



U.S. - Maritime Legislation Developments

October 2010

The Coast Guard Authorization Act of 2010

signed by the President on 15 October 2010

Significant components of this legislation are as follows:

Section 702 - Tank Vessel Transfer Safety

This section mandates Coast Guard regulations to reduce the risk of an oil spill in operations involving the transfer of oil from or to a tank vessel. In essence, Congress has asked the Coast Guard to determine and require best practices for the highest risk transfers—those that take place at night and/or in poor weather conditions. Section 702 expressly saves from preemption state regulations that address transfers in state waters, so long as they do not conflict with the Coast Guard's rules and are just as stringent or more than federal standards. It is possible, therefore, that state and local authorities will also regulate this subject in the future.

Section 708 - NOAA Response Funding

In addition to provisions for audits and record keeping requirements related to National Pollution Fund disbursements, Section 708 provides up to \$15,000,000.00 per year to NOAA for "activities related to response and damage assessment capabilities." The provision of such funds, while not particularly significant as an overall component of NOAA budgets or as a meaningful element of oil spill costs, at least has the benefit of amplifying governmental support for NOAA activities.

Section 711 - Tug Escorts

In addition to calling for various assessments and recommendations for the regulation of vessel traffic and safety in Alaska and Washington state, Section 711 extends the tug escort requirements that currently exist for single hull vessels to double hulled tankers over 5,000 gross tons transporting oil in Prince William Sound, Alaska. This provision, which was included in the original House bill introduced a year ago, will take effect 90 days after enactment of the Act. Specifically, double-hull tank vessels will be required to be escorted by at least 2 towing vessels or other vessels considered to be appropriate by the Coast Guard in accordance with regulations published in 33 C.F.R. Part 168. This requirement contrasts with judgments made by the Coast Guard in other waters, namely, the decision to expressly exclude double-hull vessels from tug escort requirements in Buzzards Bay.

Section 711 also contains a preemption "savings clause" designed to ensure that federal law is not interpreted to preempt state or local "authority" to "require the escort by one or more tugs of laden oil tankers in" certain areas specified in section 4116(c) of OPA '90. Those areas are: "Prince William Sound, Alaska, and Rosario Strait and Puget Sound, Washington (including those portions of the Strait of Juan de Fuca east of Port Angeles, Haro Strait, and the Strait of Georgia subject to United States jurisdiction)."

Section 712 - OPA Financial Responsibility Jurisdiction

Section 712 extends the financial responsibility provisions of OPA '90, section 1016 to "any tank vessel over 100 gross tons using any place subject to the jurisdiction of the United States." Currently, those requirements only apply to vessels over 300 gross tons using any place subject to the jurisdiction of the United States (except a non-self-propelled vessels that do not carry oil as cargo or fuel) and vessels using the exclusive economic zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States.

Section 713 - OPA Responsible Party and Cargo Interests

Section 713 broadens the OPA '90 definition of "responsible party" to include "the owner of oil being transported in a tank vessel with a single hull after December 31, 2010. This provision does not apply, however to "a vessel unloading oil in bulk at a deepwater port licensed under the Deepwater Port Act of 1974" or "a delivering vessel that is offloading in lightering activities (i) within a lightering zone . . . and (ii) more than 60 miles from the baseline from which the territorial sea of the United States is measured." 46 U.S.C. § 3703a(b)(3).

This provision endeavors to accelerate the rate at which single-hull tank vessels are phased out in U.S. waters. Under OPA '90 single hull vessels will be banned after January 1, 2015. Rather than revise this fast-approaching deadline, something that would create serious retroactivity problems, Congress is attempting to accomplish the same result indirectly by inducing cargo interests to employ only double-hull vessels to avoid the risk of liability under OPA '90 as a "responsible party."

Section 912 - Piracy Limitation of Liability

Section 912 limits the liability of vessel owners, operators, charterers, masters, mariners and other individuals who use or authorize force to defend a U.S. vessel against pirates. In such instances, parties who have used or authorized force "shall not be liable for monetary damages for any injury or death caused by" the use of force, provided that "such force was in accordance with standard rules for the use of force in self-defense of vessels" to be determined by the Coast Guard "in consultation with representatives of industry and labor." The Coast Guard is also directed to work in conjunction with the IMO to promote coordinated action to deter and respond to piracy.

Section 912 is a modified version of the "United States Mariner and Vessel Protection Act" (H.R. 3376) which was introduced in July, 2009 by Rep. Frank LoBiondo (R-NJ), the Coast Guard and Maritime Transportation Subcommittee Ranking Republican. In hearings before that subcommittee, representatives from various segments of the maritime community articulated concerns that, while they found the use of armed personnel desirable to safeguard crew and cargo, they were concerned that arming a vessel would expose owners, operators and crew to increased liability for actions taken in defense of the ship. Section 912 is a response to that concern. Its aim is to encourage those who own and operate U.S. vessels to be proactive in the defense of their vessels, crew and cargo. Under this provision, crewmen or private security contractors will be shielded from damage claims if they cause injury in the course of defending a U.S. vessel against an "act of aggression, search, restraint, depredation, or seizure" by an individual not authorized by the "United States, a foreign government, or an international organization recognized by the United States to enforce law on the high seas."

Based on a report prepared for the International Group of P&I Clubs by Jonathan Benner of Reed Smith.