



Testimony of Aaron Smith on behalf of the Offshore Marine Service Association

To:

The Maritime Safety Roundtable

Conducted by:

The U.S. House Committee on Transportation and Infrastructure, Subcommittee on Coast
Guard and Maritime Transportation

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Purpose and Summary:

Chairman Ezell, Ranking Member Carbajal, and Members of the U.S. House Committee on Transportation and Infrastructure and its Subcommittee on Coast Guard and Maritime Transportation, thank you for inviting the Offshore Maine Service Association to share its views on Marine Safety in the U.S.

Fortunately, there is more interest in the U.S. maritime industry than has ever been seen. However, there is an impediment to the promotion of our industry that, if not addressed, will prevent the U.S. maritime industry from becoming the national, homeland, and economic security asset that our nation needs it to be. Specifically, the U.S. Coast Guard (USCG) is the maritime industry's regulator; however, if one asks the Coast Guard whether a regulation helps or hurts the U.S. maritime industry, by law, they don't have an answer and don't have to answer. That's the problem I'm here to talk about.

As the Committee knows, the USCG is statutorily charged to “administer laws and promulgate and enforce regulations for the promotion of safety of life and property on and under the high seas and waters subject to the jurisdiction of the United States.”¹

In promulgating this mission, USCG has wide latitude in setting, implementing, and interpreting policy and regulation. Such autonomy should foster a climate that promotes safety and simultaneously promotes the growth of the U.S. maritime industry. Increasingly, however, the implementation of this mission acts not only as a constraint upon commerce, but upon the promotion of the U.S. maritime industry. Specifically, it is the experience of OMSA members that the current implementation of the Marine Safety mission contains a growing disconnect between:

- The requirements put in place on U.S.-flagged vessels and the lesser requirements put on competing foreign-flagged vessels and
- The reasoning and justification for regulation and policy and the effect or implementation of the regulation or policy.

The result is a regulatory environment that is unnecessarily rigid, difficult to navigate, and increasingly burdensome for compliant operators.

OMSA believes there is a solution to this problem, and it is not increased resources. Instead, OMSA believes that there must be a restatement of the statutory Marine Safety mission of the USCG. Specifically, this restatement must clarify that the USCG is required to consider the effect on the U.S. maritime industry whenever it issues, interprets, or implements regulations or policies.

Second, the USCG needs to be led by a civilian leader that is accountable to the Administration and Congress to correctly implement the Marine Safety mission of the U.S. Coast Guard. We believe these changes will greatly benefit and drive the future of the U.S. maritime industry.

Who We Are:

The Offshore Marine Service Association (OMSA) is the trade association representing the segment of the U.S. maritime industry that is engaged in offshore energy. More specifically, we represent approximately 130 companies that construct, own, operate, or provision the vessels that construct, repair, service, and supply the production, exploration, and development of offshore energy resources. These companies directly employ some 12,000 U.S. mariners operating roughly 1,200 U.S.-flagged vessels. These vessels are some of the most technologically advanced vessels in the world. Because of these advanced capabilities, OMSA member vessels are often chartered by or have their designs and equipment copied by the Armed Services for national and homeland security roles.

¹ 14 U.S.C. §102(b)(3)

In addition, and importantly as we as a nation look at how the U.S. maritime industry can better compete internationally, OMSA members have a unique perspective because more so than any other segment of the U.S. maritime industry, OMSA members have U.S.-built, U.S.-owned, coastwise-qualified U.S.-vessels working internationally.

OMSA members also have the negative experience of competing directly against foreign-flagged vessels in U.S. waters. This experience gives OMSA members a unique perspective of exactly how the best intentions and drive to provide for a safe marine environment can also adversely impact U.S. competitiveness and job creation when regulations are employed on only one set of market participants.

In addition, the experience of OMSA members is important to capture and categorize because many OMSA members are required to employ mariners with USCG Merchant Mariner Credentials (MMC) meeting the requirements of the International Maritime Organization (IMO) Standards of Training Certification, and Watchkeeping (STCW). These licenses are for unlimited tonnage and full oceans. This is important because these are the sorts of licenses that U.S. Maritime Administration (MARAD) has stated are necessary to serve as part of the Ready Reserve Force.

OMSA members could be even more of a national asset. However, our industry fails to reach its full potential because the well-intentioned regulations and policy of the USCG hinder our industry. This testimony provides examples regarding the disconnect between U.S. regulations and the lesser standard that is applied to foreign vessels and disconnects between the risk that a regulation or policy seeks to mitigate and the requirements of the regulation or policy.

Competitive Disadvantage Verses International Competitors:

All too often, USCG regulation and policy are applied only to U.S.-flagged vessels. These policies and regulations differ from and are almost always more stringent than the requirements placed on the foreign-flagged vessels that OMSA members compete with. OMSA's testimony notes the following examples.

Cyber Security:

Maritime cyber security is obviously a concerning threat vector. Just last month, the U.S. Coast Guard Cyber Command issued the 2025 edition of the *Cyber Trends and Insights in the Marine Environment*². This report found that year-over-year there was a 17 percent increase in reported maritime cyber incidents.

Thus, it makes sense that in February of 2024 the USCG issued a Notice of Proposed Rulemaking (NPRM) seeking "to update its maritime security regulations by adding regulations specifically focused on establishing minimum cybersecurity requirements for U.S.-flagged vessels, Outer Continental Shelf facilities, and U.S. facilities subject to the Maritime Transportation Security Act of 2002 regulations."³ This regulation included expensive reporting, training, planning, testing, and auditing cyber security requirements. It also went out of its way to exempt foreign-flagged vessels from the requirement. Thereby sending the message that foreign-flagged vessels are somehow less likely to have cybersecurity incidents or that such incidents will not impact U.S. commerce.

Obviously, this is not accurate. Just one month prior to the issuance of the NPRM, the journal *PLOS ONE* conducted a study finding that Russia, Ukraine, China, the United States of America, Nigeria, and Romania are responsible for almost all cyber attacks.⁴

Thus, it cannot be said that more cyberattacks originate from the United States than anywhere else. Furthermore, the U.S. and U.S. citizens are better prepared to defend against these threats. Specifically, the fraud prevention company Seon recently mined data from the Global Cyber Strategies Index and recent cyber-crime statistics to determine which

² 2025 *Cyber Trends and Insights in the Marine Environment*, 5th Edition (2026) U.S. Coast Guard Cyber Command, Available here: https://www.uscg.mil/Portals/0/Images/cyber/CTIME2025.pdf?ver=zqV7JCHYFUFYVbpuF_0TIg%3d%3d.

³ "Cybersecurity in the Marine Transportation System," U.S. Coast Guard, Department of Homeland Security 89 Federal Register 13,404–13,514, February 22, 2024 (Docket ID: USCG-2022-0802-0001)

⁴ An English press release about the study can be found [here](#).

countries are the best at protecting their citizens against cyberattacks. This analysis found that Denmark, Germany, and the United States are the best in the world in protecting against cyber threats.⁵

Again, this demonstrates that U.S.-flagged vessels, the U.S. mariners on these vessels, or their U.S. owners are in no way a greater threat or more vulnerable to face cyberattacks. As such, there is no reason for the USCG to promulgate regulations which only subject U.S.-flagged vessels to cyber reporting requirements.

While there is a wealth of evidence demonstrating why foreign-flagged vessels should not be exempt, the USCG in promulgating the regulation did not provide a justification for excluding foreign-flagged vessels from the requirements contained in the NPRM. In fact, the NPRM simply states:

Cyber regulations for foreign-flagged vessels under domestic law may create unintended consequences with the ongoing and future diplomatic efforts to address maritime cybersecurity in the international arena.⁶

This is not a justification. At best, it is the pronouncement that putting foreign-flagged vessels on a level playing field may make the Government's job harder in the future. The possibility that international negotiations may be more difficult in the future is a fair price for protecting the U.S. marine transportation system from the impacts of a cyberattack on foreign vessels in U.S. waters.

In the NPRM, the USCG also attempted to argue that applying the cybersecurity regulations to foreign-flagged vessels would be duplicative of IMO requirements, stating:

The IMO addressed cybersecurity measures for foreign-flagged vessels through MSC-FAL.1/Circ.3 and MSC Resolution 428(98). Therefore, based on IMO guidelines and recommendations, an SMS approved under the ISM Code should address foreign-flagged vessel cybersecurity.⁷

However, that assertion is inaccurate. The IMO's "Guidelines on Maritime Cyber Risk Management" states:

The Guidelines provide high-level recommendations on maritime cyber risk management to safeguard shipping from current and emerging cyberthreats and vulnerabilities. The Guidelines also include functional elements that support effective cyber risk management.⁸

"Guidelines" and "high-level recommendations" from an international body to member states are in no way similar to prescriptive regulations from the USCG. Specifically, the updated version of these guidelines lack the following requirements, all of which are included in the USCG regulations:

- Flag-state approved cybersecurity plan,
- Flag-stated approved cyber incident response plan,
- Prescriptive requirements for the qualifications of the company's Cyber Security Officer (CySO),
- Definitions for and how sensitive security information is handled,
- Prescriptive requirements for cyber security audits,
- Prescriptive requirements for auditor personnel qualifications,

⁵ The study can be viewed [here](#).

⁶ "Cybersecurity in the Marine Transportation System," U.S. Coast Guard, Department of Homeland Security 89 Federal Register 13,404–13,514, February 22, 2024 (Docket ID: USCG-2022-0802-0001)

⁷ *Id.*

⁸ "Guidelines On Maritime Cyber Risk Management," MSC-FAL.1/Circ.3/Rev.1, (2021) International Maritime Organization, Available here: <https://www.wcdn.imo.org/localresources/en/OurWork/Facilitation/Facilitation/MS-C-FAL.1-Circ.3-Rev.1.pdf>.

- Prescriptive requirements for cyber security drills,
- Prescriptive requirements for cyber security exercises,
- Prescriptive requirements regarding how the CySO is able to communicate with the vessel owner,
- Prescriptive requirements for account security measures,
- Prescriptive requirements for device security measures,
- Prescriptive training requirements,
- Identification and mitigation of all known exploited vulnerability (KEVs) in critical IT or OT systems,
- A requirement for expensive penetration testing,
- Prescriptive requirements for routine system-maintenance measures,
- A requirement that vessel operators consider cybersecurity capability as criteria for evaluation to procure IT and OT systems or services,
- A requirement that vessel operators establish a process through which all IT and OT vendors or service providers notify the owner or operator or designated CySO of any cybersecurity vulnerabilities or reportable cyber incidents, and
- Prescriptive requirements for physical security measures.

Further, IMO’s resolution MSC.428(98) is equally ineffective. This single-page document:

1. AFFIRMS that an approved safety management system **should** take into account cyber risk management in accordance with the objectives and functional requirements of the ISM Code;
2. **ENCOURAGES** Administrations to ensure that cyber risks are **appropriately** addressed in safety management systems no later than the first annual verification of the company's Document of Compliance after 1 January 2021; (emphasis added, capitalization original).⁹

“Should” does not equal “shall” and an IMO body encouraging member states to “appropriately” address cybersecurity does not equal a USCG requirement. Thus, the USCG cannot state that foreign-flagged vessels are being held to the same standard.

Furthermore, evidence suggests that maritime cyberattacks almost always attack a system (such as GPS or Automatic Identification System (AIS)) or a specific region, not a specific flag of vessel. Specifically, in 2025 the GAO conducted a study on cyber security risks in the maritime industry and found that even the USCG knows there is a risk of cyberattacks on a foreign-flagged vessel in U.S. waters:

Coast Guard officials and one nonfederal organization we met with told us that a cyberattack on [operational technology] used by a large vessel could cause that vessel to crash into a large bridge. This could result in an impact similar to the March 2024 non-cyber incident in which a major bridge in Baltimore, Maryland collapsed. . . . Researchers from Rutgers University raised the possibility of a similar attack that blocks a port entryway.¹⁰

Others within the U.S. Department of Homeland Security (DHS) also saw the need to expand cyber security regulations to foreign-flagged vessels. Specifically, almost concurrently to the above-described USCG NPRM, a separate NPRM was issued by DHS’ Cybersecurity and Infrastructure Security Agency (CISA) regarding cyber

⁹ “Maritime Cyber Risk Management in Safety Management Systems,” ANNEX 10 Resolution MSC.428(98), (2017) International Maritime Organization, Available here: [https://wwwcdn.imo.org/localresources/en/OurWork/Security/Documents/Resolution%20MSC.428\(98\).pdf](https://wwwcdn.imo.org/localresources/en/OurWork/Security/Documents/Resolution%20MSC.428(98).pdf).

¹⁰ “Additional Efforts Needed to Address Cybersecurity Risks to the Maritime Transportation System” (2025) United States Government Accountability Office. Available here: <https://www.gao.gov/assets/gao-25-107244.pdf>.

incident reporting for the entirety of critical infrastructure in the U.S.¹¹ This NPRM—which has never been finalized or implemented—did not exempt foreign-flagged vessels from its cyber security requirements.

The competitive disadvantage these regulations place upon the U.S. maritime industry are massive. The NPRM estimated the compliance costs to the U.S. maritime industry to be \$562.7 million over 10 years. However, the Final Rule increased this estimate to \$1.246 billion over 10 years.¹² Even this estimate does not fully reflect the cost of these regulations. As one specific example, the Final Rule estimates that Penetration Testing will cost each vessel \$13,200.¹³ For many vessels, this is a vast underestimate.

In creating its estimate, the USCG simply estimated that penetration tests would cost a base-level of \$5,000 and subsequently assumed that there would be an additional cost of \$50 per IP address associated with the vessel, for a total cost of \$13,200. That is not an accurate description of the pricing of penetration tests. Instead, OMSA members report that these costs are dependent upon the vessel's network architecture, number of externally accessible systems, IT/OT integration, and whether testing includes onboard operational technology.

As modern offshore vessels have a massive number of integrated systems which directly feed into or control the vessel's OT, the quotes provided to OMSA members for modern offshore vessels range from \$25,000 to \$45,000 per vessel. As penetration testing is one of the primary cost drivers of the regulation, this disparity means that it is very possible that the regulation could end up costing U.S. vessel owners \$2 billion or more over 10 years.

For those U.S. vessel operators that compete with foreign-flagged vessels, these costs must be absorbed by the vessel operators because their international competitors are not subject to the same requirements. This makes operating U.S. vessels less profitable and discourages investment in the U.S. maritime industry. As such, this regulation is an unfortunately great example of how the simple promulgation of a well-intended regulation by the USCG is harming the development of the U.S. maritime industry.

Safer Seas Act Camera Requirements:

In a more troubling instance of the USCG failing to apply regulations to foreign-flagged vessels that compete with U.S.-flagged vessels, the USCG is failing to enforce the statutory requirements of 46 U.S.C. § 4901 (c)(2) on foreign-flagged vessels working in the United States.

As the Committee will remember, in 2022 it passed the Safer Seas Act as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117-263). This landmark legislation established comprehensive new requirements to prevent, report, and respond to sexual assault and sexual harassment in the maritime industry. This legislation also acknowledged that applying this regulation to only U.S.-flagged vessels would not have fully accomplished its mission and inadvertently harmed the U.S. maritime industry, thus it applied the requirement that vessels that have berths for no less than 10 persons that work in U.S. offshore energy projects install “video and audio surveillance equipment shall be placed in passageways on to which doors from staterooms open. Such equipment shall be placed in a manner ensuring the visibility of every door in each such passageway” equally to U.S.-flagged and foreign-flagged vessels.¹⁴ The statutory text stated:

The requirements in this section shall apply to—

- (1) documented vessels with overnight accommodations for at least 10 individuals on board that are—
 - (A) on a voyage of at least 600 miles and crosses seaward of the Boundary Line; or

¹¹ “Cyber Incident Reporting for Critical Infrastructure Act (CIRCIA) Reporting Requirements,” April 4, 2024, Cybersecurity and Infrastructure Security Agency (Docket ID: CISA-2022-0010-0163).

¹² “Cybersecurity in the Marine Transportation System,” U.S. Coast Guard, Department of Homeland Security January 17, 2025 (Docket ID: USCG-2022-0802-0107).

¹³ *Id.*

¹⁴ 46 U.S.C. § 4901 (c)(2)

- (B) at least 24 meters (79 feet) in overall length and required to have a load line under chapter 51;
- (2) documented vessels of at least 500 gross tons as measured under section 14502, or an alternate tonnage measured under section 14302 as prescribed by the Secretary under section 14104 on an international voyage; and
- (3) vessels with overnight accommodations for at least 10 individuals on board that are operating for no less than 72 hours on waters superjacent to the outer Continental Shelf (as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)).¹⁵

This requirement is expensive. A modern OSV will have berthing space for 30 to 60 persons in at least 15 to 30 staterooms.¹⁶ As a result, the average modern OSV will require eight to 20 cameras and audio recording devices to cover the two to five corridors with accommodation berths on them these requirement will cost—for the average OSV—\$21,000 to \$55,000 per vessel in installation costs. In addition, OMSA estimates \$2,500 to \$8,500 annually in data storage. Thus, over a 10-year regulatory cost window, requirement will cost \$46,000 to \$135,000. When extrapolated over just the 650 OSVs in the U.S.-flagged fleet that is a cost of \$29.9 million to \$87.75 million.

Despite the clear Congressional intent, USCG refuses to enforce this requirement on foreign-flagged vessels. In fact, it was recently revealed to OMSA that the USCG does not inspect cameras on foreign-flagged vessels no even ask the foreign-flagged vessels if they are installed. The requirement is not even included on the USCG Port State Inspection Checklist.

In practice, this means that the foreign-flagged OSVs that work in U.S. waters have a competitive advantage over U.S.-flagged vessels that are required to comply—and face proactive USCG inspections upon—this expensive requirement.

OSV Chemical Code:

The USCG is implementing the international requirements for how offshore energy vessels are allowed to carry bulk liquid cargos classified as hazardous or noxious in a way that no other flag state is implementing. This implementation again degrades the U.S. maritime industry by putting U.S.-flagged vessels at a competitive disadvantage. Specifically, the USCG refuses to accept or even consider mitigation plans, equivalencies, or history of safe carriage of chemicals that are commonly done by other flag states. As a result, foreign vessels—that don't have to meet these standards receive work and in some cases U.S.-flagged vessels are forced to leave the U.S.-flag in order to work.

This issue has evolved over nearly two decades and concerns how the USCG implements the IMO's MARPOL Annex II.¹⁷ Many of the chemicals used in offshore energy are regulated as Noxious Liquid Substances (NLS) under MARPOL Annex II because, if discharged into the sea, they pose risks to the marine environment. Without a special regime, an OSV carrying these products would have to comply with the International Bulk Chemical (IBC) Code, which was written for dedicated chemical tankers. That would be impractical and would effectively prevent many offshore support operations because OSVs are not designed nor have the space to handle these materials.

¹⁵ 46 U.S.C. § 4901 (a)

¹⁶ However, it should be noted there are disagreements within both the USCG and industry if call of these staterooms are covered by the statutory requirement or if only the staterooms occupied by the vessel's marine crew are covered by the requirement. As this is currently an open question, this testimony assumes that all staterooms are covered by the requirement, however, that is not an indication of OMSA or OMSA member's position.

¹⁷ International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), Annex II—Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk. Available here: https://www.imo.org/en/about/conventions/p.s/international-convention-for-the-prevention-of-pollution-from-ships-%28marpol%29.aspx?utm_source.

To solve this problem, the IMO created a separate regulatory framework specifically for OSVs in 1989 adopting Resolution A.673(16), “Guidelines for the Transport and Handling of Limited Amounts of Hazardous and Noxious Liquid Substances in Bulk on Offshore Support Vessels.”¹⁸ Rather than requiring compliance with the IBC Code, the Guidelines allowed OSVs to carry a limited list of offshore chemicals under modified design and operational standards. The USCG implemented this IMO requirement through Policy Letter 03-12.¹⁹

The problem with A.673 was that the list of approved cargoes became increasingly outdated as the offshore industry evolved dramatically. Many new products simply were not on the A.673 cargo list, even though they presented risks similar to already-approved products. The result was years of case-by-case approvals and inconsistent international implementation. To correct this problem, Beginning in the mid-2000s, the IMO substantially revised MARPOL Annex II and the pollution categorization system for NLS. At the same time, the IMO created a much more sophisticated product evaluation process, allowing new offshore chemicals to be evaluated and assigned pollution categories much more efficiently.

Recognizing these shortcomings, the IMO adopted Resolution A.1122(30) in December 2017, creating the Code for the Transport and Handling of Noxious Liquid Substances in Bulk on Offshore Support Vessels (Hereafter: the OSV Chemical Code).²⁰ The OSV Chemical Code greatly expanded the number of cargos that could be carried on an OSV, formalized many processes, and international implementation strategies. The USCG issued its Policy Letter implanting these changes soon thereafter, called Policy Letter 03-23.²¹

The Policy Letter explains how the USCG will issue an OSV Chemical Code Certificate (Certificate of Fitness) and allows qualifying vessels to use the self-classification procedures of the OSV Chemical Code. Importantly, the USCG expressly states that carriage under Policy Letter 03-12 CH-1 (IMO Resolution A.673(16)) remains an available option, giving owners two regulatory pathways depending on their operations and cargoes. While the USCG states this Policy Letters is intended to expanded number of cargos and providing multiple pathways, that is not accurate. Policy Letter 03-23 is rigid and does not allow for equivalencies or alternative pathway mechanisms, with the only other option being following the Policy Letter 03-12, CH-1, which was declared to be outdated and unworkable, hence the reason it was superseded.

As the OSV Chemical Code is an IMO requirement, it could be assumed that every OSV around the world would be found to have trouble complying with the requirements. However, that is not the case. Instead, only U.S.-flagged OSVs have compliance problems, because most other flag states are providing vessels under their flags with realistic compliance opportunities. Specifically, in the last few years flag states have listed at least 15 waivers related to the IBC Code on the IMO waiver register. For example, the Bourbon Calm (IMO 9530125) and Bourbon Clear (IMO 9530113)—hold explicit Bahamas-notified exemptions from IBC Code 15.12.2 (Vapor Return), MARPOL Annex II Regulation 12 (Stripping), and OSV Chemical Code 2.9.1.1 (Tank Elevation) to accommodate the carriage of Methyl Alcohol-based mixtures. These international filings demonstrate that these vessels have achieved an “equivalent level

¹⁸ International Maritime Organization, Resolution A.673(16), Guidelines for the Transport and Handling of Limited Amounts of Hazardous and Noxious Liquid Substances in Bulk on Offshore Support Vessels, adopted by the IMO Assembly at its 16th Session on 19 October 1989. Available here: <https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.673%2816%29.pdf?>

¹⁹ U.S. Coast Guard, Office of Design and Engineering Standards (CG-ENG), CG-ENG Policy Letter 03-12, Implementation of IMO Resolution A.673(16), Guidelines for the Transport and Handling of Limited Amounts of Hazardous and Noxious Liquid Substances in Bulk on Offshore Support Vessels, for New and Existing U.S. Offshore Supply Vessels (2012).

²⁰ International Maritime Organization, Resolution A.1122(30), Code for the Transport and Handling of Hazardous and Noxious Liquid Substances in Bulk on Offshore Support Vessels (OSV Chemical Code), adopted by the IMO Assembly at its 30th Session on 6 December 2017. Available here: <https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.1122%2830%29.pdf?>

²¹ U.S. Coast Guard, Office of Design and Engineering Standards (CG-ENG), CG-ENG Policy Letter No. 03-23, Guidance for the U.S. Implementation of the Code for the Transport and Handling of Noxious Liquid Substances in Bulk on Offshore Support Vessels – OSV Chemical Code (Nov. 20, 2023). Available here: <https://www.dco.uscg.mil/Portals/9/CG-ENG%20Policy%20Letter%2003-23.pdf?>

of safety” but don’t meet the letter of the IMO OSV Chemical Code. The USCG refuses to offer similar mitigation to U.S.-flagged vessels, forcing them to meet impossible requirements.

Additionally, most European countries have agreed among themselves that the OSV Chemical Code is not applicable when existing vessels operate within their waters. The USCG requires every vessel to comply.

The costs of compliance for U.S. vessels are detrimental. One OMSA member reported that it would cost \$500,000 to update its deck tanks to comply with Policy Letter 03-23 just to carry chemicals it has a safe record of carrying. The vessel’s below-deck tanks will cost approximately \$5 million to meet the requirements, again just to carry chemicals it had a track record of safely carrying.

Again, U.S. vessels cannot endure these costs and compete with vessels that do not have to endure these costs. Thus, enforcing these requirements doesn’t make the industry safer, it simply displaces U.S. vessels from being able to conduct operations because they are priced out of the market.

Requirement that Non-Operating Individuals have a Merchant Mariner Credential

The USCG’s well-intended efforts do not stop with vessels, the USCG also harms U.S. marine workers by forcing them to hold documents that their foreign competitors are not forced to hold. Specifically, federal statute requires mariners working onboard commercial vessels hold a Merchant Mariner Credential (MMC) appropriate for their rank. Recently, the USCG extended this requirement from the vessel’s marine crew—see below—to everyone onboard the vessel (the non-mariners are referred to as “persons in addition to crew” or “PICs”). This change requires non-mariners to endure expensive classes and months of delays waiting for responses from the USCG to receive credentials that have no bearing on their role and provide no safety benefit. The USCG is the only nation to make this requirement, thereby adding costs to U.S. operators and employees that their foreign counterparts do not have.

Prior to 1983, the statute clearly stated that only the marine crew needed an MMC. In 1983, the statute was recodified in what was supposed to be a reorganization without changes to the meaning. During this process, the phrase of “employed or engaged” was added to 46 U.S.C. § 8701. To some, this seemed to imply all persons on board a vessel were required to have an MMC. But because of this ambiguous nature, and questionable codification, this requirement was not enforced until 2018. That enforcement quickly stopped when legislation was enacted preventing the USCG from enforcing that requirement until the issue could be studied.

However, there remain questions surrounding whether this statute requires PICs to hold an MMC. 46 U.S.C. § 8701(b) requires “the document must authorize service **in the capacity** for which the holder of the document is engaged or employed” (emphasis added). That requirement is straightforward for positions within the marine crew, there are MMC endorsements for masters, mates, engineers, ABs, and every other marine crew position. But there is not an MMC endorsement for a data processor, a logistics coordinator, or dozens of other positions that are found within PIC ranks.

Furthermore, there is no safety benefit to these individuals holding an MMC. MMC endorsements primarily certify that the holder has completed the training requisite for the position. As indicated by the titles above, PICs do not operate or maintain marine machinery and do not navigate the vessel or interact with the vessel’s propulsion equipment, therefore they do not need marine training. That is not to say they are untrained or certified, there are industry-based, internationally recognized training and certification programs for almost every PIC position.

Furthermore, the USCG simply does not have the capacity to issue MMCs to these PICs. The USCG’s National Maritime Center (NMC) estimates that there is a MMC application backlog of more than 18,000, with 300 new applications coming in per day. Thus, the NMC estimates that current processing times will extend to eight to 12 months. Considering these backlogs and delays, there is simply no way for the NMC to handle providing MMCs to the 20,000 to 40,000 PICs estimated to work onboard offshore energy vessels.

Even if the USCG had the capacity to issue the MMCs to these individuals, there is an insufficient amount of training courses that the PICs would need to attend in order to apply for their MMC. There are approximately 35 schools

conducting STCW basic safety training. Each school is required to have its facility approved by the USCG before it can conduct these courses and part of that approval process is dictating how many students can attend the course at any one time, based upon the square footage of the room. Assuming each has a maximum class size of 15—which is a generous, if not incorrectly high assumption—and assuming each school teaches basic safety training 1.5 times per month, there would be only 9,500 training seats in the United States per year. That is not enough to cover the 20,000 to 40,000 PICs that work in the industry currently. In fact, there would need to be 50 schools, teaching two classes a month to 18 students just to teach 21,000 PICs.

Nor is this requirement feasible from a cost perspective. The STCW Basic Safety Training tuition is \$900 to \$1,500 per PIC, when travel, lodging, and food are included, that amount is at least double. Thus, enforcing this unnecessary training requirement will cost each PIC \$3,000 in training costs. When extrapolated over the potential PIC population, that is a \$60 million cost to industry at the low end of the estimate.

For these reasons, no other nation requires PICs to secure a mariner license from their national licensing agencies and if the USCG starts to enforce this requirement, it will create another massive competitive disadvantage for U.S. vessels and their American crews.

Type Approval Regulations:

There is an entire set of regulations which create an additional standard for equipment that is utilized on U.S.-flagged over and above the international requirements for this equipment. These regulations—generally called “type approval regulations”—require the U.S. Coast Guard (USCG) approve a type of equipment before this equipment can be installed or used on a U.S.-flagged vessel, even when that equipment has been audited and approved by international bodies to meet international requirements.

More specifically, this system increases industry costs and burdens by causing suppliers to incur unnecessary and duplicative costs associated with securing USCG type approval. These costs are passed along to U.S. vessel operators which in turn make U.S.-flagged vessels less competitive when compared to international vessels. Further, the type-approval system in some instances has led to out-of-service time for U.S. vessels, has disrupted maritime commerce, and has resulted in arbitrary detentions, fines and penalties without improving safety, functionality or a reduction of risk.

In practice, this process only causes delays and increased costs without any guarantee that the USCG created process is any better than the industry standard. Further, because manufacturers often cannot make a financial justification for complying with the USCG type-approval process, they will simply skip seeking or securing USCG approval. As a result, U.S. vessel owners are deprived—or at the very least delayed—from being able to purchase the best equipment in the market. In turn, this inability to purchase the equipment that international competitors purchase means that U.S. vessel operators must pay more for sometimes inferior equipment, thereby putting them at a competitive disadvantage.

Disconnects Between Purpose of Regulation and Implementation of the Regulation:

In addition to the numerous disconnects between the standards that are applied to U.S.-flagged vessels and foreign-flagged vessels, another way that the USCG’s implementation of its Marine Safety mission is when the reasoning and justification for regulation and policy becomes disconnected from the effect or implementation of the regulation or policy. Unfortunately, there are numerous examples of this disconnect that OMSA members face, a few of these examples are included below to demonstrate how this component of the USCG’s Marine Safety mission harms the U.S. maritime industry.

In these instances, the USCG’s Marine Safety mission would be greatly enhanced by having civilian control over the USCG able to ensure that the national policies and priorities are reflected through the USCG’s mission.

Notice of Arrival:

In 2006, Congress passed the Security and Accountability for Every Port Act of 2006.²² Section 109 of this legislation was as intended to close a perceived security gap by requiring the USCG to issue regulations requiring foreign vessels operating on the U.S. Outer Continental Shelf (OCS) submit Notices of Arrival (NOA). Specifically, the legislation required:

Not later than 180 days after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall update and finalize the rulemaking on notice of arrival for **foreign vessels** on the Outer Continental Shelf (emphasis added).²³

A NOA is a report submitted electronically, usually by the vessel's crew that must be submitted 96 hours before arrival on the U.S. OCS (or before the vessel leaves its last port if the voyage is less than 96 hours). The report generally includes information such as identifying information about the vessel and the vessel's owner, its last five ports, where it is going, the crew and passengers, and cargo information.

In drafting the implementing regulations, the USCG went beyond this clear statutory purpose and the implementing regulations also swept in U.S.-flagged vessels moving between U.S. ports and OCS facilities and between multiple OCS facilities.²⁴

While not usually difficult to complete, the NOAs can become cumbersome for OSV crews to submit because these vessels are moving between OCS facilities and port facilities often, sometimes multiple times a day.

By applying this requirement to U.S.-flagged vessels, the USCG missed the purpose and Congressional intent of the Security and Accountability for Every Port Act of 2006 which was designed to provide more marine domain awareness for the USCG to monitor threats from foreign vessels entering U.S. waters, not U.S. vessels moving within U.S. waters. As a result, in 2012, Congress passed Section 704 of the Coast Guard and Maritime Transportation Act of 2012, which provides:

The regulations required under section 109(a) of the Security and Accountability For Every Port Act of 2006 dealing with notice of arrival requirements for foreign vessels on the Outer Continental Shelf shall not apply to a vessel documented under section 12105 of title 46, United States Code, unless the vessel arrives from a foreign port or place.²⁵

However, in early 2015, when the USCG promulgated regulations to enact this change, they severely limited the exemption, applying it only to "A passenger or offshore supply vessel when employed in the exploration for or in the removal of oil, gas, or mineral resources on the continental shelf."²⁶ This implementing regulation greatly and inappropriate limited the provision Congress had enacted.

Further, USCG policy further limited the provision applying it only when passenger or offshore supply vessels are operating within the same port. As such, what was twice declared by Congress to be a requirement on foreign-flagged vessels or U.S.-flagged vessels that were returning from international travel became a requirement on many U.S.-flagged vessels. As one example, the 1st USCG District issued the following text as part of a Marine Safety Information Bulletin:

In recent months, some Offshore Supply Vessels (OSVs) greater than 300 gross tons arriving from outside of the First Coast Guard District have failed to submit a Notice of Arrival (NOA). The purpose

²² Security and Accountability for Every Port Act of 2006, Pub. L. No. 109-347, § 109(a), 120 Stat. 1884, 1893–94 (2006). Codified at 46 U.S.C. § 70001 note.

²³ *Id.*

²⁴ 33 C.F.R. Part 160, Subpart C

²⁵ Pub. L. 112–213, title VII, §704, Dec. 20, 2012, 126 Stat. 1580

²⁶ 33 C.F.R. § 160.204(a)(1)

of this Bulletin is to remind the commercial vessel industry of their obligation to submit a Notice of Arrival as required by Title 33 of the Code of Federal Regulations (CFR), Part 160.212(a).

All commercial vessels greater than 300 gross tons, measured under either domestic or international tonnage, shall submit an electronic NOA via the National Vessel Movement Center's website in accordance with the timetable below prior to entering a new Captain of the Port zone.

If your voyage time is—

1. 96 hours or more; Then you must submit an NOA at least 96 hours before arriving at the port or place of destination.
2. Less than 96 hours, then you must submit an NOA before departure but at least 24 hours before arriving at the port or place of destination.²⁷

Not only did the USCG apply this provision to entire classes of U.S.-flagged vessels that were expressly excluded by Congress, the USCG then further harmed U.S.-flagged vessels via its review of the NOA reports filed by U.S.-flagged offshore energy vessels. The USCG started to heavily mine these NOA reports to look for other perceived violations. And when actual or perceived violations were found, the USCG would fine or impound the vessels.

Obviously, this was not the purpose of the NOA requirement. The statutory requirement was enacted to provide for more tools to fight terrorism and foreign intrusion into our ports. However, the USCG implementation of this requirement instead became a way to take punitive actions against U.S. vessels.

As such, this is yet another example where the USCG's implementation of the Marine Safety mission harms the domestic maritime industry. As such, OMSA finds this to be another example of why the Marine Safety Mission needs to be amended to include a requirement that the USCG implement this mission "with due regard" to the promotion of the U.S. maritime industry and an example of where OMSA believes the Marine Safety mission of the USCG would be enhanced if it was placed under civilian leadership.

Chemical Code Policy Letters:

Another example of where the USCG implantation of policy runs counter to the intent of the regulation is in the previously described OSV Chemical Code. As this issue has been described in detail above, the background will not be redescribed here. However, within this area there is a very specific example of how the purpose and implementation are at such cross purposes that it needs to be noted.

Specifically, as said above, the purpose of the IMO's OSV Chemical Code was to greatly expand the number of chemicals that OSVs would be able to carry. Specifically, the OSV Chemical Code states: "recognizing the need to improve the provisions of the [IMO Resolution A.673(16)] in light of the evolution of the offshore industry and experience gained from implementing those Guidelines."²⁸ The second important passage is in the OSV Chemical Code where the IMO explains:

It is recognized that the technology of the offshore industry is complex and continuously evolving... To meet the needs of the industry, the present Code should not remain static...

²⁷ First Coast Guard District Marine Safety Information Bulletin 23-006 (September 11, 2023)

²⁸ International Maritime Organization, Resolution A.1122(30), Code for the Transport and Handling of Hazardous and Noxious Liquid Substances in Bulk on Offshore Support Vessels (OSV Chemical Code), adopted by the IMO Assembly at its 30th Session on 6 December 2017. Available here: <https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.1122%2830%29.pdf?>

Amendments to the Code involving provisions for new cargoes will be circulated periodically as new cargoes are proposed for carriage and the provisions are developed.²⁹

As previously stated, the USCG promulgated Policy Letter 03-23 to implement the OSV Chemical Code. However, this Policy Letter has served to restrict the number of chemicals that U.S.-flagged vessels can carry. Specifically, halting vessels from carrying chemicals they had previously been allowed to carry, thereby directly contradicting what the OSV Chemical Code and Policy Letter 03-23 were supposed to provide for.

Solution: Amending the Marine Safety Mission and Establishing Civilian Control of Coast Guard:

To address these issues, the statutory Marine Safety mission of the USCG should be amended to ensure that the in addition to its current requirement providing for the “promotion of safety of life and property on and under the high seas and waters subject to the jurisdiction of the United States” the USCG must also consider the effect of its regulations and policy on the U.S. maritime industry.³⁰ This amendment to the statutory mission would mirror existing language already in the U.S. Code which requires the USCG to:

develop, establish, maintain, and operate, **with due regard to the requirements** of national defense, aids to maritime navigation, icebreaking facilities, and rescue facilities for the promotion of safety on, under, and over the high seas and waters subject to the jurisdiction of the United States (Emphasis added).³¹

Such an amendment to the Marine Safety mission of the USCG would not mean that the USCG is taking over the U.S. Secretary of Transportation’s—acting through MARAD—statutory responsibility to implement the national policy set forth in 46 U.S.C. § 50101.³² Instead it simply directs the USCG to consider the impact of its regulations and policies on the U.S. maritime industry, just as the USCG’s statutory aids to navigation, icebreaking, and rescue mission does not take over the U.S. Department of Defense’s responsibility to provide for our nation’s national security.

Additionally, there is no way for MARAD to protect the U.S. maritime industry for inadvertent consequences of USCG regulations or policies because—as evidenced by the above examples—many times it is not a USCG regulation that has the negative impact. Instead, it is a USCG Policy Letter, Marine Safety Information Bulletin (MSIB), or other such document that does not go through the interagency review process. Therefore, there is no chance for MARAD to review or comment on these policy documents. It therefore makes sense to have the mission amendment to require the mission must be implemented with an eye toward promotion of US maritime industry.

²⁹ *Id.*

³⁰ 14 U.S.C. § 102(b)(3)

³¹ 14 U.S.C. § 102(b)(4)

³² 46 U.S.C. § 50101. Objectives and policy

(a) Objectives.—It is necessary for the national defense and the development of the domestic and foreign commerce of the United States that the United States have a merchant marine—

- (1) sufficient to carry the waterborne domestic commerce and a substantial part of the waterborne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of the waterborne domestic and foreign commerce at all times;
- (2) capable of serving as a naval and military auxiliary in time of war or national emergency;
- (3) owned and operated as vessels of the United States by citizens of the United States;
- (4) composed of the best-equipped, safest, and most suitable types of vessels constructed in the United States and manned with a trained and efficient citizen personnel; and
- (5) supplemented by efficient facilities for building and repairing vessels.

Coupling this change in mission with the establishment of a Secretary of the Coast Guard would further provide for the promotion of the U.S. maritime industry. As stated in Force Design 2028, “civilian leadership and control of the military is a fundamental construct within the Constitution. It ensures that the Nation's Armed Forces are subordinate to the elected representatives of the American people.”³³ This same report also correctly notes that:

The other branches of the Armed Forces have Service Secretaries that provide direct civilian political leadership, control, oversight, accountability, and advocacy. The Coast Guard does not, and despite the Service's efforts to succeed, that has contributed to its neglect and drift for decades.³⁴

By establishing a single official—accountable to the Administration and Congress—responsible for USCG performance, this position would improve oversight, establish a strategic direction, and advocate for the USCG's priorities within the Administration. Moreover, USCG is unique among the armed services in that it has a regulatory mission, not just national security or homeland security missions. This regulatory mission is very much a civilian function and should, therefore, be under the control of civilian leadership.

This proposal would be even further enhanced if the Secretary of the Coast Guard was assisted by an Assistant Secretary specifically charged with overseeing the USCG's unique Marine Safety mission.

One of the biggest benefits for the domestic maritime industry of this system would be the consistent administration of the USCG's nationwide regulatory programs. As demonstrated above, today, many USCG regulatory decisions are implemented through geographically dispersed districts and local Captain of the Port zones. While operational flexibility is essential for responding to local conditions, regulated industries frequently encounter differing interpretations of national policy.

As demonstrated above, OMSA members also see inconsistent application of guidance documents, and varying enforcement practices among districts. These inconsistencies can create unnecessary compliance costs, regulatory uncertainty, and competitive disparities for maritime operators conducting business across multiple USCG jurisdictions.

A civilian Secretary and Assistant Secretary for Marine Safety would be uniquely positioned to ensure that the established clear national policy priorities—namely, the promotion of the U.S. maritime industry—are not overwhelmed by the implementation of other requirements—such as the OSV Chemical Code, MMC requirements, and the other examples listed above. oversee implementation across all Coast Guard components, and ensure that regulations and guidance are administered consistently throughout the Service. This benefit would not only happen when regulations and policies are developed but would be continuous by directing periodic reviews of district implementation, promoting standardized policy guidance, and improving internal oversight mechanisms.

Finally, a Secretary of the Coast Guard would not eliminate the need for district commanders to exercise judgment based on local risks and operational conditions. Rather, the Secretary would strengthen the distinction between appropriate operational discretion and inconsistent regulatory administration. National regulations should produce nationally consistent outcomes. By providing dedicated civilian leadership focused on the Coast Guard's extensive civil responsibilities, a Secretary would help ensure that the Service speaks with one regulatory voice while preserving the operational flexibility necessary to carry out its diverse missions.

For all of these reasons, OMSA believes that a restated Marine Safety mission and the establishment of a Secretary of the Coast Guard are vital changes necessary to ensure that the U.S. maritime industry is grow and to fulfil the national policy of being a national, homeland, and economic security driver. We look forward to working with the

³³ U.S. Department of Homeland Security & U.S. Coast Guard, Force Design 2028 Executive Report (May 21, 2025), Available at: https://media.defense.gov/2025/May/27/2003724531/-1/-1/0/REPORT%20-%20FD28%20EXECUTIVE%20REPORT%20_1166_V14.PDF.

³⁴ *Id.*

Committee to make these changes a reality so that the efforts to promote the U.S. maritime industry are not inadvertently hindered by the USCG's good faith efforts to provide for safety.