

CONGRESS PASSES COAST GUARD AUTHORIZATION BILL WITH HISTORIC OVERHAUL OF VESSEL DISCHARGES STANDARDS AND OTHER MEASURES

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Maritime Alert

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On Tuesday evening, the House passed S. 140, the vehicle for reauthorization of the U.S. Coast Guard, unanimously by voice vote. The bill's passage marks a successful compromise in a protracted struggle over the legislation's commercial vessel incidental discharge provisions. The Senate had previously cleared the bill on November 14th by a vote of 94-6. It is now headed to the President for his signature.

Negotiations had played out over the course of many months, with Senate Democrats citing objections to language within the section of the bill pertaining to the Vessel Incidental Discharge Act (VIDA) (Title IX of S.140). Under the new VIDA standards, the regulation of commercial vessel incidental discharges, including ballast water, are modified to task the Environmental Protection Agency (EPA) with setting discharge standards and the United States Coast Guard (USCG) with the responsibility of setting and enforcing compliance requirements. The EPA will have two years to promulgate regulations on discharge standards, followed by a two-year period for the USCG to promulgate regulations on compliance with, and enforcement of, those standards. VIDA also made permanent (1) an exemption from vessel discharge requirements for recreational vessels; and (2) an exemption from non-ballast water discharge requirements for small commercial vessels of less than 79 feet and fishing industry vessels regardless of length.

S.140 provides not only operating authorities for the USCG but also the Federal Maritime Commission (FMC), as well as the National Oceanic and Atmospheric Administration (NOAA) hydrographic services. The USCG and FMC are authorized through Fiscal Year 2019 and the NOAA hydrographic services are authorized through Fiscal Year 2023. The Coast Guard's \$7.9 billion operations allocation includes \$167 million to procure three new National Security Cutters and begin construction of a new Great Lakes icebreaker. The bill also directs the USCG to establish a Center of Expertise for Great Lakes Oil Spill Preparedness and Response.

The legislation also permits the U.S.-flagged fishing vessel America's Finest to obtain coastwise and fisheries privileges. The vessel has been under unprecedented scrutiny because, despite being constructed in a U.S. shipyard, the vessel failed to qualify as a U.S.-built vessel under USCG regulations due to the use of foreign-formed steel and foreign components in the vessel's construction. This provision grants the USCG the authority to revoke the vessel's fisheries and coastwise privileges if it is discovered that Fisherman's Finest, the owners of America's Finest, or Dakota Creek Industries, which constructed the vessel, knowingly violated the USCG U.S. build standards.

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The FMC provisions increase transparency requirements for the agency's meetings and amend the Shipping Act of 1984 to (1) prohibit joint negotiations among ocean carriers and tug operators; (2) subject joint negotiations among carriers for designated port services to general antitrust laws ("covered services" include cargo loading, berthing, bunkering services); and (3) prohibit ocean carriers from participating in simultaneous rate discussion agreements and vessel sharing agreements in the same trade if the Commission finds that such overlapping agreements would result in a reduction in competition, unreasonable reduction in service, or increase in transportation costs. In response to the bankruptcy of Hanjin Shipping in 2016, Congress has also required the Government Accountability Office to study the impacts to supply chains of a major ocean carrier bankruptcy.

Additionally, the bill reorganizes title 14 of the United States Code, codifies the Ports and Waterways Safety Act, and amends its enforcement provisions. It also addresses fishing vessel safety by extending the deadline for compliance with an alternative safety compliance program, revising how the program should be implemented for fishing vessels, and requiring the USCG to submit a report to Congress on the development of this alternate safety compliance program.

The nearly 400-page bill contains numerous other provisions that may be of interest to the maritime sector. The changes will have impacts on vessel owners and operators, common carriers, fishing vessel owners and operators, marine terminal operators, and many others in the maritime industry. Affected companies should carefully navigate the intricacies of the prescribed regulatory changes and position themselves for upcoming public participation in the process. As such, stakeholders should review the legislation for potential impacts on their activities. The bill in its entirety can be found [here](#).

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