forces and resist short-term measures that might weaken the Coast Guard of the future. I am committed to executing front-line operations in a manner that maintains the requisite experience among our junior members who will be our senior leaders of tomorrow. Likewise, we must critically assess and measure the readiness of our platforms and resources, and eliminate inefficiencies that detract from readiness.

The condition and serviceability of the Coast Guard's surface fleet, maintaining our air assets, and the projected timelines to replace these assets necessitate continued investment in major recapitalization programs. In order to operate efficiently and to ensure our workforce has the tools they need to do their jobs, we are acquiring new National Security Cutters, and Fast Response Cutters, while concurrently performing significant depot level maintenance projects on Medium Endurance Cutters. Our Medium Endurance Cutter fleet is approaching the half century mark, making these vessels increasingly expensive to maintain and operate. Cost control and best business practices are essential on our part. We must leverage commonality of systems among DHS and Department of Defense partners to the maximum extent possible. The next critical phase of modernization is the development of the Offshore Patrol Cutter. And if confirmed, I am committed to working with DHS, the Administration, and the Congress to ensure we can achieve the Coast Guard's critical recapitalization needs in an affordable and efficient manner.

Moreover, as stewards of public funds, the Coast Guard must stay the course in sustaining a clean audit opinion while continually infusing efficiencies across all lines of mission support and execution. In 2013, the Coast Guard achieved the first clean unqualified audit opinion in our history, and we were the first Armed Service to do so. We will continue to make the most out of every dollar we receive to care for our people, and give them the ships, aircraft, training, and shore facilities they need to do the jobs that the American people have asked of them.

### **Leading the Workforce**

If confirmed, I look forward to working with each of you to continuously improve front-line service to the public. I especially thank you for your personal commitment to our workforce and their families who represent the Coast Guard's most valuable asset—our people. The men and women of the Coast Guard are the heart and soul of our Service. The Coast Guard consists of 42,380 active duty uniformed personnel and 7,861 Reservists, 32,633 volunteer auxiliarists, and 6,816 civilians—some 89,690 people engaged in the work of our Service. These dedicated men and women enable front-line success across our numerous and diverse statutory mandates.

Sexual assault is a scourge among all of the armed services, including the Coast Guard. As the current Operational Commander for more than 13,000 men and women, I have taken proactive measures that have been hailed as best practices to drive this abhorrent behavior out of the Service.

This includes highly interactive workshops that have elicited those who have been assaulted to submit unrestricted reports; a climate that engenders open reporting while protecting survivors against retaliation; and uncompromising standards of accountability against those who do not ascribe to our core values—*Honor, Respect, and Devotion to Duty*. If confirmed, I will continue to emphasize a sustainable Sexual Assault Prevention and Response program focused heavily on prevention and accountability, while ensuring the advocacy, support, and resiliency of our survivors.

I am committed to developing clear measures of effectiveness, and a climate and culture befitting our Nation's trust and confidence.

The Coast Guard is analogous to a woven rope that grows stronger with each strand of diversity, culture, experience, and point of view. While we have made great strides in growing a more diverse workforce, much more remains to be done in order to reflect the public we serve. If confirmed, I will take measures to recruit a more diverse pool of candidates at our accession points, develop strategies to improve retention, and continue to uphold the meritocracy of our advancement and promotion processes. We must create a workplace that offers every individual the opportunity to attain their personal goals, grow within the service, and fully contribute to the accomplishment of our missions. Diversity enables improved mission performance and is critical to operational excellence and efficiency.

### Conclusion

In closing, I again offer my sincere appreciation and gratitude to Admiral Bob Papp who has served the Coast Guard with highest distinction as the 24th Commandant and throughout his four decade career. He began his tenure as Commandant in the middle of the worst environmental disaster in United States history. Yet, as Admiral Papp stated in his confirmation hearing, "Serving our country is more than a job—it is a calling." He met that calling head on and his leadership poised the Coast Guard for the challenges ahead.

There is no way to predict the next major crisis, but our operating environment is profoundly harsh and unforgiving. The Coast Guard will succeed, as it has for over two centuries, because of our skilled, courageous, and dedicated workforce. If confirmed, I will ensure the Coast Guard remains "Semper Paratus—Always Ready" to serve the public and our partners in a manner that embodies our core values of honor, respect, and devotion to duty.

Thank you for the opportunity to testify today. I look forward to your questions.

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### A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Paul Frederick Zukunft.
2. Position to which nominated: Commandant of the Coast Guard/Admiral (O-10).
3. Date of Nomination: March 4, 2014.
4. Address (List current place of residence and office addresses):  
 Residence: Information not released to the public.  
 Office: Coast Guard Pacific Area, Coast Guard Island, Bldg 51-6, Alameda, CA 94501.
5. Date and Place of Birth: January 30, 1955; New Haven, CT.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).  
 Frances (nmn) DeNinno (spouse). Retired 2006 after 25 years as a senior pharmaceutical sales representative for Abbott Labs. Fran currently performs community service for Girls Inc in Alameda, CA and for the Coast Guard's ombudsman and Women in Leadership programs; children: Heidi Louise Zukunft (daughter) 30; Erika Anne Law (daughter—married last name is Law) 26; and Brett DeNinno Zukunft (son) 23.
7. List all college and graduate degrees. Provide year and school attended.  
 1977, U.S. Coast Guard Academy, BS Government.  
 1988, Webster University, MA Management.  
 1997, U.S. Naval War College, MA Strategic Studies and International Affairs.
8. List all post-undergraduate employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated. None.
9. Attach a copy of your resumé. A copy of my Coast Guard biography is attached.
10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years. None.
11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last five years. None.

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

None of these organizations restricts membership on the basis of sex, race, color, religion, national origin, age or handicap.

Member, Honolulu Presbyterian Church, 2001–2008

Youth baseball coach, Pony league of Honolulu, 2001–2004

Youth basketball coach, Honolulu Parks and Recreation, 2003

Member, Novato (California) Presbyterian Church, 2008–2009; 2012 to present

Member, Sydenstricker United Methodist Church (Virginia), 2009–2012

Sydenstricker Pastor Relations committee, 2011–2012

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt. No.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period. None.

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

Department of Homeland Security Distinguished Service Medal

Defense Superior Service Medal

Legion of Merit (2)

Meritorious Service Medal (5)

Coast Guard Commendation Medal (2)

Coast Guard Achievement Medal (2)

Asia Pacific Center for Strategic Studies—Senior Seminar certificate

Harvard's Kennedy School of Government, National Preparedness Leadership Initiative certificate

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

20 August 2013—Keynote, Maritime Security Workshop, Los Angeles, California

02 May 2013—Keynote, Veterans Affairs, Reno, Nevada

30 April 2013—Keynote, Arctic Security Initiative, Hoover Institute

20 March 2013—Keynote, Golden Gate Breakfast Club

14 November 2012—Keynote, Maritime Risk Symposium, University of Southern California

26 August 2012—Keynote, Arctic Summit, Girdwood, Alaska

02 August 2012—Keynote, Defense Support for Civil Authorities, Seattle, WA

14 June 2012—Keynote, ASEAN forum in Singapore

23 May 2012—Keynote, San Diego Military Advisory Committee

07 March 2012—Maritime Opportunities and Challenges in the High North

02 March 2012—Cross Border Crime Forum in Ottawa, Canada

08 Feb 2012—NDIA panelist—Special and conventional forces in a new world dynamic

On-Scene Coordinator Report Deepwater Horizon Oil Spill, September 2011

30 Nov 2011—Keynote, Clean Gulf Conference

19 Oct 2011—Keynote, Asia Pacific Chiefs of Defense Summit

04 Oct 2011—Keynote, George Washington University, National Incident Response Policy

26 Sep 2011—Keynote, NDIA, Securing Our Borders

12 Jul 2011—Keynote, CSIS Arctic Oil and Gas Development  
 29 Jun 2011—Keynote, CSIS, Arctic Policy  
 12 May 2011—Keynote, National Press Club, Maritime Security  
 12 Apr 2011—Keynote, IDGA, Maritime Safety, Security and Stewardship  
 15 Mar 2011—Keynote, Cruise Shipping Conference, Passenger Vessel Safety and Security  
 Mar 2008—Keynote, Malaysia. U.S./Malaysia bilateral agreement combating transnational crime  
 Mar 2008—Keynote, Republic of the Philippines, Maritime Law Enforcement  
 Apr 2008—Keynote, Australia, Multilateral Approach in Combating Transnational Criminal Organizations  
 Oct 2007—Keynote, Quadrilateral Defense Talks in Wellington, NZ, Maritime Security and Maritime Domain Awareness  
 Aug 2007—Keynote, Asia Pacific Combined Fleet Commanders Conference, Transnational Criminal Organizations

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

07 Feb 2012—Hearing, Border and Maritime Security Subcommittee, Balance maritime security and maritime commerce  
 02 Nov 2011—Hearing, House Transportation and Infrastructure, Deepwater Horizon Lessons Learned  
 20 Jul 2011—Hearing, Senate Committee on Commerce, Science and Transportation, Deepwater Horizon Lessons Learned  
 12 Jul 2011—Hearing, House Transportation and Infrastructure, Maritime Interagency and International Law Enforcement Cooperation  
 16 Mar 2011—Hearing, House Appropriations Committee, Homeland Security, Southwest Border Security  
 21 Jun 2010—Field Hearing, House Appropriations Committee, Homeland Security, National Contingency Plan/Spill of National Significance  
 27 May 2010—Hearing, Senate Committee, Small Business and Entrepreneurship, National Contingency Plan and Deepwater Horizon Spill of National Significance

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I have had seven field commands ranging from the Lieutenant junior grade to Vice Admiral pay grades, and am intimately familiar with the array of Coast Guard missions, readiness requirements of our people and platforms, and value that this service brings to our Nation.

As the current operational commander with an area of responsibility that spans half of the globe, 71 nations and 6 of 7 continents, I have acquired keen geo-political awareness of myriad issues to include contested territorial claims in the East and South China Seas, transnational criminal activity in the Western Hemisphere, increased human activity in the Arctic, global climate change that has spawned more frequent and severe tropical cyclones, the “ring of fire” and disaster response missions, global competition for dwindling fish stocks, unstable regimes that threaten national security, and homegrown violent extremists that threaten our way of life in the Homeland. I have also engendered unity of effort with the nations of Russia, China, Japan, Canada and South Korea while conducting combined operations against illegal fishing activity in the Western Pacific Ocean. Similarly, I have worked with senior naval officers in Mexico in bolstering a maritime law enforcement regime against the maritime transshipment of narcotics under the auspices of the Sinaloa cartel.

I also serve on the Coast Guard’s Leadership Council comprised of the Commandant and the Service’s 5 Vice Admirals and have tackled issues related to budget, policy, acquisition, sexual assault prevention, growing a more diverse workforce, and prudent operational risk management when our budget could not meet the operational requirements placed upon the Coast Guard.

As the former Federal On-Scene Coordinator for the Deepwater Horizon Spill of National Significance, I am one of the few officers in the Coast Guard who is cer-

tified as a NIMS ICS Area Commander while leading more than 47,000 responders in one of the most complex catastrophes in the past decade.

And in every capacity, I have made people my highest priority to include a formal mentoring program, sexual assault workshop and victim advocacy, family campaign plan, holding commanders accountable for failing to uphold our core values, and initiating work place climate surveys that have reflected an inclusive and highest percentile work environment.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

We must first recapitalize our dysfunctional core accounting system and build upon the success of our most recent clean audit opinion to instill public trust in the Coast Guard's stewardship of taxpayer dollars. We must also strike a balance in funding our multi-year recapitalization plan against current-year operations, and revalidate our mission needs statements that drive the requirements for the recapitalized cutters, aircraft and systems that will serve our Nation for another 40 years. As a Rear Admiral, I have co-chaired the Coast Guard's Investment Board, and currently serve on the Coast Guard's Investment Review Board that finalizes the allocation of funds across our acquisition, operations and personnel accounts. I have also served as the Coast Guard's sponsor for all major acquisitions and refined mission needs statements to reflect the reality that we must "build to budget" first, and apply best acquisition practices such as fixed pricing schemes to drive down cost. The next step is to engender a "one-DHS" approach to major acquisitions, particularly with the Air and Marine Division of Customs and Border Protection (CBP) with a view towards commonality of systems to drive down total acquisition cost. I have worked closely with the current senior leadership within CBP as well as the operational components of the Department of Homeland Security, and will invigorate a one-DHS approach to our field operations as well. In my current assignment, I have established a Regional Coordinating Mechanism comprised of CBP, Immigration and Customs Enforcement, Department of Justice, and local law enforcement agencies at the Coast Guard's Sector in San Diego that has proved to be a best practice in thwarting transnational criminal operations along the Nation's maritime Southwest border. I currently have 13,000 Coast Guard personnel serving for me, and for seven months, supervised more than 47,000 first responders during the Deepwater Horizon Spill of National Significance. Under the provisions of the National Contingency Plan and Oil Pollution Act of 1990, I leveraged more than \$25 billion from the responsible party to garner the necessary resources in mitigating this spill of unprecedented magnitude, and invited a GAO audit of my funding authorities and expenditures that culminated in a clean audit.

20. What do you believe to be the top three challenges facing the department/agency, and why?

a. *Budget.* The Budget Control Act lays out milestones for our Nation to come to grips with its burgeoning deficit, leaving minimal opportunity for real growth in our budgetary top line. This dilemma is not unique to the Coast Guard, and affects all Federal entities alike. Our biggest challenge is a predictable budget that allows us to strike a balance among our discretionary (acquisition and operations) and non-discretionary (personnel pay and benefits) accounts. We are currently on a trajectory to draw down the number of personnel serving in the Coast Guard and scaling back on front line operations to build trade-space for our recapitalization plan. A multi-year budget approach will afford a much more measured approach and the time necessary to assess the risks associated with drawing down the size of the force at a time when mission requirements are on the rise.

b. *Offshore Patrol Cutter (OPC) acquisition.* The Coast Guard serves as our Nation's lead Federal agency for maritime security. To this end, the Coast Guard is vested with 60 bilateral agreements that authorize the Coast Guard to exert U.S. sovereignty on internal waters, territorial seas, high seas, and into the territorial seas of many signatory nations for threats related to illicit drug trafficking, illegal fisheries, and maritime carriage of a weapon of mass destruction. We currently operate a fleet of more than 28 medium endurance cutters that have approached, and in many cases, exceeded their service life, yet continue to serve as the nation's sentinel in the offshore (beyond 50 miles) domain. The OPC acquisition program is absolutely critical to our national security objectives, and the Coast Guard must down-select three recently received proposals to a patrol craft that can concurrently meet our mission requirements at an affordable price. Requirements and affordability are mutually inclusive, and will

be the subject of my highest scrutiny as the Coast Guard down-selects the winning proposal within the next 18 months.

c. *Sexual Assault.* The scourge of this aberrant and criminal behavior defies our core values *honor, respect, and devotion to duty*, and results in a hostile work environment that erodes operational readiness and public trust. The Coast Guard has been revered for its humanitarian missions as “guardians” and “life-savers”, and has taken a similar approach in looking out for our people through a servicewide Sexual Assault Prevention and Response Campaign. Only through a series of innovative and aggressive measures will we be able to change this culture that enables sexual assault to persist. First is education. Online applications have proved to be woefully inadequate as reflected in our sexual assault workshops where too many attendees are not aware of the distinction between harassment and assault, the continuum of sexual assault that ranges from inappropriate touching to rape that all fall under Article 120 of the Uniform Code of Military Justice. Second is victim advocacy that begins with unrestricted reporting, and quite frankly, has no definitive end given the psychological consequences unique to each sexual assault victim. But the fact that many of the alleged assaults are perpetrated by repeat offenders, an offense that does not go reported potentially spreads the carnage to future victims. Removing the victim from the alleged perpetrator during the adjudication process is absolutely critical, and on a case-by-case basis, the Coast Guard may wish to consider a leave of absence policy for victims, much like we do for new parents. Third is accountability. I have confidence in the American system of military justice and the convening authorities and others who use it to hold offenders accountable for their acts. I welcome efforts to review our system and make it even better. And fourth is alcohol awareness. Alcohol has been the common denominator in most allegations of sexual assault, and the temperate use of alcohol must first be modeled within the officer and chief petty officer ranks, then followed up with intrusive leadership to reverse the destructive relationship that a small portion of our workforce has with alcohol.

#### B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

Please see my Nominee PFDR.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. None.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. None.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. None.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

I will obtain and follow the advice of a Coast Guard ethics attorney.

#### C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain. No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain. No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain. No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain. No.

6. If you ever served as a general court-martial convening authority involving an offense involving sexual misconduct or assault, have you ever disapproved the findings of a court-martial related to the offense(s) or reduced the sentence adjudged by a court martial, other than in connection with a pre-trial agreement? No.

7. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

I relieved a commanding officer of his duties on 30 October 2012 for projecting a hostile and corrosive work environment to include profane outbursts of anger that belittled the majority of his 170-member crew. In response, this officer filed a complaint against me under Article 138 of the Uniform Code of Military Justice, claiming that my loss in confidence in his ability to command was arbitrary and capricious. This complaint was fully investigated by a Coast Guard Vice Admiral who was recalled to active duty, and the complaint was closed in March 2013 with no findings to support the Article 138 complaint. The officer was permanently relieved of his command.

I have continually held a Top Secret clearance for the past 14 years and undergo an extensive background investigation every five years. There have been no findings whatsoever that compromise my eligibility for a Top Secret clearance.

#### D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistleblowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.



## Vice Admiral Paul F. Zukunft

Commander, Pacific Area and Commander,  
Coast Guard Defense Force West

*United States Coast Guard*



Vice Admiral Zukunft previously served as the Assistant Commandant for Marine Safety, Security and Stewardship. His other Headquarters flag assignments include the Director of Response Policy and the Assistant Commandant for Capability.

In 2010, Vice Admiral Zukunft served as the Federal On-Scene Coordinator for the Deepwater Horizon Spill of National Significance where he directed more than 47,000 responders, 6,500 vessels and 120 aircraft during the largest oil spill in U.S. history.

Vice Admiral Zukunft was promoted to flag rank in 2006 and his previous flag assignments include Commander, Eleventh Coast Guard District and Director, Joint Interagency Task Force West.

His senior staff assignments included Chief of Operations, Coast Guard Pacific Area and Chief of Operations Oversight, Coast Guard Atlantic Area where he directly supervised all major cutter operations in the Atlantic and Pacific theaters. He also served as Chief of Staff, at the Fourteenth Coast Guard District in Honolulu.

Vice Admiral Zukunft has commanded six units and served extensively in the cutter fleet where he commanded the cutters CAPE UPRIGHT, HARRIET LANE, and RUSH.

Vice Admiral Zukunft graduated from the U.S. Coast Guard Academy in 1977 with a Bachelor of Science degree in Government; from Webster University in 1988 with a Master of Arts degree in Management; and from the U.S. Naval War College in 1997 with a Master of Arts degree in National Security and Strategic Studies. He is a graduate of the Asia Pacific Center for Strategic Studies Executive Seminar and Harvard's Kennedy School of Government National Preparedness Leadership Initiative course.

Vice Admiral Zukunft is a native of North Branford, Connecticut. He wears the permanent Cutterman pin and is a certified NIMS ICS Type I Area Commander. His personal awards include the Department of Homeland Security Distinguished Service Medal, Defense Superior Service Medal, three Legions of Merit and five Meritorious Service medals with "O" device among others.

The CHAIRMAN. Thank you very much, Vice Admiral.

I have a number of questions I'd like to ask, one of which we discussed in my office. It's interesting when you look at this. What is it now, two months old? Or a month-old search for the Malaysian plane that crashed? And all of a sudden, you've discovered you're dealing with under-ocean currents and just vast forces, which people in ordinary life, including myself, would not know except when things like this happen. And the number of man-hours, person-hours that have been put into that process is yet extended way into the future.

So what I tend to think about, which Senator Begich has on his mind all of the time so I'll try to take his question away from him, is the aggressive approach of particularly the Soviet Union and, to some extent, China towards getting into the most Northern waters above Alaska so they can drill for oil and gas because that's where a lot of it is. You, on the other hand, you're faced with very much older. I think your best ice cutter is 40 years old. And I don't know what they did 40 years ago that they would do much more of today. And I don't know whether that's single hull, double hull, no hull. Let's just pray.

But something that's 40 years old is simply going to be ineffective in terms of breaking through ice and protecting, therefore, our interests. I think that's a huge issue because oceans are 75 percent of everything they dominate, people pay attention to them. And one of the reasons is that I think that the Coast Guard doesn't get the attention that it should except when, you know, the big spills and crises happen is because it doesn't intersect with people's ordinary lives. But then, when it does, you're called upon to be perfect and to solve all problems; even as we continue to cut your budget, have sequestration; don't do anything with increasing revenues so that you can, you know, get a couple of new boats, a bunch of new boats.

So what I'd like you to do is just to reflect a little bit on your frustrations, or maybe I should just say challenges, as you look at that situation up there in the North Slopes. And, what goes through your mind?

Admiral ZUKUNFT. Thank you, Mr. Chairman.

Our responsibilities are growing because our oceans are growing. We have more open water in the Arctic domain and, certainly, in 2012 was the greatest recedence of sea ice in recorded history. With that has come a fourfold increase in human activity over the last 4 years. This is everything from oil and gas exploration to ecotourism and other adventures in transit through the Northern sea route and Northwest Passage as well.

Much like the Malaysian air disaster, a disaster up there, survival time is measured in minutes. You know, not in days in that extreme harsh environment. So it's imperative that the Coast Guard continues to deploy resources on a seasonal basis during the relatively ice-free season in the Arctic domain to ensure that we are Semper Paratus in that part of the globe as well. We've been operating up there since 1867, since "Seward's Folly," if you will, the acquisition of the great state of Alaska. And we will be committed to working up there for the long period ahead as well.

Our National Security Cutters serve as a floating command and control platform. They were not designed for ice. In fact, we didn't factor ice into the mission needs statement for the National Security Cutters. So as we look at what our future needs are in the Arctic, we need to look at an Arctic domain that addresses some of our sovereign rights with oil, gas, with responsible stewardship to that environment up there including the tribal nations who subsist in that very remote domain. And also, others that may want to exploit those resources that may have a maritime security regime. Not to mention the fact we still need to break ice up there as well.

So we need to look at what the capabilities of tomorrow's ice breakers are and as we hold in place with the capabilities that we have albeit with somewhat aging cutters.

The CHAIRMAN. That still doesn't give me—and I apologize for going over my time. The efficiency of, let's say, a modern Russian ice cutter as opposed to what you have in a Vietnam Era 40 year old, ice cutter. What are the differences?

Admiral ZUKUNFT. Well, they're literally night and day.

You know, the Soviet Union has a fleet of 26 icebreakers. Some of those have nuclear capability. Our nation—and I want to emphasize, these are national assets, not Coast Guard assets. Our country has two icebreakers in service today. A medium icebreaker, the Coast Guard Cutter HEALY, just over 10 years of service. And then the Coast Guard cutter POLAR STAR that was just reactivated after being laid up for a period of 6 years. Our nation's third icebreaker, the POLAR SEA, is in inactive status currently in Seattle.

And as this committee is well aware, we're exploring a number of options as we look at future needs via what is the best course of action in terms of POLAR SEA and whether to reactivate that cutter as well. But we are able to get the job done with the capability that we have today. But it's not going to meet the demands of the future.

The CHAIRMAN. I thank you.

Senator Thune.

Senator THUNE. Thank you, Mr. Chairman. You're dealing like everybody is with some serious budget realities that require the Federal Government to do more with less. And, you know, unfortunately the Coast Guard is no exception. So, Admiral, you currently serve, as I mentioned earlier, as a member of the Coast Guard's Leadership Council which addresses a lot of tough issues facing the Coast Guard including budget and workforce issues. As Commandant, how would you prioritize the deployment of Coast Guard resources to ensure that drug interdiction targets can be met?

Admiral ZUKUNFT. Yes.

We certainly don't do our drug interdictions alone and we do it in a multilateral process. We have 44 bilateral agreements that grant us broad authorities up to the territorial seas and up to the shorelines of a number of nations that are along the transit zones for drugs destined to the United States.

As small as the Coast Guard is, by volume, we interdict over three times the volume of drugs by all Federal, state, and local law enforcement in the United States. And the drugs that we interdict are usually at the highest purity level before they're diluted and

then introduced into our inner cities. But it is a challenge for us going forward.

We have a strong partnership with the Navy, but the Navy has aging platforms as well; namely the PERRY-class frigates. And as those are being taken out of service, today we use our law enforcement teams on those Navy ships to support drug interdictions. We are doing our best with the resources that I have at my disposal. And as the Theater Commander in the Pacific, I have deliberately had to withdraw from doing operations in the Western Pacific in support of capacity building for the Pacific fleet and PACOM Commander because my mission requirements in the Western Hemisphere are such that the opportunity cost of taking those ships out of theater comes at a tremendous cost and missed opportunities in conducting drug enforcement operations.

So it is a challenge. There's good news as well. We are able to leverage all of the assets that are available in the national intelligence community of which the Coast Guard is a member. And much like search and rescue, we're able to take some of the search out of that. And when it comes to drug interdictions, many of those interdictions are led by intelligence of one form or another. So it has made us much more effective but it does come down to numbers and it does require resources on the frontline to continue that level of effort.

Senator THUNE. Drug and migrant interdiction are interrelated missions that have a direct impact on our national security. There was a recent hearing before the Senate Armed Services Committee in which former Assistant Secretary of State Roger Noriega noted that terrorist groups have established cells in Latin American and used drug trafficking to fund other terrorist activity. Your experience as Operation Commander of the Coast Guard's Pacific area, where you spearheaded coordination among law enforcement agencies dealing with transnational crime, should serve you well.

In your view what role does the Coast Guard have in preventing terrorist activity from getting closer to our coastline? And what goals would you have as Commandant in carrying out that mission?

Admiral ZUKUNFT. It's probably not just a Coast Guard but this is a whole of DHS approach. And when you look at the terrorist threat as we shore up our defenses, if you will, along our land border, then these activities will fall on the path of least resistance and then exploit the maritime domain and vice versa.

So it doesn't really require a campaign approach of both land and sea as we look at threats that are destined for the United States. On that note, the Coast Guard fits very smoothly into the Department of Homeland Security. The five missions that Secretary Johnson has set out and the work that we do with our partners that have been illustrated, especially along the Southwest border where we stand up these regional coordinating mechanisms, as you have referred to.

Senator THUNE. In March, the Inspector General for DHS released a report examining how the Coast Guard had tracked its implementation of recommendations issued in the wake of the *Deepwater Horizon* oil spill. The IG concluded that the Coast Guard had not effectively tracked the corrective actions taken in response to

these recommendations. Can you discuss the policy changes that the Coast Guard plans to make in response to that report?

Admiral ZUKUNFT. I can. And I wrote the Federal On-Scene Coordinator's report immediately following that spill before I relinquished my duties.

There are about 255 findings of the 569 that we have prioritized and not all of those 569 line items are actionable or manifest within the Coast Guard. But certainly applying, you know, incident command system principles and how do you build unity of effort across whole of government; having the states that support an area contingency plan that prioritize what areas that you will protect; and then the methodologies that you will use to respond to a spill of national significance.

And we have subsequently stood up an Incident Management Assist Team, who today are down in Houston, Galveston, assisting in that endeavor. And certainly I would categorize that as a good whole of government response to a 168,000 gallon oil spill. But I do look to see that we are better prepared.

One of our challenges going forward is how do you codify all of the knowledge that was gained during *Deepwater Horizon* which is measured in terabytes? And then, how do you archive that information? And obviously, some of it has litigious applications but the other has, you know, best management practices. So that's still an area of work that we will continue to work on and certainly I will be happy to work with this committee in pushing those best practices forward.

Senator THUNE. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Thune.

Senator Nelson.

**STATEMENT OF HON. BILL NELSON,  
U.S. SENATOR FROM FLORIDA**

Senator NELSON. In the lessons learned from the Gulf oil spill, as applied to the Houston ship channel you just named—one thing that you've done with that incident's command Center. What are some of the other lessons learned that you would apply to another major disaster like another Gulf oil spill?

Admiral ZUKUNFT. Our biggest challenge during the Gulf oil spill is whole of science. We always talk whole of document but, you know, we probably mentioned the, you know, the size of the ocean and we probably know more about the moon than we do about the sea floor at 5,000 feet.

As the Incident Commander, you know, my challenge was peer-reviewed information. As we were making daily decisions on, for example, whether to use disbursements or not, and what is the long-term effect in getting all of science to peer review but work within a decision cycle measured in hours, not days, weeks, and oftentimes, months. As we look at other areas for potential exploitation, being able to have the scientific community aligned with policy is absolutely critical to any step going forward and especially with any area contingency plan, that we have all stakeholders that have had bought off on these pre-planned responses to a contingency such as the *Deepwater Horizon*.

Senator NELSON. Do you, looking back, believe that you had the military chain of command so that an order could be given and it would be carried out by all parties?

Admiral ZUKUNFT. Mr. Senator, this is probably about the fifth or sixth complex catastrophe, including mass migration, the Haiti earthquake, that I've been involved in. And, for whatever reason, when a blue suit shows up at a complex catastrophe, people usually turn to the Coast Guard whether we have authorities over these organizations or not.

Kennedy School of Government calls it, you know, establishing unity of effort in the absence of unity of command because they don't all fall under that neat Goldwater-Nichols military construct. But we are able to build unity of effort because we drive through the incident command system, our national response system, daily integrated action plans that brings all stakeholder members to bear, and we do it on a continuous 24-hour cycle.

And so, it was anarchy at first, I think with any crisis and the fact that this was an oil spill that reconstituted itself for 67 consecutive days rather than what historically has been an instantaneous oil spill.

Senator NELSON. How did you get a unity of effort with BP petroleum when they had so much at interest that was contrary to your interests leading the effort?

Admiral ZUKUNFT. Yes.

My role as the Federal On-Scene Coordinator, in promulgating the daily incident action plan—and this is everything from directional drilling offshore to the 47,000 responders, and what materials were we going to need to bring to bear to an oil spill of this magnitude, and that would drive resource requirements.

On a daily basis I was signing off in excess of \$100 million daily expenditures that BP could either front the bill to bring those resources to bear or using the Oil Spill Liability Trust Fund, we would do that, but then, through litigation, go back to BP for reimbursements. So that was a daily activity built into our battle rhythm. But holding the responsible party accountable for bringing resources on a global scale to bear on five states that were impacted by this oil spill.

Senator NELSON. Take, for example, in the early part of the spill, BP said that they were losing some minimal amount of oil 5,000 feet below the surface. It wasn't until we got the streaming video, which a number of us up here had to kick and scream to finally get that, your experts could then analyze the amount of oil that was coming out to see that this was something like 25,000 barrels—gallons, I guess it was. It was a number that rose from 1,000, which was BP's first estimate or their first statement, to ultimately 25,000 a day.

How do you get, when you're getting a different participation from a private sector operator, how do you bring that into line so that you get exactly the information that you need as the Incident Coordinator? And in this case, you would be just like Admiral Allen was at the time. You'll be the top dog. How do you do that?

Admiral ZUKUNFT. I mentioned earlier, whole of science. We actually have whole of science to bear on this as well. What used to be Minerals Management Service, obviously, underwent a huge or-

ganizational change immediately following and during *Deepwater Horizon*. But for every drilling permit there is a worse case discharge number that's provided. Whenever we experience a calamity like we had in Houston, Galveston, we default to the worst case number. The fact that BP initially provided an estimate of 5,000 barrels per day, at the end of that oil spill through scientific research and analysis—and Senator I know you had a big part in making sure that video was streamed. That number grew to 53,000 barrels, was the approximate number at the end of the oil spill at the height of the discharge.

But there is information available in the worst case discharge that the Department of Interior maintains. And we have a much closer working relationship with the Department of Interior today than we did leading up to the BP *Deepwater Horizon* oil spill which is nearly 4 years ago to the day.

Senator NELSON. Mr. Chairman, thank you.

I just want to say, Lord forbid that we should have another one of these. But if you're the Admiral in charge, which I assume you would be, if it's on your watch I think one of the major lessons learned from the BP oil spill that we didn't have a military chain of command that directed all the parties, including BP, of what they were ordered to do. And I hope you don't have to go through that. But if you do, I would certainly recommend to you that you use that as a lesson learned.

Thank you.

Admiral ZUKUNFT. Thank you, Senator.

The CHAIRMAN. Thank you, Senator Nelson.

Senator Begich.

**STATEMENT OF HON. MARK BEGICH,  
U.S. SENATOR FROM ALASKA**

Senator BEGICH. Thank you very much.

Thank you very much for being here, Admiral, and your willingness to take the next command. We had a great conversation in my office and I appreciate the issues and the concerns that you had. But also just the discussion in general about the Arctic and the value of it and the need that will continue to grow, as you and I both know. Not only from the Arctic but what people miss a lot of times is the Bering Sea and the traffic that's moving through there not just for oil and gas but shipping and transportation, fisheries, a variety of other opportunities that are going through there.

So first, I do want to talk a couple minutes on the Arctic but, first, before I do that, I want to tell you a concern. I know we talked about it when we met and that's the recapitalization of the Coast Guard Fleet and what it'll look like in 10 years. And, if we continue at this kind of acquisition level that we're at, are we going to be able to meet, really, the needs? Or, do we have to look at how to add more resources in there? And, if not, and we keep at a certain pace that we're at now, what missions will suffer because we just don't have enough equipment? Because my concern is as the Arctic and Bering Sea become more and more active, we're just moving equipment rather than adding to it. I know we're adding some National Security Cutters and some others but just not at the

pace necessary. Can you tell me what will be the missions that suffer as we continue to have more growth in this area?

Admiral ZUKUNFT. Thank you, Senator.

First, I want to thank this committee because, you know, having long lead-time materials set aside for the final National Security Cutter, Number 8, with a budget going forward will be a tremendous relief for me as we complete the buildup of that program of record to ultimately make space for other acquisitions.

My biggest concern right now is the offshore domain. We have 60 bilateral agreements that cover counterdrug fisheries and weapons of mass destruction. We're the only organization on the face of the earth that has these broad authorities that are global in nature but our limitation is our global reach. And it really comes down to cutters that can operate in that offshore environment.

So the areas that will suffer are those where we see transnational criminal activity that's not constrained by budget continuing to flourish and it's not just the commodities that they smuggle but it's the impact it has on regional stability; particularly in the western hemisphere. What troubles me is when I look at the murder rates in countries such as Guatemala, Honduras, and even in Puerto Rico, and much of that is being fueled by transnational criminal activity and it's also undermining rule of law as well. Our ability to enforce our economic exclusive zone which is over a \$5 billion industry, but over \$140 billion in the Pacific, you know, that can suffer as well if we're not able to operator in that offshore domain.

So that is a challenge that I see going forward.

Senator BEGICH. Let me ask you on the—I know the Coast Guard's program record for recapitalization really doesn't address the long-term polar icebreaker needs. Do you think there's space, or room, over the next few years to be able to figure out how to put some more resources in there or is it just a two-part function; one resources, or is it also production? In other words, you get the money but there's not a production line out there to really build these facilities. Can you give me a thought on that?

Admiral ZUKUNFT. Yes, Senator.

I always have to say, if confirmed.

Senator BEGICH. Yes.

Admiral ZUKUNFT. But, certainly, whenever a new Commandant steps in, there's always a sense of an AC change, if you will. Admiral Papp has been very consistent in his messaging and I certainly plan to do, you know, follow his lead in that regard. Working with our departmental Secretary Johnson, as we look at a whole of government approach for icebreaker recapitalization, which is truly a national asset as I mentioned earlier. As we explore the mission needs requirements and what it will take to recapitalize an icebreaker fleet, we need to carefully assess, you know, how do we close that window of vulnerability? And that would include cutters such as the POLAR SEA and reactivating the POLAR SEA. But, right now, we do not have a budget plan, a capital investment plan, that provides us the trade space to bring that onboard today.

Senator BEGICH. If you're confirmed, is that something that you'll re-examine?

Admiral ZUKUNFT. I certainly will.

Senator BEGICH. Last, let me just say last on the report that you recently did on the Kulluk. I thank you for that; the work you all did on that. I know, and I want to emphasize here, and I would think you would agree with this, the issue wasn't oil and gas exploration. It was the movement of a piece of equipment and a transportation issue. And that there were clearly mistakes made but a good, detailed report lays out what should be done and what can be done. And I know Shell is very responsive to that but I want to—because I know sometimes that report has been moved into another arena of debate. That it's not about the oil and gas exploration. This was hundreds of miles. I know on the map of the United States, Alaska looks very small because that's how they draw it. But, in reality, it was probably 900,000 miles away from the actual activity of oil and gas. It was transporting that vessel which was in question about how they transport it. Is that a fair statement?

Admiral ZUKUNFT. It is.

Senator BEGICH. OK.

And last, for the Coast Guard, the thing I always hear from District 17 is the biggest concern they have right now is that corridor, the Bering Sea corridor, of transportation and what's going through there and what they're not aware of that is not all oil and gas, it's everything. Is that a fair statement?

Admiral ZUKUNFT. It is. And that's why having presence in that domain is absolutely critical.

Senator BEGICH. Very good. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Begich.

Senator McCaskill.

**STATEMENT OF HON. CLAIRE McCASKILL,  
U.S. SENATOR FROM MISSOURI**

Senator McCaskill. Thank you, Mr. Chairman.

As you know, Admiral, the barge traffic in my state is very important to the health of our economy. In fact, to our country because of the agricultural products that need the barge navigation.

You all place buoys along the channel between Kansas City and St. Louis at the direction of the Army Corps. And the problem is, in talking to Missouri base river operators and the Inland Rivers, Ports and Terminals Association, these markers are not accurate. And you all know they're not accurate. You know that the river channel has changed but the buoys don't move. So that means all of these barges have to send out recon boats to actually do this for themselves.

So, you know, there are so many things about this that doesn't make sense. Why mark it at all if it's not going to be accurate? Why go to the cost and expense of doing that if the barge traffic knows they can't rely on them with any certainty that they are accurately showing them where the channel is? Do you think you can do something about that?

Admiral ZUKUNFT. We're certainly looking at that, Senator. And as you know, you know, the river bottom does shift with sediment buildup and that is just a question of how soon we can relocate those buoys into deeper water. So it's a never-ending process.

There's another element to that and that is the recapitalization as well of that inland water buoy tender fleet as well. Rather old assets. Many of these are approaching 60 years of service. Of course, they operate in a more forgiving freshwater environment but it is a capacity challenge for us as well. But certainly, I will keep a very close—

Senator MCCASKILL. Well, I would work with you on this because it, you know, especially if you all are just doing what the corps tells you even though that might be outdated and inaccurate. And not only is your fleet old and a problem, the buoy tenders, you're not even doing it correctly to provide guidance. So maybe it's time to figure out a different way to approach this.

So I'll look forward to you coming up with some solutions and I'll be open to those even if it means you all stepping back from some of the responsibilities you've had or maybe taking the Army corps out of the equation. I think you all have enough expertise to figure out where the channel is.

Second, you all—two of the tenders, the CHEYENNE and the GASCONADE that are operating along this section of Missouri River, they have been taken out of performance for routine maintenance during the season that barge traffic is heaviest; between April and December. Is it possible that we could figure out a way to have that maintenance done during the months that they are not needed for the heaviest months of barge traffic?

Admiral ZUKUNFT. Senator, I will take a very close look at that. These are very old ships and at times some of this is on scheduled maintenance. So we will certainly take a close look at that recognizing there's a peak season, especially when those buoys need to be watching properly.

Senator MCCASKILL. OK. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator McCaskill.

Senator BLUMENTHAL. I'm sorry. Senator Cantwell.

**STATEMENT OF HON. MARIA CANTWELL,  
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman, and thank you for holding this important hearing.

And, Admiral, thank you for your service and your willingness to serve more. And I certainly enjoyed my colleagues communicating about this issue of the Arctic. Something that I think we've had a brief chance to talk about but I thought for purposes of this discussion, just to clarify for people about the activity in the Arctic and the, you know, geographic region and transportation through the Arctic, is the big question here. And as we see a changing climate the more people that are going to be using the Arctic and the fact that we want to be competitive with our shipping interest in the Arctic as well, we all want to be able to say we do business in the Arctic.

But the second chart, I think, is the one that I'm most interested in getting your feedback on because I believe that that chart shows the number of icebreakers that various countries have; the Russians and the Swedes. And here we are down at the bottom with two. And, as you mentioned in your testimony, even that, with

where we are with the POLAR SEA, is somewhat of a question on deployment.

So the 2010 Coast Guard high-latitude studies stated the Coast Guard requires three heavy and three medium icebreakers just to fulfill its statutory mission and/or six heavy and four medium icebreakers to fill its statutory mission and meet the requirements of naval operations concepts. Do you think that still makes sense? Is that the—

Admiral ZUKUNFT. Yes, Senator.

I was actually, you know, working here in Washington, D.C., at the completion of a high-latitude study which did call for three heavy and three medium icebreakers.

Senator CANTWELL. And while there's a popular movie with Drew Barrymore in it, you know, to save a Dolphin and calling out, I think it was a Russian Icebreaker, our plan is not to call the Russians; right? That we're going to have our own capacity?

Admiral ZUKUNFT. We have an opportunity through the Arctic Council going forward; the creation of an Arctic Coast Guard forum. We clearly have some challenges with Russia with where we stand today with policy on Russia. But when we look at some of the imminent threats and most of those are environmental and safety of life at sea. In those two realms, there is an opportunity for a coalition approach. But when it comes to sovereign interests, the United States is lagging behind, as your chart well depicts, the other primary Arctic nations.

Senator CANTWELL. OK.

Are there other branches of service that have Arctic interest that would benefit and thereby also want to help in the contribution of funding icebreakers?

Admiral ZUKUNFT. There are clearly a number. We're working with our department right now in exploring a whole of government approach to address the number of Federal agencies that do have equities in the Arctic. A number of those I mentioned in my oral testimony but certainly the National Science Foundation would be among those as well, Department of Interior, Department of Defense. So there are a number of stakeholders.

Senator CANTWELL. Navy?

Admiral ZUKUNFT. And the Navy.

Senator CANTWELL. Very specifically.

Admiral ZUKUNFT. Right.

Senator CANTWELL. Right.

Well, this is a very keen interest obviously to my colleagues, Senator Begich and to myself, and many of my colleagues from the Pacific Northwest. So we certainly want to make more traction than we've made in the past on this.

But let me also get you on the record because obviously we have a lot of other transportation issues in the region and one of it is this transport of oil sands. You know, you might have seen that spill they had in Kalamazoo, Michigan, and they ended up doing a lot of dredging, I think. That's not something that's going to work in the Pacific Northwest.

So what is your response to how we would protect ourselves and address the risk of oil sands in the Pacific Northwest?

Admiral ZUKUNFT. Some of the—

Senator CANTWELL. Whether it's on our side or the Canadian side, because going through Rosario Strait there we're very concerned that even if somebody chose to ship that oil sands on the Canadian side, I mean, the water knows no real boundary when it comes to the oil. So—

Admiral ZUKUNFT. Yes.

My first concern is the volume that's being moved by intermodal means; by rail car, by barge. And we've seen catastrophes in both those modes of transportation. Tar sands has a high benzene content, so the vapors from that are certainly detrimental to a densely populated area initially. But the response protocols for that are much similar to a light diesel or even a gasoline spill.

So we have research and technology on how to respond to that particular spill but then, as the heavier sediments settles out and sinks, our technology is not as sophisticated when you have tar sands that are now heavier than water and then settle on the ocean bottom. So it is a challenge for us.

Senator CANTWELL. Mr. Chairman, I see my time has expired but I think I'll submit a follow-up question on that because I think that's really getting to the crux of we want to understand whether the Coast Guard feels a new process should be undertaken for this technology or whether we're going to say that this isn't a safe route for transportation. Because we certainly can't afford to have a spill like we've had in other places happen in that particular area; too damaging to salmon and other resources.

The CHAIRMAN. Go ahead

Senator CANTWELL. OK. I see my colleague's here.

So do you believe that a new process for understanding the technology—do you know a new list of requirements? Or how would you approach that?

Admiral ZUKUNFT. Certainly, with the heavy sediment within this product is a concern of mine. And then, how is that safely moved? And so, it is worthy of further study especially if the volume of the movement of this is going to increase by sea-going conveyance.

Senator CANTWELL. So would you say that we don't really have a plan for cleaning it—we don't have the technology available to clean this up if, in fact, we did have an incident?

Admiral ZUKUNFT. Two-part question. For surface removal, we have very sophisticated technology. Once it settles on the sea floor, our technology is lacking in that regard.

Senator CANTWELL. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Cantwell, very much.

It is actually very interesting that there have been several major changes on this committee in the last several years. And I think the most important of them is the influence of those who represent the Northwestern part of our country as opposed to, not necessarily a lesser intensity, than the Northeastern part, but the Northeastern part has always been represented. The Northwestern part has been less so. And I think particularly that first map that you put up, I wished you'd just sort of give that to me and I'd put it up in my house. Sharon might object but that'd be all right. Be-

cause that's a real teacher of what's coming. It's a real teacher of what's coming.

So with that said I'm going to go to Senator Blumenthal to be followed by Senator Markey unless you choose to stand and——

[Laughter.]

Senator BLUMENTHAL. You know what——

The CHAIRMAN. We do this all the time, folks. Don't get upset.  
[Laughter.]

**STATEMENT OF HON. RICHARD BLUMENTHAL,  
U.S. SENATOR FROM CONNECTICUT**

Senator BLUMENTHAL. Senator Rockefeller, thank you very much for letting me go next even though I am from a Northeastern state.

Senator MARKEY. And even though the home of the NCAA Final Four Champion as well, Connecticut?

Senator BLUMENTHAL. And pivoting from that question, thank you, Senator Markey.

The CHAIRMAN. That's a very crude thing to bring up, don't you think, Senator Blumenthal, in a cerebral hearing?

[Laughter.]

Senator BLUMENTHAL. I'm assuming that the witness is, in fact, a UConn fan since he is a native of Connecticut. At least he is a UConn fan today at the hearing.

Thank you for being here. Thank you for your service to our Nation. And you do us proud as a Connecticut native. Thank you for all your great work. And I look forward to working with you particularly on Long Island Sound, an issue that affects us so directly and urgently where the Coast Guard has been a vital friend and servant of all of our interests in preserving safety and environmental values.

So we are very grateful to you and I look forward, particularly, to working with you on the Coast Guard Museum as you and I discussed. It's the only nature of military service that has no museum serving. It's seemingly a small issue but it is one that matters a lot.

I want to focus especially on the cruise ship industry. And the Coast Guard, as you know, conducts comprehensive exams of cruise ships semiannually. Ships that have been detained in the last 3 years are examined on a quarterly basis. Senator Rockefeller has been a leader in the area of cruise ship safety. I've been pleased to follow that lead.

At a National Transportation Safety Board meeting a couple of weeks ago the Coast Guard announced that it will begin announced examinations of cruise ships and these inspections would target ships that have a history or pattern of noncompliance. As you well know, the number of recent incidents have increased public concern over passenger safety, security, and health; not to mention the enjoyment that they have on cruise ships. The Costa Concordia, the Carnival Triumph, all raise this issue in the public headlines but there are many other issues that may not reach that degree of public attention.

So my question to you is, sir, what's your assessment of this problem and the Coast Guard's ability to affect increased safety aboard cruise ships?

Admiral ZUKUNFT. We've set up a national center expertise that's focused on the cruise ship industry. As you mentioned, we do semi-annual exams but there are concerns about transparency. This is an industry that's seeing a growth phase. So we expect to see—there's going to be more activity, and let's say for-profit competition among the cruise ship industry. So doing unannounced inspections rewards good behavior, just as we track, you know, what past practices are within that fleet to certainly honor those that are in full compliance. But that's really the next step going forward as we've seen a spate of these events transpire. And even though we're on there every 6 months, you know, an unsafe practice may surface and go unreported several months and then it becomes headline news.

This is really in the best interest of the cruise ship industry as well. We have a very close working relationship with them. But this really dates back to when we started doing boiler inspections when boilers would blow up back in the steamship days of the 1800s. So we're now dealing with a much more complex industry but we're resourced to do that and I'm up to this challenge.

Senator BLUMENTHAL. You mentioned the issue of transparency. If you're confirmed, would you commit to making public the reports from the Coast Guard cruise ship inspections as a matter of public record?

Admiral ZUKUNFT. Senator, I will need to study that a little bit more and, certainly, would look forward to working with you.

Senator BLUMENTHAL. Thank you.

Admiral ZUKUNFT. And certainly, my interest is to be as transparent as possible.

Senator BLUMENTHAL. Certainly, I would hope that those reports and records will be made transparent. Because, as we all know, the more consumers know the better choices they can make about where they vacation and where they go. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Blumenthal.

That's a very important point. We've just, after a six-year battle, asked to release and have—well, therefore will get released a part of the 63,300 pages which chronicles the interrogation techniques used by, principally by the CIA and, in many cases, by subcontractors who had no experience whatsoever. It's a shocking document. And we had to fight absolutely totally to get that released. Not within the Committee, that was easy. And we did so this week. But that kind of transparency is the essence of what America needs to know.

And now, Senator Markey.

**STATEMENT OF HON. EDWARD MARKEY,  
U.S. SENATOR FROM MASSACHUSETTS**

Senator MARKEY. Thank you, Mr. Chairman.

Admiral, the Arctic ice is melting, seas are rising, climate change is real. How does that affect the mission of the Coast Guard in the years ahead?

Admiral ZUKUNFT. On a number of fronts, Senator. You know, we did see in 2012 record recedence of sea ice and, as I earlier mentioned, a fourfold increase in human activity just in the last 4

years up in the Arctic domain. Clearly, one of the most pristine environments on the face of the earth.

We're encouraged by the progress of the Polar Code as we look at some of those challenges, but the immediate ones that I see are environmental stewardship and safety of life at sea in a very remote portion of our Arctic. We are an Arctic nation but I don't have the capacity I need to be present for the myriad of threats that we're going to see in that domain.

Senator MARKEY. So right now you don't have the capacity to deal with this unfolding change?

Admiral ZUKUNFT. I do not.

Senator MARKEY. And I think that's important for us to understand that climate change is having an impact on the Coast Guards' ability to do its job.

And an increasingly ice-free Arctic Ocean there's a demand for new oil drilling up there. You know, talking about human activity and oil drilling is a human activity. And last week the Coast Guard released its report on the Shell oil drilling rig that ran aground in Alaska on December 31, 2012. As it was being towed back from the Arctic during a period of bad weather.

The report, your report, found that a number of serious problems, including that a desire by Shell to avoid potentially having to pay millions of dollars in taxes on the rig, had remained in Alaskan waters on January 1, influenced the company decision on the timing of moving the rig. Just to avoid taxes, they kept it in a dangerous situation. The report found that Shell continued to move the rig despite forecasts of increasingly bad weather shortly after departure. And it uncovered numerous problems with key pieces of equipment and deficiencies in pre-voyage inspections.

Do you think that before Shell or any other company attempts to drill again in the harsh environment of the Arctic, all of the issues identified in the Coast Guard report should be addressed to ensure that Shell or any other company is operating to the highest possible safety standards?

Admiral ZUKUNFT. Senator, I could not agree more and look forward to working with this committee.

There were not procedures in place before towing mechanisms. And that towing system failed and, of course, there were also several other systems that failed but were not reported in a timely manner. And obviously there were some risk management decisions that would cause one to question was that a crucial course of action.

But first and foremost would be working with the Towing Safety Advisory Committee as we look at better procedures to safeguard the movement of vessels under tow in the Arctic. And certainly, I will look forward to working with this committee in that endeavor.

Senator MARKEY. Thank you.

Just to follow up on that then, the Coast Guard report found that Shell's towing plan was "Not adequate for the winter towing operation crossing the Gulf of Alaska. The plan was not adequately reviewed and lacked the proper contingency planning." The report further found that, There is a lack of regulatory requirement for the Coast Guard to review or improve towing operations of this nature."

Do you believe that the Coast Guard should work with Congress so that there is an ability to properly review these plans to ensure that they are not deficient?

Admiral ZUKUNFT. Senator, absolutely.

Senator MARKEY. Thank you.

And finally, Admiral, I wanted to raise with you the Coast Guards' December 27, 2013 Notice of Proposed Rulemaking entitled "Assessment Framework and Organizational Restatement Regarding Preemption of Certain Regulations Issued by the Coast Guard."

Nobody but the Judge Advocate General of the Coast Guard probably knows what that means. But I am concerned that the Coast Guard is moving forward on this rule without adequately consulting the states. I am concerned that it could have the unintended consequence of negatively impacting states' laws protecting their coasts. In particular, I'm worried that it may impact the Massachusetts Oil Spill Prevention and Response Act that was passed in the wake of the 2003 oil spill in Buzzards Bay, which caused extensive damage in a critical coastal area for commercial and recreational fishing and other coastal businesses.

Will you commit to looking at the rationale for this proposed rulemaking and engaging with the State of Massachusetts and other concerned states on this issue to make sure that the law of unintended consequences or intended consequences which runs contrary to state interests is, in fact, kept in mind?

Admiral ZUKUNFT. Certainly, Senator.

I mean, as someone who grew up in Connecticut, I actually caught my stripers in Buzzards Bay. And so, I'm very well familiar with the concerns of the State of Massachusetts. Certainly, any Federal rulemaking would be through a public hearing process engaging all stakeholders and addressing the very concerns that the State of Massachusetts has raised as it applies to barge movement though Buzzards Bay.

Senator MARKEY. Beautiful.

Admiral ZUKUNFT. You have my commitment.

Senator MARKEY. Thank you, sir.

And along with you, you're going to do a great job. Thank you.

The CHAIRMAN. Senator Markey, can I just be rude enough, because your question interested me. Because, I assume, that means that what you passed in Massachusetts is stronger and more stringent than what we have done.

Senator MARKEY. We don't know exactly what is going to happen in terms of impacting our ability to protect our own coastline. We just wanted to make sure—Governor Patrick, actually, and the state—they wanted me to make sure that we put this flag out there just to make sure that what they do is done in conjunction with the State of Massachusetts and other states to not have our ability to protect our coastline.

The CHAIRMAN. Well-spoken by the Northeast.

[Laughter.]

The CHAIRMAN. Vice Admiral, I can't thank you enough. And when you talked, I think you said 37 years?

Admiral ZUKUNFT. That's correct.

The CHAIRMAN. That's a very long time. I think I have to pay special respects to your wife.

You know, we in politics sometimes think that we're busy and that we're always off—actually when you retire from politics you don't have to raise money, do you? You don't have to do all the things—in any event, I think you've done superbly. You had certain constraints when I asked you, for example, about the difference between a Russian and a U.S., you can answer that. You're not allowed to answer that. And I know that. But I think you've been very forthright with us and as much as a military person can be.

And I think that you're going to whiz right through here. You'll be out of here before you know it. Then the next question will be—to get you done on the floor which is more difficult. But I think in your case not a problem.

So, at this point, I'm going to ask Senator McCaskill, who—I think this is the first day in the last five or six that she hasn't, sort of, dominated the television airwaves.

[Laughter.]

The CHAIRMAN. And we also have the Consumer Product Safety Commission and some very important nominations to deal with on that. And I'm going to ask her if she would be so good as to take over the chair for that.

Senator MCCASKILL [presiding]. Thank you. Thank you, Mr. Chairman.

Thank you, Admiral.

If our nominees for the CPSC would come forward.

[Pause.]

Senator MCCASKILL. Congressman, if you and Senator Udall would—I'm trying to make sure we can get to our votes, Senator Udall.

Mr. TIERNEY. Senator McCaskill, you're trying to move us along.

Senator MCCASKILL. I am trying to move you along with a smile on my face.

Mr. TIERNEY. OK.

Senator MCCASKILL. It's good to see both of you. We're happy to have you. I understand that both of you are here to introduce nominees.

So we will turn it over to you, Senator Udall, for your introduction.

**STATEMENT OF HON. TOM UDALL,  
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you very much.

And good bye to Senator Rockefeller and distinguished members of the Committee.

It's a pleasure to be back with you here on the Senate Commerce Committee. While I no longer serve on the Committee, I still appreciate working with you on many issues. That includes important efforts to improve children's products safety like the Youth Sports Concussion Act which will be considered during your markup tomorrow.

And I want to thank Chairman Rockefeller for all the work you've done with me on this issue. You and your family have done so much already to advance research and treatments for brain injuries.

But today I have the honor of introducing a fellow New Mexican, John Mohorovic, who is nominated for the position of Commissioner of the Consumer Product Safety Commission.

CPSC plays a vital role in protecting the public and especially children from injury from unsafe products. Mr. Mohorovic is qualified for this position with his experience at CPSC and in the private sector. He served in several roles at CPSC where he helped establish the Office of International Affairs and Programs. This office is crucial in ensuring the safety of imported consumer products. Joe also worked at InterTek where he helped companies assure the quality and compliance of their products, especially across complex supply chains.

So he brings an understanding from both his public and private sector experience of the challenges of ensuring product safety in today's global economy. Joe has a commitment to public service; he represented the Northeast Heights area of Albuquerque for two terms in our state legislature. He earned his MBA from the University of New Mexico and received their Young Alumni Award for professional success and community service.

Joe also served for years as a youth football coach in Albuquerque. So he and I share a commitment to promoting youth sports participation and safety. CPSC helps oversee both mandatory and voluntary standards for helmets and other sports gear.

And let me also say a few words about Elliot Kaye, the other CPSC nominee before you today. I've worked closely with Elliot during his time at CPSC. He should be thanked for his work as Chief of Staff for former Chairwoman Tenenbaum on football helmet safety and sports concussion. He brought together sports leagues, manufacturers, and the Centers for Disease Control to get the latest safety information to youth coaches and athletes, and to replace outdated youth football helmets. So this is just one area where I know both CPSC nominees can work in a bipartisan manner to improve consumer protection and children safety.

Chairman McCaskill, and members of the Committee, thank you for allowing me to introduce my fellow New Mexican, Joe Mohorovic, to be Commissioner of the Consumer Product Safety Commission. I appreciate the Committee's work to consider Joe and Elliot Kaye for these important positions.

Thank you very much, Senator McCaskill.

Senator MCCASKILL. Thank you, Senator Udall. It's good to see you.

Congressman Tierney.

**STATEMENT OF HON. JOHN F. TIERNEY, CONGRESSMAN,  
6TH DISTRICT OF MASSACHUSETTS**

Mr. TIERNEY. Senator McCaskill, thank you very much for allowing me to come before you today.

It's my distinct honor to come before you today to introduce Elliot Kaye and for you to consider his nomination to serve as Chairman of the United States Consumer Product Safety Commission.

It would seem to me, respectfully, that Elliot has the exact type of background that would be ideal for this position. He's steeped in both the policy implications and the process of the Commission. He's had broad experience working successfully with personnel

across the agency. He has coordinated and managed negotiations at the Committee level on numerous agency rulemaking efforts, including three of the Chairman Signature Safety Achievements; adoption of the world's most stringent standards for cribs; creation of a publicly available database for consumers to search and file reports of harm; an enactment of a requirement for independent periodic third-party safety testing for all children's products; he's led high-profile ongoing safety initiatives for the chairman, including working to reduce the risk of brain injuries in youth sports; addressing the severe hazard to children from injection of small batteries; and combatting deaths and injuries from carbon monoxide poisoning.

Prior to serving as Senior Counsel to the Chairman, then Deputy Chief of Staff and Senior Council, then Chief of Staff and Senior Council and Executive Director, his life and work experiences prepared him well for the role that he would play. I was fortunate to work with Elliot when he was Legislative Director and then Chief of Staff and Legislative Director for a five-year period in my office. His ability to grasp complex issues, to lead people, and to fashion solutions was obvious early on. He went on to acquire a solid legal education; clerked for distinguished jurors; and was a serious litigator for respective law firms, again, handling complex cases and negotiations, exhibiting his ability to work with people too, in creating solutions.

But you can read about that in his resumé. I'd like to mention a bit about his character and work ethics. Elliot never shied away from difficult situations. He regularly took the lead in forging answers to pressing problems regardless of the number of hours in a day it demanded. More impressively, he always stood for what was right and just in any given situation.

A leader of the Commission must have the respect of those working with him, of Administrators, of Legislators, and of the public. From my experience with Elliot, I can emphatically state that he will earn and maintain the respect of all. He is absolutely honest, forthright in his dealings with others, loyal, and thus commanding of loyalty from others.

As his background reflects, he will be guided by the facts whichever way they lean and will resolutely search them out before making any conclusions. His integrity is unquestionable and his work ethic is unimpeachable.

It's with great pleasure that I introduce to you Elliot Kaye, your nominee for the Chairman for the United States Consumer Products Safety Commission and appreciate your consideration.

Senator MCCASKILL. Thank you so much, Congressman Tierney. It's great to have you in front of the Committee today and we appreciate you taking the time to come over.

Mr. TIERNEY. It's a pleasure to be here. Thank you.

Senator MCCASKILL. And now, if our two nominees will come forward.

[Pause.]

Senator MCCASKILL. I'm pleased to chair this second panel today to consider two nominations for the Consumer Product Safety Commission; a small agency but with a critical and large mission of protecting Americans from unsafe consumer products.

Today, we'll consider two well-qualified nominees with extensive knowledge and understanding of the Consumer Product Safety issues.

I'll start with Mr. Elliott Kaye who is nominated to serve as Chairman of the CPSC. Mr. Kaye's qualifications for the position are deep and nearly unmatched in recent years. He has been with the CPSC since 2010 a time when the Commission has been extremely active implementing the requirements of a sweeping new consumer protection law, the Consumer Product Safety Improvement Act, which was enacted in 2008. He came to the CPSC to serve as Chief of Staff as Chief Counsel to former Chairman Inez Tenenbaum. He's currently the Executive Director for the Commission.

Mr. Joseph Mohorovic; is that correct?

Mr. MOHOROVIC. It is.

Senator MCCASKILL. OK.

Mr. Joseph Mohorovic is Senior Vice President of Strategic Management of InterTek; a company that conducts consumer product testing and inspections. Through this position, I expect he has a stronger understanding than most of the challenges faced by both government and industry in ensuring the safety of toys and other products. Mr. Mohorovic is also long experienced with the CPSC, having worked at the Commission from 2002 to 2006 including as Chief of Staff to former Chairman Hal Stratton.

The CPSC has long been a neglected agency until the passage of the CPSIA, which was prompted by the discovery of dangerous amounts of lead in millions of toys and other children's products. The Commission had been underfunded and understaffed and simply did not have the means to monitor what was on our shelves. Congress passed CPSIA to provide the protections all Americans deserve against harmful and hazardous products. While there have been some bumps in its implementation, the law has rejuvenated the CPSC thanks in large part to the committed leadership of former Chairman Tenenbaum.

I hope the two nominees here today will help carry on the strides the CPSC has made in recent years and ensure the Commission remains vigilant over the 15,000 kinds of consumer products it monitors. In this regard, I appreciate that both of these nominees have extensive experience and expect that, when confirmed, you'll be able to jump right in without any learning curve.

Furthermore, I hope that you will help to reduce the unnecessary partisanship that has plagued the Commission in recent years. This is a vitally important agency and its Commissioners should be able to constructively work together in the interests of the American public. I realize I'm sitting in a glass house when I give you that ammunition but, nonetheless, I'd just say what I say to my children, "Do what I say. Just do what I say. Don't pay any attention to what I do."

Seriously, I know that Congress is having great difficulty, but I hope that both of you take very seriously this important part of your job is to get beyond some of the partisan squabbling that has hampered the activities of the Commission recently.

Welcome to both of you and I look forward to both of your testimony.

We'll begin with you, Mr. Kaye.

**STATEMENT OF ELLIOT KAYE, CHAIRMAN  
AND COMMISSIONER-DESIGNATE,  
CONSUMER PRODUCT SAFETY COMMISSION**

Mr. KAYE. Good afternoon, Chairman McCaskill, distinguished members of the Committee. It is an honor to be here today as the nominee for Chairman of the U.S. Consumer Product Safety Commission.

I would like to begin by introducing two members of my family. My wife, Kanae, please stand up.

[Laughter.]

Mr. KAYE. Kanae is Country Officer for Haiti at the World Bank. She inspires me every day, from her unequaled skill as a parent, to her deep and abiding commitment to helping people in strife-ridden countries. With her is our nine-year-old son, Noah.

Master KAYE. That's me.

[Laughter.]

Mr. KAYE. Whose knowledge, I would say, of Consumer Product Safety Law means he might be the better Mr. Kaye to be sitting here.

[Laughter.]

Mr. KAYE. We were not able to bring our 4-year-old son, Ethan, whose level of energy is not exactly compatible with this setting. I love Kanae, Noah and Ethan as much as is humanly possible. I'm a far better person because of them.

I would like to congratulate Mr. Mohorovic on his nomination and look forward to serving with him if confirmed. I would also like to express my gratitude for the support of Acting Chairman Adler and Commissioners Robinson and Buerkle. And I am deeply moved by the support of so many CPSC staff, especially DeWane Ray, Jay Howell, Michelle Ziemer, and Sydney Lucia from my office.

My career was born, so to speak, in January 1993 when I started as an unpaid intern on the Hill. But my career matured years later, when I went to work for Congressman Tierney. I learned from him what a tremendous force for good government can be, especially when it serves to bring people together from many different viewpoints to solve problems. I am a far more effective and well-rounded public servant because of Mr. Tierney. And I thank him for his very kind words of support today.

After law school and a year in private practice, I had the great fortune to clerk for a U.S. District Court Judge, Sterling Johnson. I learned from the judge the art of reading people and situations and the power of not taking oneself too seriously. I've a far better perspective because of Judge Johnson.

I also struck gold a few years ago when I was hired by then CPSC Chairman Inez Tenenbaum who taught me about combining great leadership with great compassion. Because of her, I learned about the relationship between effectively leading a large group of people and truly connecting with them as individuals. And, in large part because of her efforts, I sit before you today.

Chairman Tenenbaum, thank you for making a special trip to be here.

The CPSC is a very special place to work. Consumer product-related deaths and injuries are not just numbers to us. They are the people whose stories motivate us to be even better at what we do. They are young brothers from Minnesota who were poisoned by carbon monoxide from a furnace. They are an 81-year-old woman who died after becoming entrapped in a bed rail at her assisted living home in Washington. And they are a little boy who died when he became entangled in a window blind cord in nearby North Bethesda. His mom was quoted in saying she found a tiny handprint on the window near where he got caught.

As it should, that image haunts me. And as it should, that image drives me. It drives me to solve safety problems. My track record at the Commission has been to reach out to a wide coalition of stakeholders to try to find safety solutions. I've done this with football helmet manufacturers and representatives from the NFL down to youth football on trying to reduce the risk of brain injury. And I've done this with the major battery manufacturers in trying to address the life-threatening chemical burn hazard to children who swallow coin cell batteries.

There are times that when the agency needs to employ all of the tools that Congress has provided us. If confirmed, I would continue the thoughtful and deliberative approach I've taken during my time at CPSC.

We have significant safety challenges facing us. New and unique hazards continue to emerge. Hidden hazards persist in causing injuries and deaths. If confirmed, I would look forward to working across the agency and hopefully with our stakeholders to find solutions.

We also face challenges in identifying noncompliant products at the ports. In the CPSIA, Congress directed us to better target hazardous imports. We have been running a successful pilot of that program and now we're requesting a funding mechanism to run a full-scale version. Consumers are better served by us catching those products before they enter our markets, and compliant trade is better served by us focusing on those companies not following the rules.

If confirmed, I would look forward to working with this committee on expanding our import safety program, on other safety priorities, and on finding ways to reduce the cost of third-party testing while still assuring children's products are compliant.

And if confirmed, it would be an honor to lead the CPSC, its wonderful staff, and build upon their great achievements in recent years.

Thank you again, Chairman McCaskill, Ranking Member Thune, and the members of this committee. I look forward to answering your questions.

[The prepared statement and biographical information of Mr. Kaye follow:]

PREPARED STATEMENT OF ELLIOT F. KAYE, NOMINEE FOR CHAIRMAN,  
U.S. CONSUMER PRODUCT SAFETY COMMISSION

Good Afternoon, Chairman Rockefeller, Ranking Member Thune and the distinguished members of the Committee.

Thank you for the opportunity to appear before you today as the nominee for Chairman of the U.S. Consumer Product Safety Commission.

I would like to begin by introducing two members of my family. My wife, Kanae, is Country Officer for Haiti at the World Bank. She inspires me every day, from her unequaled skill as a parent to her deep and abiding commitment to helping people in need, especially in strife-ridden countries. Sitting next to Kanae is our nine-year-old son, Noah. We were not able to bring our four-year-old son, Ethan, whose level of energy is not exactly compatible with this setting.

I love Kanae, Noah and Ethan as much as is humanly possible. I am a far better person because of them.

I would like to congratulate Joe Mohorovic on his nomination and look forward to serving with him on the Commission, if confirmed. I would also like to express my gratitude for the support of Acting Chairman Bob Adler and Commissioners Marietta Robinson and Ann Marie Buerkle. And, I am deeply moved by the support of so many CPSC staff, especially DeWane Ray, Jay Howell, Michelle Ziemer, and Sydney Lucia from my office.

Though my family was in the textile business, I chose public service as my path. My career was born, so to speak, in January of 1993, when I started as an unpaid intern on the Hill. But my career matured years later, when I went to work for Congressman John Tierney. By the time I left the Congressman's office, I had learned from him what a tremendous force for good government can be, especially when it serves to bring people together from many different viewpoints to solve problems. I am a far more effective and well-rounded public servant because of John Tierney. Congressman Tierney, thank you for your very kind words of support today.

After law school and a year in private practice, I had the great fortune to clerk for U.S. District Court Judge Sterling Johnson. I learned from him the art of reading people and situations. I also learned the power of not taking oneself too seriously. I have far better perspective because of Judge Johnson.

I also struck gold a few years ago when I was hired by then CPSC Chairman Inez Tenenbaum. From her, I learned about combining great leadership with great compassion. Because of her, I have a much greater understanding of the relationship between effectively leading a large group of people and truly connecting with them as individuals. And, in large part because of her efforts, I sit before you today. Chairman Tenenbaum, thank you for making a special trip to be here today.

The CPSC is a very special place to work. We like to say that we are a tiny agency with a giant mission. Consumer product related deaths and injuries are not just numbers to us—they are the people whose stories motivate us to be even better at what we do.

They are people like the young brothers from Kimball, Minnesota who were poisoned by carbon monoxide from a furnace.

They are an 81-year-old woman, who died after becoming entrapped in a bed rail at her assisted living home in Vancouver, Washington.

And they are the little boy who recently died when he became entangled in a window blind cord in nearby North Bethesda. The boy's mom was quoted in the media saying that she found a tiny handprint on the window near where he got caught.

As it should, that image haunts me. And, as it should, that image drives me.

It drives me to solve safety problems. My track record at the Commission has been to reach out to a wide coalition of stakeholders to try to find meaningful safety solutions through collaboration. I have done this with football helmet manufacturers and representatives from the NFL down to youth football on trying to reduce the risk of brain injury. Brain safety in youth sports would be a top priority, if confirmed as Chairman. And I have done this with the major battery manufacturers in trying to address the life-threatening chemical burn hazard to children who swallow coin cell batteries.

There are times, though, when the agency needs to employ all of the tools Congress has provided us. If confirmed, I would continue the thoughtful and deliberative approach I have taken during my time at CPSC.

We have significant safety challenges facing us. New and unique hazards continue to emerge. Hidden hazards persist in causing injuries and deaths. These hazards can be addressed and, if confirmed, I would very much look forward to working with my fellow Commissioners, the wonderful CPSC staff, and our stakeholders to do so.

We also face challenges in identifying noncompliant products at the ports. In the CPSIA, Congress directed us to begin a risk assessment methodology to better target hazardous and violative imports. We have been running a successful pilot of that program and now are requesting a funding mechanism to run a full scale version. Consumers are better served by us catching these products before they enter our markets, and compliant trade is better served by us focusing on those companies not following the rules.

If confirmed, I would very much look forward to working with the members of this Committee on expanding our import safety program, as well as on other safety pri-

orities. I would also look forward to working with members of this Committee on ways the Commission can continue to seek to reduce costs of third party testing while still assuring children's products are compliant.

And, if confirmed, it would be an honor to lead the outstanding and dedicated staff at CPSC and build upon the great successes they have achieved in recent years.

Thank you again Chairman Rockefeller, Ranking Member Thune and the members of this Committee. I look forward to answering your questions.

#### A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Elliot Franklin Kaye.
2. Positions to which nominated: Commissioner and Chairman, U.S. Consumer Product Safety Commission.
3. Date of Nomination: March 31, 2014.
4. Address (List current place of residence and office addresses):
  - Residence: Information not released to the public.
  - Office: 4340 East West Highway, Bethesda, MD 20814.
5. Date and Place of Birth: April 21, 1969; Huntington, New York.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).
  - Kanae Watanabe-Kaye, Country Officer for Haiti, the World Bank; children: Noah Takashi Kaye (age 9), Ethan Yoshiyuki Kaye (age 4).
7. List all college and graduate degrees. Provide year and school attended.
  - BSJ—Northwestern University, the Medill School of Journalism (1991).
  - No Degree (Senior Managers in Government Program)—Harvard University, The Kennedy School of Government (1999).
  - JD—New York University School of Law (2004).
  - No Degree (transferred to NYU)—The George Washington University Law School (2001–2002).
8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

Place of Employment	Position(s)	Dates
Sapore di Mare (restaurant)	Waiter	1992 (est.)
James Lane Café	Waiter	1992
Office of Congressman Earl Hutto	<ul style="list-style-type: none"> <li>• Communications Director/Legislative Aide</li> <li>• Legislative Aide/Correspondent</li> <li>• Congressional Intern</li> </ul>	1/1993–1/1995
Office of Congresswoman Pat Danner	<ul style="list-style-type: none"> <li>• Chief of Staff</li> <li>• Communications Director</li> </ul>	2/1995–6/1996
Office of Congressman John Tierney	<ul style="list-style-type: none"> <li>• Chief of Staff (DC)/Legislative Director</li> <li>• Legislative Director</li> </ul>	6/1997–8/2001
Cooley Godward Kronish LLP (formerly Kronish Lieb)	Associate Attorney	9/2004–8/2005; 11/2006–5/2007
Chambers of U.S. District Court Judge Sterling Johnson, Jr., EDNY	Judicial Clerk	9/2005–11/2006
Ohio Campaign for Change	Director of Voter Protection, Cuyahoga County	9/2008–11/2008
Hogan Lovells (formerly Hogan & Hartson)	Associate Attorney	12/2007–10/2010

Place of Employment	Position(s)	Dates
U.S. Consumer Product Safety Commission	<ul style="list-style-type: none"> <li>• Executive Director</li> <li>• Chief of Staff &amp; Chief Counsel to the Chairman</li> <li>• Deputy Chief of Staff and Senior Counsel to the Chairman</li> <li>• Senior Counsel to the Chairman</li> </ul>	10/2010–present

9. Attach a copy of your resumé. A copy is attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years. None.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last five years. None.

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap. None.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt. No.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

Obama for America 2012: Based on a review of available credit card records, I made a number of individual contributions in the approximate range of \$10–\$55. In aggregate, these donations totaled a little more than \$500, as best as I can currently determine.

Obama for America 2008: To the best of my recollection, I made a similar level of aggregate, small money donations in 2008. I have requested what I believe to be relevant credit card records for that time period.

Campaign work: Ham Fish for Congress (Fall 1994 est.); Tierney for Congress (Fall 1998 & Fall 2000); Ohio Campaign for Change (Fall 2008).

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

Recipient of The Legal Aid Society's Outstanding *Pro Bono* Service Award (2005).

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

I covered sports for the *Daily Northwestern* for a time while in college. Also while in college, I was required as part of the journalism program to work at a newspaper for one quarter. I worked at the *Lakeland Ledger* in Lakeland, FL to satisfy that requirement. I worked as a reporter during some of that experience. In both capacities, I wrote articles, but authored no commentary or editorial pieces. When I was in high school, I was editor-in-chief of my high school newspaper. During that time I recall writing two columns (one per semester of publication). One article was about baseball opening day; I do not recall the subject of the second article. Prior to that, I submitted one piece of short fiction to the same paper during my junior year.

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony. None.

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I have been with the agency for almost three and a half years, and have served in a number of senior capacities. This experience has provided me with a broad and

detailed view of the entire agency. In my current capacity as Executive Director, I am responsible for day-to-day staff level management of the agency, including operations related to product compliance, import surveillance, international outreach, small business interaction, hazard identification and reduction, facilities, human resources, finance, and information technology. My experience as CPSC's Executive Director—managing, interacting and connecting with the staff of this agency throughout each day—has left me well positioned to serve as an effective Chairman.

Prior to moving into this position, I served as Chief of Staff and Chief Counsel to the Chairman, and before that, in other senior positions in the Chairman's office. In the Chief of Staff and Chief Counsel roles, I was responsible for management of the Chairman's staff and policy objectives, as well as relations among the Commissioners and their staffs. I believe the combination of these diverse perspectives, both as the Chairman's lead policy staffer and as Executive Director, would be extremely beneficial, should I be confirmed.

Having served in those positions, I am well aware of the tremendous good the Chairman can initiate and even carry out, both inside and outside of the agency. I care deeply about the agency's staff and am very cognizant of the impact the Chairman can have on them and their sense of the health of the agency.

The Chairman also has the ability to seek major safety gains by leading collaborative engagements with relevant stakeholders, particularly industry. This was the approach I took when I worked in the Chairman's office. I would employ, and even expand upon, this approach if confirmed as Chairman. My experience has taught me that an inclusive approach can lead to faster and more meaningful gains in certain circumstances.

If confirmed, I would bring to the position of Chairman my collective experiences of working in the Chairman's office and serving as Executive Director and work in furtherance of helping the agency fulfill its consumer product safety mission in a very reasonable and thoughtful manner. But even more so, I would bring my passion for the issues the Commission addresses daily.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

In my current role as Executive Director, I am the senior most staff person responsible for management and internal controls, both related specifically to accounting and beyond. I conduct at least weekly meetings with all of the managers, including those in finance. Often, I engage in unscheduled discussions with staff as warranted. The executive staff and I closely monitor the work of the managers and track progress on key milestones, including enhancing controls as identified. I also am in regular contact with the agency's Inspector General, with whom I have an open line of communication. I take very seriously his recommendations and also track, with my staff, the implementation of warranted enhancements.

20. What do you believe to be the top three challenges facing the department/agency, and why?

*Staffing:* One significant challenge facing the CPSC is the ability to recruit and maintain a strong workforce. During the past five years the agency has experienced a large number of retirements, and with them the Commission has suffered a significant loss of expertise and institutional knowledge. Sequestration slowed the agency's ability to replenish those losses, as well as to build out areas of need. Furthermore, as part of its understandable effort to reduce costs across government offices, GSA required that the CPSC decrease its physical space. The smaller footprint has resulted in tighter, more restrictive working conditions. Lastly, the eroding competitiveness of government compensation and benefits, an issue not unique to CPSC, has made attracting sufficient and well qualified personnel a challenge. I believe staffing challenges have and will continue to affect CPSC's ability to timely address product safety needs in accordance with the Commission's, the Congress's, and the public's expectations.

*Emerging Hazards:* Addressing hazards in a timely manner, given our budgetary constraints and limited resources, presents another major challenge. The agency has to be creative and nimble in its approach. One of the best ways to leverage our resources and better protect consumers is to stop hazardous products at the ports, before they even enter the stream of commerce. CPSC's Import Surveillance Program addresses certain hazardous products at importation, and helps expedite entry of compliant trade. The program, however, is pilot scale, allowing the Commission to examine only a small segment of the products under the Commission's jurisdiction. The Commission—and, more importantly, consumers and compliant trade—would be well-served by a full-scale nationwide program.

I also fully support leveraging the collective wisdom of stakeholders industry, consumers, and health entities—to address emerging hazards. Using a collaborative effort has served the agency well, especially with regard to making meaningful progress with chemical burn injuries associated with coin cell batteries as well as brain injuries in youth sports. We all have the same goal—identifying and addressing areas of concern as early as possible. Such an approach, if successful, could save lives, prevent injuries, and significantly reduce costs.

*Hidden Hazards:* Lastly, hidden hazards present another related significant challenge. Historically, the agency was focused more on obvious hazards, such as the likelihood of a person being cut by a sharp product, a child choking on a small part in a toy, or a consumer being electrocuted by an electric-powered appliance. Consumers are increasingly facing less intuitive hazards: the very serious risk to a child of deadly tip-overs from a cathode-ray tube television placed on a tall piece of furniture; the risk from a product containing chemicals or metals with scientific consensus that they are chronically harmful; or the unknown possible long-term effects from new, untested technology in the market, such as nanoparticles that are the focus of research by the National Nanotechnology Initiative. I am particularly concerned with how vulnerable populations might be impacted. Congress recognized and addressed the risk of some hidden hazards in CPSIA, setting certain new chemical and element limits as well as providing the agency with enhanced authorities to try to address those hazards in the marketplace and even before they enter the marketplace. But, more work needs to be done. In the interim, one key aspect is to keep educating consumers, through robust outreach, particularly in conjunction with stakeholders, and to stay informed and ahead of the technological advances.

#### B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts. None.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

CPSC's Office of General Counsel has identified one stock I own (Wendy's-Arby's) as potentially providing a conflict in the event my holdings reach or exceed \$15,000. Currently, the value of my holding of that stock is less than \$4,000. I monitor the stock to ensure a potential conflict can be avoided. This is also reflected in the ethics agreement I signed.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. None.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. None.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

If faced with a potential conflict of interest, I will seek the advice and counsel of CPSC's Office of General. If faced with any legitimate conflict of interest, I will recuse myself completely of all related business and/or divest as necessary.

#### C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain. No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain. No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain. No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain. No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination. None.

#### D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

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#### RESUMÉ OF ELLIOT FRANKLIN KAYE

##### **Government and Political Experience**

U.S. CONSUMER PRODUCT SAFETY COMMISSION, Bethesda, MD

*Executive Director*, October 2013–present

*Chief of Staff & Chief Counsel to the Chairman*, May 2013–October 2013

*Deputy Chief of Staff & Senior Counsel to the Chairman*, April 2012–May 2013

*Senior Counsel to the Chairman*, October 2010–April 2012

In current capacity, manage the agency's operations on a day-to-day basis, including chief executive staff-level management responsibilities for staff work related to compliance, import, hazard identification and reduction, international, information technology, facilities, human resources and finance. Also am responsible for ensuring the Acting Chairman's policy goals are carried out as directed. In prior capacities, worked with the former Chairman to formulate and implement wide-ranging and ambitious consumer product safety goals while also managing the Chairman's personal staff. Served as the Chairman's principal staffer with all engagements internal and external to the government. Provided counsel to the Chairman on a broad range of complex legal, policy and enforcement matters and strategic advice on Congressional and media related issues and interactions. Coordinated and managed negotiations at the Commission level on numerous agency rulemaking efforts, including three of the Chairman's signature safety achievements: adoption of the world's most stringent standard for cribs; creation of a publicly-available database for consumers to search and/or file reports of harm (*SaferProducts.gov*); and enactment of a requirement for independent, periodic third-party safety testing of all children's products. Lead high profile, ongoing safety initiatives for the Chairman, including working to reduce the risk of brain injuries in youth sports, addressing the severe hazard to children from ingestion of small batteries, and combating deaths and injuries from carbon monoxide poisoning.

OHIO CAMPAIGN FOR CHANGE, Cleveland, OH

*Director of Voter Protection, Cuyahoga County*, September 2008–November 2008

Took unpaid leave of absence from Hogan & Hartson to manage the voter protection effort in a top priority county. Primary responsibilities included identifying and addressing with the local Board of Elections key issues that could lead to voter disenfranchisement and managing staff of 18 full-time attorneys working on the recruitment, training and placement of approximately 1,000 attorneys/law students to serve as Election Day poll observers. On Election Day, managed regional voter protection war room with staff of 20 election law attorneys and senior Ohio litigators; also managed Election Day voter protection field team of 50 countywide regional supervising attorneys and the approximately 1,000 voter protection observers inside and outside hundreds of key polling locations.

THE HON. STERLING JOHNSON, JR., U.S. DISTRICT COURT, EDNY, Brooklyn, NY

*Judicial Clerk*, September 2005–November 2006

Researched and drafted numerous opinions for civil and criminal matters, including issues relating to evidentiary questions, conflict of counsel, sufficiency of charging instruments and other constitutional claims. Also was responsible for all trial-related work during five criminal trials and one civil trial, including assisting judge with case management and the resolution of numerous trial motions. Prepared all related jury instructions.

CONGRESSMAN JOHN F. TIERNEY, Washington, D.C.

*Chief of Staff (DC)/Legislative Director*, November 1998–June 2001

*Legislative Director*, June 1997–November 1998

Core responsibilities included developing and implementing all policy objectives, strategies and operating plans, managing and directing all staff in the Washington office and coordinating all activities with the White House, the rest of the Administration, and with Congressional leadership/committee personnel.

CONGRESSWOMAN PAT DANNER, Washington, D.C.

*Chief of Staff*, July 1995–June 1996

*Communications Director*, February 1995–July 1995

Performed duties very similar to chief of staff position described above, while also managing district offices and media operations. Communications responsibilities included crafting and managing all aspects of messaging and media outreach, drafting speeches, press releases and monthly columns, and serving as primary spokesperson.

CONGRESSMAN EARL HUTTO, Washington, D.C.

*Communications Director/Legislative Aide*, April 1994–January 1995

*Legislative Aide/Correspondent*, September 1993–April 1994

*Congressional Intern*, January 1993–August 1993

Legislative duties focused on keeping member informed on key developments related to assigned issue areas, as well as handling majority of constituent mail responses by the office. Press responsibilities included managing media contacts, drafting speeches, press releases and weekly columns, and serving as primary spokesperson.

#### **Additional Legal Experience**

HOGAN LOVELLS U.S. LLP (formerly Hogan & Hartson), Washington, D.C.

*Associate*, Litigation (White Collar Group), December 2007–October 2010

Practice focused predominantly on assisting clients with complex white collar matters, in particular with investigations by the United States Department of Justice, the United States Congress and the United States Securities and Exchange Commission. Regularly traveled throughout the United States to conduct in-depth, fact-finding investigations at all types of companies. Related functions included counseling clients on resolution strategies and best practices, as well as supervising junior associates conducting document review and managing voluminous document productions to the government. Also involved in significant *pro bono* work, including day-to-day responsibility for a post-conviction, death penalty case.

COOLEY GODWARD KRONISH LLP (formerly Kronish Lieb), New York, NY

*Associate*, Litigation Department, November 2006–June 2007; September 2004–September 2005

Practice focused on white collar criminal defense. Responsibilities included factual investigations, legal research related to, and drafting of, legal memoranda and document review and production. Also was involved with significant *pro bono* work, including drafting portion of U.S. Supreme Court *amicus brief* on Federal sentencing cases, and assisting a former child soldier in obtaining asylum.

#### **Education**

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY

J.D., *cum laude*, May 2004

Editor-in-Chief, *Journal of Legislation and Public Policy*

Student member of the Federal Defender Clinic, 2003–2004

GEORGE WASHINGTON UNIVERSITY LAW SCHOOL, Washington, D.C.

Completed first-year J.D. coursework academic year 2001–2002

*George Washington Scholar* (awarded to top 15 percent of class)

HARVARD UNIVERSITY, THE KENNEDY SCHOOL OF GOVERNMENT, Cambridge, MA  
*Senior Managers in Government Program*. Summer 1999. Intensive three-week certificate program involving 100 senior government officials from around the world, aimed at improving the service of government.

NORTHWESTERN UNIVERSITY, THE MEDILL SCHOOL OF JOURNALISM, Evanston, IL  
 B.S.J., June 1991. Major: Print Journalism; concentration: Russian Literature  
*Dean's List* (Spring Semester 1991)

**Additional Honors**

Recipient of The Legal Aid Society's Outstanding *Pro Bono* Service Award (2005)

Senator McCASKILL. Thank you, Mr. Kaye.

I did not realize that Ms. Tenenbaum was in the audience when I was giving my opening statement.

I want to recognize Inez. She is a terrific leader and has done a terrific job and I consider her also a friend. So it is really nice of you to be here today. And thank you, on behalf of all the American people for your great service at the Consumer Product Safety Commission.

Mr. Mohorovic.

**STATEMENT OF JOSEPH MOHOROVIC, COMMISSIONER-  
 DESIGNATE, CONSUMER PRODUCT SAFETY COMMISSION**

Mr. MOHOROVIC. Thank you, Madam Chairman.

Madam Chairman, Senator Thune, thank you for the opportunity to appear before you today as a nominee to the U.S. Consumer Product Safety Commission. I am deeply honored and humbled by the President's nomination of me to the CPSC and for the opportunity to address you and answer your questions today.

And I'd like to also especially thank Senator Udall for his generous introduction.

If I may, Madam Chairman, I would first like to introduce my lovely wife, Royelle. Our three beautiful daughters are six-year-old twins, Gigi and Lucy, and our newest addition to the Mohorovic clan, two-year-old Stevie, are at home with their grandmother but always home in our hearts.

With three small girls at home, I'm reminded every day how critical the CPSC's mission is to protect America's most vulnerable consumers. And after having spent almost a decade working for the largest international provider of quality assurance and safety services to the consumer goods industry, I understand intimately the challenges faced by manufacturers and retailers operating in global supply chains.

And with an enduring commitment to public service that began when I was elected to the New Mexico legislature at age 27, I'd like to offer my risk management skillset to help modernize the CPSC and effectively regulate for safety in the twenty-first century.

And while the agency's regulatory agenda, strategic plans and emerging hazards direct the agency's priorities, if confirmed, there are three areas of CPSC activity that I would like to focus on personally. They are: Modernizing the CPSC's import surveillance strategy; addressing furniture and television tip-over hazards; and better leveraging the expertise of the broader safety community.

First, improving import surveillance. If confirmed, I will make it one of my highest priorities to continue to modernize the CPSC's import surveillance program. The vast majority of products under CPSC jurisdiction are imported; four out of every five recalls involves imported product. And I can think of no better way of assuring consumer safety than by ensuring the compliance of imports to U.S. safety expectations.

Specifically, I would like to work to further integrate current imports surveillance programs with those of customs and border protection. And I recognize that the agency has made tremendous strides in recent years, including the development of their risk assessment tools, but I would like to contribute my personal knowledge of the latest targeting techniques used by the world's most sophisticated supply chains to identify imports with greater safety risk.

Furthermore, I think the agency can do more to facilitate legitimate trade through public-private partnerships for those importers who are willing to subject themselves to increased scrutiny with regards to their compliance processes; not unlike the very successful TSA Pre-check Program for low-risk air travelers. I can envision a modernized CPSC imports surveillance program where harmful and noncompliant consumer goods are intercepted and deterred while legitimate cargo is identified and rapidly admitted to consumers without disruption.

Second, addressing furniture and television tip-over hazards. Tragically, every 2 weeks in America a child dies when a television, appliance, or a piece of furniture falls on him or her. And with three small children at home, I personally know how vigilant parents must be to follow the CPSC's strategy of "Anchor and Protect." And it was only a few years ago that my nephew broke his arm when the dresser that he was using as a ladder, as children tend to do, toppled over on top of him.

Some manufacturers and retailers do a very admirable job educating consumers and facilitating the safe use of their products, including the proper use of tether and anchoring devices. And I have also experienced the frustration of working with some products whose manufacturers seem blind to the hazard and thwart the efforts of a diligent parent endeavoring to create a safe environment for children. So addressing this very deadly and hidden home hazard is a personal cause for me and one that will, if confirmed, be a top priority.

Third, leveraging the expertise of CPSC stakeholders. Finally, and perhaps most importantly, I would like to work to not only aggressively pursue those products and companies that truly put American consumers at risk, but to do so by leveraging, wherever possible, the input and efforts of all agency stakeholders. There's now underway a tremendous level of activity on the part of both industry and consumer advocacy groups that, in my view, the CPSC can learn from, contribute to, and generally use to leverage the agency's limited resources.

I envision a more accessible CPSC, a more engaged CPSC, and one where members of the international safety community are solicited for support, partnership, advice, recommendations, and models to better inform CPSC public policy and improve effectiveness.

In conclusion, Madam Chairman, the mission of CPSC, in my view, is nothing less than a sacred one. American consumers have the right to know and have confidence that the products they buy, use, and then indeed that they give to their children, are safe. I assure you and this committee that if confirmed to serve as the Commissioner, I will personally, with every ounce of my faculties, uphold that sacred obligation and tradition of excellence that the CPSC embodies.

I, again, thank you, Chairman and distinguished members of the Committee, for the time and for the opportunity to appear before you today. And I look forward to answering your questions.

[The prepared statement and biographical information of Mr. Mohorovic follow:]

PREPARED STATEMENT OF JOSEPH P. MOHOROVIC, COMMISSIONER-DESIGNATE,  
U.S. CONSUMER PRODUCT SAFETY COMMISSION

Thank you Madam Chairman. Madam Chairman; Senator Heller; distinguished members of the Committee:

Thank you very much for the opportunity to appear before you today as a nominee to the U.S. Consumer Product Safety Commission. I am deeply honored and humbled by the President's nomination of me to the CPSC and for the opportunity to address you and answer your questions today.

And thank you to Senator Udall for that generous introduction.

If I may Madam Chairman, I would first like to introduce my lovely wife, Royelle. My three beautiful daughters, six-year-old twins Gigi and Lucy and our newest addition to the Mohorovic clan, two-year-old Stevie are home with their grandmother, but always home in my heart.

With three small girls at home, I'm reminded every day how critical the CPSC's mission is to protect America's most vulnerable consumers.

And after having spent almost a decade working for the largest international provider of quality assurance and safety services to the consumer goods industry, I understand intimately the challenges faced by manufacturers and retailers operating in global supply chains.

With an enduring commitment to public service that began when I was elected to the New Mexico legislature at age twenty seven, I'd like to offer my risk management skillset to help modernize the CPSC and effectively regulate for safety in the 21st Century

While the agency's regulatory agenda, strategic plans and emerging hazards direct the agency's priorities, if confirmed, there are three areas of CPSC activity I would like to focus on personally. They are: (1) Modernizing CPSC's Import Surveillance Strategy; (2) Addressing Furniture and Television Tip-over Hazards; and (3) Better leveraging the expertise of the broader safety community .

**First, Improving Import Surveillance**

If confirmed, I will make it one of my highest priorities to continue to modernize CPSC's import surveillance program. The vast majority of products under CPSC jurisdiction are imported. And a disproportionate share of recalled products is imported. I can think of no better way of assuring consumer safety than by ensuring the compliance of imports to U.S. safety expectations. Specifically, I will work to further integrate current import surveillance programs with those of Customs and Border Protection. I recognize that the agency has made tremendous strides in recent years, including the development of their risk assessment tools. I would like to contribute my personal knowledge of the latest targeting techniques used by the world's most sophisticated supply chains to identify imports with greater safety risk. Furthermore, I think the agency can do more to facilitate legitimate trade through public-private partnerships for those importers willing to subject their compliance processes to greater scrutiny—not unlike the successful “TSA Pre-Check” program for low risk air travelers. I can envision a modernized CPSC import surveillance program where harmful and non-compliant consumer goods are intercepted and deterred, while legitimate cargo is identified and rapidly admitted to consumers without disruption.

### **Second, Addressing Furniture and Television Tip-over Hazards**

Tragically, every two weeks in America, a child dies when a television, appliance or piece of furniture falls on him or her. With three small children at home, I personally know how vigilant parents must be to follow the CPSC's strategy of "anchor and protect." Only a few years ago my nephew broke his arm when the dresser he was using as a ladder toppled over on him. Some manufacturers and retailers do an admirable job educating consumers and facilitating the safe use of their products including the proper use of tether and anchoring devices. And I have also experienced the frustration of working with some products whose manufacturers seem blind to the hazard and thwart the efforts of a diligent parent endeavoring to create an environment safe for children. Addressing this very deadly and hidden home hazard is a personal cause for me and one that will, if confirmed, be a top priority.

### **Third, Leveraging the Expertise of CPSC Stakeholders**

Finally, and perhaps most importantly, I would work to not only aggressively pursue those products and companies that truly put American consumers at risk, but to do so by leveraging wherever possible the input and efforts of all agency stakeholders. There is now underway a tremendous level of activity on the part of both industry and consumer advocacy groups that in my view the CPSC can learn from, contribute to, and generally use to leverage the agency's limited resources. I envision a more accessible CPSC a more engaged CPSC and one where members of the international safety community are solicited for support, partnership, advice, recommendations and models to better inform CPSC public policy and improve effectiveness.

### **Conclusion**

In conclusion Madam Chairman, the mission of the CPSC, in my view, is nothing less than a sacred one. American consumers have the right to know and have confidence that the products they buy, use, and indeed that they give to their children, are safe. I assure you and this Committee that, if confirmed to serve as a Commissioner, I will personally and with every ounce of my faculties uphold that sacred obligation and tradition of excellence that the CPSC embodies.

I again thank you, Chairman McCaskill and distinguished members of the Committee for your time and for the opportunity to appear before you today, and I look forward to answering your questions.

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#### A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Joseph Peter Mohorovic.
2. Position to which nominated: Commissioner, United States Consumer Product Safety Commission.
3. Date of Nomination: November 6, 2013.
4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.

Office: 2107 Swift Drive, Oak Brook, IL 60523.

5. Date and Place of Birth: 5/9/1971; New York City, New York.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).

Married to Royelle Marka Mohorovic (homemaker); five-year-old twins: Gabrielle Grace and Lucille Marie and two-year-old Stephanie Vesna.

7. List all college and graduate degrees. Provide year and school attended.

University of Texas at Austin (J 989-94. Liberal Arts Major in Government and History.

University of New Mexico Master in Business Administration (2000-2002).

8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

Intertek Group plc.

U.S. Consumer Product Safety Commission

Anasazi Investments, LLC

New Mexico State Senate

Committee to Reelect Governor Gary E. Johnson

New Mexico State House of Representatives  
 Republican Party of New Mexico

Details available with attached submitted resumé.

9. Attach a copy of your resumé. A copy is attached.
10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years. None.
11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last five years.

Intertek Group plc—employment  
 Maryknoll Estates Homeowners Board of Directors (2012–2013)

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political professional, fraternal benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

St. James the Apostle, parishioner 2007–2013  
 Our Lady of Lourdes, parishioner 2002–2007  
 John Carroll Society, 2003–2007

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt.

New Mexico State Representative 1999–2002; resigned to begin employment at the CPSC. No outstanding campaign debt.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period. None.

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

- 2005—The University of New Mexico, Albuquerque, NM; Young Alumni Award for professional success, community service and professional honors.
- 2002—Assn. of Commerce and Industry, Albuquerque, NM; New Mexico FOCUS Business Star for continued excellence in promoting economic development.
- 2002—Americans for Tax Reform (ATR), Washington, D.C.: Friend of the Taxpayer Award (ATR selects a winner of the Friend of the Taxpayer Award every month since January, 1997).
- 2002—John Baker Elementary School, Albuquerque, NM; Community Appreciation Award for continued excellence in the area of public education.
- 2001—Chamber of Commerce, Albuquerque, NM; 2001 Leader Award for continued efforts in the area of crime legislation.
- 2000—NM Business Weekly, Albuquerque, NM; Top Forty Under 40, one of the top forty people under the age of forty “dedicated to changing the status quo in New Mexico.”
- 1999—NM Speech & Hearing Assn. Albuquerque, NM; Community Appreciation Award for continued support of the Audiology and Speech Language Pathology professions.

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

U.S. Consumer Product Safety Commission, “Education and Outreach Roundtable—Public Meeting,” (Regarding Education and Outreach Relating to Testing and Certification of Toys and Other Children’s Products), October 6, 2011.

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony. None.

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I have almost ten years of direct experience in the field of product safety, including five years at the CPSC. Since 2007, I have been a senior manager in a major international testing laboratory responsible for ensuring the compliance of consumer products to CPSC and other regulatory safety standards. I know the CPSC and its laws, regulations and activities intimately, as well as how those impact all agency stakeholders. In addition, as an elected state representative for four years in New Mexico, I understand the complex considerations of the legislative and regulatory processes generally.

With respect to my desire to serve as a commissioner at the CPSC I have long held a commitment to public service and can think of no better avenue, considering my background and abilities, than to serve as a CPSC commissioner. I understand well the critical and often delicate mission the CPSC is tasked with, including the many interests that must be balanced and groups that must be engaged as the agency seeks to fulfill that mission.

As the father of three young daughters, I truly understand just how important the CPSC's mission and activities are in the daily lives of American families. My daughters are safer because of the CPSC and I will take that realization and commitment with me to the CPSC, should I be confirmed.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

In addition to providing general leadership and direction to the agency, commissioners in my view must also take an active and direct role in oversight of the agency activities, to ensure the maximization and appropriate use of the agency's authorities and of limited staff and other resources. While there are of course other layers with regard to formal oversight of the agency, there is little substitute for a "hands-on" approach by all commissioners in terms of agency oversight, of course with proper respect to the role of the Commission decisionmaking process and role of the Chairman as the chief administrative officer of the agency.

I have direct and deep experience, not only with regard to the inner workings of the CPSC but also with regard to one of the more important activities the agency was tasked with under the Consumer Product Safety Improvement Act (CPSIA), that of establishing and overseeing a system of third party testing and product certification, an area about which I know a great deal.

With respect to relevant management experience, I currently oversee a global business line of 170 personnel on six continents involved with various Intertek safety and risk management services for consumer goods, a set of activities and functions directly related to the CPSC's core mission. And as both Chief of Staff and Director of International Programs at the CPSC, I also directly managed those office staffs and assisted a former Chairman of the agency, again in concert with the agency Executive Director and other senior staff leadership, in overseeing all key operations of the CPSC.

20. What do you believe to be the top three challenges facing the department/agency, and why?

The CPSC continues to undergo significant transition since enactment of the CPSIA. This continues to pose challenges to the agency and its stakeholders that must be proactively addressed. But as global supply chains and product safety regulatory systems around the world continue to become more and more complex, the core challenge for the agency in my view is and will be to keep pace with and, indeed, provide leadership with regard to these global changes. Specifically, I see the following as the agency's greatest challenges going forward:

- (1) Establishing systems and protocols for fully enforcing U.S. product safety standards while recognizing that synchronization of both standards and enforcement activities with the states and with international trading partners. As the number and variety of Federal, state and international product safety requirements continues to grow, such efforts will be important to enhance regulatory compliance, without establishing unintended barriers to trade and inconsistency or incompatibility of standards in a way that is not beneficial to consumers.

- (2) Continued modernization of CPSC's critical information technology and related systems, notably those identifying potentially violative imports. Identifying and preventing the distribution in commerce of children's and other consumer products that violate CPSC standards offers the highest return on investment of limited agency resources to improve the safety of consumer products in the U.S.
- (3) Continuing to expand outreach and education efforts to industry and other agency stakeholders about CPSC's laws, regulations, requirements and expectations, including the many new requirements stemming from enactment of the Consumer Product Safety Improvement Act (CPSIA). While this has also been an area that has seen much improvement at the CPSC in recent years, I know firsthand that much more needs to be done in this area, both to improve compliance rates with CPSC product safety standards, and as a question of fundamental fairness to industry and other stakeholders.

#### B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

I have invested stock in Intertek through the company's deferred share award plan. I also participate in Intertek's 401K plan (Fidelity Freedom K 2040).

2. Do you have any commitments or agreements, formal or informal to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the CPSC's Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Ethics Official and that has been provided to the Committee. I am not aware of any other conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the CPSC's Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Ethics Official and that has been provided to the Committee. I am not aware of any other conflicts of interest.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

The testing industry is a key stakeholder in the consumer product safety arena. While at Intertek, I have regularly interacted with the CPSC and at times urged that the agency undertake various actions or adopt various policies with regard to the administration of the agency's laws, particularly as those actions and policies impact product testing laboratories generally. October 6, 2011, I participated in a CPSC open "Education and Outreach Roundtable" where I submitted remarks for the record that included recommendations to the CPSC.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official and that has been provided to this Committee.

#### C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain. No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain. No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain. No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain. No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

Nothing further to add.

#### D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistleblowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

#### RESUMÉ OF JOSEPH P. MOHOROVIC

##### **Experience**

2007–Present—Intertek—Oak Brook, IL

*Senior Vice President, Risk Assessment and Management (RAM) Global Business Line Leader*

- Responsible for global performance, growth and strategic management.

2004–2006—U.S. Consumer Product Safety Commission—Bethesda, MD

*Chief of Staff and Director, Office of International Programs and Intergovernmental Affairs*

- Senior Executive Service (SES).

2002–2003—U.S. Consumer Product Safety Commission—Bethesda, MD

*Senior Policy Advisor to the Chairman*

- Served Chairman Hal Stratton in areas of policy, strategic management and budget management.

1999–2000—Anasazi Investments, LLC—Albuquerque, NM

*Investment Advisor Representative, Director of Marketing and Sales*

- Registered Investment Advisor (RIA) with SEC and NASD.
- Series 7 (Registered Representative) licensed trader of all investments with national exchanges.
- Series 63 (Multi-State “Blue Sky”) Uniform Securities Agent State Law Exam.
- Series 65 (RIA—State License) Uniform Investment Adviser Law Examination.

##### **Political Experience**

1999–2002—New Mexico House of Representatives—Santa Fe, NM

*State Representative (R)*

- Served two terms representing District 28 in the upper Northeast Heights of Albuquerque.
- Standing Committees: House Appropriations and Finance, House Voters and Elections.
- Legislative Interim Committees; Legislative Finance, New Mexico Finance Authority Oversight.

1997–2002—Self Proprietor—Albuquerque, NM

*Fundraising, Public Relation Marketing and Public Affairs Consultant*

- Issues and research consultant for 2002 campaign to reelect Congresswoman Heather Wilson.

- New Mexico Victory 2000 Major-Donor consultant for George W. Bush fundraising event.

1998—New Mexico Senate—Santa Fe, NM  
*Chief of Staff*

- Hired and managed 47 employees in Senate Minority staff.

1997—Reelect Governor Gary E. Johnson—Albuquerque, NM  
*Finance Director*

- Raised \$1,200,000 in 8 months.

1995–1997—Republican Party of New Mexico—Albuquerque, NM  
*Finance Director*

1992—Texas Bush/Quayle '92—Austin, TX  
*Deputy State Director*

- Coordinated state campaign efforts including final two-week whistle stop tour by George W. Bush.

1992—The White House—Washington, D.C.  
*Intern, Office of Public Liaison*

- Liaison between national business interests and George H.W. Bush Administration.

### **Education**

2002—The University of New Mexico—Albuquerque, NM  
*Robert O. Anderson School of Business Management*

- Master's Degree in Business Administration.

1994—The University of Texas at Austin—Austin, TX

- Bachelor of Arts, Double Major in History and Government.

### **Honors Received**

2005—The University of New Mexico—Albuquerque, NM  
*Young Alumni Award*

- Criteria: Professional success, community service activities and community & professional honors.

2002—Association of Commerce and Industry—Albuquerque, NM  
*New Mexico FOCUS Business Star*

- For continued excellence in promoting economic development.

2002 (May)—Americans for Tax Reform (ATR)—Washington, D.C.  
*Friend of the Taxpayer Award*

- ATR selects a winner of the Friend of the Taxpayer Award every month since January, 1997.

2001—Greater Albuquerque Chamber of Commerce—Albuquerque, NM  
*2001 Leader Award*

- For continued efforts in the area of crime legislation.

2000—New Mexico Business Weekly—Albuquerque, NM  
*Top Forty Under 40*

- One of the top forty people under the age of forty “dedicated to changing the status quo in New Mexico.”

1999—New Mexico Speech and Hearing Association—Albuquerque, NM  
*Community Appreciation Award*

- For continued support of the Audiology and Speech-Language Pathology professions.

### **Personal**

Born May 9, 1971—New York, NY

- Raised in Scituate, Massachusetts.
- 2004 married the former Royelle Marka Hoffman of Ames, IA.

**Community Interests**

2012–Present—Maryknoll Estates Owners Association—Glen Ellyn, IL  
*Board of Directors*

- Architectural Review and General Maintenance

1997–2003—Young America Football League—Albuquerque, NM  
*Coach and Board of Directors*

Senator MCCASKILL. Thank you, both.

Sometimes no decision is worse than almost any other alternative. I don't always expect to agree with decisions that agencies make but I do expect agencies to make the decisions.

I want to talk about a proposed rulemaking on mandatory standards for recreational off-road vehicles. You have had it open since October 2009; more than four and half years, the CPSC has. And it remains unresolved. I was one of ten members of this committee that recently signed a letter, bipartisan letter, raising concerns about this open rulemaking, the uncertainty it causes especially as the stakeholders are working with the CPSC to update voluntary standards.

In your view, is it acceptable to have open rulemaking for 5 years? Is that an acceptable length of time? Either one of you. Both of you.

Mr. KAYE. Thank you for the question.

It's definitely not preferable. I will say that. I can say specifically with regard to recreation off-road vehicles that the Commission did direct the staff during this current fiscal year to send up to the Commission for a Commission consideration, a Draft NPR. So there has been progress on the rulemaking side.

Additionally, in the last few months, there has been what I consider to be a very encouraging exchange between our technical staff and the voluntary standards body. The voluntary standards body did invite us and our staff to participate in their efforts. We've accepted that. And I think that that is a very constructive dialogue. We prefer and, in fact, our statute requires that if the voluntary standards body can address a hazard and that it's substantially complied with, the voluntary standard is that we cannot go ahead and continue rulemaking.

I will say that now that the express rulemaking authority that Congress provided to the Commission under the CPSIA has expired. There are rulemakings that will take longer because of some of the very specific provisions and findings that are required by Section 9 of the Consumer Product Safety Act. I understand why it was put in there for the reasons that it was put in, but it does, because of the findings that are required and the cost benefit analysis that is unique to this CPSC, it does elongate significantly rulemakings. And I believe Congress understood that by providing us with that express rulemaking authority as part of CPSIA for a limited period of time.

Senator MCCASKILL. Go ahead, Mr. Mohorovic, and then I'll comment. Go ahead.

Mr. MOHOROVIC. Certainly.

Thank you, Madam Chairman. Thank you for the question.

The advent of this particular product, ROVs, is something that has occurred in the marketplace after my time at the CPSC. So

you'll have to forgive me for not being fully informed with regards to the safety issues regarding that particular product. However, much of the nature of your question had to deal with a time-frame of five years and whether or not that's an adequate timeframe.

You have my commitment that, if confirmed, I will be sure to find out from the staff whether or not they consider the adequacy of the voluntary standard to address the hazards presented by the product, as well as the adequacy of the voluntary standard committee to move forward in a reasonable period of time.

Senator MCCASKILL. And if, in fact, if you are confirmed, both of you, which I feel confident that you will be, I would appreciate understanding more why it would take as long as you are indicating, Mr. Kaye, that it will take on some of these.

I know cost-benefit analysis is something that can't be done in a matter of a few weeks but part of this is that we build it in time, and then we build it in time on top of that, and then we build it in buffer time, and then we build it in more time, and then, before you know it, it has been years and years and years. And it may be that it's helping get the voluntary standards, the fact that this is out there, and I understand the efficacy of that, that there is some efficacy of that. But it does provide in such an uncertainty in the manufacturing climate that I think it's hard to be a cheerleader for a rule taking longer than two or 3 years from beginning to end.

And so, if you will help us figure out what we have done to handcuff you, I'll see if I can help get the key and maybe take some of those handcuffs off so it doesn't have—maybe take quite as long as you're indicating that it would.

Mr. KAYE. Thank you.

I do think, Chairman, that the ROV rulemaking is somewhat anomalous in the sense that it had begun before CPSIA was enacted.

Senator MCCASKILL. Right.

Mr. KAYE. Those type of rulemakings were in essence put on hold—

Senator MCCASKILL. Right.

Mr. KAYE.—because the Commission, under Tenenbaum's leadership, had to focus on providing all of the CPSIA rulemakings.

Senator MCCASKILL. Right.

Mr. KAYE. Now that that period has basically come and gone—

Senator MCCASKILL. You can get back to work on that.

Mr. KAYE.—to some extent.

Senator MCCASKILL. I don't mean back to work. You've been at work. I mean back to work on—

Mr. KAYE. I think Chairman Tenenbaum might jump up here—

Senator MCCASKILL. Yes.

Mr. KAYE.—on the "We're Getting to Work" fund.

Senator MCCASKILL. Right.

Mr. KAYE. I do think that the 553 Rulemaking was also provided to us with the Drywall Safety Act recently. And so, when Congress wants us to move, they tell us to move a certain way and I do think that's the best way for us to move quickly.

Senator MCCASKILL. Right.

Senator Thune.

Senator THUNE. Thank you, Madam Chairman.

Mr. Kaye, the majority of the time the voluntary recall system, especially the agency's fast-track recall system provides a quick and effective means of potentially getting dangerous products off the market. I should say, getting potentially dangerous products off the market and out of consumer's hands. However, the agency's come under growing criticism for a slowdown of the pace that recalls are being negotiated as such delays could ultimately harm consumers.

In the past four years, the agency has had three Directors of Compliance. And I understand the position is now empty again which raises concerns about the effect of such turnover of the management of the agency. So the question is can you provide the Committee with information detailing how long it generally takes the Commission to negotiate fast-track recalls and whether that time has increased over the past several years?

Mr. KAYE. Thank you, Senator.

So are you asking specifically about fast-track or recalls generally because there are actually two separate parts of the program? My sense of it is that fast-track itself is generally not controversial. It's required that a company comes basically with a pre-packaged recall including a draft press release. And those things usually move through pretty quickly. There are times, though, when our staff does feel the need to ask for a full report and in essence move from the fast-track to a slower track to make sure that the information that they are being provided will actually address, and the proposed remedy by the company, will actually address the hazard that our staff sees.

There are a couple of other things that you mentioned in there having to do with voluntary recalls. The Commission does have a Draft NPR out on amending the voluntary recall rule, or adding a new section to it. The provisions that generated the most attention actually came via amendments at the Commission level. It's not something that I worked on during my time because it wasn't part of my portfolio. But, if confirmed, it's something that I will spend a lot of time paying very close attention to all of the comments and to make sure that we get it right.

I will say that my guiding principles, since I've been at the Commission and when I've worked or, at least, been involved with recalls, I feel that there are three principles at stake. There's speed, which is certainly important; there's sufficiency of the remedy; and then there's the method of communication. I think the right recall is as quick as it needs to be with as sufficient a remedy to address the hazard and is broadcast as broadly as possible. Sometimes those three issues are in tension with each other and we're forced to choose. Ideally, they all line up. But it's not just speed, it's not just the type of recall, and it's not just the way it's going to broadcast. We do look to try to get the complete package. But I'd be happy to keep working with you since this is an area of concern with you, if I'm confirmed.

Senator THUNE. Great.

And this question is for both, I guess, nominees. When Congress passed Public Law 112-28, the concern was about the significant

cost of third-party testing requirements. And those costs were recognized by the Commission itself and its regulatory flexibility analysis to the testing rule and by those who are bearing the cost of the very extensive testing requirement. Congress directed the agency to look for and implement ways to reduce those costs and to report back to Congress if it needed additional authorities to implement opportunities to reduce cost. Three years have now passed. The Commission's taken no significant action to reduce the testing cost even though the public and its own staff have put fourth concrete recommendations on several occasions. Nor has the Commission asked for additional authorities.

So I would, Mr. Kaye, like a commitment from you that you will, within 60 days of being confirmed, provide a plan to this committee outlining specific actions you plan to take to ensure that the agency aggressively implements burden reduction opportunities and a timetable for when those actions will occur. And I would ask, Mr. Mohorovic, if you would make that same commitment.

Mr. KAYE. Yes, sir.

Mr. MOHOROVIC. Senator, I can make that commitment as well.

Senator THUNE. Great. Thank you.

I would, just to echo my colleague from Missouri, I don't want to confuse that. I mentioned earlier and I hope that both of you will work to sort of change the partisan atmospherics at the Commission. I think it's really important that we have leadership that can create the type of conditions that are conducive to finding consensus. And we're not at the best example of that up here a lot of times. But for the good of the people who are affected by the decisions that you make, I hope you'll be able to address that issue and that both of you will be committed to that end.

And, with that, I thank you. And would say, to you, Mr. Mohorovic, you have three daughters, save your money.

[Laughter.]

Senator THUNE. I had two of them get married in the last 6 months.

Mr. MOHOROVIC. Senator, I'll do my best. Thank you.

Senator THUNE. All right. Thank you.

Thanks, Madam Chair.

Senator McCASKILL. Senator Ayotte.

**STATEMENT OF HON. KELLY AYOTTE,  
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator AYOTTE. I want to thank the Chair and thank the Ranking Member.

I wanted to follow up actually on a question that the Chair had asked. I recently sent a letter along with several of my colleagues regarding the CPSC standards for recreational off-highway vehicles. And, as you know, this CPSC has had a mandatory rule-making on standards for recreational off-highway vehicles open for more than four years. This is an important issue to New Hampshire because, for example, in Northern New Hampshire, in Berlin, other areas of Northern New Hampshire, this has been an important part of tourism in this part of our state.

We have been creating tourism and recreational opportunities in areas of our state where we've really been trying to improve the

economy. Therefore, this unresolved rulemaking has created an uncertainty for the recreational off-highway vehicle industry in New Hampshire as they work to update voluntary safety standards and provide clear guidance to the public so that people can safely enjoy the off-highway vehicles. It's an important part of outdoor activities in New Hampshire.

There are also concerns that, in its current form, this mandatory rulemaking doesn't take into consideration the collective input of a wide variety of stakeholders and could stall some innovation that might be very important in the industry.

So can you help me—where this is, and in order to provide consumers with the most comprehensive and effective safety standards for off-highway vehicles? Will you work with both the industry to maintain and update the voluntary standards? Also, can you help me understand if you choose to move forward with mandatory standards, will you work collectively with all the stakeholders to ensure that standards make sense and don't unnecessarily burden this important industry? Because, I see this as an opportunity in parts of our state where you can enjoy the outdoors and we want to do this safely. I would love both of you to give me your thoughts on those two questions.

Mr. KAYE. Thank you, Senator.

So there is rulemaking in progress as you mentioned. Pursuant to the operating plan of the Commission, the Commission directed the staff to send up to the Commission by the end of this Fiscal Year a draft notice of proposed rulemaking on ROVs.

In the interim, though, I found it very encouraging that there has been an excellent dialogue in the past few months between the voluntary standards group, which is industry, as well as our technical folks of the specifics of the voluntary standard. They did invite our technical staff to participate in the next meeting. Our staff has accepted it and I think that's a great sign going forward.

The staff will abide by the Commission's direction to send up the notice of proposed rulemaking by the end of the fiscal absent the Commission voting otherwise. And during that process there will, of course, be full engagement in a public way, public notice and comment and any other meetings that are requested to try to hear the concerns of industry. Ideally, though, as I mentioned earlier, the voluntary standard can reach a place where everybody can be in agreement.

Senator AYOTTE. So you think that there's an opportunity through the voluntary process for everyone to get on the same page?

Mr. KAYE. I think there is. I do.

Senator AYOTTE. Good.

Mr. KAYE. I hope.

Senator AYOTTE. Terrific.

Mr. MOHOROVIC. Thank you, Senator, for the question.

I do recognize also that the CPSC is directing resources toward the voluntary standards activities. I also recognize that there is an open rulemaking before the CPSC and I must be careful not to pre-judge on the matter if confirmed. But it's likely that I'll have to vote upon but you do have my commitment that, if confirmed, I would like to work with the staff directly to understand the ade-

quacy of the voluntary standard to address the hazards, whether or not the staff feels that the voluntary standard is progressing in an adequate fashion, and whether or not there'll be a likely substantial compliance with that standard as well.

This is a particular product category that has emerged since after my first time at the CPSC which concluded in very early 2007. So I apologize that I don't have an intimate working knowledge of this particular product category. But I recognize it being your priority and it will become mine as well, if confirmed.

Senator AYOTTE. Good.

All I can ask of you is to work with all the stakeholders to provide some certainty. And obviously, if the voluntary standards can be agreed upon by all the parties and we can address both making sure this continues to remain a vibrant industry and safety concerns from the public. I can see this as a win-win for everyone.

I appreciate both of you being here and thank you for your willingness to serve in these important positions.

Senator MCCASKILL. Thank you, Senator Ayotte.

Senator Klobuchar.

**STATEMENT OF HON. AMY KLOBUCHAR,  
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Thank you very much.

Do you like having three women up here asking you questions? Probably didn't happen back when you were there in the past, Mr. Mohorovic.

It is great to see both of you. And I also know that there are some people back there that have your backs with former Commissioner Northrup and Acting Chair Adler, as well as my good friend Chair Tenenbaum. And I was thinking she looked very fresh and springy. And I was thinking she probably looked better than when she left the job. And so, you have a lot to look forward to, the two of you.

I wanted to focus—as you know, I've been involved in the CPSC issues since I got to the Senate, as a former prosecutor, and a member of this committee. The pool safety issue, something that Chair Tenenbaum worked with me on significantly, and I just want to get your views on the Virginia Graeme Baker Pool and Spa Safety Act. You should know, we had a little girl, Abbey Taylor, who died in a pool after living for a year and her family, the Taylors, were just incredible, from Minnesota. They would literally call me every week to see if the bill had passed yet and went public and talked about their experience. I think it made a major difference in getting the bill done.

And so, I know they'd want to ask me to ask you your views. I'm going to tell you, though, they're going to call you themselves.

Mr. Kaye.

Mr. KAYE. Thank you, Senator.

First of all, I would love to hear from them. I really would. So I would hope they, if confirmed, that they would call me. And I know that you were there for the family during this horrible time and have been there for them since then. It's something that we take very seriously, as you've mentioned. Chairman Tenenbaum really oversaw the implementation of it and especially the edu-

cation campaign. We think that that's a great campaign for us. It's the largest one we've had, I think, since 2010. We've had 1.5 billion impressions associated with that campaign. I think we can even do more with it. We do get, thankfully, from Congress, \$1 million every year on it.

I think we have a unique opportunity coming up with regard the Summer Olympics in Rio. And I mention that because when London happened, it was a few weeks before London was happening, actually even closer, and I received the most recent drowning statistics for that summer. And I was so moved by them, I called up the President of NBC Sports in his hotel room 5 days before the London Olympics began and I told him what the numbers were. And I said, "Please, can you do something about it on-air, while you have that viewership of the Summer Olympics? You'll never have that audience again before the next Olympics."

Understandably, it was not ideal timing for them. But, to their credit, they actually worked in some programming. I'm not going to wait 5 days before this time. If confirmed, I would hope that we can work with our—I think we have maybe 1,000 partners out there. And really try to go to New York, meet with NBC, and see if they can work in incredibly meaningful programming for RIO around this issue.

Senator KLOBUCHAR. That's a very good idea. And I think that we've seen some improvements since we passed that bill. And I will ask you about it later on the—can maybe answer in writing, if that's OK. Because, I have a few other topics—the Carbon Monoxide Poisoning Prevention Act. It's going to be coming up on the markup this week, a bill that I authored. And I think we've continued to see with the cold weather, the importance of a proper carbon monoxide alarm installation and system.

Obviously, we thank you, Mr. Kaye, for mentioning the Burt family in your opening. I know that you know how important this is. They're just an amazing family and the story of the Mom losing her baby after putting her to sleep; something I'll never forget. And I hope you'll work with us on that.

Maybe you want to handle that one, Mr. Mohorovic?

Mr. MOHOROVIC. Certainly. It would be my honor, Senator, thank you for the question, to work with you.

I share with you the sympathy with regards to imagining a situation like that. With three small girls at home, twins who will be six this month, as well as a 2-year-old, that is the most horrifying of situations to have to go through. I'm sympathetic to the issue in general with regards to carbon monoxide poisoning. And I recognize the fact that the CPSC has strong efforts underway to be able to address that hazard. And if confirmed, it will also become a priority of mine as well.

Senator KLOBUCHAR. OK, thank you.

One of the major issues the Commission handled in the last five to six years was the children's lead standard for toys. And that was something that our retailers in Minnesota worked with me and they were actually very eager to get something in place. And after the kind of deaths we were seeing there and I worked to write that standard to make it pragmatic and practical and I think we've also seen some improvements with that.

But I think I'll make more of a comment than a question that that is something else to watch out for and I hope we can. With the able Chair of the Consumer Subcommittee sitting next to me here, Senator McCaskill, that we can kind of look back at how that's working in terms of the number of deaths and how we've seen a very difficult situation with the recalls and things like that if I get some kind of update on that at some point beyond the questions of you two.

And last, I'll mention the issue that's already been mentioned and that's working with the industry on the recreation off-highway vehicle. A little known fact: There are still American manufacturers of these vehicles. They happen to be in my state and, primarily, Polaris and Arctic Cat; two companies made it through a difficult downturn when I think a lot of people were writing them off. And I know they are very interested in having good standards that protect safety and that are also practical and work for everyone.

And I appreciate both of you, your answers to the questions of Senator McCaskill and Senator Ayotte on this topic. And I think we can leave it there and I look forward to working with you on this in the future. So thank you very much. And thank you for being here. And good luck.

Senator MCCASKILL. Thank you.

I just wanted to just briefly address one more thing. I was interested in your testimony, Mr. Mohorovic, about the problem we have with imported products that are substandard. And this kind of mirrors a problem that we've had with dumping. Where I have gone over to testify a number of times about illegal dumping where these companies who have tariffs are putting their products through another country, labeling it as if it comes from that country, and thereby avoiding some of the tariff requirements. And I've seen it in my state impact things like mattresses and coat hangers, where they have avoided tariff payments by illegal means.

And one of the things we looked at when we were trying to get at that problem was a bonding requirement. Because, what would happen is customs and border inspections would try to track them down and then it would turn out to be a post office box and by the time they found the post office box for their agent in this country that box would no longer be valid and the address would no longer be there, and there was no bonding that had to be put into place by the importer.

So I'd like to explore that with you in the context that you're talking about. Maybe there is a way that we can join forces on this problem and implement a more aggressive bonding structure so that there would at least be some financial penalties that could be significant for those people who are facilitating the importing of goods that either are being brought here illegally and invading our tariff laws or that are being brought here with substandard production qualities that make them unsafe for the consuming public.

And what I would like to take a look at that and see if there could be some way—and maybe we can, you know, you guys can get together with customs and border inspection and talk about that. I think it might be a great way to avoid some duplication and help on two different fronts, if we can do that. I was interested that you saw that as an issue that you guys could look at.

The final question I'd ask both of you is how do you see the job of prioritizing your resources even though you have a higher profile now and have some assistance with the legislation we passed in the not too distant past? There's still just an overwhelming number of products out there that need to be investigated; an overwhelming amount of work that could be done.

And I think maybe the most important job of the Commission is to prioritize the resources. So what is the risk-based analysis that you embrace that would show your thoughts on how you ever pick between the thousands of products that have been brought to your attention in terms of investigation and potential action that needs to be taken?

Mr. KAYE. So the starting point for us has to, of course, be those areas where Congress has told us to focus on; what we consider to be mandatory actions. And so, we start with those. Those we have to do by law and we focus on them. Putting aside that bucket, we do have, I think, a pretty robust risk assessment system internally whereby which our staff and integrated teams assess all of the incident data as they come in in the incident reports and categorize them and code them and then do their own assessment. And we rely on technical staff. We try not to impose our judgment on them since we don't have the knowledge that they do. Allow them to make their recommendations and then that usually ends up flowing up in the Commission's operating plan.

And so, what they'll do is they will prioritize the work product, starting with the mandatory work, as I mentioned, where Congress requires us to do, then filling in where they see, based on risk. And, depending on the level of resources we have, they'll put a line there and say this is the path of current funding level, these are the projects that we suggest the Commission work on. Usually the Commission accepts that. There may be some fiddling here and there.

What that ends up focusing on, as I think it should, is vulnerable population. In particular, it's been children. I will say something that, if confirmed, that I'd like to continue to work on is something that Acting Chairman Adler has recently begun which is a focus as well as on seniors.

Unlike children's products which are manufactured specifically for children, there are generally used products that when somebody may have purchased them a long time ago, by the time they reach senior age, their interaction with that product becomes very, very different. And I think Acting Chairman Adler is onto something where he wants his staff to take a look at some of those products, they end up being mechanical hazards generally, and see if there's a better way to focus through the voluntary standards efforts, beginning there, on trying to address those. But we do have a pretty good internal risk process to rank those products.

Mr. MOHOROVIC. Chairman, if I may?

Senator MCCASKILL. Yes.

Mr. MOHOROVIC. First of all, I think you'll find a tremendous amount of alignment between my position with regards to risk-based decisionmaking and those that were just described by Mr. Kaye. And I also agree. It first starts with our Congressional mandates and those priorities that are identified for us by Congress.

But then, with regards to risk-based decisionmaking, it does come down to a three-pronged approach. Identify and being able to capture the magnitude of the hazard in question. Critical part number two would be the susceptibility of that hazard to remedial action. And then, third, the cost of achieving that remedial action. And that would be a general process by which I think a risk-based decisionmaking for agency resources and prioritization can be met effectively well.

Senator MCCASKILL. As the Chairman of the Subcommittee on Consumer Product Safety, I would certainly appreciate a glance at where the line falls. I think it would help us get more resources for you if members of Congress understood what was falling below the line. I don't think many people over here realize the body of work that is left undone just by virtue of the resources that are available. And I think it might be shocking to people to see where that line might fall and how many things, just by the nature of the work that you must do and the resources you have, that you just can't get to.

I think it would be helpful to your agency for us to have a sense of that. And I would look forward to you, if you are confirmed, sharing that with our subcommittee so we can maybe put out some kind of publication about, without going into too many specifics because we don't want anybody to think they're off the hook in terms of getting looked at for consumer product safety, but giving the public and members of Congress an idea of what it would look like if we could do all the work that we really needed to do.

Thank you all, both, for being here. Thank you for your willingness to serve. I know that we had some other—

I thank, Acting Chairman Adler. And former Commissioner Northrup were also in the audience. I thank them for their service also. And thank you all very much for your testimony today and we will try to get you out of this committee and to the full Senate as quickly as possible.

Thank you very much.

Mr. MOHOROVIC. Thank you, Madam Chairman.

[Whereupon, at 4:35 p.m., the hearing was adjourned.]

## A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV  
TO VICE ADMIRAL PAUL ZUKUNFT

### **Towing Vessel Inspection Rulemaking**

The towing vessel inspection rulemaking (“Subchapter M”) was mandated by Congress nearly 10 years ago in the Coast Guard and Maritime Transportation Act of 2004. Pursuant to section 701(c) of the Coast Guard Authorization Act of 2010 (Pub. L. No. 111–281, 124 Stat. 2980), a final rule was mandated to be issued not later than October 15, 2011. It is my understanding that the delay in finalizing this long-overdue rulemaking is substantially hindering potential advancements in safety for the tugboat, towboat, and barge industry. I urge you to make publication of the final rule on towing vessel inspections one of your highest marine safety priorities as Commandant.

*Question 1.* Provide a prospective timeline for completion of the “Towing Vessel Inspection (Subchapter M)” Rulemaking including: (a) date for finalization and transmittal of the rulemaking to DHS for review; and (b) the Coast Guard’s plan to work with DHS in developing a mechanism for prompt review of the rulemaking.

*Answer.* The latest estimated date for publication of the Final Rule is likely to be in March 2015. The Coast Guard Marine Safety & Security Council and DHS Executive leadership, as well as their staffs, meet on a regular and frequent basis to ensure close coordination for rulemakings.

*Question 2.* Provide the status of Coast Guard’s review of the Towing Safety Advisory Committee’s recommendations—in particular, the Committee’s 2011 report on the notice of proposed rulemaking on towing vessel inspections—and any plans the Coast Guard has to incorporate these recommendations into the “Towing Vessel Inspection (Subchapter M)” final rule.

*Answer.* The Coast Guard has reviewed the recommendations contained in the Towing Safety Advisory Committee’s 2011 report on the notice of proposed rulemaking on towing vessel inspections. Due to the ongoing status of this rulemaking, the Coast Guard is prohibited from providing additional detail at this time.

### **Cruise Ship Inspections**

There have been a number of high profile accidents and cruise ship fires over the last few years. While the Coast Guard has limited authority over foreign flagged cruise ships, they should continue to prioritize and improve inspections of them. Last month, the Coast Guard announced a plan to conduct unannounced cruise ship inspections that will spot check for deficiencies which impose inherent dangers to the safety of passengers and crew.

*Question 3.* How will the Coast Guard’s decision to initiate unannounced examinations of cruise ships help improve safety?

*Answer.* The decision to conduct unannounced examinations puts cruise lines on notice that the Coast Guard may board any vessel at any time to determine whether or not it is in compliance with the international standards we enforce. We have selected the vessels to inspect based on their compliance histories, allowing us to focus our resources on vessels with above average deficiency rates. We expect that this program will provide additional information on the maintenance of cruise ship safety systems as well as provide an additional incentive to vessel owners to maintain compliance with standards and be ready for random Coast Guard examinations.

*Question 4.* Given the number of serious accidents in recent years, how will you continue to make cruise ship safety a priority for the Coast Guard?

*Answer.* Cruise ship safety is a top priority for the Coast Guard. We recognize the risks associated with having thousands of passengers on one vessel, and will continue to focus our resources on cruise ship safety. We will work to make sensible improvements to our inspector training as well as our port state control programs, already widely recognized as the best in the world, to further enhance cruise ship safety oversight. In coordination with our National Center of Expertise for Cruise

Ships, we have recently instituted unannounced cruise ship examinations, upgraded our inspector training and qualification standards for cruise ship exams, and commenced work on a video training tool to familiarize new inspectors with cruise ship exams along with providing continuing education for more seasoned inspectors. Additionally, we have been closely monitoring improvements being made to the vessels that experienced recent fires, which will enhance their capability to prevent future incidents.

#### **Small Vessel Security**

Improving small vessel security measures is essential to our maritime and port security. It is challenging to identify the potential risks posed by roughly 17 million small vessels operating on our coastal and inland waters. The Marine Safety Unit in Huntington, West Virginia, alone patrols 350 miles of navigable waterways in West Virginia, Ohio, and Kentucky, including numerous ports, chemical facilities, and other critical infrastructure.

*Question 5.* What will you do as Commandant (reference to VADM Zukunft—prospective 25th Coast Guard Commandant) to improve maritime security for small vessels? And once we do those things, how will we know that it is enough?

Answer. The diversity of small vessels precludes any single, one-size-fits-all solution; rather, it requires a range of actions to minimize risk. That said, the Coast Guard is firmly committed to working with its partners to ensure the safety and security of the U.S. marine transportation system (MTS). In concert with our federal, state and local partners, we continually assesses the risks associated with vessels, operations, and maritime critical infrastructure located within U.S. ports and waterways. Once the risk is assessed for a particular vessel, operation, or maritime critical infrastructure, the Coast Guard uses a risk-based decision methodology to determine the appropriate level of security activities required to mitigate the identified risks. These security activities, combined with the owner/operator security initiatives provide an effective, layered security system that will help to protect the MTS from nefarious actors.

*Question 6.* What performance measures does the Coast Guard have for implementing a successful Small Vessel Security Strategy?

Answer. To achieve a successful Small Vessel Security Strategy, the Coast Guard will aim to complete the action items contained in the 2011 DHS *Small Vessel Security Strategy Implementation Plan*. As of April 2014, forty-three (43) of the action items have been completed or are being used operationally on a daily basis by the USCG. The remaining items (26) are partially completed, pending regulatory development, technology research, funding allocation, or human resource support.

#### **Arctic Operations/Polar Icebreakers**

The melting polar ice is leading to a significant increase in commercial and non-commercial activity in Arctic waters. The United States is at risk of being unable to support national interests in the region and having our sovereignty weakened. The Coast Guard only has two operational ice breakers in its fleet. And of those two icebreakers, one is over 30 years old and one has limited icebreaking capabilities. A new heavy duty icebreaker is estimated to cost \$1 billion and may take up to a decade to enter service.

*Question 7.* Do you have enough assets to support the polar operations mission?

Answer. Current mission demands are being met with mobile and seasonal deployment of Coast Guard assets. These assets include cutters (icebreakers, national security cutters, sea going buoy tenders, and patrol boats), aircraft, boats, communication systems, and personnel.

*Question 8.* How much Coast Guard presence should be in the Arctic?

Answer. The Coast Guard continues to carry out its eleven statutory missions to ensure the safety, security, and stewardship of U.S. waters in the increasingly accessible Arctic. Coast Guard presence will evolve as the extent and intensity of human activities develop and thus long-term requirements for the Arctic will be based on operational demand.

*Question 9.* How is the Coast Guard working with the Administration in pursuing a clear interagency arctic policy?

Answer. The Arctic Region Policy is contained in NSPD-66/HSPD-25. Additionally the Coast Guard Arctic Strategy aligns seamlessly with the National Strategy for the Arctic Region. The various implementation plans developed to achieve these strategic goals contain specific, achievable actions, set timelines to accomplish them, and list the various Federal agencies and groups responsible for implementation.

*Question 10.* How many icebreakers do we need to have adequate presence in the Arctic?

Answer. Current mission demands anticipated for at least the next decade can be met with CGC POLAR STAR and CGC HEALY.

*Question 11.* How important is it to recapitalize the icebreaking fleet?

Answer. To sustain current mission demands, the Coast Guard must either recapitalize CGC POLAR STAR by the projected end of service life (2020–2023), or develop an alternative bridging strategy..

*Question 12.* At what point do you take action and recapitalize the Coast Guard's icebreaking fleet, rather than wait for a 'whole of government' funding stream?

Answer. Recapitalization of the Coast Guard's icebreaking fleet is already underway. The Coast Guard has completed initial pre-acquisition activities for a new polar icebreaker, including an Icebreaker Mission Needs Statement and Icebreaker Concept of Operations. The Coast Guard is currently working to complete the Preliminary Operational Requirements Document in 2014, which will be followed by an Alternatives Analysis.

### **Training/First Responder Capability**

The Coast Guard is often referred to as "the nation's first responders" because it is typically the first on the scene in a crisis. Your rapid response to disasters like hurricane Sandy and the Deepwater Horizon oil spill are no coincidence—it's the product of training. Coast Guard officers are trained to carefully assess the risks and benefits when there's an emergency, so they know whether and how to react without having to wait for orders.

*Question 13.* With proposed cuts in the Coast Guard's budget and growing operational demands, what steps will/is the Coast Guard taking to guarantee that we maintain the necessary training to preserve the Coast Guard's critical "First Responder" capability?

Answer. The 2015 Request includes \$198 million (\$7 million less than 2014 Enacted) for the Coast Guard's training and recruiting programs. This decrease reflects savings associated with reduced recruiting requirements, efficiencies in Coast Guard training systems and scaled-back offerings of lower priority training and educational opportunities. Coast Guard will continue to fully support required qualification and training for its operations, including "First Responder" training.

### **Organizational Performance Consultants**

The Coast Guard has an opportunity to improve its organizational performance through the use of its Organizational Performance Consultants. This program was designed to leverage internal expertise to assist commands and staffs in performance assessment and improvement.

*Question 14.* Senator Rockefeller is disturbed to hear that the Organizational Performance Consultant program is being reduced in size. Why is the program being scaled back?

Answer. The Coast Guard's Organizational Performance Consultants (OPCs) are one resource amongst a suite of resources which aid Coast Guard units in improving their performance. Given the host of resources available to units, OPCs were scaled back to find efficiencies within the program.

*Question 15.* It appears to Senator Rockefeller that if the Coast Guard invested more training into the program and educated the field units on who the Organizational Performance Consultants are and what they do that they would be utilized more often. Does the Coast Guard ensure that the field units are aware of the Consultants and the services they offer?

Answer. In addition to numerous Commandant Instructions and guidebooks, Organizational Performance Consultants maintain an active web based presence and maintain contact with Coast Guard units within their areas of responsibility to ensure units are aware of performance management training and services available.

*Question 16.* Some of the other Armed Services have used other management concepts such as "Lean Thinking" and "Six Sigma" to improve their processes as well as finding significant ways to reduce costs. Are these tools that the Organizational Performance Consultants/Coast Guard use?

Answer. Baldrige is the primary process improvement framework employed by Organizational Performance Consultants. Many Organizational Performance Consultants are cross trained in other management concepts including Six Sigma and Lean Thinking. In addition, Lean Six is used throughout the Coast Guard at various depot level Service Centers and product lines to increase efficiency. These Service Centers employ personnel trained in Lean Six and other process improvement methodologies to support these initiatives.

### Coast Guard Budget Cuts

The Administration's budget for Fiscal Year 2015 includes a 4 percent cut in funding for the Coast Guard to include a 21 percent reduction in Acquisition, Construction, and Improvements. These cuts will result in the purchase of two Fast Response Cutters instead of six as well as other significant reductions in operational capabilities.

*Question 17.* Does the Administration's budget provide the Coast Guard with the resources you need to do your job?

Answer. The FY 2015 President's Budget request funds the Coast Guard's highest priority needs, which are investment in long-term operational capacity and sustainment of critical front-line operations.

*Question 18.* What additional resources does the Coast Guard need to meet its mission requirements?

Answer. The Coast Guard is charged with carrying out all of its 11 statutory missions and is wholly committed to performing assigned missions and responsibilities. The 2015 President's Budget provides the best allocation of Coast Guard's resources to meet operational demands with available resources, using a risk-based approach.

*Question 19.* How many operational days have our ships lost due to a lack of funding?

Answer. Sequestration in FY 2013 impacted available fuel and maintenance funds, reducing the number of days which cutters could be run fleet wide. The Coast Guard reduced planned underway days by approximately 3,500 days when compared to FY 2012.

*Question 20.* What other operational tradeoffs have been made due to a short-sighted budget?

Answer. The President's Budget provides the best allocation of Coast Guard's resources to meet operational demands with available resources, using a risk-based approach.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
VICE ADMIRAL PAUL ZUKUNFT

### Canadian Oil Sands

Canadian Oil Sands oil, or Tar Sands oil, is being moved by pipeline to the West Coast of the United States and Canada. While a small amount of oil sands is refined in the United States, most of this oil is shipped to international markets via barges, tankers and supertankers through Pacific Northwest waterways. Recent reports suggest that oil sands traffic will continue to increase.

*Question 1.* Please outline specific actions the Coast Guard is taking to address additional oil sands traffic in and near to Pacific Northwest waterways. In your answer, please include safety, response and clean-up measures.

Answer. The Coast Guard reviews and approves vessel and facility response plans to ensure the appropriate oil spill containment and cleanup resources are available to respond to a worst case discharge. These plans are exercised regularly as part of the Preparedness for Response Exercise Program. The Coast Guard also conducts preparedness assessment visits for oil spill response organizations to ensure the private sector resources are capable of meeting response requirements. Response, clean-up measures, and safety protocols are outlined in Area Contingency Plans, which are reviewed and updated in consultation with multiagency stakeholders to ensure the plans reflect the risks associated with each port environment.

*Question 2.* In your testimony, you indicated that the Coast Guard is not adequately prepared to respond to the unique challenges posed by a potential oil sands spill. If confirmed, how will you promote the implementation of new oil sands clean up technologies, procedures and response plans?

Answer. Effective response to Canadian Oil Sands Products relies on the same basic technologies and strategies that are used to respond to spills of other types of oil. The Coast Guard will continue to increase awareness of and preparedness for response to emerging products such as oil sands thorough coordination with industry and interagency partners and through regular updates to our Area Contingency Plans. In addition, the National Response Team is planning to develop a quick reference card about oil sands products which will help increase awareness of the unique response challenges posed by these products. Finally, as Chair of the Interagency Coordinating Committee on Oil Pollution Research (ICOPR), the Coast Guard will work closely with its Federal research peers and industry and academia

to promote awareness and joint support for new prevention and response technologies.

*Question 3.* After the Deepwater Horizon Oil Spill Disaster, many reports indicated that our oil spill response technology is out of date. Unfortunately, there has been little to no progress since 2010.

Answer. Government, industry and academia are involved in a variety of research endeavors in the wake of the Deepwater Horizon spill that address new technologies for and a better understanding of oil pollution. For example, three major Joint Industry Task Forces have funded significant research that continues through the present day that addresses spill prevention and response in deepwater environments and high-latitude areas. In addition, several academic research consortiums have evolved including the Gulf of Mexico Research Initiative (GoMRI) and the Gulf of Mexico Alliance (GoMA). The Federal Government is sponsoring or supporting a number of research initiatives, many of which are socialized and supported through the 15-member Interagency Coordinating Committee on Oil Pollution Research (ICCOPR). Finally, the Bureau of Safety and Environmental Enforcement (BSEE) hosted an international competition at its National Oil Spill Response Research & Renewable Energy Test Facility (Ohmsett) to test the latest advances in oil cleanup technology.

*Question 4.* What incentives can the Coast Guard and its partners provide to industry to encourage innovation in oil spill response technologies?

Answer. The Coast Guard continues to promote the importance and need for new spill prevention and response technologies through a number of forums. In particular, the 15-member Interagency Coordinating Committee on Oil Pollution Research (ICCOPR), chaired by the Coast Guard, is tasked to coordinate a comprehensive program of oil pollution research, technology development, and demonstration among the Federal agencies, in cooperation and coordination with industry, academia and with other nations.

Federal research partners such as the Bureau of Safety and Environmental Enforcement (BSEE), the Department of Energy (DOE), the Pipeline & Hazardous Materials Safety Administration (PHMSA) and the National Oceanic and Atmospheric Administration (NOAA) have sponsored a variety of funding grants and activities that have supported industry and academia in solving various challenges associated with oil spills.

*Question 5.* As Commandant, how would you work with other Federal agencies to leverage resources to address these technology gaps both for traditional crude and oil sands oil products?

Answer. The Coast Guard maintains strong relationships with the Federal interagency through various coordination bodies including the Interagency Coordinating Committee on Oil Pollution Research (ICCOPR) and the National Response Team (NRT). The ICCOPR has discussed oil sands products at past committee meetings and plans to further discuss oil sands product research coordination in upcoming committee meetings. The NRT held discussions on oil sands at their recent NRT Co-chairs Meeting in March and the NRT Science and Technology Committee plans to discuss best practices for oil sands product research coordination in their upcoming meetings.

### **Coast Guard Budget**

Both the Government Accountability Office and Admiral Robert J. Papp Jr. stated that at least \$2 billion to \$2.5 billion is needed to continue the Coast Guard's recapitalization program in an effort to acquire the assets listed in its program of record. As you know, the President's Budget for Fiscal Year 2015 included only \$1.1 billion for Coast Guard acquisitions.

*Question 6.* When does the Coast Guard intend to complete acquiring the assets listed in its program of record? How has the completion of this program changed over the last 5 fiscal years?

Answer. The Coast Guard continues to work with DHS to examine requirements in support of the Department's priorities.

*Question 7.* How will these delays impact the Coast Guard's ability to keep up with our Nation's demands to ensure national security and respond to natural and man-made disasters?

Answer. The Coast Guard will, as it always has, allocate its resources to address the highest risks and be prepared to surge force as needed for immediate and short-term disaster response.

*Question 8.* In the Coast Guard's Fiscal Year 2015 budget request, there is a decrease of \$15 million listed as operational efficiencies that will reduce available cutter, boat, and aircraft hours. Without impact to search and rescue, urgent security

activities and hours required to maintain operational proficiency, how will the Coast Guard be able to meet its other traditional missions such as maintaining aids to navigation, marine environmental protection and other law enforcement priorities if less asset hours are available?

Answer. The Coast Guard will, as it always has, allocate its resources to address the highest risks.

#### **Proposed Expansion Tesoro-Savage Oil**

There is a strong movement to expand the Tesoro-Savage Oil terminal in Vancouver, WA with the expectation that more Bakken crude will be transferred from rail transport to marine transport—up to 380,000 barrels of crude per day. Bakken crude is highly volatile and much more explosive than regular crude. There is also a strong movement by some groups to build coal export terminals in Longview, WA and Cherry Point, WA.

*Question 9.* What is the Coast Guard doing to prepare for the possible significant increase in Bakken oil transfer from land to water, as well as marine transport on the Columbia River?

Answer. The Coast Guard, in conjunction with the local Harbor Safety Committee and Area Committee, is conducting a Vessel Traffic Risk Assessment to evaluate the projected increase in marine traffic in Puget Sound due to increased Bakken crude oil movement.

*Question 10.* What actions is the Coast Guard taking to ensure that industry is prepared for a worst case discharge scenario during oil transfer operations on the Columbia River?

Answer. The Coast Guard reviews and approves vessel and facility response plans to ensure the appropriate oil spill containment and cleanup resources are available to respond to a worst case discharge. These plans are exercised regularly as part of the Preparedness for Response Exercise Program. The Coast Guard also conducts preparedness assessment visits for oil spill response organizations to ensure the private sector resources are capable of meeting response requirements. Additionally, Coast Guard Sectors maintain Area Contingency Plans that lists agency roles and responsibilities, environmentally sensitive areas, response protocols, and available resources for worst case discharge scenarios. The plans are reviewed and updated in consultation with the respective Area Committees, which include representatives from federal, state, and local government, as well as industry and oil spill response organizations.

*Question 11.* What environmental and/or response analysis has the Coast Guard conducted thus far with regards to each terminal proposal?

Answer. Coast Guard regulations require waterfront facilities that handle bulk oil and liquid hazardous materials, to prepare oil spill response plans. Changes in the volume or type of oil coming into the facility from ships and barges would require a revision to those plans. Because Tesoro expects to handle the Bakken crude and subsequent product via rail and pipeline, the proposed expansion will not impact marine traffic. The Coast Guard does not expect to require any changes in their facility response plan at this time.

*Question 12.* With regards to the above terminal proposals, what deficiencies and oil and/or coal spill mitigation strategies have been identified at each site?

Answer. There are no Coast Guard spill response plan requirements for coal, which is not classified as a hazardous material. The Coast Guard is working with the Harbor Safety Committee to evaluate the potential for increased risks should these terminals be constructed.

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#### RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROGER F. WICKER TO VICE ADMIRAL PAUL ZUKUNFT

#### **Capability Gap—8 National Security Cutters vs 12 High Endurance Cutters**

The current program of record is to replace the 12 High Endurance Cutters with only 8 National Security Cutters. I have toured a National Security Cutter and it seems to be a very capable ship, much more capable than the High Endurance Cutters that were built over 50 years ago. Still, the math doesn't seem to add up.

*Question 1.* What is the anticipated capabilities gap in operational hours between replacing 12 ships with 8?

Answer. The program of record was not designed as a one-for-one replacement for each legacy asset. The new assets are more capable than the legacy assets in order to meet the Coast Guard's needs with fewer ships.

*Question 2.* What is the Coast Guard's plan to address this gap?

Answer. The program of record is sufficient to meet the Coast Guard's capability needs.

**Impact of Administration's "Pivot to Pacific" on Coast Guard Drug Interdiction Ops**

It seems to me that this capabilities gap is compounded by the President's "pivot to the Pacific" and the decreasing availability of Navy ships available for assisting with Coast Guard missions.

*Question 3.* How are these factors impacting Coast Guard operations?

Answer. The Coast Guard allocates major cutters, fixed wing aircraft, airborne use of force helicopters and Law Enforcement Detachments to support JIATF-S Detection and Monitoring (D&M) activities. This allocation is based on the Global Force Management (GFM) process and Requests for Forces (RFFs) from the Department of Defense. Fewer U.S. Navy surface combatants operating in support of JIATF-S provides fewer opportunities to deploy LEDETs that perform interdiction and apprehension of suspected drug smuggling vessels.

**Offshore Patrol Cutters Delivery Timeline**

It is my understanding that the Coast Guard recently selected three shipyards for preliminary and contract design for the Offshore Patrol Cutters.

*Question 4.* Despite this progress, the offshore patrol cutter is still in its early phases. When do you expect the first offshore patrol cutter to be operational?

Answer. The first Offshore Patrol Cutter is currently scheduled to be delivered in FY 2021.

*Question 5.* How much do you expect the first offshore patrol cutter to cost and how does that compare to the fixed cost of the National Security Cutter?

Answer. The Offshore Patrol Cutter is still in the Preliminary Design phase and therefore no specific construction cost is available. However, affordability is a focus of the Offshore Patrol Cutter and the acquisition has been structured to maximize competition, affordability, and flexibility.

*Question 6.* If you were to acquire additional National Security Cutters, would that help fill the capabilities gap between replacing twelve ships with eight while the offshore patrol cutter is designed and constructed?

Answer. The Coast Guard believes that the program of record, consisting of 8 National Security Cutters and 25 Offshore Patrol Cutters, is the appropriate mix of assets to meet Coast Guard capability needs.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARCO RUBIO TO  
VICE ADMIRAL PAUL ZUKUNFT

**Impact of DOD/Navy Asset Availability on Coast Guard Drug Interdiction Ops**

Admiral: Thank you for coming by my office recently. I appreciate the introductory meeting we had. As you know, the Coast Guard is integral to many aspects of maritime life in Florida—port security, search and rescue, boater safety, homeland security, counter illicit trafficking for narcotics and human smuggling—and many other missions. Recently General John Kelly, Commander of U.S. Southern Command, made news when he told the Senate Armed Services Committee that he struggles to receive the assets he needs as commander to effectively do his mission and prevent the worst kind of narcotics from entering the U.S. via our maritime border. I am concerned that under this administration the size of the Navy's fleet continues to dwindle. Coast Guard or other law enforcement presence on Navy ships is essential in supporting the counter illicit trafficking mission of Joint Interagency Task Force (JIATF) South, a combined military and law enforcement organization headquartered in Key West that reports to SOUTHCOM.

*Question 1.* With the reduction of Navy ships overall and the dramatic drop in availabilities for ship deployments in the Western Hemisphere, how has the burden shifted to the Coast Guard?

Answer. The reduction in Navy vessels limits the opportunity for the Coast Guard to place Law Enforcement Detachments on board U.S. Navy ships. The Coast Guard allocates major cutters, fixed wing aircraft, airborne use of force helicopters and Law Enforcement Detachments to support JIATF-S Detection and Monitoring (D&M) activities. This allocation is based on the Global Force Management (GFM) process and Requests for Forces (RFFs) from the Department of Defense.

*Question 2.* How has the Coast Guard done at compensating for the loss of grey-hulled Navy ships?

Answer. Coast Guard has employed new assets, coupled with robust interagency and international coordination will enable the United States and partner nations to best mitigate threats throughout the maritime domain.

*Question 3.* What has been and will be the impact on Coast Guard operations in the Caribbean and Eastern Pacific as a result? How have operations Puerto Rico been impacted?

Answer. Fewer U.S. Navy surface combatants operating in support of JIATF-S provides less detection and monitoring platforms from which to deploy LEDETs that perform interdiction and apprehension of suspected drug smuggling vessels.

*Question 4.* How have traffickers altered their patterns for illicit trafficking? What impact has this had on Coast Guard operations?

Answer. Illicit smuggling is a multi-billion dollar enterprise. The Transnational Criminal Organizations behind these activities are adaptive adversaries constantly changing their tactics and methods of conveyance to avoid detection by law enforcement.

#### **Offshore Patrol Cutter Delivery Delays**

I am particularly interested in the final implementation of the Offshore Patrol Cutter project that will go a long way in protecting the coasts of Florida and helping the Coast Guard more effectively do its mission by replacing the current fleet of 210 foot and 270 foot cutters. It is vital to your recapitalization plans that we get this contract right and that the best ship be delivered. I know that there are currently three companies working to complete protocols for the final contract, including Eastern Shipbuilding in Panama City, Florida. I would just like to stress the importance of the Offshore Patrol Cutter program and the recapitalization effort in general as a vital component to our national security.

*Question 5.* With the proposed reduction in the Coast Guard's acquisition funding, and slowing of the Fast Response Cutter delivery schedule as proposed in the President's FY15 budget, coupled with an Offshore Patrol Cutter (OPC) project that won't deliver a cutter for at least another few years, how will the delayed delivery of those ships impact maritime security and Coast Guard missions closer to our ports, in the Exclusive Economic Zone?

Answer. Major cutters are vital to DHS' layered security strategy and the FY 2015 President's Budget supports the Coast Guard's highest priorities by providing for the production of the eighth and final National Security Cutter and continuing the Offshore Patrol Cutter acquisition.

*Question 6.* What will the impact be on securing the vast maritime border of the United States in addition to port security?

Answer. Major cutters are vital to DHS' layered security strategy and the FY 2015 President's budget supports the Coast Guard's highest priorities by providing for the production of the eighth National Security Cutter and continuing the Offshore Patrol Cutter acquisition.

*Question 7.* The recapitalization levels, particularly in shipbuilding, proposed by the administration over the past few years do not appear to support what the Coast Guard needs support your statutory missions. How will recapitalization funding levels impact the Mission Needs Statement (MNS) and your current Program of Record?

Answer. The MNS and Program of Record capture Coast Guard needs independent of funding levels.

*Question 8.* The Coast Guard is a can-do organization and routinely is asked to do more with less. Are we at the point where the Coast Guard will have to do less with less?

Answer. The Coast Guard and its DHS partners will, as it always has, continue to make the best use of the resources available to address the highest risks.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KELLY AYOTTE TO  
VICE ADMIRAL PAUL ZUKUNFT

#### **Drug Interdiction Operations**

(Sen. Ayotte asks) Heroin has become a major problem across the country, but particularly in New England and New Hampshire. This is a very real problem, and I believe we need to be looking at all aspects of how to fix it, including prevention, education, and treatment. A big part of the problem, however, is the availability of heroin. In March, I questioned Homeland Security Secretary Johnson in a Senate Homeland Security and Governmental Affairs Committee hearing about the role of DHS in combating the heroin epidemic. He assured me it was a priority for the de-

partment. On the same day, in a Senate Armed Services Committee hearing, I asked the commanders of U.S. Northern Command and U.S. Southern Command for an assessment of what actions the government is taking to identify and stop transnational drug-trafficking rings.

*Question 1.* What is your assessment of the threat transnational drug rings pose to our country?

Answer. As outlined in the President's Countering Transnational Organized Crime (CTOC) Strategy, Transnational criminal organizations undermine the rule of law in neighboring countries, decrease economic competition, and promote instability on U.S. borders. The Coast Guard also defers to the Departments of State, Justice and Homeland Security in assessing the threats posed to the U.S. by transnational criminal organizations.

*Question 2.* What is the Coast Guard doing to counter this threat?

Answer. The Coast Guard is the lead Federal agency for maritime law enforcement. The Coast Guard supports the Administration's National Drug Control Strategy and CTOC by interdicting shipments of illicit drugs (primarily cocaine) in international waters and in the maritime approaches to the United States.

*Question 3.* Where is the threat greatest?

Answer. The Coast Guard defers to the Office of National Drug Control Policy (ONDCP) on this question.

*Question 4.* Can you give me an assessment of heroin interdiction trends in particular?

Answer. Historically, maritime interdictions of heroin by Coast Guard are infrequent.

*Question 5.* If confirmed, will you make drug interdiction a top priority?

Answer. Drug interdiction is one of the Coast Guard's eleven statutory missions. I am committed to performing all of the Coast Guard's missions with the resources I have available.

*Question 6.* What is your assessment of the Coast Guard's collaboration with state and local law enforcement, as well as the defense department (like SOUTHCOM and NORTHCOM), when it comes to interrupting drug trafficking?

Answer. The Coast Guard has well established ties and coordinates and conducts joint operations with other DHS components and interagency partners in a whole-of-government response to drug trafficking.

### **Sexual Assault Prevention**

In July 2013, before it was required of all military branches, the Coast Guard began assigning Special Victim's Counsels to sexual assault victims. I commend the Coast Guard for being proactive on this.

*Question 7.* How concerned are you about sexual assault in the Coast Guard?

Answer. Sexual assault is a crime and is a breach of trust and a violation of our core values. For these reasons, every effort is being made to eliminate sexual assault from our Service.

*Question 8.* Are you able to give me an assessment of how the program is working?

Answer. The Coast Guard continues to focus on creating a culture where every service member feels duty-bound to intervene and protect; where victims feel empowered to report offenders without fear of reprisal; where every leader creates a command climate intolerant of sexual assault and founded upon trust and mutual respect; and where every report is vigorously investigated, crimes are prosecuted and where justice is served. Feedback thus far suggests there is improved trust in the process, as well as faith that leadership will respond appropriately; if confirmed as Coast Guard Commandant, I commit to strengthening that trust and deepening that faith.

*Question 9.* If confirmed, what will you do to ensure a safe and healthy environment in the Coast Guard, beyond what is now required under law?

Answer. Sexual assault is not just a military issue; it is also a societal issue. Because of the public trust placed with the Coast Guard, the Coast Guard holds itself to a higher standard of conduct, which requires the determination and courage of every Coast Guardsman to promote a culture of respect and proactively act to eliminate sexual assault.

### **Human Trafficking**

We know that human trafficking isn't just the illicit movement of people into the United States. In fact, it is happening in our own communities and we must bring this to light.

*Question 10.* But to the extent it can, and often does, start with the smuggling of people into the U.S., what is the Coast Guard's role in helping to combat this?

Answer. Coast Guard law enforcement personnel are trained to ensure the safety and security of all personnel on board vessels boarded by the Coast Guard for the duration of the Coast Guard boarding. If law enforcement personnel find evidence of human trafficking, they immediately notify their Tactical Commander and Coast Guard Headquarters for specific guidance and continue to gather supporting information in anticipation of law enforcement action. When such activity is detected aboard foreign-flagged vessels, the Coast Guard observes the principle of exclusive Flag State jurisdiction and coordinates with the Departments of State and Justice, among others, to engage the Flag State in order to take appropriate enforcement action. When such activity is detected aboard a vessel over which the United States may exercise jurisdiction (U.S. flagged or stateless), the Coast Guard coordinates with the Department of Justice to take enforcement action consistent with the Trafficking Victim Protection Act and other applicable laws. The Coast Guard provides layered security on the high seas and in the coastal/inland zones and will board vessels to enforce U.S. and international law.

*Question 11.* What is your assessment of the problem?

Answer. The Coast Guard defers to the Departments of Homeland Security and Justice on the extent and impact of human trafficking.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO  
ELLIOT KAYE

*Question 1.* When we met, you and I discussed some of the burden relief efforts at the CPSC, in particular, making determinations that certain materials don't include lead, heavy metals, or other toxic substances. Could you please state for the record your commitment to ensuring these determinations are made in a timely manner?

Answer. If confirmed, I assure you that I will continue to work with the U.S. Consumer Product Safety Commission's (CPSC) Commissioners and staff to try to expand our list of determinations as quickly as resources, actionable data, and consumer product safety priorities permit.

*Question 2.* Based on your experience as Executive Director, what you think Congress can or should do to expedite these determinations?

Answer. Congress could assist CPSC in overcoming two related challenges with this process.

First, to date the Commission unfortunately has yet to receive actionable data to expand our list of determinations. Though, I am hopeful that recent events will assist with this effort. On April 3, 2014, CPSC staff hosted a public workshop on potential ways to reduce third-party testing costs through determinations consistent with assuring compliance. Staff invited interested parties to participate in or attend the workshop and to submit written comments. I attended this workshop, and found the information provided by the participants to be incredibly informative. However, CPSC staff noted throughout the workshop that we will need more specific data to provide the requested relief. It would certainly assist our efforts if Members of Congress would also encourage stakeholders to submit any actionable information and data they might possess.

Second, staff time associated with these efforts does compete with time allocated to pressing and meaningful safety work. At our funding levels, the Commission has struggled to strike the right balance in ensuring that both our consumer product safety work and our determinations process can proceed in a timely fashion. Additional funding would allow us to work on a greater number of important activities.

*Question 3.* We also discussed imports, and the need for the CPSC to go after bad actors who willing and repeatedly skirt U.S. regulations. How do you think the current importation program is working, and how would the modifications to that program you mention in your testimony function?

Answer. As directed by Congress in Section 222 of the CPSIA, CPSC began a risk assessment methodology (RAM) to enhance our targeting capabilities at the ports. Because of existing funding levels, CPSC employs a pilot scale version of the RAM. It allows us to better target certain high risk products at U.S. ports of entry, thus focusing our efforts more on those companies who choose not to follow the rules. CPSC developed the program in very close collaboration with U.S. Customs and Border Protection (CBP). The pilot scale RAM Surveillance System integrates with and analyzes a limited set of existing CBP data to identify certain targeted imports with high violation risk.

To date, we view the pilot as a success for consumers, the trade, and CPSC. As mentioned, we are focusing better on those companies that chose not to follow the rules. We believe, however, that Section 222 called for CPSC to run more than a pilot-scale version of the RAM program. For this reason, CPSC requested a \$5 million start-up appropriation, as well as a longer term funding mechanism in our FY 2015 Budget Request to begin building out the RAM to full-scale. To address violative consumer products more comprehensively, the CPSC would like to scale the import surveillance program to a national program, capable of analyzing 100 percent of the consumer product-related import entry lines by FY 2020.

This approach would not only fulfill the mandate from the CPSIA, but also it would be consistent with the goals articulated in President Obama's Executive Order 13659, Streamlining the Export/Import Process for America's Businesses. We believe a full-scale RAM program would significantly enhance consumer product safety and consumer confidence, while also providing tremendous benefits to compliant trade. If I am confirmed, this will continue to be a top priority for me.

*Question 4.* How has the CPSC been working with importers who have been following the current rules and procedures?

Answer. During the last few years, as we have developed an even closer and more efficient working relationship with CBP, we have been able to create more opportunities to work with and assist compliant trade. For instance, CPSC has worked closely with CBP to conduct the Importer Self-Assessment—Product Safety (ISA-PS) pilot program. The ISA-PS pilot program is a voluntary approach to product safety compliance and provides recognition and support to participating companies that ensure product safety compliance for products regulated by the CPSC. We believe that as we continue to enhance our working relationship with CBP, especially consistent with Executive Order 13659, compliant trade will continue to benefit significantly.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE McCASKILL TO  
ELLIOT KAYE

*Question 1.* What do you believe is the CPSC's core mission?

Answer. I believe the U.S. Consumer Product Safety Commission's (CPSC) core mission is to protect consumers from the unreasonable risk of injury associated with the use of consumer products within the CPSC's jurisdiction.

*Question 2.* Do you think the CPSC's budget is adequate to achieve this mission?

Answer. Long-term historical funding trends, in conjunction with the effects of sequestration, make it very difficult to believe the CPSC's budget is adequate to achieve its mission. The legacy of lower funding levels has been either in unattended or significantly delayed product safety work. Given the current climate of tight budgetary constraints, the most recent funding trends, beginning with the appropriated amount for the current Fiscal Year, give reason for optimism that one day the agency may be funded at levels that more closely resemble its authorization levels. Higher funding levels would allow the CPSC first and foremost to address additional consumer product hazards more quickly while also providing more certainty for consumers and industry.

*Question 3.* Where do you find the greatest need for more resources or more focus by the Commission?

Answer. As I mentioned in my opening statement, I believe more resources are needed to expand our import surveillance program. The CPSC faces great challenges in identifying noncompliant products at the ports. In the CPSIA, Congress directed the CPSC to begin a risk assessment methodology to better target hazardous and violative imports. The agency has been running a successful pilot of that program and is now requesting a funding mechanism to run a full scale version. I believe consumers are better served by CPSC catching these products before they enter U.S. markets, and compliant trade is better served by CPSC staff focusing on those companies not following the rules.

I also believe greater attention should be placed on addressing certain chronic, hidden hazards. These hidden risks can come from long-term exposure to toxic chemicals or hazardous metals contained in consumer products. I am particularly concerned with how vulnerable populations might be affected by these hidden hazards. I believe Congress recognized and addressed the risk of some hidden hazards in the CPSIA, setting new chemical and element limits as well as providing the agency with enhanced authorities to try to address those hazards in the marketplace—and even before they enter the marketplace. With more resources, the agency

could expand on Congress' success and potentially address more hazards in the marketplace.

*Question 4.* Now that the CPSC is nearly done with its rulemaking work as mandated under the Consumer Product Safety Improvement Act of 2008, what other priorities should the Commission focus on?

Answer. Although CPSC has fulfilled many of the rulemaking requirements mandated by the CPSIA, some required work remains, particularly with regard to durable infant products, ATVs, and the Chronic Hazard Advisory Panel work associated with phthalates. Beyond this work, I believe the Commission should continue its focus on expanding the agency's import surveillance program. Additionally, I believe the Commission should focus more on addressing hidden, chronic hazards, as well as hidden mechanical hazards, such as those associated with window blind cords.

*Question 5.* The Consumer Product Safety Improvement Act of 2008 empowered the Commission with stronger enforcement authorities. Some of these include: (1) the ability to determine the type and form of a corrective action a manufacturer must take; (2) an increase in maximum civil penalties; (3) the authority to immediately remove particularly hazardous products from store shelves without judicial approval; and (4) the ability to quickly destroy non-compliant products at the ports. Much of the power of the CPSC rests with the Chairman of the Commission. Will you use these authorities aggressively to protect the public?

Answer. Yes. If confirmed, I would use all of the tools at the agency's disposal to protect the public.

*Question 6.* If you are confirmed as Chairman, how do you see the agency changing under your leadership?

Answer. If confirmed, I would hope to build on the successes of Chairman Inez Tenenbaum and Acting Chairman Robert Adler. Chairman Tenenbaum particularly deserves great credit for seeing the agency through the implementation of the major provisions of CPSIA. The agency now has a chance to address persistently deadly product hazards that were not a focus of the CPSIA, such as window blind cords. As we move beyond CPSIA implementation, the CPSC could focus more on consumer product hazards associated with seniors—a group of great concern given its rapidly expanding numbers.

With all of these efforts, if confirmed, I would hope to continue my work in building a wide coalition of stakeholders to try to find meaningful safety solutions through collaboration. Although this approach does not fit every situation, my experience at the agency has been that more often than not, collaboration leads to meaningful results. I would also hope to further engage our sister agencies. The CPSC has a very productive working relationship with Customs and Border Protection at the ports and with the Centers for Disease Control and Prevention on brain safety in youth sports. I would like to find even more ways to have CPSC and other agencies pool resources and expertise to address safety issues in a more efficient and effective manner.

I would also like to see CPSC take better advantage of digital communications. The agency has some work to do to be more on the leading edge of using all available communications tools to keep the public better informed.

Finally, I am optimistic that, if confirmed, the new composition of the Commission would be conducive to very meaningful collaborative work among the Commissioners. The Chairman is responsible for setting a tone and leading by example. If confirmed, I would take this responsibility very seriously.

*Question 7.* Some businesses still have legitimate concerns about some of the unintended impact of new regulations on their operations. Will you commit to working through the implementation of this law in a commonsense manner that recognizes the inherent flexibility of the Act?

Answer. Yes. My approach while at the CPSC has been to reach out to a wide coalition of stakeholders to try to find meaningful solutions through collaboration. If confirmed, I would continue this approach.

*Question 8.* Any agency, no matter its size, would have difficulty protecting the public from all potentially unsafe products. How will you reach the millions of consumers who have probably never heard of the CPSC to notify them of recalls and warn them about the unforeseen risks in their homes? How will you reach rural communities?

Answer. I believe that all consumers, no matter where they live and no matter what their circumstances, deserve to be informed about consumer product dangers. I believe the CPSC could work more effectively with the regulated community to find ways to reach consumers in more creative ways. While many consumers may not have heard of CPSC, they certainly are familiar with large retailers, for example. If confirmed, I would like to work more with retailers on improving ways to

reach consumers regarding product safety hazards across many different communities. I would certainly appreciate the opportunity to work with you and your staff on ways to enhance our efforts in this regard.

As mentioned, I would also like to see CPSC take better advantage of digital communications as part of this effort. Although print and broadcast media might work well with certain segments of the population, the CPSC could enhance its ability to also connect with the public through their smartphones.

I would also like to see an expansion of CPSC's Neighborhood Safety Network (NSN) program, which delivers product hazard and recall information to more than 9,000 community leaders and organizations serving underserved communities nationwide. These community contacts, including tribal leaders, fire departments, and health clinics, share our materials widely with their constituents.

*Question 9.* Related to this, recall participation rates remain low. What are your recommendations to improve those rates?

Answer. I definitely share your concern about the distressingly low response rate that many recalling firms experience in carrying out a voluntary recall. Although low recall participation rates unfortunately plague many agencies including the CPSC, I believe one potential avenue for improvement is more direct communication with affected consumers. Manufacturers that have e-mail addresses and/or phone numbers of their customers, either through club membership, catalogue purchases, or product registration cards, are able to generate greater awareness of product recalls. CPSC staff, in their proposed voluntary recall notice rule, encourages retailers to make a greater effort to assist manufacturers in identifying and contacting potentially affected consumers. CPSC staff also is proposing to launch a study in the coming year that explores the question of why some consumers hear about recalls, but decide not to respond while others do. If confirmed, I would continue to work with agency staff and industry to address this issue. I would also engage our sister agencies, as well as interested stakeholders, to see if we could identify better and more creative ways to improve recall rates.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROGER F. WICKER TO  
ELLIOT KAYE

*Question 1.* Upholstered furniture flammability is an issue of importance to my constituents, due to the number of people who are employed in this sector in Mississippi. State regulators in California, after years of deliberation and research, have developed a furniture flammability standard that focuses on smolder ignition. Do you agree or disagree with the California approach, and what are your views on the need for a national furniture flammability standard?

Answer. To the extent that California's new standard, Technical Bulletin 117-2013, addresses a portion of the risk associated with upholstered furniture fires while also discouraging the use of harmful chemicals to do so, that is a very positive step forward. However, I believe consumers and other stakeholders nationally would be well-served by a national standard. Particularly, I believe this would be the case if the standard can achieve the aims of TB117-2013, but in a fashion that addresses an even larger percentage of associated fires. I believe the Commission should work toward a feasible standard that could mitigate the most deaths and injuries possible.

Presently, CPSC staff is considering all of the information in the public record along with additional materials and available scientific studies and relevant data, such as analyses of fire hazard data, death and injury data, and the technical and economic feasibility of an approach. Taking all of this information into account, staff will recommend a proposed rule to the Commission for consideration. If confirmed, and subject to available resources, I would encourage CPSC staff to move as expeditiously as possible with this effort.

*Question 2.* It is my understanding that the Commission is considering adopting a mandatory rulemaking that would call for use of a specific flesh-sensing technology by certain bench-top table saw manufacturers. Could the adoption of such a rulemaking stifle competition in the marketplace for tabletop saws or make such saws prohibitively expensive for some consumers to purchase? What is your view on the need for such a mandatory regulation?

Answer. About 11 people per day suffer an amputation because of incidents involving table saws. Based on data reflecting the patterns and prevalence of life-altering injuries associated with these products, on October 11, 2011, the Commission voted unanimously (5-0) to approve an Advance Notice of Proposed Rulemaking (ANPR) on table saws. However, the Commission has also directed CPSC staff to remain very involved in the development of an improved voluntary standard that

might potentially address the hazard. Ideally, the voluntary standards process will produce, in a timely fashion, a revised standard that effectively addresses the hazard patterns CPSC staff has identified.

Please know that, if confirmed, I will carefully review all of the comments and feedback we receive from stakeholders on this issue, as well as continue to monitor the progress of the voluntary standards process. The Commission's aim is to address this hazard, ideally through a strong voluntary standard.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. TIM SCOTT TO  
ELLIOT KAYE

*Question.* In carrying out its mission of protecting the public against unreasonable risks of injury, the Commission often relies on voluntary standards in partnership with the involved industries. It is my understanding that even though an important industry in my state has worked to develop enhanced table saw safety standards, which are currently working to significantly reduce user injuries, the Commission is considering proposing a mandatory standard that could essentially eliminate the most portable and affordable saws from the market. Can you assure me that you will give full and fair consideration to existing voluntary standards and their relative impact on consumers when considering the imposition of new mandatory standards?

*Answer.* Yes. This is the approach I have taken to date while serving at the Commission, and, if confirmed, I would continue this approach.

About 11 people per day suffer an amputation because of incidents involving table saws. Based on data reflecting the patterns and prevalence of life-altering injuries associated with these products, on October 11, 2011, the Commission voted unanimously (5-0) to approve an Advance Notice of Proposed Rulemaking (ANPR) on table saws. However, the Commission has also directed CPSC staff to remain very involved in the development of an improved voluntary standard that might potentially address the hazard. Ideally, the voluntary standards process will produce, in a timely fashion, a revised standard that effectively addresses the hazard patterns CPSC staff has identified.

Please know that, if confirmed, I will carefully review all of the comments and feedback we receive from stakeholders on this issue, as well as continue to monitor the progress of the voluntary standards process. The Commission's aim is to address this hazard, ideally through a strong voluntary standard.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RON JOHNSON TO  
ELLIOT KAYE

*Question 1.* Mr. Kaye, if you are confirmed, when you are considering a mandatory standards are you willing to take into account not only consumer safety but also a consumer's rights to afford products, access products, and assume a reasonable amount of risk?

*Answer.* Yes, because many of our statutes require that associated rulemakings consider concerns such as these.

*Question 2.* A company's ability to survive and the number of jobs that will be lost if your standard is put in place?

*Answer.* Again, yes, because many of our statutes require that associated rulemakings consider concerns such as these.

*Question 3.* Mr. Kaye, if you are confirmed, will you consider closing open rulemakings that threaten to impose mandatory standards on companies that are successfully operating under voluntary standards? Coming in as a new chairman and closing outdated dockets will provide the agency with a clean slate.

*Answer.* The Consumer Product Safety Act (15 U.S.C. 2056(b)), the Federal Hazardous Substances Act (15 U.S.C. 1262(g)(2)), and the Flammable Fabrics Act (15 U.S.C. 1193 (h)(2)) require the CPSC to rely on voluntary standards rather than promulgate mandatory standards, provided that the voluntary standards would eliminate or adequately reduce the risk of injury or death addressed, and it is likely that there will be adequate compliance with the voluntary standard by industry. If during the course of mandatory rulemaking activities an adequate voluntary standard is adopted and there is substantial compliance, the Commission must, by statute, terminate its rulemaking activities. If confirmed, I would abide by this statutory framework.

*Question 4.* For example, CPSC currently has a mandatory rulemaking on Recreational Off-Highway Vehicles (ROVs) that has been open for more than four years,

imposing an atmosphere of uncertainty on the industry. During your nomination hearing there was a bipartisan call to eliminate this uncertainty. Would you consider closing this rulemaking to provide business certainty?

Answer. CPSC's end goal is to reduce the death and injury hazards associated with ROVs. ROV-related deaths are on the rise—jumping 65 percent from 2011 to 2012. Between January 2003 and April 2011, the CPSC knows of at least 428 reported ROV incidents—231 of which involved fatalities and 388 of which involved injuries (including serious injuries such as de-gloving, fractures, and crushed hands, feet, and arms). The Commission directed staff as part of the CPSC's Fiscal Year 2014 Operating Plan to draft for Commission consideration a Notice of Proposed Rulemaking (NPR) on ROVs. Absent the Commission directing otherwise, CPSC staff plans to provide the Commission with the draft NPR by the end of the current Fiscal Year.

Importantly, though, CPSC staff continues to work with the voluntary standards body to revise its standard in a manner that adequately addresses the deaths and injuries associated with these vehicles. CPSC staff has exchanged a number of letters with the voluntary standards body on the technical aspects of the standard and has also accepted an invitation to participate in the next meeting regarding possible revisions. These are positive signs that this issue might be addressed as part of this process. If a voluntary standard adequately addresses the death and injury hazards and industry substantially complies, CPSC will abide by the statute and defer to the voluntary standard.

I am sensitive to the desire to come to a speedy resolution on an effective performance standard for ROVs. If confirmed, I assure you that I will actively listen to all stakeholders and continue to diligently work with the Commission and its staff to achieve a meaningful solution, as quickly as possible.

*Question 5.* The CPSC is also considering a proposed mandatory rule on tabletop saws that would, in essence, eliminate the most popular category of table saws from the market: bench top table saws. However, there are already existing and effective voluntary standards in place. Since the current voluntary standards are working to significantly reduce the number of blade contact injuries and the mandatory standards under consideration will result in serious unintended consequences to consumers and businesses, will you assure me that you will avoid finalizing this rulemaking?

Answer. About 11 people per day suffer an amputation because of incidents involving table saws. Based on data reflecting the patterns and prevalence of life-altering injuries associated with these products, on October 11, 2011, the Commission voted unanimously (5–0) to approve an Advance Notice of Proposed Rulemaking (ANPR) on table saws. However, the Commission has also directed CPSC staff to remain very involved in the development of an improved voluntary standard that might potentially address the hazards. Ideally, the voluntary standards process will produce, in a timely fashion, a revised standard that effectively addresses the hazard patterns CPSC staff has identified.

Please know that, if confirmed, I will carefully review all of the comments and feedback we receive from stakeholders on this issue, as well as continue to monitor the progress of the voluntary standards process. The Commission's aim is to address this hazard, ideally through a strong voluntary standard.

*Question 6.* I also understand that the Underwriters Lab is specifically looking into the adoption of a voluntary standard relating to the incorporation of flesh sensing technology into table saws. While the Underwriters Lab considers this issue do you agree that you should take this draft rule/mandatory standard regarding this same issue off the table?

Answer. Section 7 of the CPSA (15 U.S.C. 2056(b)) requires the CPSC to rely on voluntary standards rather than promulgate mandatory standards provided that the voluntary standards would eliminate or adequately reduce the risk of injury or death addressed and adequate compliance with the voluntary standard by industry is likely. If during the course of mandatory rulemaking activity an adequate voluntary standard is adopted and there is substantial compliance, the Commission must, by statute, terminate its rulemaking activity. If confirmed, I would abide by this statutory framework.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV  
TO JOSEPH MOHOROVIC

**Intertek's Faulty Testing of Chinese-Manufactured Gas Heaters**

Mr. Mohorovic, several weeks ago, a Federal jury in the Western District of Pennsylvania awarded a \$6 million verdict against the company where you are currently employed, Intertek. This verdict and judgment included \$5 million of punitive damages. The name of this case was *Brand Marketing Group v. Intertek* (12cv1572).

The facts of this case are the following: a U.S. company called Brand Marketing Group contracted to supply the Ace Hardware store chain with "Thermablaster" vent-free gas room heaters.

Brand Marketing Group hired a Chinese company, Reecon M&E, to manufacture the heaters. Reecon hired Intertek's Chinese subsidiary, Intertek Shenzhen, to test the heaters and certify that they complied with American National Standards Institute (ANSI) safety standards.

According to the facts established during the trial, Intertek's Chinese testers did not have the proper training or experience to test the heaters. They had never tested heaters before and they misunderstood the ANSI standards, partly due to their poor command of English. They mistakenly applied the standard for outdoor grills to the Thermablaster heaters. As a result, Intertek falsely certified that the heaters met the ANSI Z.21.11.2b standard for room space heaters.

Relying on Intertek's certification, Brand Marketing Group shipped thousands of potentially unsafe heaters to Ace Hardware. When it became aware that the heaters did not comply with the standard, Ace sued Brand Marketing and won a \$611,000 judgment. Brand Marketing then sued Intertek, which resulted in the \$6 million jury award.

*Question 1.* Mr. Mohorovic, did you have any involvement in the testing of the Thermablaster heaters that were at issue in this case?

Answer. No.

*Question 2.* Are you involved in the safety testing of consumer gas heaters (also known as "hearth products")? If yes, please explain your role.

Answer. No.

*Question 3.* In your current position as a Senior Vice President at Intertek responsible for "global performance, growth and strategic management," what role do you play in making sure that your company properly applies U.S. standards to products manufactured in China? What responsibility do you have for certifying that products made in China and other countries are safe for U.S. consumers?

Answer. I am not directly involved in our engineering or certification activities, but Intertek has multiple systems in place to ensure that the testing and certification of products is conducted in compliance with applicable standards, in China and around the world.

*Question 4.* Is it common for Intertek to outsource the safety testing of products manufactured in China to Chinese testers?

Answer. Intertek does not outsource safety testing. Just like other Nationally Recognized Testing Laboratories approved by OSHA, Intertek operates a global system of laboratories and inspectors that support manufacturers who elect to have their products tested and certified. Intertek laboratories are accredited by accreditation bodies, meaning that they must qualify their sites as having the equipment, trained personnel, and quality system necessary to operate. In addition to being accredited, the Intertek laboratory in issue in this litigation is an OSHA approved and audited site.

*Question 5.* How many products have testers employed by Intertek's Chinese subsidiary certified as safe for the U.S. market?

Answer. Intertek does not maintain records of active certifications by country of origin. However, Intertek currently has over 80,000 products authorized for the use of the ETL certification mark, indicating compliance with recognized national standards. The plaintiff in this case was not an Intertek customer and was never authorized to use an Intertek mark and did so without Intertek's knowledge or consent.

*Question 6.* Is it common for Intertek to employ safety testers in other countries where products are manufactured, rather than U.S. testers?

Answer. All Nationally Recognized Testing Laboratories, including Intertek, serve the globalized supply chain and in doing so, operate laboratories where the product manufacturers are located. For this reason, Intertek and its competitors, maintain extensive operational quality systems, together with internal audits and external audits by accreditation bodies and OSHA. Contrary to the misinformation generated in this lawsuit, engineers working in product conformity are trained and use the

English language on a daily basis, as almost all product standards are maintained in English.

*Question 7.* Why does Intertek rely on foreign testers to determine whether products comply with U.S. standards?

Answer. It is important to recognize that Intertek serves the global commercial market. The supply chain for the United States is built in part on manufacturers located in other countries. Requiring that testing for the United States market be completed only in the United States would entail a dramatic change in the process and cost related to bringing products to market, and might also constitute a restraint of trade. To be clear, Intertek, and its competitors, do not (and cannot) dictate where testing must be completed, but serve the market as it exists.

*Question 8.* Does Intertek regularly claim that these testers are “expert” in U.S. standards such as the ANSI standards?

Answer. Intertek engineers apply product standards to products on a daily basis. Intertek engineers receive extensive and ongoing training in the relevant product categories they work within, regardless of the country. The United States sites are subject to the same requirements and supervision as the foreign laboratories. As a general rule, Intertek personnel are highly knowledgeable on the product standards and their application to products.

*Question 9.* When Intertek outsources testing to foreign testers, how does Intertek make sure that the testers are properly applying U.S. standards and that the testers actually understand the U.S. standards?

Answer. As the global system of product standards is almost entirely in English, command of the language is a job requirement for all Intertek engineers. In conducting testing and evaluation of products, Intertek engineers have access to supervising engineers and, ultimately, a Chief Engineer for each product category to ask questions and obtain support. Intertek conducts internal audits of all of its sites and undergoes external audits by its accreditors and OSHA. After a product is certified it is subject to ongoing factory inspections to check on continuing compliance with the relevant standard.

*Question 10.* Why should consumers and the CPSC rely on Intertek’s certification that a product is safe and meets that standards of the U.S. market?

Answer. The ETL mark is used on more than 80,000 different products. Intertek maintains processes to investigate and address all reports of non-compliances. On an annual basis, Intertek receives reports on well less than one percent of the products it lists. Of these reports, the large majority involve manufacturing defects, component changes, end of life failures, misuse of the product, competitor complaints, or mismarking. All reports are investigated and if it is determined that a dangerous condition exists, Intertek will work with the product owner to report the issue to the CPSC. In the case at issue, Intertek suspended the manufacturer and then forced the plaintiff, over his strenuous objections, to report the problem to the CPSC and to remove the product from the market. Intertek stopped this product from being sold on the United States market. Intertek works every day to improve the compliance of products with recognized standards and is proud of its role in supporting the voluntary testing and certification activities of manufacturers in the United States and around the world.

#### **GAO Report on “Burrowing” in the Federal Workforce**

On May 1, 2006, the Government Accountability Office (GAO) issued a report with the title, “Conversions of Employees from Noncareer to Career Positions, May 2001-April 2005” (GAO-06-381). This report examined 144 Federal employment cases in which employees working at agencies through political appointments converted to career Federal positions (a practice known as “burrowing”).

The report found that in most of the 144 cases, the agencies and employees followed the proper procedures for political-to-career conversions. But in 18 cases, the report found that the agencies and employees did not follow the proper procedures.

One of these 18 cases involved the conversion of a Schedule C Special Assistant to the then-CPSC Chairman Hal Stratton to a Senior Executive Service (SES) position in the agency with the job title, “Director, Office of International Programs and Intergovernmental Affairs, Office of the Executive Director.” GAO did not name this employee, but described the employee’s “previous experience in the private sector, and as an elected official to the New Mexico State Legislature.” (p. 68)

The resume you submitted to the Committee in the course of your nomination shows that you held the same positions at the same time as the person described in this GAO report.

*Question 11.* Mr. Mohorovic, are you the CPSC employee described in the GAO report I have cited in the paragraph above?

Answer. Yes. I had discussed this matter with CPSC human resources staff previously and am happy to now fully explain what I understand to have occurred.

*Question 12.* According to GAO, when CPSC submitted your name to a Qualifications Review Board (QRB) convened by the Office of Personnel Management (OPM), the Board determined that you did not have the executive experience required for an SES position in the Federal Government. Although your appointment was eventually approved by a second QRB, GAO notes that you did not provide sufficient evidence to support your claim that you were a “senior manager and leader.”

Mr. Mohorovic, can you describe in detail what your qualifications for this SES position were in November, 2003?

Answer. The QRB did not determine that I did not possess the necessary executive experience required for an SES position in the Federal Government. Instead, the QRB initially determined that my SES application did not sufficiently document my management experience and suggested I provide additional evidence of my leadership credentials. Therefore, I believe it is important to focus on these qualifications. Prior to my experience at CPSC, I had extensive and direct line management experience as a State Legislator, in my role as the Chief of Staff to the New Mexico Senate Minority Staff, and as Finance Director of both the Republican Party of New Mexico and the campaign to Reelect Governor Gary Johnson. As for my leadership credentials, I point to the “2001 Leader Award” presented to me by the Greater Albuquerque Chamber of Commerce and my inclusion in the New Mexico Business Weekly’s “Top Forty Under 40” issue identifying those forty leaders under the age of forty “dedicated to changing the status quo in New Mexico.” While a more exhaustive list is contained within my actual SES application, I believe these examples provide meaningful insight into the management and leadership qualifications the QRB ultimately deemed sufficient in this specific area.

*Question 13.* Can you explain how you were more qualified than the 23 other people who applied for this job?

Answer. By my understanding, GAO reports that twenty-four candidates applied for the position. An independent CPSC Executive Resource Board comprised of non-political, career, SES senior executives reviewed the applications, according to, as I understand, all relevant statutes and regulations governing such decisions. The GAO report cites that I was the highest rated candidate among the total applicant pool. I do not know and was not allowed to know who from the CPSC comprised the ERB, nor do I know of any other applicants so I cannot speak to their qualifications relative to my own.

*Question 14.* How did you respond when the QRB determined that you did not have the senior management experience for this SES job?

Answer. The QRB did not determine that I did not have the senior management experience necessary for the position. Instead, the QRB initially determined that my SES application did not sufficiently document my management experience and suggested I provide additional evidence of my leadership credentials. OPM’s QRB forwarded the written rationale for its decision to me via the CPSC Office of Human Resources. The QRB clearly anticipated a revised application, inviting the agency to “present other examples of his experience.” I revised the application to address the QRB concerns. The revised application was approved by a second QRB at OPM comprised of entirely different career-SES participants. Although the second QRB did not make any specific comment on the application, it is apparent that they believed that the comments of the first QRB were successfully addressed in the revised application.

Throughout the process, the CPSC followed standard SES procedure. There is nothing unusual about the re-submission of applications to the QRB. CPSC has followed this procedure before in the case of other applicants for a career SES position. In these cases, after the candidate was initially asked to amend their application by the QRB, the candidate made revisions and re-submitted their application. And second QRBS approved those candidates. Such outcomes are identical to what transpired with my application.

*Question 15.* How did you respond to the charge that you were not qualified for this job, and that you won the job through political influence rather than through a fair application process?

Answer. I would take strong issue with any such allegation or comment. At the time of my application, the QRB, composed of non-political, career SES managers from other Federal agencies, ultimately agreed that I had the skills and experience necessary to lead the CPSC Office of International Programs and Intergovernmental Affairs. The applicants were also rated internally at the CPSC by non-political, career SES senior managers. The selection process was in no way subject to political

influence. The GAO did not conclude that it was nor has there ever been an allegation of the same to my knowledge.

*Question 16.* How do you respond today to the charge that you were not qualified for this job, and that you won the job through political influence rather than through a fair application process?

Answer. I would likewise take issue with any such comment. I stand behind my solid record of public service as testament to my qualifications for the job. For two years, I directed and led the groundbreaking work of the CPSC Office of International Programs, work that directly established and led to the foundation for the direct international cooperation the CPSC experiences today with a number of countries with regard to the sharing of product safety information and expertise. The International Programs efforts I led aimed at taking the U.S. safety message directly to the source—clearly articulating the standards and expectations of the U.S. government to international consumer product manufacturers.

*Question 17.* The Senate Commerce Committee found this episode troubling. In its report on S. 2045, the “Consumer Product Safety Commission Reform Act of 2007” (Report # 110–265), the Committee specifically discusses the GAO report I describe above and criticizes the CPSC for “promoting a nonqualified appointee working for then Chairman Stratton to a Senior Executive Service (SES) position.” (p. 3) The Committee strongly encouraged the CPSC “to develop a human resource selection protocol to ensure that non-political Commission staff have clear opportunities for development and promotion, and that candidates for SES position be technically qualified for the demands of that position.” (p. 4)

Mr. Mohorovic, given these allegations of political favoritism, how can you assure me that you are not going to inappropriately politicize the CPSC?

Answer. I do not believe these allegations have merit so there should be no such concern. You can be assured that, if confirmed, I will do everything in my power to ensure that the CPSC continues to adhere to merit system principles of fair and open competition.

*Question 18.* Can you please discuss how you would, in the words of the Committee report, “ensure that non-political Commission staff have clear opportunities for development and promotion”?

Answer. Ensuring that the CPSC has an effective human resources development plan for the qualified promotion of non-political staff is primarily within the sphere of the CPSC Chairman. However, to extent proper, I will work with the Chairman and the Director of Human Resources to ensure a process by which defined personnel and activity goals are set for staff with clear delineation of career-laddering opportunities within CPSC and externally within the Federal workforce.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO  
JOSEPH MOHOROVIC

*Question 1.* In your committee questionnaire you noted that one of your priorities if confirmed as a Commissioner will be pursuing the harmonization of standards. Can you provide additional information about what types of activities you plan to pursue in that area?

Answer. Thank you for the question. I was not able to fully elucidate this in my oral and written testimony, but I believe it is a critical issue going forward for the CPSC. The U.S. and international regulatory landscape for consumer products is evolving extremely rapidly. As these new standards and requirements evolve, there is ample room for the CPSC to engage on an international basis to ensure that if the same objective is being sought (*e.g.*, 100 parts per million of lead in children’s products), that the same or similar testing, certification and enforcement will occur. In my experience, such is not generally the case today. I will work as a commissioner to ensure that harmonization does not in any way reduce the protection of American consumers that U.S. standards provide but instead encourages similar standards abroad and reductions in redundancies and inefficiencies.

*Question 2.* Since standards vary substantially from jurisdiction to jurisdiction, how do you harmonize without potentially impacting safety? Do you harmonize up to the highest standard—or look for something else?

Answer. There a number of ways to accomplish harmonization without any reduction in consumer safety. Having spent the last 10 years in the consumer safety testing industry, I believe this to indeed be the case. For example, there exists a “drop test” to determine the presence or absence of small parts that could cause a choking hazard in young children’s products. As it turns out, however, the drop test is almost identical for the U.S. and European markets, with only slight variations in the

height of the drop and the flooring underneath. This, in my mind, is a prime example of where standards can and should be harmonized to ensure both safety and efficiencies for international commerce. I would look for approaches consistent with President Obama's Executive Order 13609. The end goal might not be harmonization of a standard in all cases. CPSC and other jurisdictions may explore ways to reduce unnecessary differences in regulatory requirements through mutual recognition agreements or other vehicles to reduce regulatory trade burdens without subjecting American consumers to increased consumer product safety risk. Many international differences in standards are not based on differences in risk assessment and stringency of protection but local and parochial practices which will benefit from dialogue and scrutiny to avoid unnecessary nontariff trade barriers.

*Question 3.* In your written testimony, you stated that you would like to further consult members of the international safety community for ideas and information that could further inform CPSC decision making.

To that end, do you support efforts by CPSC staff to enter into further information sharing agreements with foreign product safety regulators?

Answer. Generally speaking, yes, I do. As the former Director of International Programs at the CPSC, I have seen first-hand how important it is for the CPSC and its cohort agencies internationally to share product safety information, and sometimes on an urgent basis. If there are unnecessary barriers to that sharing of information, and barriers that can be reduced or eliminated by the CPSC, consistent with its laws and regulations, then I would generally support such efforts.

*Question 4.* Section 6(b) of the Consumer Product Safety Act generally prohibits Commission disclosure of information obtained about a consumer product if that information names or otherwise identifies the manufacturer or the name of such consumer product, unless the manufacturer consents to release of the information.

This is true even where the consumer product is linked to a serious injury or death. Do you support the current version of section 6(b), or do you think it should be changed to provide additional flexibility?

Answer. It would be premature for me to comment on this matter, which is of course the subject of a pending regulatory action by the CPSC. However, I would opine that any effort to make what I know to be a currently paper-and mail-based notice system more modern and efficient would likely be a desirable outcome from both the agency and its stakeholders.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. MARK PRYOR TO  
JOSEPH MOHOROVIC

*Question.* When we met, I asked you if there would be any controversy surrounding your nomination. While you said there was none, I have been reminded of a GAO report that focused on a potential impropriety of your transition from a noncareer, political appointee at the Commission, to a career position. Please explain what happened, and whether or not this should factor into your nomination?

Answer. Thank you for the question, Senator. First, I do not believe this issue to be a controversy and am surprised to see it raised in relation to my confirmation. That said, I do appreciate the opportunity to set the record straight on this matter. Having reviewed the GAO report and all relevant information it addresses in detail, it is clear to me that the CPSC used proper appointing authorities and adhered to merit system principles of fair and open competition in selecting a candidate who successfully competed to fill the career SES vacancy. CPSC staff followed all applicable procedures and reviewed all applicants without bias before choosing a candidate to submit to the Qualification Review Board (QRB).

CPSC advertised the position vacancy as CPSC-001-04, in accordance with the procedures set forth at 5 C.F.R. § 317.501(b)(2). Next, the CPSC Executive Resource Board (ERB), composed of career SES managers, conducted the merit staffing process as required by subsection (c) of the regulation. The independent CPSC ERB comprised of non-political, career, SES senior executives reviewed the twenty four applications. The GAO report cites that I was the highest rated candidate among the total applicant pool as scored exclusively by non-political, career, CPSC SES managers. None of these managers were political appointees. This process was performed according to all OPM merit-based hiring procedures.

The CPSC then submitted me as the best qualified applicant to a QRB at OPM, in accordance with 5 C.F.R. § 317.502. The review is conducted by OPM completely independent of CPSC.

OPM initially determined that my SES application did not sufficiently document my management experience and suggested I provide additional evidence of my leadership credentials. OPM's QRB forwarded the written rationale for its decision to

me via the CPSC Office of Human Resources. The QRB clearly anticipated a revised application, inviting the agency to “present other examples of his experience.” I revised the application to address the QRB concerns. The revised application was approved by a second QRB at OPM comprised of entirely different career-SES participants. Although the second QRB did not make any specific comment on the application, it is apparent that they believed that the comments of the first QRB were successfully addressed in the revised application.

Throughout the process, the CPSC followed standard SES procedure. There is nothing unusual about the re-submission of applications to the QRB. CPSC has followed this procedure before in the case of other applicants for a career SES position. In these cases, after the candidate was initially asked to amend their application by the QRB, the candidate made revisions and re-submitted their application. And second QRBS approved those candidates. Such outcomes are identical to what transpired with my application.

Reviewing the GAO report and all relevant information, it is clear that the CPSC used proper appointing authorities and adhered to merit system principles of fair and open competition in selecting me as a candidate who successfully competed to fill the SES vacancy. CPSC staff followed all applicable procedures and reviewed all applicants without bias before choosing a candidate to submit to the QRB. CPSC did not engage in any prohibited personnel practices, nor does GAO allege otherwise. For these reasons, I do not believe this to be an issue that should factor into my confirmation.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROGER F. WICKER TO  
JOSEPH MOHOROVIC

*Question 1.* Upholstered furniture flammability is an issue of importance to my constituents, due to the number of people who are employed in this sector in Mississippi. State regulators in California, after years of deliberation and research, have developed a furniture flammability standard that focuses on smolder ignition. Do you agree or disagree with the California approach, and what are your views on the need for a national furniture flammability standard?

Answer. Thank you, Senator. Because the issue you raise is the subject of an open and ongoing rulemaking before the CPSC, I am unable to comment on the specifics of your question. However, I am generally familiar with this issue and its implications to both the U.S. and international furniture industry, and assure you that, if confirmed, I will make every effort to ensure that the Commission’s actions are consistent with both consumer safety and U.S. and international harmonization of standards and requirements.

*Question 2.* It is my understanding that the Commission is considering adopting a mandatory rulemaking that would call for use of a specific flesh-sensing technology by certain bench-top table saw manufacturers. Could the adoption of such a rulemaking stifle competition in the marketplace for tabletop saws or make such saws prohibitively expensive for some consumers to purchase? What is your view on the need for such a mandatory regulation?

Answer. As with the previous question, and with all due respect, because this is the subject of an open rulemaking before the agency, I am unable to opine on that specific matter. This is no doubt an important issue and all aspects of a possible standard should be carefully considered, and I assure you that, if confirmed, I will do so.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. TIM SCOTT TO  
JOSEPH MOHOROVIC

*Question.* In carrying out its mission of protecting the public against unreasonable risks of injury, the Commission often relies on voluntary standards in partnership with the involved industries. It is my understanding that even though an important industry in my state has worked to develop enhanced table saw safety standards, which are currently working to significantly reduce user injuries, the Commission is considering proposing a mandatory standard that could essentially eliminate the most portable and affordable saws from the market. Can you assure me that you will give full and fair consideration to existing voluntary standards and their relative impact on consumers when considering the imposition of new mandatory standards?

Answer. I fully agree that voluntary standards are incredibly important to ensuring the safety of products for American consumers. While I am not fully knowledgeable

able of all of the details and current status of the particular issue of table saws (which is undergoing active regulatory consideration by the CPSC) I can assure you that I will give this important issue my full and immediate consideration should I be confirmed.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE McCASKILL TO  
JOSEPH MOHOROVIC

*Question 1.* What do you believe is the CPSC's core mission?

Answer. I believe the CPSC's core mission is well-defined in the 2011–2016 Strategic Plan. CPSC's mission is to protect the public against unreasonable risks of injury from consumer products through education, safety standards activities, regulation and enforcement.

*Question 2.* Do you think the CPSC's budget is adequate to achieve this mission?

Answer. Of course I would need to review the resourcing recommendations of the staff, but I haven't seen any reason to believe that current funding levels are inadequate. In fact, I note that the CPSC is operating under a budget surplus and the Commission is making adjustments accordingly to the FY 2014 Operating Plan.

*Question 3.* Where do you find the greatest need for more resources or more focus by the Commission?

Answer. From 1998 to 2007, the amount of consumer products under CPSC's jurisdiction imported from China alone quadrupled. With almost one million importers and over three hundred ports of entry, it is indisputable that the challenge of ensuring compliant imports is daunting. CPSIA doubled funding levels for CPSC. But that funding came with significant new mandates to enforce as well. I believe that modernization of CPSC's import compliance program presents the greatest need for more resources and focus by the Commission.

*Question 4.* Now that the CPSC is nearly done with its rulemaking work as mandated under the Consumer Product Safety Improvement Act of 2008, what other priorities should the Commission focus on?

Answer. I believe the CPSC should focus on addressing the compliance of imports. The vast majority of products under CPSC jurisdiction are imported. And a disproportionate share of recalled products comes from imported products. I can think of no better way of assuring consumer safety than by ensuring the compliance of imports to U.S. safety expectations. To accomplish this, I believe a two-prong strategy is necessary.

First, foreign suppliers must understand the safety expectations of consumer products bound for the United States. I believe success will be had by better leveraging existing communication networks including international consumer groups, retail networks, the testing community, manufacturing and standard developing organization networks.

Second, CPSC must conduct a robust and effective import surveillance program. I would like to see CPSC work with Customs & Border Protection to develop public-private partnerships that facilitate the fast flow of low-risk, legitimate, compliant cargo. I would also like to see CPSC's import screening methods incorporate the most sophisticated techniques and the best data to leverage resources and intercept non-compliant cargo at higher rates.

*Question 5.* You have worked for Intertek—a company whose business is to conduct third-party testing—for many years. What will you bring from this job that will inform your work as a Commissioner?

Answer. After having spent almost a decade working for one of the largest international providers of quality assurance and safety services to the consumer goods industry, I understand intimately the challenges faced by manufacturers and retailers operating in global supply chains. With an enduring commitment to public service, I'd like to offer my risk management skillset to help modernize the CPSC and effectively regulate for safety in the 21st Century.