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EXTENDING LIMITS OF U.S. CUSTOMS WATERS ACT

APRIL 2, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Missouri, from the Committee on Ways and Means, submitted the following

R E P O R T

[To accompany H.R. 529]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 529) to extend the customs waters of the United States from 12 nautical miles to 24 nautical miles from the baselines of the United States, consistent with Presidential Proclamation 7219, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Extending Limits of U.S. Customs Waters Act".

SEC. 2. DEFINITION OF CUSTOMS WATERS.

(a) TARIFF ACT OF 1930.—Section 401(j) of the Tariff Act of 1930 (19 U.S.C. 1401(j)) is amended—

(1) by striking "means, in the case" and inserting the following: "means—
"(1) in the case";

(2) by striking "of the coast of the United States" the first place it appears and inserting "from the baselines of the United States, determined in accordance with international law,";

(3) by striking "and, in the case" and inserting the following: "; and
"(2) in the case"; and

(4) by striking "the waters within four leagues of the coast of the United States." and inserting the following: "the waters within—

"(A) the territorial sea of the United States, to the limits permitted by international law in accordance with Presidential Proclamation 5928 of December 27, 1988; and

"(B) the contiguous zone of the United States, to the limits permitted by international law in accordance with Presidential Proclamation 7219 of September 2, 1999.".

(b) ANTI-SMUGGLING ACT.—Section 401(c) of the Anti-Smuggling Act (19 U.S.C. 1709(c)) is amended—

(1) by striking "means, in the case" and inserting the following: "means—
"(1) in the case";

(2) by striking "of the coast of the United States" the first place it appears and inserting "from the baselines of the United States, determined in accordance with international law,";

(3) by striking "and, in the case" and inserting the following: "; and
"(2) in the case"; and

(4) by striking "the waters within four leagues of the coast of the United States." and inserting the following: "the waters within—

"(A) the territorial sea of the United States, to the limits permitted by international law in accordance with Presidential Proclamation 5928 of December 27, 1988; and

"(B) the contiguous zone of the United States, to the limits permitted by international law in accordance with Presidential Proclamation 7219 of September 2, 1999.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the day after the date of the enactment of this Act.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

H.R. 529, *Extending Limits of U.S. Customs Waters Act*, as ordered reported by the Committee on Ways and Means on November 30, 2023, amends the Tariff Act of 1930 and the Anti-Smuggling Act to extend customs law enforcement authorities to operate up to 24 nautical miles off the U.S. coast.

B. BACKGROUND AND NEED FOR LEGISLATION

U.S. Customs and Border Protection (CBP) Air and Marine Operation (AMO) was established in 2006 to provide unique, cross-domain law enforcement activities between ports of entry, in our coastal waters, and within the nation's interior. H.R. 529 would codify two Presidential Proclamations that change the area within which AMO officers may operate off U.S. coasts, extending the area from 12 to 24 miles and bringing AMO operations into line with those of other law enforcement agencies.

Other agencies, including the U.S. Coast Guard, previously received statutory authorization to operate up to 24 miles off the U.S. coast. However, AMO's current limitation of generally operating only up to 12 nautical miles off the U.S. coast may limit the agency's ability to detect and interdict illegal narcotics and other illegal shipments. For AMO specifically, removal of the 12-nautical-mile limitation would enhance its response to sophisticated capabilities of transnational criminal organizations, better support its law enforcement partners, and increase detection, interdiction, and ultimately, prosecution of those conducting illegal smuggling, unsafe entry, or other violations of U.S. law.

C. Legislative History

Background

H.R. 529 was introduced on January 25, 2023, by Representative Michael Waltz and was referred to the Committee on Ways and Means.

Committee Hearing

On May 25, 2023, the Committee held a hearing entitled "Modernizing Customs Policies to Protect American Workers and Secure Supply Chains."

On September 14, 2023, the Committee held a hearing entitled "Ways and Means Member Day Hearing."

Committee Action

The Committee on Ways and Means marked up H.R. 529, the "Extending Limits of U.S. Customs Waters Act" on November 30, 2023, and ordered the bill, as amended, favorably reported (with a quorum being present).

D. Designated Hearing

Pursuant to clause 3(c)(6) of rule XIII, the following hearings were used to develop and consider H.R. 1568:

On May 25, 2023, the Committee held a hearing entitled "Modernizing Customs Policies to Protect American Workers and Secure Supply Chains."

On September 14, 2023, the Committee held a hearing entitled "Ways and Means Member Day Hearing."

II. EXPLANATION OF THE BILL

PRESENT LAW

Section 1401(j) of the Tariff Act of 1930 generally defines the term "customs waters" as the waters within four leagues of the coast of the United States (equivalent to 12 nautical miles).

REASON FOR CHANGE

Current law limits AMO's ability to intercept bad actors if they are operating more than 12 nautical miles from the U.S. coast. H.R. 529 would double AMO's area of operation from 12 nautical miles to 24 nautical miles off the U.S. coast to better enforce U.S. laws and stop illegal activity, including human and drug trafficking.

Currently, despite the intent of Presidential Proclamations, various court rulings have made AMO carefully weigh legal authority before attempting to help stranded migrants or intercept suspicious vessels that pass just beyond the 12 nautical mile limit. In 1999, President Clinton issued a Presidential Proclamation to allow CBP, the U.S. Coast Guard, and other U.S. agencies to travel to the internationally recognized 24-mile limit. Congress has since provided legal certainty by codifying this ability for other agencies, including the U.S. Coast Guard, but has yet to do so for AMO. This legislation would allow AMO to travel to the international limit to enforce U.S. law more effectively and stop bad actors.

EXPLANATION OF PROVISIONS

Section 1. Short title

Section 2. Definition of customs waters: Amends the statutory definition of U.S. customs waters that applies to U.S. Customs and Border Protection's Air and Marine Operations. Specifically, this section modifies the definition of "customs waters" in both the Tariff Act of 1930 and the Anti-Smuggling Act. Both statutes currently define "customs waters" as extending up to four leagues from the coast of the United States, which is equivalent to twelve nautical miles. This bill would modify the definition of "customs waters" in both statutes to match the limits outlined in accordance with international law and in two Presidential Proclamations, which were issued by President Reagan in 1988 and President Clinton in 1999. This change would double the area of potential operations for AMO by extending the "customs waters" from the current limit of 12 nautical miles to 24 nautical miles.

EFFECTIVE DATE

The provision is effective the day after the date of enactment of this Act.

III. VOTE OF THE COMMITTEE

In compliance with the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.R. 529, Extending Limits of U.S. Customs Waters Act" on November 30, 2023.

H.R. 592 was ordered favorably reported to the House of Representatives as amended by a roll call vote of 37 yeas to 0 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Smith (MO)	X			Mr. Neal	X		
Mr. Buchanan	X			Mr. Doggett	X		
Mr. Smith (NE)	X			Mr. Thompson	X		
Mr. Kelly				Mr. Larson	X		
Mr. Schweikert	X			Mr. Blumenauer	X		
Mr. LaHood	X			Mr. Pascrell	X		
Dr. Wenstrup	X			Mr. Davis			
Mr. Arrington				Ms. Sánchez	X		
Dr. Ferguson	X			Mr. Higgins	X		
Mr. Estes	X			Ms. Sewell	X		
Mr. Smucker	X			Ms. DelBene	X		
Mr. Hern				Ms. Chu	X		
Ms. Miller	X			Ms. Moore	X		

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Dr. Murphy	X			Mr. Kildee	X		
Mr. Kustoff	X			Mr. Beyer	X		
Mr. Fitzpatrick				Mr. Evans	X		
Mr. Steube				Mr. Schneider	X		
Ms. Tenney	X			Mr. Panetta	X		
Mrs. Fischbach	X						
Mr. Moore	X						
Mrs. Steel	X						
Ms. Van Duyne	X						
Mr. Feenstra	X						
Ms. Malliotakis	X						
Mr. Carey	X						

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 529, as reported. The estimate prepared by the Congressional Budget Office (CBO) is included below.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee states further that the bill involves no new or increased tax expenditures.

V. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

H.R. 529, Extending Limits of U.S. Customs Waters Act
As ordered reported by the House Committee on Ways and Means on November 30, 2023

By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
Direct Spending (Outlays)	*	*	*
Revenues	*	*	*
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	*	*	not estimated

Increases *net direct spending* in any of the four consecutive 10-year periods beginning in 2035?	*	Statutory pay-as-you-go procedures apply?	Yes
		Mandate Effects	
Increases *on-budget deficits* in any of the four consecutive 10-year periods beginning in 2035?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

* = between -$500,000 and $500,000.

H.R. 529 would amend the definition of *customs waters* to extend the distance from 12 nautical miles to 24 nautical miles from the U.S. coastline. That change would conform to the distance set by Presidential Proclamation 7219, which extended the contiguous zone of the United States—the area within which the Coast Guard enforces fiscal, immigration, customs, and other laws—to 24 nautical miles from the shore.[1] However, the enforcement authority of Customs and Border Protection (CBP) under current law is limited to the statutory definition of *customs waters;* thus, H.R. 529 would expand the agency's jurisdiction.

Using information from CBP, CBO expects that the bill would increase that agency's seizures of currency, vessels, and other assets by a small amount because the new boundary would give CBP more time to detect and respond to illegal activity. Forfeited assets are recorded in the budget as revenues, deposited into the Treasury Forfeiture Fund, and later spent without further appropriation. Based on the volume of seizures in recent years, CBO estimates that any resulting increase in revenues and direct spending would total less than $500,000 over the 2024–2034 period.

Under the bill, CBO expects that the average distance of CBP's trips would increase because vessels could be intercepted farther from shore and thus CBP would need to purchase additional fuel for its fleet. Using information about the agency's current spending for fuel and the annual average number of trips, CBO estimates that implementing H.R. 529 would increase CBP's fuel costs by less than $500,000 over the 2024–2029 period; that spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Jeremy Crimm. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

VI. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill does not authorize funding, so no statement of general performance goals and objectives is required.

C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

[1] President William J. Clinton, Proclamation 7219, Contiguous Zone of the United States, 64 Fed. Reg. 48701 (August 2, 1999), http://tinyurl.com/2ujkxcr7.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

E. Duplication of Federal Programs

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TARIFF ACT OF 1930

* * * * * * *

TITLE IV—ADMINISTRATIVE PROVISIONS

PART I—DEFINITIONS AND NATIONAL CUSTOMS AUTOMATION PROGRAM

Subpart A—Definitions

SEC. 401. MISCELLANEOUS.

When used in this title or in Part I of Title III—

(a) VESSEL.—The word "vessel" includes every description of water craft or other contrivance used, or capable of being used, as a means of transportation in water, but does not include aircraft.

(b) VEHICLE.—The word "vehicle" includes every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land, but does not include aircraft.

(c) MERCHANDISE.—The word "merchandise" means goods, wares, and chattels of every description and includes merchandise the importation of which is prohibited, and monetary instruments as defined in section 5312 of title 31, United States Code.

(d) PERSON.—The word "person" includes partnerships, associations, and corporations.

(e) MASTER.—The word "master" means the person having the command of the vessel.

(f) DAY.—The word "day" means the time from eight o'clock antemeridian to five o'clock postmeridian.

(g) NIGHT.—The word "night" means the time from five o'clock postmeridian to eight o'clock antemeridian.

(h) UNITED STATES.—The term "United States" includes all Territories and possessions of the United States, except the Philippine Islands, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the island of Guam.

(i) OFFICER OF THE CUSTOMS: CUSTOMS OFFICER.—The terms "officer of the customs" and "customs officer" mean any officer of the Bureau of Customs of the Treasury Department (also hereinafter referred to as the "Customs Service") or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person, including foreign law enforcement officers, authorized by law or designated by the Secretary of the Treasury to perform any duties of an officer of the Customs Service.

(j) CUSTOMS WATERS.—The term "customs waters" [means, in the case] *means—*

(1) in the case of a foreign vessel subject to a treaty or other arrangement between a foreign government and the United States enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States, the waters within such distance [of the coast of the United States] *from the baselines of the United States, determined in accordance with international law,* as the said authorities are or may be so enabled or permitted by such treaty or arrangement [and, in the case] *; and*

(2) in the case of every other vessel, [the waters within four leagues of the coast of the United States.] *the waters within—*

(A) the territorial sea of the United States, to the limits permitted by international law in accordance with Presidential Proclamation 5928 of December 27, 1988; and

(B) the contiguous zone of the United States, to the limits permitted by international law in accordance with Presidential Proclamation 7219 of September 2, 1999.

(k) The term "hovering vessel" means—

(1) any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is

reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws of the United States; and

(2) any vessel which has visited a vessel described in paragraph (1).

(l) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(m) CONTROLLED SUBSTANCE.—The term "controlled substance" has the meaning given that term in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)). For purposes of this Act, a controlled substance shall be treated as merchandise the importation of which into the United States is prohibited, unless the importation is authorized under—

(1) an appropriate license or permit; or

(2) the Controlled Substances Import and Export Act.

(n) The term "electronic transmission" means the transfer of data or information through an authorized electronic data interchange system consisting of, but not limited to, computer modems and computer networks.

(o) The term "electronic entry" means the electronic transmission of the Customs Service of—

(1) entry information required for the entry of merchandise, and

(2) entry summary information required for the classification and appraisement of the merchandise, the verification of statistical information, and the determination of compliance with applicable law.

(p) The term "electronic data interchange system" means any established mechanism approved by the Commissioner of Customs through which information can be transferred electronically.

(q) The term "National Customs Automation Program" means the program established under section 411.

(r) The term "import activity summary statement" refers to data or information transmitted electronically to the Customs Service, in accordance with such regulations as the Secretary prescribes, at the end of a specified period of time which enables the Customs Service to assess properly the duties, taxes and fees on merchandise imported during that period, collect accurate statistics and determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

(s) The term "reconciliation" means an electronic process, initiated at the request of an importer, under which the elements of an entry (other than those elements related to the admissibility of the merchandise) that are undetermined at the time the importer files or transmits the documentation or information required by section 484(a)(1)(B), or the import activity summary statement, are provided to the Customs Service at a later time. A reconciliation is treated as an entry for purposes of liquidation, reliquidation, recordkeeping, and protest.

(t) RECONFIGURED ENTRY.—The term "reconfigured entry" means an entry filed on an import activity summary statement which substitutes for all or part of 1 or more entries filed under section 484(a)(1)(A) or filed on a reconciliation entry that aggregates the

entry elements to be reconciled under section 484(b) for purposes of liquidation, reliquidation, or protest.

* * * * * * *

SECTION 401 OF THE ANTI-SMUGGLING ACT

SECTION 401. When used in this Act:

(a) The term "United States", when used in a geographical sense, includes all Territories and possessions of the United States, except the Virgin Islands, the Canal Zone, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the island of Guam.

(b) The term "officer of the customs" means any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or agent or other person authorized by law or by the Secretary of the Treasury, or appointed in writing by a collector, to perform the duties of an officer of the Customs Service.

(c) The term "customs waters" ***[****means, in the case****]****means*—

(1) of a foreign vessel subject to a treaty or other arrangement between a foreign government and the United States enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States, the waters within such distance **[**of the coast of the United States**]** *from the baselines of the United States, determined in accordance with international law,* as the said authorities are or may be so enabled or permitted by such treaty or arrangement **[**and, in the case**]***; and*

(2) in the case of every other vessel, **[**the waters within four leagues of the coast of the United States.**]** *the waters within—*

(A) the territorial sea of the United States, to the limits permitted by international law in accordance with Presidential Proclamation 5928 of December 27, 1988; and

(B) the contiguous zone of the United States, to the limits permitted by international law in accordance with Presidential Proclamation 7219 of September 2, 1999.

(d) The term "hovering vessel" means any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue.

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