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Legislative update

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The recently-enacted Frank LoBiondo Coast Guard Authorization Act of 2018 included a number of provisions impacting the maritime community. The most comprehensive impact involved major changes to the ballast water management system (BWMS) requirements, which I addressed in a previous article. This article will address other provisions of interest in the Act.

US Coast Guard provisions

A provision (46 USC § 3305(d)) was enacted to improve the consistency in marine inspections between Officers in Charge, Marine Inspections (OCMIs) and deduce disparities between USCG Sectors. It would also require the Coast Guard to provide persons affected by a decision or action by an OCMI or the Marine Safety Center all information necessary for such person to exercise any right to appeal such decision or action. It is unclear how this provision interacts with the Freedom of Information Act (FOIA).

A manufacturer, distribution, or dealer that installs propulsion machinery and associated starting controls on a covered recreational vessel is required to equip such vessel with an engine cut-off switch and engine cut-off switch link that meet American Boat and Yacht Council Standard A-33 as in effect on the date of enactment of this Act (4 December 2018). The requirement enters into effect on 4 December 2019. Unfortunately, the provision (46 USC § 4312) does not provide for later amendments to the engine cut-off switch standard.

The statute relating to logbook entries (46 USC § 11304) was amended to clarify that logbooks may be kept in electronic form and to clarify the requirement for entries regarding illness of or injury to a seaman, including the nature of the illness or injury and the medical treatment provided.

The period of validity of certificates of documentation for recreational vessels and for renewal thereof has been extended to five years (46 USC § 12105(e)).

The Secretary of Transportation has been charged with responsibility to provide for the establishment, sustainment, and operation of a land-based, resilient, and reliable alternative timing system to that currently provided by GPS (49 USC 312). The system must provide wide-

area coverage and be synchronized with coordinated universal time (UTC), be extremely difficult to disrupt or degrade, and work in concert with and complement any other similar positioning, navigation, and timing systems, including enhanced long-range navigation systems. This long-overdue provision effectively requires the restarting of the eLORAN system, but will require time to fully implement.

Section 515 of the Act amends 46 USC § 2102(41), but it clearly meant to amend 46 USC § 2102(31) relating to scientific personnel on board oceanographic research vessels so as to include individuals receiving instruction in oceanography or limnology. This error should be addressed in a later technical amendment.

Section 516 of the Act is intended to enhance the transparency of the vessel documentation process by requiring prompt publication of any letter of determination issued by the USCG National Vessel Documentation Center (NVDC). It also requires the Comptroller General to conduct an audit to the USCG process for issuance of letter of determination and the coordination with the US Customs and Border Protection (CBP) and the Maritime Administration (MARAD).

Section 824 of the Act directs the Comptroller General to conduct a comprehensive review of the processes and resources used by the Coast Guard to implement vessel response plan (VRP) requirements of OPA 90. The review must include those processes used by the Coast Guard to approve VRPs; to approve alternate planning criteria used in approving such plans; to verify compliance with such plans; and to act in the event of a failure to comply with the requirements of such plans. The review must also include an examination of all federal and state agency resources used by the Coast Guard in carrying out those processes; an analysis of how those processes ensure compliance with applicable law and are implemented in the field; a determination regarding whether asset and equipment mobilization time requirements under approved VRPs can be met by the vessels to which they apply; and recommendations for improving those processes. This provision could constitute the first in-depth third-party analysis of the VRP program since its implementation in 1993. That program has greatly enhanced the response to oil spills from vessels and reduced the volume of oil entering the water from vessels, but there is always room for improvement, particularly after 25 years.

The Coast Guard is directed to prescribe regulations that treat marine throw bags as a type of lifesaving equipment and allow carriage of such throw bag as an alternative for one additional throwable personal flotation device on rafts that are 16 feet or more overall in length (Section 827).

The Coast Guard is directed to develop a performance standard for the alternative use and possession of visual distress alerting and locating signals for recreational vessels (Section 828). It should be noted that a recent USCG policy letter provides guidance for acceptance of electronic visual distress signal devices (eVDSs) that are evaluated as meeting the design and performance requirements of RTCM Standard 13200.0 as equivalent to electric distress lights certified to 46 CFR § 161.013.

The Coast Guard is directed to amend its regulations to eliminate the requirement that a mariner actively using the mariner's credential complete an approved refresher or recertification course to maintain a radar observer endorsement. This rulemaking is exempted from the requirements of the Administrative Procedure Act, thus requiring no advance notice and comment (Section 829).

There are a number of provisions relating to commercial fishing and related vessels, which will not be addressed here.

The Act makes a number of technical amendments regarding the Coast Guard. It reorganizes Chapter 14, United States Code, relating to the organization and responsibilities of the Coast Guard. It codifies the Ports and Waterways Safety Act (PWSA) and transfers those provisions into Title 46. It moves the provision regarding regattas and marine parades from Title 33 to Title 46. The provisions relating to the regulation of vessels in the territorial waters of the United States (sometimes referred to as the 'Super 6' provisions) are updated so as to make clear that such provisions are enforced by the Coast Guard. Last but not least, the establishment, function, and membership of the various National Maritime Transportation Advisory Committees have been codified.

Federal Maritime Commission provisions

Title VII of the Act adopted provisions relating to the Federal Maritime Commission (FMC). The FMC is tasked with conducting analyses of the impacts on competition for the purchase of certain covered services by alliances of ocean common carriers acting pursuant to an agreement. At the same time, the definition of 'certain covered services' has been amended to include the berthing or bunkering of vessels; the loading or unloading of cargo to or from a vessel to or from a point on a wharf or terminal; the positioning, removal, or replacement of buoys related to the movement of the vessel; and, with respect to injunctive relief, towing vessel services provided to such a vessel. The agency is authorized to require a common carrier or marine terminal operator to file a periodical or special report related to the entity's business. The public is now allowed to submit relevant information following the publication in the Federal Register of the notice of filing with the FMC of agreements. Ocean transportation intermediary (OTI) provisions have been tightened to reduce abuses. Ocean common carriers are prohibited from knowingly and willfully accepting cargo from or transporting cargo for the account of a NVOCC that does not have an FMC tariff or an OTI that does not have a bond, insurance, or other surety as required by the FMC. A conference or group of two or more ocean common carriers is prohibited from negotiating with a tug or towing vessel service provider on any matter relating to rates or services provided within the United States by those tugs or towing vessels. The FMC is required to submit biannual reports to Congress describing the Commission's progress toward addressing the issues raised in each unfinished regulatory proceeding. The Comptroller General is directed to conduct a study that examines the immediate aftermath of a major ocean carrier bankruptcy and its impact through the supply chain.

National Oceanic and Atmospheric Administration provisions

Title X of the Act adopted several provisions impacting the National Oceanic and Atmospheric Administration (NOAA). Expenditures through 2013 are authorized for hydrographic surveys and related duties, as well as for the agency's Arctic programs. NOAA is directed to develop and implement a system to track and report the full cost of hydrographic data collection, including costs relating to vessel acquisition, vessel repair, and administration of contracts to procure data and to develop a strategy for increased contracting with nongovernmental entities for hydrographic data collection. Provisions were also adopted for possible changes in homeports of some NOAA research vessels.

Summary

The above discussion addresses provisions in the Act that I feel have the most impact on large segments of the maritime community and that have received minimal analysis elsewhere. There are numerous other provisions that are of equal or greater importance to smaller segments of the community, but space does not allow for their inclusion here.