

**REPORT OF**  
**THE JUDGE ADVOCATE GENERAL**  
**OF THE**  
**UNITED STATES COAST GUARD**



**PRESENTED TO THE AMERICAN BAR ASSOCIATION**

**New York, NY**

**August 2008**



**Homeland  
Security**

## THE UNITED STATES COAST GUARD

From its beginning, the United States has been a maritime nation, tied to the seas for security, commerce, and resources. To sustain its strength, America must protect its maritime borders from unlawful intrusion and uphold its maritime sovereignty, ensure the safe passage of cargoes and people and rescue those in distress, and prevent the misuse of the oceans and preserve its marine resources for future generations. The Coast Guard's value to America is in executing its roles of maritime safety, security, and stewardship. These roles are enduring, long-standing responsibilities, assigned to the Coast Guard over time since it was established in 1790:

**Maritime Safety:** *The Coast Guard ensures safe operation of the Marine Transportation System (MTS) and protects the lives and safety of those on the sea; it responds to maritime disasters, natural or man made, to protect lives and ensure safety in U.S. communities.*

**Maritime Security:** *The Coast Guard protects the U.S. maritime domain and the MTS, and denies their use and exploitation by terrorists as a means for attacks on U.S. territory, population, vessels, and critical infrastructure; it upholds U.S. maritime sovereignty and enforces U.S. law, international conventions, and treaties against criminal activities, including halting the flow of illegal drugs, aliens, and contraband, and illegal fishing in our Exclusive Economic Zone; and it defends U.S. national interests in the maritime domain against hostile acts through military action.*

**Maritime Stewardship:** *The Coast Guard facilitates the economical movement of goods and people through the MTS and maximizes access for recreational boating activity; it safeguards U.S. marine resources, threatened and endangered species, and the ocean from unlawful acts and environmental degradation; and it conducts maritime recovery operations in the aftermath of incidents of national significance, including transportation security incidents, to ensure the continuity of commerce and other critical port and waterway functions.*

Today, the Coast Guard is a military, multi-mission, maritime force within the Department of Homeland Security. It is one of the armed forces, a law-enforcement and regulatory authority, a member of the U.S. Intelligence Community, and a collaborative response partner with federal, state, and local agencies. The Coast Guard conducts distinct yet complementary functions in the maritime domain to fulfill its maritime safety, security, and stewardship roles—**law enforcement, national defense, mobility, maritime safety, environmental protection, and humanitarian response**. Its key strengths are broad authorities and an expansive network of partnerships; flexible, adaptable operational capability and presence that allow it to meet all threats and all hazards; and access and relevant expertise within the international community. Missions are executed by **shore-based multi-mission forces** assigned to 35 sectors in 9 Coast Guard Districts; surface and air **maritime patrol and interdiction forces** that range thousands of miles beyond our shores; and **specialized deployable forces** that include the Maritime Security Response Team and Maritime Safety and Security Teams designed to respond to terrorist threats; Port Security Units intended to support deployed DoD organizations; Law Enforcement Detachments that are principal enforcers of narcotics laws; and the National Strike Force that responds to pollution and hazardous substance incidents.

The Coast Guard has commenced initiatives to transform its command and control structure, its support system, and its business practices to prepare it for sustainable mission execution in the complex and dynamic operating environment of the 21<sup>st</sup> Century. In July 2007, the Deployable Operations Group was established to provide adaptive force packaging from among our specialized deployable forces . Future changes will better align the Coast Guard with DOD, DHS, and our interagency partners. In addition, the Coast Guard's modernization of its fleet continues. The first Coast Guard Legend Class Cutter, the CGC BERTHOLF (WMSL-750), was commissioned on August 4, 2008.

## THE COAST GUARD LEGAL PROGRAM

The mission of the Coast Guard legal program is to deliver high-quality legal advice and support to the people who carry out the varied functions of the Coast Guard to ensure their missions, operations, and activities can be achieved within the spirit, as well as the letter, of the law.

Coast Guard legal services are provided by 250 attorneys (64% Judge Advocates and 36% civil service attorneys); 86 paralegals, legal technicians, and other support staff; and 37 Coast Guard Reservists. Coast Guard legal professionals are located in 13 offices and staffs of the Judge Advocate General at Coast Guard Headquarters in Washington, D.C., and in 20 legal offices at major Coast Guard units. Judge Advocates rotate through non-legal operational and staff assignments and several have deployed in support of Operation Iraqi Freedom & Operation Enduring Freedom. Currently four Judge Advocates are serving as Flag Officers (including the Judge Advocate General) and a fifth has been selected for Flag rank. The Legal Program has three distinct organizational groups:

◆ **Judge Advocate General.** Offices and special staffs in the office of the Judge Advocate General exercise program oversight over activities within their practice areas. In addition, there are military attorneys assigned to the Department of Homeland Security and other government agencies. These include: Department of Justice, Department of State, and Department of Defense (U.S. Northern Command, Joint Interagency Task Force South, Naval Justice School, Naval War College, Defense Institute of International Legal Studies, and the Army Center for Law and Military Operations).



- ◆ **Field Legal Offices & Staffs.** Military and civilian attorneys are assigned to geographically-aligned field commands, including the Maintenance and Logistics Command Atlantic (Norfolk) and Pacific (Alameda), seven District Legal Offices (Boston, Miami, New Orleans, Cleveland, Seattle, Honolulu, and Juneau), “Base” legal staffs (Coast Guard Academy, Training Center Yorktown, Training Center Cape May, and Coast Guard Yard), the National Pollution Funds Center, Personnel Service Center, and the two Facilities Design and Construction Centers. These staffs report to the local commander.
- ◆ **Coast Guard Hearing Office.** This command, supervised by the Judge Advocate General, adjudicates civil penalties for maritime safety and environmental violations.

For additional information, <http://www.uscg.mil/legal/> provides public access to materials including opinions of the Coast Guard Court of Criminal Appeals (<http://www.uscg.mil/legal/cca/>), and the Coast Guard Legal Assistance Web Portal (<http://www.uscg.mil/legal/la/>). Recruiting information is at <http://www.uscg.mil/legal/recruit/dclinterinfo.htm>.

# THE PRACTICE OF LAW IN THE COAST GUARD

## Core Competencies

*To accomplish our mission of providing the highest quality legal services and support to the activities and people of the Coast Guard, the Coast Guard Legal Program is committed to master, and fully develop, the following core competencies:*

**Legal Knowledge.** To master the law.

**Ethics & Professional Responsibility.** To uphold the highest professional ethical standards of the legal profession.

**Responsiveness.** To provide legal services and counsel in the right place, at the right time.

**Advocacy.** To zealously and skillfully represent our clients, effectively countering challenges to lawful Coast Guard operations and activities.

**Client Relationships.** To partner with Coast Guard decision-makers at all levels, understanding their business, giving them the legal capabilities they need to get their jobs done.

**Leadership.** To develop those skills needed to be leaders in the world's premier maritime service.

**Technology.** To expertly use technology tools to deliver legal services to Coast Guard leaders and people wherever they need them.

## Coast Guard Practice Areas

*The Coast Guard Legal Program is a “full-service” legal support organization, providing legal advice and counsel for any and all requirements that the service’s decision makers place on us. This is done within nine general legal practice areas:*

### ◆ Maritime and International Law

As the nation's only armed force with domestic law enforcement authority, the Coast Guard is involved daily in enforcing federal law in the areas of drug interdiction, immigration, marine environmental protection, marine safety, fisheries, maritime security, and general federal laws applicable at sea. The Office of Maritime and International Law at Coast Guard Headquarters plays a prominent role in the development and implementation of Coast Guard policy in these areas and in providing real-time advice to Coast Guard operational commanders. The Office of Maritime and International Law also leads Coast Guard efforts in the international legal community as a fully participating member of the U.S. delegation to the International Maritime Organization.

### **International Activities:**

International Maritime Organization. Coast Guard attorneys serve as advisors or representatives of the United States at meetings of the International Maritime Organization (IMO), headquartered in London, England, including the Maritime Safety Committee, the Flag State Implementation Committee, the Marine Environmental Protection Committee, the Safety of Navigation Subcommittee, the Radio-communications and Search and Rescue Subcommittee, the Bulk Liquid and Gases Subcommittee, and the Legal Committee. The IMO Legal Committee held its 93<sup>rd</sup> session (LEG 93) in Panama City, Panama, October 22-25, 2007. A Coast Guard attorney headed the delegation. Delegations from 52

States, as well as intergovernmental and nongovernmental bodies attended. Current issues on which Coast Guard attorneys are working include:

- **Seafarer Abandonment.** In February of 2008, the U.S. tabled a proposal to create a mandatory instrument to provide for a system of financial security to protect seafarers in the event of abandonment. The present forum is the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers. The United States proposal enjoyed broad support and led to the immediate scheduling of an extraordinary eighth Session of the Working Group, held in Geneva, from July 21 to 24. A submission, co-sponsored by France, the Philippines, and the United States, was a cornerstone of the deliberations at that meeting. The Working Group agreed to all the principles to be addressed by a binding instrument. It further agreed to schedule a ninth session to finalize text of a draft binding instrument with an accompanying recommendation to both the IMO Legal Committee and the ILO Governing Body for the appropriate body to adopt and implement a mandatory instrument to provide financial security for abandoned seafarers. This initiative, led and executed by Coast Guard attorneys, is integrated with a domestic legislative proposal to provide for a mechanism to allow the U.S. to provide financial support to seafarers abandoned in our country. Success on either or both fronts will be of substantial benefit to the welfare of seafarers.
  
- **Maritime Criminal Acts.** The Legal Committee considered two proposals concerning maritime criminal acts: Draft Guidelines for Model National Legislation submitted by the Comité Maritime International (CMI) and a proposal by India to develop a binding international instrument to facilitate expeditious investigation of shipboard offenses. The Committee discussed extensively whether the subject should be a separate work item and, if so, whether the Committee should pursue the format of a draft convention or guidelines for model legislation. The United States stated that while it supports the concept of assisting states seeking to exercise their sovereign rights in this area, the United States could not support further development by the Legal Committee of either proposal. The primary reasons are: (1) the issue is not attributable to gaps in international law but rather potential deficiencies in national law or failure of states to exercise jurisdiction afforded under existing international law; (2) the proposed work is beyond the competency of the IMO and could infringe upon sensitive issues of state sovereignty; and (3) adding this work item could further complicate and impede progress on the divisive seafarer fair treatment issue. The Committee found no compelling need to reinstate the issue as a separate work item. Delegations were invited to gather comprehensive data to demonstrate such a need and to submit future proposals within the scope of “other business.” The Committee recommended that, in the meanwhile, States should concentrate their efforts in effective implementation of existing treaty law regimes, and particularly encouraged states to work with CMI with a view towards harmonizing national legislation and strengthening implementation of existing international law.

Major Maritime Powers Meeting. Each year, a Coast Guard attorney serves as a member of the State Department-led delegation to the annual meeting of the major maritime powers. In October of 2007, Germany hosted delegations from the United States, the United Kingdom, France, Russia, and Japan for a two day meeting that featured discussions on a variety of issues relating to the law of the sea and issues before various international forums, especially the International Maritime Organization.

1982 UN Convention on the Law of the Sea. On May 15, 2007, President Bush called on the U.S. Senate “to act favorably on U.S. accession to the [1982 UN Convention on the Law of the Sea] during this session of Congress.” With the exception of the United States, over 150 countries (including all major maritime powers) have become party to the convention. To facilitate a better understanding of the convention’s principles, a State Department-led team has been briefing members of the Senate following last fall’s Senate Foreign Relations Committee hearing. A Coast Guard attorney is a member of this team and briefs interested members on the interplay between the convention and Coast Guard operations.

## **Maritime Safety, Security, and Environmental Protection:**

Right Whale Litigation. In *Defenders of Wildlife v. Gutierrez*, the Dept of Commerce (NMFS) and Coast Guard were sued by environmental groups challenging NMFS' denial of a petition for emergency rulemaking for vessel speed limits, and USCG's lack of consultation with NMFS under the Endangered Species Act on east coast Traffic Separation Schemes (TSS). The district court granted summary judgment to the federal defendants. On July 18, 2008, the D.C. Circuit affirmed the summary judgment in favor of NMFS, and reversed the district court's decision in favor of the Coast Guard. The case was remanded to district court which will consider what USCG actions are subject to the Endangered Species Act Section 7 consultation requirement, and how the applicable 6-year statute of limitations applies. The issues are similar to those in a recently filed case on the west coast over alleged USCG actions involving the blue whale and the TSSs in the approaches to San Francisco, Los Angeles/Long Beach and in the Santa Barbara Channel.

Environmental Crimes. Coast Guard Judge Advocates work with the Department of Justice, the Environmental Protection Agency (EPA), and other agencies, to further the Coast Guard's highly successful use of criminal enforcement mechanisms for knowing violations of international and domestic maritime pollution prevention standards. These efforts yielded high-profile criminal convictions. Better coordination with Coast Guard JAGs has led to multi-district convictions for shipping companies. On the west coast, a company was convicted for violations of the Act to Prevent Pollution from Ships (APPS) in federal court in Washington, Oregon and Louisiana from an investigation that began in Portland, Oregon. Similarly, on the east coast, a company was convicted of APPS violations in Connecticut, New York, Florida and the U.S. Virgin Islands for an investigation that began in New Haven, Connecticut. Additionally, the Coast Guard is placing more stringent requirements on vessel operators as part of court ordered Environmental Compliance Plans, including the requirements for real time remote monitoring of vessel pollution equipment.

Clean Water Act Litigation. Clean Water Act Litigation: The Coast Guard is working closely with the EPA to respond to the 9th Circuit Court of Appeals decision in *Northwest Environmental Advocates v. EPA*. The case involved a challenge to Clean Water Act regulations exempting many routine vessel discharges from National Pollutant Discharge Elimination System (NPDES) permitting. The decision affirmed the District Court's holding that EPA's 1973 regulatory exclusion for discharges in the ordinary course of vessel operations was void because it was contrary to the Clean Water Act. The court noted, with approval, EPA's ongoing efforts to publish a regulatory permit regime by the 30 September 2008 deadline. The decision will impact how the Coast Guard regulates vessels and will likely lead to legislation covering such discharges.

## **Maritime Coast Guard Operations:**

United States – Canada Shiprider Agreement Negotiations. In February 2008, the United States and Canada entered into formal negotiations to conclude a framework agreement for integrated maritime law enforcement operations along the shared waterways and maritime border of Canada and the United States. This cutting-edge framework includes cross-designating officers of each nation to enforce the laws of both nations while working together in each other's waters. Negotiations commenced following a successful pilot project in August and September 2007, during which shiprider teams boarded over 187 vessels, seized 214 pounds of marijuana, over 1 million contraband cigarettes, six vessels, and \$38,000 intended to fund smuggling activities. Additionally, the shipriders were directly involved in the recovery of a child abducted from Cornwall, Ontario, conducted several search-and-rescue missions, and collected intelligence for land-based investigators on both sides of the border. The USCG is leading the US delegation, which includes the Departments of State, Justice, and Homeland Security.

Self-Propelled Semi-Submersibles. The use of self-propelled semi-submersible (SPSS) vessels by transnational drug trafficking organizations for the purpose of transporting illicit cargo to the United States is an escalating threat for which there is no adequate remedy in current law. The threat is so dire, and the prosecutorial tools so imperfect, that the Office of National Drug Control Policy, the Department of Homeland Security, the Department of Defense, and the Department of Justice have requested that



Congress enact, as expeditiously as possible, legislation to criminalize this activity. SPSS crews typically abandon and sink their vessels and contraband when detected by law enforcement in order to evade U.S. prosecution for drug trafficking. Although U.S. interdiction forces nearly always capture imagery of

detected SPSS and the crews abandoning them before they sink, attempting to access and recover contraband before a scuttled SPSS sinks is very dangerous and often impossible. If operation and embarkation in a stateless SPSS vessel were illegal, however, then U.S. interdiction forces and U.S. Attorneys would have the necessary legal tools to combat the SPSS threat even in the absence of recovered drugs (or other contraband). Accordingly, the USCG is leading the effort to criminalize the operation of and embarkation in stateless SPSS's on international voyages in order to improve officer safety, deter the use of these inherently dangerous vessels, and facilitate effective prosecution of criminals involved in this treacherous and emerging trend.

Biometrics-At-Sea Proof of Concept. In 2006, the Coast Guard implemented the first-ever mobile biometrics-at-sea capability in support of Alien Migration Interdiction Operations in the Mona Passage between the Dominican Republic and Puerto Rico. This proof of concept equipped 110-foot Coast Guard patrol boats with mobile biometrics collection equipment, allowing crews to obtain digital fingerprints and a digital facial photograph from interdicted migrants and compare the data at sea against records in the US-VISIT IDENT database. Working with the Department of Justice, Customs and Border Patrol, Immigration and Customs Enforcement, and US-VISIT, the Coast Guard expanded this program in 2008 to operations in South Florida. This new and effective mobile capability has substantially contributed to a nearly 50% decrease in illegal maritime migration in the Mona Pass vector, and has resulted in the identification and subsequent arrest and conviction of numerous wanted felons interdicted at sea.

Global Maritime Law Enforcement Partnerships. In 2008, the Coast Guard's Office of Law Enforcement and the Operations Law Group intensified and expanded their efforts to promote regional cooperation and coordination by focusing on areas where mutual national interests intersect. The collapse of fish stocks around the globe is driving fishing fleets to under-governed waters off Africa and in the Western Central Pacific Ocean in search of new resources. Additionally, the West African coast has become a major transshipment zone for illicit drugs from South America to Europe, as well as a hot bed of piratical attacks off of Nigeria. Piracy in East Africa off of Somalia and in the Gulf of Aden is similarly troublesome. The Coast Guard has engaged in all of these "hot spots" during 2008 through the establishment of shiprider agreements and integrated enforcement operations with States in the Western Central Pacific and Cape Verde, and by advising East African States engaged in developing a sub-regional counter-piracy agreement under the auspices of the International Maritime Organization.

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## Military Justice

As an armed force, members of the Coast Guard are subject to the Uniform Code of Military Justice. Coast Guard Judge Advocates serve as defense counsel and prosecutors for courts-martial and as military judges. Judge Advocates assigned as appellate government and defense counsel brief and argue cases before the Coast Guard Court of Criminal Appeals, the Court of Appeals for the Armed Forces, and the U.S. Supreme Court. Coast Guard attorneys at field offices serve as Staff Judge Advocates providing advice on military criminal matters to field commanders.

### **Courts-martial and Article 15 cases.**

	<u>2008*</u>	<u>2007</u>	<u>2006</u>	<u>2005</u>	<u>2004</u>
General Courts-Martial	10	16	16	7	12
Special Courts-Martial	15	24	32	45	27
Summary Courts-Martial	20	31	31	21	12
<b>Total Courts-Martial</b>	<b>45</b>	<b>71</b>	<b>79</b>	<b>73</b>	<b>51</b>
Nonjudicial Punishment	1,025	1,437	1,442	1,411	1,694

\*As of 1 July 2008

**Appellate Activity.** As of 1 July 2008, the Coast Guard Court of Criminal Appeals issued 14 opinions in fiscal year 2008. The Court is composed of 1 full-time and 5 collateral-duty appellate judges, both military and civilian.

### **◆ Legal and Defense Services**

The Judge Advocate General is responsible for providing various legal services directly to Coast Guard members and other eligible beneficiaries. These services include physical disability advice and representation, legal assistance relating to personal civil legal matters, and representation for defendants and appellants.

**Legal Assistance.** The Legal Assistance program completed its bi-annual workshop this past June. The workshop which included civilian and military legal assistance attorneys from almost all Coast Guard legal offices was held at Coast Guard facilities in Alameda, California. While the agenda was primarily focused on providing training relating to foreclosures and related concerns, much of the discussion focused on: (1) ensuring that entry level JAGs have the capabilities, competencies, and tools to provide legal assistance; (2) improving the legal assistance program's ability to effectively respond to catastrophic events; (3) assisting servicemembers and families in planning for predictable and unpredictable events; and (4) potential for implementing unit legal readiness standards.

**Physical Disability Evaluation program.** Coast Guard attorneys provide counsel and representation for members being evaluated by the Physical Disability Evaluation System for continued service. In the past year, less than 2% of all disability cases were appealed beyond the formal adjudication process. Approximately 83% of all cases were resolved informally in response to reconsiderations filed by member's counsel or member satisfaction with their initial findings. In addition to ensuring members are provided benefits due them, counsel are working closely with the Coast Guard's PDES program in proposing and implementing changes to current Coast Guard policies.



**Appellate Activity.** Appellate defense counsel brief and argue cases before the Coast Guard Court of Criminal Appeals, the Court of Appeals for the Armed Forces (CAAF), and the United States Supreme Court. Appellate defense counsel currently represent over fifty Coast Guard members in the appellate process. Since the last report, Appellate defense counsels have had five petitions granted at CAAF. Four cases were orally argued before CAAF (*United States v. Bridges*, 66 M.J. 246 (C.A.A.F. 2008); *United States v Upham*, 66 M.J. 83 (C.A.A.F. 2008); *United States v. Holbrook*, 66 M.J. 31 (C.A.A.F. 2008); and *United States v. Hunter*, 65 M.J. 399 (C.A.A.F. 2008) ). One Coast Guard case was decided by summary disposition (*United States v. Stellan*) at CAAF. Coast Guard appellate defense attorneys also provide legal representation to Commanding Officers or Officer-in-Charge during the temporary and permanent relief for cause process and provide legal representation to Coast Guard members during informal line of duty investigations.

◆ **Regulations and Administrative Law**

The Coast Guard is a regulatory agency charged with developing and enforcing regulations to ensure the safety of marine navigation, protect the environment, conduct search and rescue, enforce laws & treaties, and increase marine safety and security. Coast Guard attorneys provide advice to field commanders on the implementation of existing regulations and their enforcement and applicability. The Office of Regulations and Administrative Law manages the Coast Guard regulatory agenda, oversees regulatory initiatives, works with field attorneys on local field regulations, provides advice about the Federal Advisory Committee Act, and responds to complaints filed with the Small Business Administration.

Rulemaking continues to balance the need for increased national security measures with its traditional maritime safety and environmental protection functions. Since last year's report, the Coast Guard published 414 field regulations, 18 Headquarters proposed rules, 4 Headquarters final rules and 111 notices in the Federal Register.

**Transportation Worker Identification Credential.**

In 2007, the Coast Guard in coordination with the Transportation Security Agency and the Department of Homeland Security began developing the Phase two rulemaking that will implement card reader requirements for the TWIC card. A TWIC is a biometric identification card, with a programmable chip, that identifies whether the presenter is the same individual who applied for and received the card. TSA continued to enroll port workers in the TWIC program and the Coast Guard began announcing compliance dates for sections of the country based on completion of enrollments. TSA and the Coast Guard is also working on a card reader pilot program to test card readers under varying conditions in a number of ports around the country.

**Rulemaking Development System Improvements.**

The Coast Guard conducted an internal review of its rulemaking development system during this past year. This review included an assessment by organizational performance consultants and benchmarking of other regulatory agencies. Coast Guard was also able to obtain a number of additional personnel including economists and attorneys to begin addressing a back log of rulemaking projects.

## **Transition to new Federal Docket Management System.**

On October 1<sup>st</sup>, 2007, the Coast Guard transitioned to the new web based Federal Docket Management System (FDMS). FDMS is a Government wide eRulemaking initiative that allows the public to more actively participate in the rulemaking process by accessing rulemaking dockets through the Internet and commenting on open rulemakings. The Coast Guard dockets can be access by going to [www.regulations.gov](http://www.regulations.gov) .

### ◆ **Legislation**

The Office of Legislation works closely with other directorates, the Department of Homeland Security, the Office of Management and Budget, and other agencies to develop the Coast Guard's legislative program, including drafting the Administration's annual Coast Guard Authorization Act, as well as with congressional staff to secure enactment of the program.

**Coast Guard Authorization Bill.** The Office of Legislation prepared a large legislative proposal for the fiscal year 2008 cycle, which remains pending in the 100<sup>th</sup> Congress. Highlights include an increase in number and flexibility in nomination of senior officers as part of the strategic transformation effort, a provision to criminalize international voyages of stateless self-propelled semi-submersible vessels, a provision to enact the Maritime Alien Smuggling Law Enforcement Act to improve tools to prosecute alien smugglers in the maritime context, and legislation to improve regulation of ballast water to control non-indigenous aquatic invasive species. Based on the pace of legislative activity in this election year, certain provisions, such as the ballast water proposal, are being considered for passage as stand-alone bills.

**MARPOL Convention.** The MARPOL Convention is the global agreement to control pollution from ships. Coast Guard attorneys worked with other federal agencies to prepare draft legislation to implement MARPOL Annex VI, which regulates air pollution from ships. This proposal, a key step in Senate ratification of Annex VI, earned Administration approval and was submitted to Congress in the fall of 2005. Congress passed a bill which the President signed in July 2008.

**Intelligence Authorization Act.** Coast Guard attorneys continue to work with the Office of the Director of National Intelligence and congressional staffs on the annual Intelligence Authorization Act. Coast Guard input into the Intelligence Authorization Act proposed critical language to correct an inadvertent change to the Coast Guard's status within the Intelligence Community made by the Intelligence Reform and Terrorism Prevention Act of 2004.

## ◆ Civil Advocacy, Claims & Litigation

Coast Guard attorneys actively manage an extensive claims program under several federal statutes. These involve not only adjudicating claims made against the agency, but also collecting monies owed to the government due to penalties assessed for violations of federal law, for damage to Coast Guard property, and for environmental cleanup & recovery costs. Coast Guard attorneys are actively involved in a wide variety of civil litigation, from simple tort defense to challenges under the APA and Constitutional challenges. Two Judge Advocates are assigned to the Department of Justice where they obtain intensive civil, admiralty and environmental litigation experience and provide valuable Coast Guard experience to Department of Justice attorneys.

***In re T/V ATHOS I, (E.D. Pa.)***. The T/V ATHOS I struck a submerged obstruction in 2004 and released a large quantity of oil in the Delaware River. Numerous claims, arising from the oil spill and exceeding approximately \$250M, have been submitted against the Oil Spill Liability Trust Fund (OSLTF) administered by the National Pollution Funds Center (NPFC) on several grounds of loss and liability. The T/V ATHOS I owners, operators and insurers filed *In re Frescati Shipping Company, Ltd., et al* (E.D. PA), petitioning for exoneration from, or limitation of, liability under Admiralty Law. The U.S. entered the Admiralty proceeding asking the Court not to decide Oil Pollution Act, Clean Water Act, and other Federal liability issues, arguing jurisdictional grounds. In April 2006, the Court granted the U.S.'s motion dismissing federal liability and compensation issues. The U.S. has since filed an action joining ATHOS I owners against CITGO for contractual claims based on the safe port/safe berth clause. This case will be the largest incident in the NPFC and OSLTF history.

***Argusea LDC, v. U.S., (S.D. Fla.)***. On November 10, 2004, a 118-ft motor yacht struck the underwater remains of a support piling for what had been an aid to navigation (ATON), resulting in \$2 million in damage. On March 13, 2008, the district court granted the United States' motion for summary judgment, holding that the Coast Guard can not be held liable for warning mariners of discrepancies to aids to navigation that it is not aware of, and that the Coast Guard's maintenance, operation, and design of aids to navigation is a discretionary function for which the U.S. has not waived sovereign immunity to be liable in tort. The district court also held that imposing a standard of care higher than due care on the Coast Guard, would improperly amount to imposing strict liability on the Coast Guard for its maintenance of thousands of ATONs. Thus the court was without jurisdiction to hear any such claims.

***Philadelphia Metal Trades Council, et al v. U.S. Coast Guard et al, (E.D. Pa.)***. Philadelphia Metal Trades Council ("PMTC") and the Metal Trades Department ("MTD"), after exhausting agency appeals, brought an Administrative Procedure Act action challenging a new build determination of the National Vessel Documentation Center (NVDC). In May 2006, the NVDC issued a new build determination that certain tank vessels being built by a shipyard would be considered "built in the United States" even though the vessels would include some foreign-manufactured equipment modules and foreign-fabricated pipe. Two rival shipbuilders have intervened as defendants. On April 24, 2008, the court heard oral argument on the parties' cross motions for summary judgment. The district court took the case under advisement and we are awaiting a court decision on motions.

***Barack v. U. S. Coast Guard, (E.D. Ohio)***. A Coast Guard hearing officer deemed Plaintiff's bridge to be an unreasonable obstruction and hazard to navigation for which the Plaintiff was fined for failure to remove the bridge. Plaintiff appealed the agency's decision to the district court. The district court granted the U.S.'s motion for voluntary remand to the agency and motion to dismiss; the court held it did not have subject matter jurisdiction other than to review final agency action. The district court acknowledged the Government's argument that in the absence of a detailed investigation, as required by federal regulations, remanding the case to the agency is appropriate when agency action cannot be

sustained on the record. On remand, the Coast Guard has since held public hearings on the matter and conducted a detailed investigation. Plaintiff appealed the district court's decision and oral argument before the Sixth Circuit took place in late April, 2008. Plaintiff argued Circuit intervention is required because the agency order violated the constitutional rights of the Plaintiff.

***Hornbeck Offshore Transportation, LLC v. United States of America, (D.D.C.)***. The District Court for the District of Columbia dismissed Hornbeck's Federal Tort Claims Act (FTCA) claim for lack of subject matter jurisdiction because the barge owner failed to establish that a private party analog existed for an agency's accurate interpretation of a statute. The owner of a single-hull petroleum tanker barge filed an FTCA suit to recover \$6.6 million in damages sustained after the Coast Guard erroneously interpreted the Oil Pollution Act of 1990 to assign an earlier phase-out date for the barge than the statute required. Prior to the tort action, the barge owner had successfully litigated an Administrative Procedure Act case in which the District Court held that the agency had acted arbitrarily and capriciously in assigning an early phase-out date for the barge as a result of its misinterpretation of the statute's plain meaning. In the tort action, the court rejected the barge owner's proffered analogies to private conduct involving the Good Samaritan doctrine and trespass to chattels; the court also distinguished District of Columbia cases that allowed tort actions arising out of the wrongful withholding of a permit or license.

#### ◆ **Environmental & Real Property Law**

Attorneys located in the Office of Environmental Law and in the Atlantic and Pacific Maintenance & Logistics Commands provide specialized environmental law advice to other Coast Guard programs, particularly the engineering environmental compliance staffs. Attorneys in field offices provide "front-line" counsel to their commanders regarding their compliance obligations and responsibilities. When issues arise, Coast Guard environmental lawyers work closely with their counterparts in enforcement agencies to reach acceptable solutions. Our counsel provides advice and support for all Coast Guard real property matters including its management, acquisition and disposal.

**Vessel Traffic Separation and Endangered Species Protection.** Coast Guard environmental law attorneys joined in defending the Coast Guard in the litigation discussed earlier in this report, challenging East Coast traffic separation schemes.

**Shore-side Liquid Natural Gas Permitting.** Over the past year, the Coast Guard reexamined its internal procedures for issuing letters of recommendation on the suitability of waterways being proposed as shipping lanes for LNG. As a result of that review, NEPA procedures are being changed to recognize that the Captain of the Port's recommendation is not a final agency action requiring extensive environmental analysis.

**Water Training Areas.** The Coast Guard was named a defendant with several other Federal agencies in a citizen's suit filed in the Federal Court for the Northern District of Illinois. Issues in the case focus on the Federal Bureau of Investigation's firing range on the shore of Lake Michigan in the Chicago area and past Coast Guard live-fire weapons training in the Great Lakes. A trial date is pending.

**Dry Cargo Residue.** The Coast Guard has published a Notice of Proposed Rulemaking for the management of dry cargo residue by the shipping industry in the Great Lakes. Congress has directed that the rule be published by the end of September, 2008. Coast Guard attorneys have assisted clients in managing environmental planning requirements for the rule.

**Deepwater Port Act LNG Terminals.** The Coast Guard and the Maritime Administration engaged with a concerned permit applicant on the issue of whether the State of Connecticut deserved “adjacent coastal state” status in reviewing their facility application. Coast Guard attorneys assisted TJAG in meeting with counsel for the applicants.

**Coast Guard Real Estate Practice.** Our attorneys assisted Coast Guard real property program managers in conveying several parcels pursuant to Congressional direction and also helped with the transfer of a former US Navy communications site for future use by the Department of Homeland Security.

#### ◆ Procurement Law

Coast Guard procurement attorneys contribute to the best performance capabilities for Coast Guard missions through successful acquisitions and effective representation in contract litigation before the Government Accountability Office and the Civilian Board of Contract Appeals. Attorneys in the Office of Procurement Law, the two Maintenance & Logistics Commands, and in some field legal offices, provide contract law advice to management, technical, and contracting officials at all levels. This ranges from daily advice to field level contracting officers to advice on major construction, acquisition, and procurements. Advice is provided from the earliest planning stages of procurement through contract negotiation and award as well as through contract administration, which may include action on claims and contract litigation.

Several on-going major and significant systems projects are supported by procurement law project counsel. In mid-2008 Coast Guard received the first of the new class of National Security Cutters into the fleet; we are progressing with receipt of additional cutters. Selection of the new Fast Response Cutter is expected before the end of the calendar year, as are resources for C-130 avionics upgrades. Plans for the Operational Patrol Cutter are also being developed. In addition to these and other systems to be used for Deepwater missions, the Coast Guard is moving ahead with interrelated Maritime Domain Awareness programs, from projects nearing award, such as Nationwide Automatic Identification Systems (short-range tracking), to those that are successfully in operation, such as Rescue 21 (search and rescue communications). Our attorneys also support a myriad of service, construction and A/E and traditional platform acquisitions, ranging from construction for base facilities, buildings and training centers to acquisition of Medium Response Boats.

In addition, the Coast Guard procurement lawyers actively litigate, representing the agency before the Government Accountability Office and Civilian Agency Board of Contract Appeals, and with Department of Justice counsel in cases brought in the federal courts. In all aspects of the exceptionally broad, while all contract-focused, practice, our Coast Guard procurement attorneys consistently ensure that optimally transparent and competitive processes are correctly and appropriately used, while agency service and supply needs are fully satisfied without disruption.

## ◆ General Law

Coast Guard attorneys provide legal advice on issues including federal fiscal law, gift acceptance and standards of ethical conduct for government employees, military and civilian personnel law, civil rights, intellectual property, health care, privacy and information law. To some extent, Coast Guard attorneys do this work wherever they are. Attorneys at the Office of General Law at Headquarters and at the Maintenance & Logistics Commands provide advice and represent the Coast Guard on matters involving the Merit Systems Protection Board, Equal Employment Opportunity Commission, and labor relations.

**Coast Guard Administrative Investigations.** Coast Guard attorneys had extensive involvement in administrative investigations throughout the Coast Guard. Of national significance, administrative and safety investigations were launched after Port Security Specialist Third Class Ronald A. Gill was ejected from a Coast Guard vessel and struck by the vessel's propellers, suffering fatal injuries on March 25, 2007. The boat was conducting an escort of a Washington ferry in Puget Sound, Washington. Coast Guard attorneys reviewed the initial investigation, provided key legal advice to senior leadership, helped coordinate a legal strategy to release important information, and played a major role in drafting the Final Action Memorandum. The Final Action Memorandum detailed the facts surrounding the incident, stated the Commandant's conclusions, and ordered that certain actions be taken to ensure similar incidents are prevented in the future. A Coast Guard attorney was also detailed as legal counsel to advise the Mishap Analysis Board during its safety investigation into the incident.

**Oversight of CG Response to San Francisco Bay Oil Spill.** In November 2007, a container ship allided with the Oakland Bay Bridge, resulting in an approximately 50,000 gallon oil spill in San Francisco Bay. The Coast Guard, along with other federal, state, local and private sector partners responded to the spill. The incident and the "unified response" prompted a Coast Guard chartered multi-agency review, a Congressionally mandated Inspector General audit, intense media and public scrutiny of response efforts, an investigation by the National Transportation Safety Board (including a public hearing in Washington, DC) of the incident and actions taken in response, a Coast Guard marine casualty investigation, civil litigation, and a criminal investigation. Coast Guard attorneys played a pivotal role by personally reviewing, categorizing and marking thousands of documents and other materials, ensuring coordination among various Headquarters and field level legal offices, providing real time legal advice to senior leadership and developing an effective outreach, release and document management strategy.

**Personnel Law.** For the period of Jan 2008 through present, Coast Guard employment and labor law attorneys handled 47 Equal Employment Opportunity Commission, Merit Systems Protection Board, and Military EEO cases, as well as assisting the Department of Justice with cases in Federal District and Appellate Courts. The EEOC and MSPB cases carried potential liabilities of over \$14,100,000.00.

## ◆ FIELD LEGAL OPERATIONS

The Coast Guard legal program includes attorneys and legal support staff in 20 offices located throughout the United States. These legal staffs work in close cooperation with the Judge Advocate General's legal staff and offices to insure the consistent and responsive delivery of legal services in support of Coast Guard missions. Following are highlights of practice from some of these offices.

◆ **The First Coast Guard District Legal Office:** The First Coast Guard District, headquartered in Boston, Massachusetts, is responsible for Coast Guard operations on the Northeast coast from central New Jersey to the Canadian border, and includes the Hudson River, Lake Champlain, and several major seaports. The First District is one of the Coast Guard's most operationally diverse Districts, having a

hand in every major Coast Guard mission, from the regulation of industry in the ports of New York and Boston, to fisheries enforcement off the coast of Massachusetts, search and rescue in Long Island Sound, and ice breaking in Maine. The practice of law for the seven active duty, four Reserve and one civilian Coast Guard attorneys assigned to the First District Legal Office is likewise diverse, ranging from operational law advice, military justice and legal assistance to the more than 2,500 Coast Guard member workforce within the First District.

**Environmental Crimes.** First District Judge Advocates served as Special Assistant U.S. Attorneys in three groundbreaking vessel-borne pollution criminal prosecutions. In *U. S. v. Petraia Maritime Ltd.* (D.Me.), a First District attorney helped prosecute the first vessel pollution case heard by a jury, resulting in convictions on several counts. In *U. S. v. Ionia Management, S.A* (D.Conn.), a First District attorney played a crucial role in a jury returning an 18-count conviction that resulted in an unprecedented sentence requiring the company to install pollution monitoring equipment on all its ships. In *U.S. v. Clipper Wonslid Tankers, Ltd.* (D.NJ) First District attorneys negotiated a plea agreement whereby the company, in addition to paying a substantial fine, agreed to retrofit its oceangoing fleet with state of the art pollution prevention equipment and install and test pollution monitoring equipment allowing for real-time oversight by the Coast Guard. Further, a First District attorney was a member of the team that argued the appellate case of *U. S. v. Kun Yung Jho et al* before the Court of Appeals for the Fifth Circuit, resulting in a decision that validated many of the Coast Guard's legal theories on environmental crimes prosecutions.

**Memoranda of Agreement (MOAs).** First District attorneys negotiated and drafted several important MOAs this year, including agreements with the State of New Hampshire, the New York City Police Department, and several other police jurisdictions, to allow state and local police officers to enforce Coast Guard safety and security zones. These agreements create an extremely effective resource multiplier for both the Coast Guard and local police, and allow for more complete security coverage during both routine and special operations. Other MOAs allowed for the sharing of resources between the Coast Guard and the Army Corps of Engineers in support of the new Buzzards Bay Vessel Movement Reporting System, and with the New York National Guard for the sharing of intelligence specialists.

**Alternative Energy Projects.** First District Attorneys played key roles in the processing and consideration of requests to site several alternative energy projects (wind, liquefied natural gas, etc.) within the First District area of responsibility. Of the 9 alternative energy proposals currently active within the First District, two reached decision points this year. In the matter of the Weaver's Cove LLC proposal to site an LNG terminal in Fall River, MA, First District attorneys advised Captain of the Port prior to his making a determination on the suitability of the waterway in question for the transit of LNG, and provided similar advice on the proposal of Broadwater Energy, Inc.'s proposal to site an LNG terminal in the waters of Long Island Sound off New York.

◆ **The Seventh Coast Guard District Legal Office.** The Seventh Coast Guard District Legal Office, headquartered in Miami, provides legal oversight in an area of responsibility covering South Carolina, Georgia, Florida, and the Caribbean. Seven active Coast Guard Judge Advocates, one Reserve Judge Advocate, one civilian attorney, one paralegal, and one legal administrative assistant staff three sections: Response Law, Prevention Law, and Legal Assistance.

**Response Law Section.** Response Judge Advocates provide advice on law enforcement and search and rescue matters to advance mission execution, provide real-time advice in support of missions in and around the Caribbean, and ensure the Coast Guard operates within its authorities and policy.

Due to the overwhelming success of the biometrics initiative proof of concept in the Puerto Rico operational area (94 federal prosecutions since July, 2007) the initiative was exported to the Florida Straits operational area in March 2008. Recently, the first criminal conviction of an illegal entrant was obtained as a direct result of that initiative. Response Judge Advocates continue to maintain a strong

presence within the Southern District of Florida Anti-Migrant Smuggling Task Force led by the U.S. Attorney's Office. The response section supports a Judge Advocate as a full-time Special Assistant U.S. Attorney (SAUSA) assigned to the U.S. Attorney's Office in Miami. This Judge Advocate has processed 52 indictments related to alien smuggling, involving 105 defendants since January, 2008. In a recent case, the SAUSA was able to justify an upward departure from the Federal sentencing guidelines which resulted in a sentence of ten years in a case resulting in the death of migrant during a smuggling attempt. A full-time Judge Advocate is also detailed as a SAUSA in the U.S. Attorney's Office in Puerto Rico in support of the biometrics proof of concept. This Judge Advocate has prosecuted 23 defendants involved in maritime migrant smuggling cases resulting from the biometrics initiative in Puerto Rico. Response Judge Advocates also are involved with initiatives (in conjunction with the Department of Justice and Customs and Border Patrol attorneys) to improve the efficiency of civil forfeiture of vessels involved in migrant smuggling operations and parole revocation processes in conjunction with Immigration and Customs Enforcement agents. The biometrics and prosecution initiative have contributed to a significant reduction in illegal migration to Puerto Rico and a significant increase in consequences for migrant smugglers.

The Response Section, working through the duty attorney, provided direct legal guidance on all drug law enforcement boardings in the Caribbean and has been instrumental in multiple drug seizures of tons of cocaine, as well as assisting with the subsequent prosecutions.

**Prevention Law Section.** The Prevention Law Section Judge Advocates provide advice on environmental, regulatory, administrative, marine safety and security, and ethics/standards of conduct issues to the Seventh District Staff and field units. The Judge Advocates also provide support to local U.S. Attorney Offices and the Department of Justice Environmental Crimes Section (DOJ-ECS) on ongoing criminal investigations and prosecution of marine pollution violations.

Recently a Judge Advocate assigned to the Prevention Law Section assisted the Coast Guard Investigative Service, the U.S. Attorney's Office for the Southern District of Georgia and the DOJ-ECS with the investigation and prosecution of the corporate owner of a vessel that was charged with one count of violating the Act to Prevent Pollution from Ships (APPS). In another pending vessel pollution case, a Judge Advocate has negotiated an agreement with attorneys representing the vessel's owners to obtain surety satisfaction as provided in APPS.

In the past six months, Judge Advocates from the Prevention Law Section have drafted and reviewed thirty-seven regulations. These regulations restrict and control vessel movements and establish limited access to the regulated area. These regulations are necessary to protect the public, the ports, the waterways and the environment from potential hazards. Judge Advocates also provided training to field units on the requirements of the Administrative Procedures Act and provide legal sufficiency review for regulations governing the operation of bridges.

**Legal Assistance Section.** In 2008 the Legal Assistance Branch (LAS) responded to the housing/foreclosure crisis that spiked well above the national average in Florida. A combination of plummeting property values (as much as 40%) and skyrocketing interest rates left many members unable to meet their financial obligations. In the Landlord/Tenant arena, foreclosures are forcing members to relocate mid-tour, costing thousands in moving expenses and lost security deposits. The staff provides assistance by drafting demand letters, reviewing leases, and providing small claims court packages. Hundreds of wills and other estate planning documents have been prepared for troops deploying to Guantanamo Bay, Cuba and Africa. The LAS also sponsored a Small Claims Clinic, and negotiated with landlords, mortgage companies, car dealerships, and other businesses resulting in over \$12,000 in settlements.



**OPLAN Vigilant Sentry and Exercise Series Unified Support:** All members of the Legal Office were involved in the exercise of OPLAN Vigilant Sentry, the Department of Homeland Security's response plan for a mass migration in the Caribbean. The Office works with an interagency legal team with members from Department of Justice, Department Of Defense, Immigration and Customs Enforcement, Customs and Border Patrol, Florida Department of Law Enforcement and local government attorneys to address contingencies in the event of a mass migration.

**Military Justice/Personnel Law:** The D7 legal office provides legal and prosecutorial support to field commands on issues ranging from general courts-martial through Non-Judicial punishment under Article 15 of the UCMJ, as well as personnel administrative issues such as relief for cause and administrative discharge. All of our military attorneys are Judge Advocates and as such have responsibilities in the military justice system, primarily as trial counsel. Recent cases have involved drug use and distribution, fraud, and larceny.

◆ **The Eighth Coast Guard District Legal Office:** The Eighth Coast Guard District office is located in New Orleans, LA. The area of operations includes the Gulf of Mexico and all of the states bordering the Mississippi, Missouri, Tennessee, and Ohio River basins from Pennsylvania to the Florida panhandle to Texas to North Dakota.

The attorneys of the Eighth District continued to play a vital role in the enforcement of environmental laws and regulations through support of prosecutorial efforts by the Department of Justice. Many cases that had been ongoing over the course of several years were finalized. Legal advice and assistance were provided for multiple new cases as well.

Three ship owners/operators were charged with violations of the Act to Prevent Pollution from Ships under 33 U.S. Code § 1908(a) and the False Statements Act under 18 U.S. Code § 1001. Two of these cases have resulted in plea agreements with fines of \$1.5 million and additional donations for community service projects totaling \$300,000.

In the first successful prosecution under the Ports and Waterways Safety Act, 33 U.S. Code § 1232, Canal Barge Company and three of its employees were convicted of failing to notify the Coast Guard of a hazardous condition after a barge experienced a benzene leak. Canal Barge Company employees concealed the leak, patched it, and passed the barge to another barge company for transit on the Ohio River without informing either the other company or the USCG of the leak.

Rowan Companies Inc. and nine of its employees pled guilty to violations of the Clean Water Act, 33 U.S. Code § 1319(c) for illegally pumping used hydraulic fluid from one of their towing vessels into waters of the United States. Additionally, while cleaning a rig in Sabine Pass, RCI workers allowed debris, paint, grease, hydraulic fluid, and other materials to discharge directly into the water. The fines awarded by the court totaled over \$10 million.

Energy Partners entered into a plea agreement providing for a fine of \$75,000 and a payment of \$25,000 for wetlands restoration for violating the Refuse Act, 33 U.S. Code 407.

This year marked the first two successful prosecutions in the Eighth District area of responsibility under the Failure to Heave To provision contained in 18 U.S. Code § 2237. Both violators were Mexican nationals. One was sentenced to time served of 152 days of confinement; the other was sentenced to 6 months of confinement and 2 years of unsupervised probation.

Beyond support to the Justice Department, Eighth District attorneys played a vital role advising operational commanders on a daily basis. Eighth District attorneys deployed on July 24, 2008 in support of the major pollution incident that occurred after the collision of a barge and cargo vessel on the

Mississippi River in Downtown New Orleans. Almost 100 miles of the River were closed to vessel traffic for several days. In addition to Judge Advocates supporting the Incident Commander and Federal On-Scene-Coordinator, another Judge Advocate, serving out-of-specialty, was assigned a one-person formal investigation to determine the cause of the mishap. The legal office also provided real-time, on-site analysis and opinions on two significant major hazardous material releases that are now under investigation by the Environmental Protection Agency.

The first such instance involved a release of an estimated 6-10 million gallons of water contaminated with Phosphoric Acid into a small tributary directly feeding into the Houston Ship Channel and subsequently Galveston Bay. A breach developed in a containment wall surrounding a decades old gypsum stack leading to an immediate need to release pressure in light of a possible total failure of the containment system. The responsible party notified the State commission for environmental quality, but failed to file a National Response Center report or notify the Coast Guard. The immediate area showed obvious signs from the acidic release, including dead vegetation and reports of dead frogs, turtles, crabs and fish.

The second situation involved a 468,000 gallon release of Fluorosilicic Acid into the lower Mississippi River from an above ground storage tank due to a weld failure on the tank which threatened a catastrophic release of over a half million gallons. Attorneys have helped the Captain of the Port develop responses to additional requests for releases, orders to the company to cease all transfer operations, the creation of a mitigation and neutralization plan, and ultimately the removal of all Fluorosilicic Acid from the facility.

Finally, an Eighth District attorney served as an instructor in support of the Africa Partnership Station conducting assessments in Ghana, Cameroon, Gabon, and Sao Tome and Principe and legal training for scores of senior level personnel responsible for overseeing domestic maritime security policy and enforcement in their countries.

◆ **The Ninth Coast Guard District Legal Office.** This office of three military attorneys, one civilian legal assistance attorney and two support staff supports Coast Guard operations throughout the Great Lakes and along 1500 miles of international border from Massena, New York, to Duluth, Minnesota. In The Ninth District Legal Office provides legal support and services to 1968 active duty, 556 Reserve, 97 civilian and 3191 Coast Guard Auxiliarists.

This past June, the legal office supported the Spill of National Significance (SONS) 2007 exercise, which involved a two-million gallon oil spill into Lake Michigan by the U.S. Navy and catastrophic damage from a major earthquake throughout the Midwest. The legal office deployed two attorneys in support of the exercise. One attorney served as legal advisor to Coast Guard Senior Representative Official (SRO). Working in partnership with the Environmental Protection Agency SRO's attorney, counsel provided strategic policy advice and guidance. Notably was the identification and explanation of significant differences in each agency's authority, and the legal and policy implications of a spill being designated by agency officials as a SONS. A second attorney was deployed to assist and represent the Coast Guard Federal On-Scene Coordinator (FOSC) responsible for the 2 million gallon spill response. The FOSC's attorney was assigned as Command Staff to the Unified Command and assisted the FOSC with legal issues associated with governmental agencies that are responsible parties, jurisdiction, authority, and other Captain of the Port / FOSC functions.

The Ninth District Legal Office continued its robust legal assistance program by establishing a partnership with Ohio National Guard (OHNG) which resulted in an OHNG attorney drilling two days a week in Ninth District legal office. As the sole legal assistance office in Cleveland, the office regularly provides services to other DoD eligible clients in addition to Coast Guard clients. The OHNG attorney has taken on a significant portion of DoD client load. The program also provides a unique training opportunity for the OHNG attorney. The Ninth District legal assistance program provided services to over 700 individual clients throughout the D9 AOR during the past year and assisted four Ninth District

Coast Guard members obtain U.S. citizenship. During this past tax season, an expanded Volunteer Income Tax Assistance Program was spearheaded by the legal office. The prior year's VITA program was restricted to Coast Guard members in Cleveland. This year's program expanded to several units throughout the district with oversight provided by the legal office. Over 24 legal assistance visits/road shows were conducted throughout the eight state Ninth District area of responsibility, including weekend visits in support of reserve all-hands training and five visits for pre-deployment legal assistance to mobilized Coast Guard Reserve members.

The legal office recently wrapped up a two-year project to review, validate and correct Ninth District special local regulations and safety and security zone regulations. The project was prompted in part by new Captain of the Port zones that were established when the Coast Guard created Coast Guard Sectors. Numerous permanent fireworks regulations from the old Captain of the Port zones were combined and the information for all these events was updated. Permanent regulations for over 200 annual events were published.

The Ninth District Legal Office continues to play a significant role in environmental stewardship and compliance issues. The legal office is working closely with our Canadian partners to effectively leverage both countries resources to identify and prosecute polluters on the Great Lakes. In addition, the legal office, Coast Guard Investigative Service Central Region and Coast Guard Sector personnel participate in several environmental crimes task forces throughout the Ninth District AOR. Internally, the legal office has provided guidance on in-house environmental stewardship initiatives such as using biodegradable oils on certain Coast Guard cutters to minimize impact to the environment in the event of an accidental discharge. The legal office is also providing field level guidance and advice on ballast water, aquatic nuisance species and dry-cargo residue issues.

◆ **The Thirteenth Coast Guard District Legal Office.** The Thirteenth District Legal Office, headquartered in Seattle, Washington, supports Coast Guard operational units within Washington, Oregon, Idaho, and Montana. These units cover more than 460,000 square miles of Pacific Ocean. The Thirteenth District provides maritime safety and security to the largest passenger ferry system, the third largest commercial port and third largest U.S. Naval homeport in the Nation. The legal staff includes four active duty attorneys, one civilian Coast Guard attorney, one reserve attorney, and two support personnel.

**Largest Vessel Pollution Criminal Case in Northwest History.** The National Navigation Company, based in Cairo, Egypt pled guilty to 15 felony charges of violating the Act to Prevent Pollution from Ships and making false statements to federal officers and will pay a fine of \$7.25 Million. The case arose when Coast Guard investigators found evidence of the violations aboard the M/V WADI AL ARISHI during a port call in Portland, Oregon. The investigation was extended to the entire National Navigation Fleet and led to the record settlement. A significant portion of the settlement is going to support environmental initiatives.

**U.S./Canadian Shiprider Program.** Coast Guard personnel joined forces with the Royal Canadian Mounted Police for a joint border law enforcement initiative in Blaine, Washington. Coast Guardsmen worked on RCMP platforms in Canadian waters under RCMP supervision and Mounties worked on USCG platforms in U.S. waters under USCG supervision. The operation was rolled out following joint training conducted in Charleston, South Carolina. This pilot program increased the capability and adaptability of the law enforcement presence on the U.S./Canadian border.

◆ **The Fourteenth Coast Guard District Legal Office.** The Fourteenth District legal office in Honolulu teamed up with the U.S. Attorney's Office to defend Coast Guard authority against an intense attack by protesters of the new Hawaii Superferry. On August 31, 2007, in response to protesters physically blocking Superferry's entry into Nawiliwili Harbor, Kauai, the Coast Guard established a temporary security zone that placed large portions of the harbor waters off-limits, which effectively prevented

obstructors from pursuing their strategy. The protesters then asked the federal district court for a temporary restraining order to prevent enforcement of the zone. The court denied their request, holding that the protestors lacked standing to challenge the zone, that the Coast Guard had ample statutory and regulatory authority to create and enforce the zone, that the Coast Guard complied with both the Administrative Procedure Act and the National Environmental Policy Act, and that the zone did not impermissibly restrict First Amendment rights. The protestors appealed to the Ninth Circuit, which set oral argument for August 12, 2008 in San Francisco.

A Fourteenth District Judge Advocate deployed to Saipan in January to address allegations that crewmembers aboard the MSC-chartered cargo ship MAJ. STEPHEN W. PLESS pumped oily waste overboard in violation of the Act to Prevent Pollution from Ships. The on-scene lawyer advised Coast Guard vessel inspectors, pollution investigators, and a Coast Guard Investigative Service Special Agent as they conducted an expanded examination of the vessel, interviewed crewmembers, and collected other evidence that supported a successful criminal-case referral to the U.S. Attorney's Office.

In March, 2008, the Fourteenth District legal office responded to the potential export of PCBs aboard the historic cruise ship OCEANIC in violation of the Toxic Substances Control Act (TOSCA). The ship, apparently destined for foreign scrapping, was scheduled to arrive in Guam while its tug refueled, making its long-term abandonment there highly likely if arrested under TOSCA. The controversy became public in Guam as residents grew more concerned about the ship's toxicity. D14 Judge Advocates spearheaded intense discourse with CGHQ, EPA, and DOJ that resulted in the use of Coast Guard authority to keep the ship from entering U.S. waters, which thereby avoided the substantial risk of vessel abandonment and the negative consequences (grounding, sinking, release of toxic substances, harbor obstruction) that might well have attended it.

◆ **The Seventeenth Coast Guard District Legal Office.** The Seventeenth District Legal Office located in Juneau, Alaska supports the District Commander and subordinate operational units throughout Alaska; an environmentally diverse and geographically enormous region. Alaska is a maritime state. Its waters encompass 3,853,500 square miles and over 33,000 miles of coastline. There is no more formidable physical environment for Coast Guard operations than Alaska. The District Legal office consists of three military attorneys and two Legal Office Detachments: one civilian legal assistance attorney located in Kodiak, AK and one military attorney serving as Special Assistant U.S. Attorney (SAUSA) with the Department of Justice, U.S. Attorney's Office in Anchorage, AK.

The Seventeenth District Detached SAUSA was instrumental in guiding the investigation, conducting negotiations and crafting the plea and settlement agreement documents in the case of the T/V POLAR DISCOVERY, an 895 foot crude oil tanker. Polar Tankers, Inc. of Houston, Texas, was sentenced to pay a fine of \$500,000 and community service in the form of a \$2,000,000 payment to the National Fish and Wildlife Foundation to fund environmental projects to protect and preserve the waters along the Alaska coast and in Prince William Sound. Polar Tankers Inc. operated and controlled the T/V POLAR DISCOVERY as part of its fleet of tankers. The crew of the T/V POLAR DISCOVERY caused an accidental discharge of oily sludge overboard into the ocean. The crew then took steps to hide the discharge and failed to record the transfer in the ship's Oil Record Book. Additionally, rather than recording that the tanker had slowed and turned into the wind to clean oil from the side of the ship, the Captain reported to the company that the ship had performed a man overboard drill. The situation may have gone undiscovered had a crew member not come forward to the Coast Guard with critical information. Pursuant to the Act to Prevent Pollution from Ships, the Judge awarded one half of the criminal fine to that crewman. Polar Tankers informed the court that they terminated the employment of all supervisory personnel involved, including the Captain, and cooperated with the investigation into the incident.

A Seventeenth District Legal Office Staff Attorney served as the Legal Advisor to the Formal Marine Board of Investigation inquiring into the March 23, 2008 sinking of the F/V ALASKA RANGER in the Bering Sea. The 180 foot "Head & Gut" vessel, owned by the Seattle firm Fishing Company of Alaska, foundered and sank off the Aleutian Islands about 120 miles west of Dutch Harbor claiming the life of the Captain, Fish master and three additional crewman. Proceedings of the Board spanned over 27 days at Dutch Harbor and Anchorage Alaska, Seattle, Washington and Boston, Massachusetts.

◆ **The Maintenance and Logistics Command Atlantic Legal Division.**

The MLCA Legal Division serves as the Staff Judge Advocate (SJA) and principal legal advisor to the Commander, Coast Guard Atlantic Area/Coast Guard Defense Forces East; Commander, Maintenance & Logistics Command Atlantic; and the Coast Guard's Fifth District Commander; staff and subordinate unit; as well as SJA to the Chief of Staff of the U.S. Coast Guard at Coast Guard Headquarters. The division is divided into five branches, covering the practice areas of operational law, military justice (criminal law), claims and litigation, contract & fiscal law, and general law (property, environmental compliance, information law, ethics/standards of conduct). In addition, one civilian attorney is embedded with the Coast Guard Maritime Intelligence Fusion Center (MIFC) Atlantic to provide highly specialized intelligence legal advice and oversight to the Atlantic Area Intelligence program.

The Operational Law Branch is co-located with the Coast Guard Atlantic Area and Fifth District Commanders. This branch continues to play a critical role in preparing Coast Guard Atlantic Area cutters, aircrews and deployable operational units for operational missions by providing training on authority, use of force, rules of engagement, evidence collection and case package preparation. Operational Judge Advocates provided pre-deployment Rules of Engagement briefs to members deploying to Coast Guard Patrol Forces Southwest Asia (PATFORSWA) and provided legal assistance services for deploying members. The Operational Law Branch continued to assist the Fifth Coast Guard District in environmental crime cases referred to the United States Attorney for prosecution.

Judge Advocates participated in multiple interagency and national level exercises ranging from hurricane preparedness to homeland defense. Two Judge Advocates deployed as a member of Africa Partnership Station. During the deployment, Judge Advocates conducted inspections and training while offering guidance on how to improve port security in Ghana and Cameroon.

The General Law Branch was honored by the recognition of the Standing Committee on Legal Assistance for Military Personnel with the LAMP Distinguished Service Award. Judge Advocates and Yeoman were recognized for "expanded and enhanced legal assistance services, despite diminishing resources."

The Contract Law Branch advised contracting officials, commands, and staffs on all aspects of contract formation, administration, and termination. It performs legal reviews on all contract actions valued at over \$500K. In addition, this branch provides advice on all aspects of fiscal law. To date, since August 2007, the branch has advised on 540 matters, including legal reviews of 137 contract awards with a value of over \$411 million.

The Military Justice Branch conducted 37 courts-martial and responded to 12 administrative matters. In addition, the branch provided TAD training to subordinate units and the Coast Guard Investigative Service on the military justice process, nonjudicial punishment, evidence collection and the drafting of PIO reports. Judge Advocates traveled to units in Florida, Georgia, South Carolina and Washington D.C. to give the briefs.

The Claims and Litigation Branch adjudicated defensive claims, collected affirmative claims, coordinated responses to subpoenas, processed line of duty determinations, and coordinated litigation with Coast Guard Headquarters Office of Claims and Litigation. The Branch's main workload involved processing defensive claims under various federal statutes where claimants were seeking recovery for damage caused by Coast Guard personnel. To date in FY08 the Branch has received approximated 85 new claims for processing. In total, the branch negotiated and authorized payment of about \$718,000 to settle over \$66 million in damages claimed against the Coast Guard. Affirmative collections to date total \$184K. The Branch is also responsible for the on-site payment of personal property claims for Coast Guard service members who reside in government quarters and sustain damage to their personal property due to natural disasters.

◆ **The Maintenance and Logistics Command Pacific Legal Division.**

The Alameda-based Pacific JAG Office provides legal advice to the Commander, USCG Pacific Area; Commander, Eleventh Coast Guard District; and Commander, Maintenance and Logistics Command Pacific. The office provides legal support to all Pacific Area (PACAREA), the Eleventh Coast Guard District, and Maintenance & Logistics Command Pacific units. The division is divided into seven branches, covering the practice areas of Operational Law, Military Justice, Claims and Litigation, Environmental Law, Contract Law, Legal Assistance, and General Law. Highlights include ongoing efforts to combat illicit drug trafficking, the support of environmental crimes prosecutions, the successful negotiation and settlement of multiple civil claims, and continued cooperation with the U.S. Marine Corps and Department of Justice.

The Operational Law Branch of the Pacific JAG Office supports counter-drug operations in the Eastern Pacific as far south as Colombia, Ecuador, and Peru, resulting in well over 50 tons of illegal drugs removed from the international drug trade this year. In the area of environmental law enforcement, operational law attorneys actively supported the investigation and prosecution of nine criminal pollution cases involving ships in the ports of Los Angeles and San Francisco Bay. They also directly assisted the Department of Justice in prosecuting a Coast Guard vessel crewmember for illegally dumping waste oil into U.S. waters. After the foreign freight ship COSCO BUSAN struck the San Francisco-Oakland Bay Bridge and spilled more than 50,000 gallons of fuel oil into San Francisco Bay in November 2007, operational law attorneys facilitated the many civil and criminal investigations into the incident and the multi-agency response. They also assisted Coast Guard decision-makers in the delicate process of establishing Water Training Areas for offshore security exercises in an environmentally responsible manner.

The Pacific JAG Claims and Litigation branch adjudicated over 100 defensive administrative claims during the past year. In total, the branch negotiated and authorized payment of about \$158,000 to settle over \$8 million in damages claimed against the Coast Guard. In addition, Pacific JAG Claims branch helped units and Coast Guard members work through the personnel claims process after Coast Guard members sustained property damage due to West Coast wind storms and flooding as well as a fire in Coast Guard housing. For affirmative claims, Pacific JAG Claims branch recovered over \$197,000 for damage to Coast Guard property. Also, for Fiscal Year 2007, the branch was successful in collecting over \$805,000 in civil penalties.

In addition, the Claims and Litigation branch continues to have one attorney on extended assignment to the Department of Justice Maritime Law Division in San Francisco. The Military Justice branch continues our great success in sending an attorney to U.S. Marine Corps Base Camp Pendleton for a three-month assignment to provide backfill for Marine JAGs deployed to Iraq. During these assignments, Coast Guard attorneys gained invaluable experience and provided a great service to the Marines Corps and Department of Justice.

◆ **Coast Guard Academy New London, Connecticut.**

Coast Guard attorneys are assigned to the Academy in two capacities. First, three Coast Guard attorneys staff a legal office which provides a range of legal services and advice to nearly all Academy elements. Secondly, three Coast Guard attorneys serve on the Academy faculty where they teach a number of undergraduate law courses as part of the cadet curriculum.

The Staff Judge Advocate (SJA) and his staff furnish all legal advice to the Superintendent, Assistant Superintendent, and all other Academy Divisions. The two Assistant Staff Judge Advocates (ASJAs) are the trial counsel for Academy courts-martial cases and are periodically detailed to serve as Summary Courts-Martial or Article 32 Investigating Officers. One ASJA is also appointed as a Special Assistant United States Attorney (SAUSA) by the U.S. Attorney for the District of Connecticut for criminal cases arising on the Academy grounds and administers the Federal Magistrate Program at the Coast Guard Academy. Under the Magistrate Program, the SAUSA may prosecute civilians that commit offenses on the Academy (assault and drunken driving are examples). Additionally, the ASJAs provide legal assistance to eligible beneficiaries, client support to staff elements, and supervise the Volunteer Income Tax Assistance program. In 2008, CGA's VITA program filed a total of 768 federal and state returns, and saved clients over \$83,000 in tax preparation fees.

All three Judge Advocates also serve as law instructors to various Leadership Development Center (LDC) courses and provide military justice and standards of conduct briefings for the corps of cadets. The staff trained over 400 LDC students and 200 cadets and provided over 150 hours of classroom instruction.

Three attorneys are assigned as instructors in the Coast Guard Academy's Humanities Department. These attorneys teach two "core" courses (Criminal Justice and Maritime Law Enforcement) and two electives (International Law and Constitutional Law). During the last year, Academy law instructors provided legal instruction to over 530 cadets in the core courses. Twenty-five cadets chose to expand their legal education by taking either the upper-level International Law or Constitutional Law elective. The Section also offered a one-credit course in Rhetoric & Courtroom Advocacy, in which students participated in mock trials in competitions with other colleges. The Cadet Law Society, dedicated to fostering and developing an interest in the study of law and the Coast Guard legal program, was also active throughout the year. Lastly, one of the faculty attorneys was a Fellow at Harvard University's Carr Center for Human Rights Policy.

◆ **Coast Guard Training Center Yorktown, Virginia**

Coast Guard Training Center Yorktown is one of two Coast Guard commands where legal advice is provided by a single independent duty attorney. This active duty Staff Judge Advocate, assisted by an active duty legal assistant, provides advice on a broad range of legal issues that cover the full spectrum of the training center's operations. The principle job of the training center's attorney is to advise the commanding officer and command staff on a broad range of legal issues, including military and criminal justice, real property, ethics, environmental law and fiscal and contract law,. The office hosted the Coast Guard Fiscal and Appropriations Law course attended by over 50 Coast Guard attorneys and financial specialists from throughout the nation. The assigned attorney is also a Special Assistant United States Attorney, in the event the proper forum for resolution of an issue is the U.S. Magistrate or District Court.

In addition to being the legal counsel for the commanding officer, the staff Judge Advocate serves as a legal assistance attorney for all of the command's students and permanent party members, as well as several outlying units and provided assistance to over 250 members last year. The legal office also provided assistance under the Volunteer Income Tax Assistance program to well over 100 members, garnering more than \$225,000 in refunds and saving Coast Guard families over \$20,000 in commercial

preparation fees. Instruction is also a part of the staff Judge Advocate's duties. The training center is home to 16 separate schools, including the National Search and Rescue School, the International Maritime Officers School, the National Aids to Navigation School, the Coast Guard's Operational Intelligence, Marine Inspections and Investigations, and Port Operations Schools. The assigned attorney provides instruction during these courses on a variety of legal subjects. The Training Center SJA also provides the instruction on Coast Guard legal issues during the Coast Guard's Air Station Prospective Commanding Officer/Prospective Executive Officer and Sector Commander courses.

◆ **Coast Guard Training Center Cape May, New Jersey.**

One Coast Guard attorney is assigned as the Staff Legal Officer/Staff Judge Advocate for the Coast Guard's 6<sup>th</sup> largest base and only Recruit Training Center. Coast Guard Training Center Cape May is the home of the Coast Guard enlisted corps. It is the Coast Guard enlisted accession point and recruit training center. The Staff Legal Officer advises the Commanding Officer in all legal matters involving the Training Center. Major areas requiring advice include community relations, real property management, licenses, Recruit separations, government contracts, acquisitions, environmental matters, philanthropic support, claims and litigation, conflicts of interest, fiscal law, personnel law and labor/management relations, and Freedom of Information Act and Privacy Act. In addition, the Staff Legal Officer assists the Training Center's 14 tenant commands. The Staff Legal Officer is the Staff Judge Advocate and, as such, is directly responsible to the Commanding Officer for all military justice matters. In addition, the Staff Legal Officer provides local liaison with Coast Guard Investigative Service and the U.S. Attorney's Office.

As the Command Director of Legal Assistance for the Training Center, the Staff Legal Officer provides Legal Assistance to Recruits, active duty, dependents, local retirees, and several local/tenant commands throughout Eastern Pennsylvania and all of New Jersey. On a weekly basis, the Staff Legal Officer provides instruction to Recruits on the Uniform Code of Military Justice. The Legal Office trains over 5,000 Recruits, Reserves, and Prior Service Personnel.