



**Legislative Bulletin.....November 4, 2011**

**Contents:**

**H.R. 2838** — Coast Guard and Maritime Transportation Act of 2011

**H.R. 3321** — America's Cup Act of 2011

**H.R. 2838 — Coast Guard and Maritime Transportation Act of 2011 (LoBiondo, R-NJ)**

**Order of Business:** The legislation is scheduled to be considered on Friday, November 4, 2011, under a structured rule that makes in order the amendments described below. The rule, [H.Res. 455](#), provides each measure one hour of general debate equally divided and controlled by the chairs and ranking minority member of the Committee on Transportation and Infrastructure. The rule provides that the chairman of the Committee on Transportation and Infrastructure or his designee may offer amendments en bloc. Amendments en bloc are debatable for 10 minutes. The rule also provides that it shall be in order at any time on the legislative day of November 4, 2011, for the Speaker to entertain motions that the House suspends the rules relating to a measure addressing the applicability of the coastwise trade laws. Lastly the rule provides each measure a motion to recommit with or without instructions.

**Summary:** H.R. 2838 would authorize FY 2012 through 2015 appropriations and make other adjustments to Coast Guard policy and management. Highlights are below:

Title I Coast Guard Discretionary Authorizations

<i>(Millions of Dollars) Account</i>	<b>FY11 Appropriation</b>	<b>H.R. 2838: FY12</b>	<b>H.R. 2838: FY13</b>	<b>H.R. 2838: FY14</b>
Operations & Maintenance	\$6,970	\$6,819	\$6,923	\$7,018
Acquisition & Construction	\$1,640	\$1,504	\$1,505	\$1,506
Research & Development	\$28	\$19.7	\$19.8	\$19.9
Environmental Compliance	\$13.3	\$16.6	\$16.6	\$16.7
Coast Guard Reserve	\$135.6	\$136	\$138	\$139
<b>TOTAL</b>	<b>\$8,808</b>	<b>\$8,500</b>	<b>\$8,605</b>	<b>\$8,703</b>

H.R. 2838 also provides an authorization of \$24,500,000, \$20,000,000, and \$650,000 for each of the fiscal years 2012, 2013, and 2014 that will be derived from the Oil Spill Liability Trust Fund to carry out the payment of Federal administrative, operational, and personnel costs and expenses reasonably necessary for and incidental to the implementation, administration, and enforcement of the Oil Pollution Act of 1990.

In addition to the authorized discretionary spending levels contained in Title I noted above, H.R. 2838 also includes numerous additional, smaller levels of authorized spending subject to appropriation in other sections of the bill. These are some of the bill highlights along with a description of some of smaller levels of authorized spending subject to appropriation in other sections of the bill.

#### Authorized Levels of Military Strength and Training

- Authorizes the hiring of 47,000 active-duty Coast Guard personnel for each of the fiscal years 2012 through fiscal year 2014.
- Authorizes average military training student loads for the each of the fiscal years 2012 through fiscal year 2014 as follows:
  - --recruit and special training: 2,500 student years
  - --flight training: 165 student years
  - --professional training in military and civilian institutions: 350 student years
  - --officer acquisition: 1,200 student years

#### Coast Guard and Servicemember Parity

- The legislation requires foreign countries that send cadets to the Coast Guard Academy for instruction to reimburse the U.S. Government for the cost of providing healthcare to those cadets.
- The legislation requires the Coast Guard Academy to institute the same sexual harassment policy that exists at the other military service academies. It conforms survey and reporting requirements to those of the other service academies.
- The legislation would clarify a commissioned officer's status should the officer return to the Coast Guard following a break in service. It preserves the officer's rank as of the departure. This is similar to the status afforded returning officers in the other armed services.
- The legislation authorizes the Coast Guard to expend not more than \$1,500,000 from amounts available for operating expenses for unspecified minor construction and improvement projects at any one location. It also requires the Secretary of Homeland Security to report to the Committee on each project undertaken during the course of the preceding fiscal year for which the amounts expended exceeded \$500,000.

- The legislation authorizes the Commandant to disclose to the public information regarding investigations of Coast Guard aircraft accidents, so long as doing so would not undermine the ability of accident or safety investigators to continue to conduct the investigation and would not compromise national security. It also makes conclusions of the investigators inadmissible in legal proceedings.
- The legislation clarifies the Coast Guard's expedited hiring authority and extends the authority through fiscal year 2015.
- The legislation requires the Commandant to submit a report to the Committee on the condition of Coast Guard servicemember housing. The Committee remains very concerned with the current state of Coast Guard servicemember housing. The Committee has heard testimony from the Coast Guard regarding the outdated, obsolete, and even dilapidated housing servicemembers and their families often must live in.

### **Coast Guard Reform:**

- H.R. 2838 repeals certain outdated and duplicative sections of title 14, United State Code. The legislative repeals:
  - Section 55 of title 14, United States Code requires that the Commandant of the Coast Guard establish an Ombudsman for each Coast Guard District. The ombudsman is responsible for coordinating and communicating with marine industry in the District.
  - Section 82 of title 14, United States Code authorizes coordination with the FAA for the maintenance of air aids to navigation. The Committee is repealing this provision because the Coast Guard no longer maintains air aids to navigation.
  - Section 90 of title 14, United States Code authorizes the Coast Guard to maintain ocean stations. The Committee is repealing this provision because the Service has not maintained an ocean station since the 1970's.
  - The last two sentences of Section 149(a) of title 14, United States Code allow servicemembers assigned to a foreign country to be paid twice. This repeal corrects that discrepancy.
  - Section 193 of title 14, United States Code authorizes an advisory committee on the Coast Guard Academy. The Committee is repealing this provision because this advisory committee's authority to meet expired in 1994.
  - Section 198 of title 14, United States Code authorizes the Commandant to establish Coast Guard History Fellowships. This program has never been funded. The Committee is repealing this provision because the Coast Guard has never used this authority and has no plan to establish History Fellowships.

- Section 563 of title 14, United States Code makes employees of the Service's Acquisition Directorate eligible for additional bonuses that other Coast Guard employees and servicemembers are not eligible to receive. The Committee is repealing this provision to ensure parity among all employees at the Coast Guard.
- The legislation makes the knowing and willful interference with Coast Guard transmissions a class-E felony offense. The Coast Guard has testified before the Committee that its ability to conduct its vital missions including protecting the safety of life at sea is entirely dependent on being able to send and receive radio and microwave signals over its network. Interference with those signals places lives in danger. As nearly all navigation is now electronic, this provision is the logical extension of the penalties for offenses related to interfering or tampering with Aids to Navigation.
- The legislation prohibits the Commandant from going to production on a sixth national security cutter on any date before which the Commandant has acquired a sufficient number of Long Range Interceptor II and Cutter Boat Over the Horizon IV small boats for each of the first three national security cutters, implemented a system to achieve the goal of 225 days away from homeport for two national security cutters, and submitted a plan to provide the national security cutters with advance aerial surveillance support. Additionally, the Commandant may not begin production on the seventh national security cutter until the Service has selected an OPC. The OPC is intended to replace the Coast Guard's aging fleet of medium endurance cutters. The Service is years behind schedule on the development of the OPC, and still does not have an approved baseline cost estimate in place for the program.
- The legislation consolidates several reports on Coast Guard acquisitions and expands the reporting requirements beyond the former Deepwater Program to encompass all major acquisitions projects.
- The legislation requires the Coast Guard to submit to the Committee a prioritized list of projects eligible for environmental compliance and restoration funding in the ensuing fiscal year. The Committee remains concerned about the Service's growing backlog of environmental restoration projects.
- The legislation would expand eligibility for enrollment in the Coast Guard Auxiliary to legal permanent residents. Currently, legal permanent residents can serve in the Armed Forces.
- The legislation requires the Commandant to decommission the POLAR SEA within 6 months of the date of enactment of this Act and the POLAR STAR within 3 years of the date of enactment of this Act. Neither Class I icebreakers is currently operational. The POLAR STAR is currently undergoing a sustainment project and is scheduled to return to service in fiscal year 2013. The Coast Guard estimates the POLAR STAR could be operational through fiscal year 2019.

- The legislation requires the Secretary of Homeland Security to report to the Committee on the Coast Guard's high latitude capabilities. This report must address prevention and response capability in the high latitude regions and must touch on all Coast Guard mission areas. Additionally, it must provide an assessment of the high latitude operating capabilities of all current Coast Guard assets other than icebreakers, including assets acquired under the Deepwater program; an assessment of projected needs for Coast Guard forward operating bases in the high latitude regions; and an assessment of shore infrastructure, personnel, logistics, communications, and resources requirements to support Coast Guard forward operating bases in the high latitude regions.
- The legislation limits expenditures on certain Coast Guard programs which provide assistance to foreign nations to \$100,000 annually.
- The legislation prohibits the Secretary of Homeland Security and the Commandant from traveling aboard any Coast Guard owned or operated fixed wing aircraft until the Secretary provides Congress with a cost-constrained Fleet Mix Analysis and the notification on the Secretary's determination on the need for a backup to GPS as required under section 219 of the Coast Guard Authorization Act of 2010 (Public Law 111-281; 124 Stat. 2918). The Committee has repeatedly requested these documents. Subsequent to Committee action on H.R. 2838 the Secretary provided the Section 219 report to the Committee.

### **Shipping and Navigation:**

- H.R. 2838 provides a formal authorization to the existing interagency Committee on the Marine Transportation System. It also requires the Committee to provide Congress with a strategy on ways to improve the Marine Transportation System every five years.
- The legislation requires the Secretary of Homeland Security to report to the Committee on the Coast Guard's foreign rebuild determination regulations, the impact of those regulations on maritime industries, and recommendations for improving the transparency in the Service's foreign rebuild determination process.
- The legislation repeals a provision in current law that has yet to be implemented which would require a publicly accessible database listing the names of commercial fishermen. It also changes the frequency of dockside examinations for commercial fishing vessels from two to five years and changes the date that the requirement for such examinations enters into force from October 15, 2012, to October 15, 2015. The Coast Guard has testified before the Committee that it does not have the resources to conduct examinations on all 35,000 commercial fishing vessels prior to October 15, 2012. The Service has also testified that without an examination, these vessels will not be permitted to leave the dock.
- The legislation clarifies that a foreign citizen may file a personal injury lawsuit in a U.S. court only if the accident occurred in U.S. waters, aboard a U.S. vessel, or the claimant is a permanent resident alien and does not have a right to bring suit in his country of

residence or the flag state of the vessel from which the claim arose. The provision does not require a trial in, or under the laws of, the United States for any injury, illness or death to any foreign seaman engaged aboard a foreign passenger vessel.

- The legislation clarifies that a fishing permit is not appurtenant to a vessel and therefore not subject to a maritime lien.
- The legislation makes technical and clarifying changes to improve the Short Sea Transportation program administered by the Maritime Administration.
- The legislation clarifies that the mission of the Maritime Administration shall be to foster, promote, and develop the domestic merchant maritime industry of the United States.

### **Shipping and Navigation:**

The legislation authorizes funding for the Federal Maritime Commission at \$22,100,000 for each of the fiscal years 2012 through 2015, the same level appropriated in fiscal year 2008.

### **Commercial Vessel Discharges:**

The legislation includes language from the [H.R. 2840](#) which creates a single nationwide performance standard for ballast water discharges (i.e., for water drawn into and discharged from a ship to help stabilize or control it) in an effort to conform to standards set by the International Maritime Organization regarding the permissible number of viable organisms per cubic centimeter of water. Highlights include the following:

- The legislation requires the Homeland Security Department, in consultation with EPA, to issue standards governing ballast water discharges.
- The legislation exempts discharges that are done solely to ensure the safety of life at sea, that are accidental and the result of damage to the vessel, or that are solely for the purpose of avoiding or minimizing discharge of pollution that would otherwise violate federal or state law.
- The legislation's new requirements would not apply to commercial vessels that carry all ballast water in sealed tanks that are not subject to discharge, that continuously take on and discharge ballast water via a flow-through system, that discharge ballast water consisting solely of water taken from a commercial or municipal source meeting the requirements of the Safe Water Drinking Act, or that are three years or fewer from the end of their useful lives. The measure also exempts any vessel in the National Defense Reserve Fleet that is scheduled to be disposed of through scrapping or sinking.
- The legislation establishes a schedule of deadlines for compliance with the new discharge requirements, including early deadlines for newly-constructed ships, and later deadlines for existing vessels based on their ballast water capacity. It also provides a process for the Homeland Security Department to extend compliance deadlines, but the total extension

period could not exceed 36 months. The initial federal rules would have to be issued within 180 days of enactment.

- The legislation directs the Homeland Security Department, in consultation with the EPA, to establish an alternative method of compliance for commercial vessels having a maximum ballast water capacity of less than eight cubic meters. The department would consider the effectiveness of the alternative method in reducing the risk of aquatic nuisance species.
- The legislation requirements would not apply to commercial vessels that operate within a geographically limited area. The owner or operator of a commercial ship could petition the Homeland Security Department for a determination that it operates in a geographically limited area, with the department required to respond within 90 days.
- The legislation also exempts commercial vessels that discharge ballast water into an onshore facility for the reception of ballast water that meets standards issued by the EPA, in consultation with the Homeland Security Department, or that discharge water into an offshore facility for the reception of ballast water that meets standards issued by the Homeland Security Department, in consultation with the EPA. The Homeland Security Department and the EPA would be required to issue relevant standards for such situations within two years.
- The legislation requires the EPA, in consultation with the Homeland Security Department, to review ballast water performance standards no later than Jan. 1, 2016, and every 10 years thereafter, to determine whether revisions would result in a scientifically demonstrable and substantial reduction in the risk of the introduction or establishment of aquatic nuisance species.
- The legislation requires if the EPA determines that revising the ballast water performance standard would result in a scientifically demonstrable and substantial reduction in the risk posed by aquatic nuisance species, the EPA would conduct a rulemaking to revise the standard. The EPA could not issue a revised performance standard that applies to a commercial vessel constructed prior to the issue date of the revised standard, however, unless the revised standard is at least two orders of magnitude more stringent than the standard in effect on the date the review is completed.
- The legislation requires that the States be allowed to submit petitions requesting that the EPA review a ballast water performance standard if there is significant new information that could reasonably indicate the standard could be revised to result in a scientifically demonstrable and substantial reduction in the risk posed by aquatic nuisance species.
- The legislation allows states that wish to administer their own inspection and enforcement authority over ballast water discharges to submit a complete description of the program to the Homeland Security Department. The department, with the concurrence of the EPA, could approve a state program if it determines that the state has

adequate resources to inspect, monitor and board a commercial vessel at any time to ensure compliance with the measure.

- The state could enact laws necessary to provide for the implementation of a state ballast water inspection program. The Homeland Security Department could take corrective action if it finds that a state is not administering a program as approved, but it could not withdraw approval of a program before notifying the state in writing.

### **Miscellaneous Provisions:**

- The legislation makes technical corrections to Title 14 to clarify the prohibition on the phase out for the use of lead systems integrators and changes the frequency of a report on former Coast Guard Officers. Additionally, this section clarifies the requirements for a report on construction and alteration of bridges over navigable waters.
- The legislation requires the Commandant to report to the Committee on the present merchant mariner medical evaluation program and alternatives to the program. The Committee is concerned the current program is unduly burdensome on U.S. mariners, is not equipped to handle the expected demand of moving to a two year licensing regime called for under the amendments to the Standards of Training, Certification, and Watchkeeping recently adopted by the International Maritime Organization, and is not consistent with similar medical review programs in other transportation modes.
- The legislation clarifies that notice of arrival regulations promulgated pursuant to the Security and Accountability for Every Port Act of 2006 only apply to vessels arriving from a foreign port or place.
- The legislation makes technical and clarifying amendments to Chapter 1 of title 14, United States Code.
- The legislation extends the expiration of the current vessel manning requirements waiver for the Distant Water Tuna Fleet until the expiration of the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America.
- The legislation allows the issuance of coastwise endorsements to eight vessels and clarifies that vessels carried aboard a certain movable dry dock do not constitute “merchandise”.
- The legislation requires the Commandant to report to the Committee on options to improve coordination between the United States Coast Guard and the Canadian Coast Guard on matters pertaining to Great Lakes icebreaking. The bill requires the Coast Guard to decommission the Class I icebreaker Polar Sea within six months of the date of enactment and to decommission the Polar Star within three years of the date of enactment. Neither icebreaker is currently operational, according to the committee.



- The legislation requires the operators of offshore drilling platforms to contract for vessels to be in the area of the platform to perform evacuations.
- The legislation allows, in the case of a class action suit brought by seamen who serve on cruise ships, the total amount of the penalty is limited to 10 times the amount of wages owed. Section 404 caps the penalty amount at 10 times the amount of wages owed for any seaman serving on a cruise ship, regardless of whether the relief is sought in a class action. Current law provides that if a shipowner does not pay a seaman what the seaman is owed under his employment contract without sufficient cause, the shipowner must pay the seaman two days' wages for each day he does not pay the seaman the contractual amount.

**Background:** The Transportation and Infrastructure Committee provided the following background on the Coast Guard in the [committee report](#):

The United States Coast Guard was established on January 28, 1915, through the consolidation of the Revenue Cutter Service (established in 1790) and the Lifesaving Service (established in 1848). The Coast Guard later assumed the duties of three other agencies: the Lighthouse Service (established 1789), the Steamboat Inspection Service (established in 1838), and the Bureau of Navigation (established in 1884).

Under section 2 of title 14, United States Code, the Coast Guard has primary responsibility to enforce or assist in the enforcement of all applicable Federal laws in, under, and over the high seas and waters subject to the jurisdiction of the United States; to ensure safety of life and property at sea; to protect the marine environment; to carry out domestic and international icebreaking activities; and to ensure the safety and security of vessels, ports, waterways, and related facilities. As one of the five armed services that comprise the armed forces, the Coast Guard also maintains defense readiness to operate as a specialized service in the Navy upon the declaration of war or when the President directs. The Coast Guard is composed of approximately 42,000 military personnel, 8,100 reservists, 6,700 civilian employees, and 36,000 volunteers of the Coast Guard Auxiliary. The Coast Guard or its predecessors have defended the Nation in every war since 1790.

**Committee Action:** H.R. 2838 was introduced by Rep. Frank LoBiondo (R-NJ) on September 9, 2011, and was referred to the Committee on Transportation and Infrastructure. The committee amended the bill on October 3, 2011 and then passed the bill by voice vote and placed the bill on the Union Calendar.

**Administration Position:** According to the Statement of Administration Policy (SAP), “The Administration strongly opposes House passage of H.R. 2838 because it includes a provision that would require the Coast Guard to decommission the icebreaker USCGC POLAR STAR. The Administration has requested, and Congress has appropriated, funds to reactivate the USCGC POLAR STAR by December 2012 and extend that vessel’s service life for seven to 10 years. This effort will stabilize the United States’ existing polar fleet until long-term icebreaking

capability requirements are finalized. By directing the Commandant to decommission the USCGC POLAR STAR within three years, the bill would effectively reduce the vessel's service life to two years and create a significant gap in the Nation's icebreaking capacity. The Administration supports Title II (Coast Guard and Servicemember Parity), which would promote parity between the Coast Guard and the other branches of the armed forces."

**Cost to Taxpayers:** According to CBO, "H.R. 2838 would authorize appropriations for United States Coast Guard (USCG) activities through fiscal year 2014, Maritime Administration (MARAD) grants for certain short-distance shipping activities through fiscal year 2016, and Federal Maritime Commission (FMC) activities through fiscal year 2015. In total, the bill would authorize the appropriation of about \$25.8 billion for such activities, \$25.7 billion of it for ongoing USCG operations. CBO estimates that implementing the bill would cost about \$24.4 billion over the 2012-2016 period, assuming appropriation of the authorized amounts."

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes, the bill creates new program that imposes a mandate on the private-sector. According to CBO,

"The bill would require operators to locate a standby vessel within 3 nautical miles of offshore oil and gas facilities when certain activities are being performed and within 12 nautical miles of facilities at all other times. The cost of that mandate would depend on several factors. The bill would allow operators to share one standby vessel among multiple facilities and to use standby vessels for other purposes. For operators that can use those measures, the cost of the mandate would tend to be lower. At the same time, the bill would authorize the Coast Guard to require standby vessels to be located closer than 3 or 12 nautical miles to offshore facilities if necessary to address delays caused by weather or other conditions. Reducing the minimum distance from facilities would increase the number of vessels necessary for compliance and increase the cost of the mandate for some operators."

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** According to CBO, "The bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). H.R. 2838 would impose a private-sector mandate, as defined in UMRA, on owners and operators of offshore facilities used in the production of oil and gas. Based on information from the Department of the Interior and industry sources, CBO estimates that the aggregate cost of the mandate would probably exceed the annual threshold established in UMRA for private-sector mandates (\$142 million in 2011, adjusted annually for inflation)."

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** A committee report citing compliance with rules regarding earmarks, limited tax benefits, or limited tariff benefits is not available.

**Constitutional Authority:** According Rep. LoBiondo's statement of constitutional authority, "Congress has the power to enact this legislation pursuant to the following: Article 1, Section 8 of the United States Constitution."

## **H.R. 3321 - America's Cup Act of 2011 (Herger, R-CA)**

**Order of Business:** The bill is scheduled to be considered on Friday, November 4, 2011, under a motion to suspend the rules and pass the legislation.

**Note:** The Rules of the House only allow bills to be considered under suspension of the rules on Mondays, Tuesdays, and Wednesdays. For a bill to be considered under suspension of the rules during the remainder of the week, the Rules Committee must pass a rule. [H.Res. 455](#) provides that it shall be in order at any time on the legislative day of November 4, 2011, for the Speaker to entertain motions that the House suspends the rules relating to a measure addressing the applicability of the coastwise trade laws

**Summary:** H.R. 3321 would facilitate the hosting in the United States of the 34th America's Cup by authorizing certain eligible vessels to participate in activities related to the competition, and for other purposes. The legislation authorizes, notwithstanding sections 55102, 55103, and 55111 of title 46, United States Code, an eligible vessel, operating only in preparation for, or in connection with, the 34th America's Cup competition, to position competing vessels and transport individuals and equipment and supplies utilized for the staging, operations, or broadcast of the competition from and around the ports in the United States. The legislation prohibits a vessel from operating as an eligible vessel unless the vessel has received an Eligibility Certification. The bill states that a vessel may not operate unless the vessel has received an Eligibility Certification. The legislation defines an eligible vessel as a competing vessel or supporting vessel of any registry that:

- is recognized by America's Cup Race Management as an official competing vessel, or supporting vessel of, the 34th America's Cup, as evidenced in writing to the Administrator of the Maritime Administration of the Department of Transportation;
- transports not more than 25 individuals, in addition to the crew;
- is not a ferry (as defined under section 23 2101(10b) of title 46, United States Code);
- does not transport individuals in point to-point service for hire;
- does not transport merchandise between ports in the United States.

The legislation authorizes the Administrator of the Maritime Administration of the Department of Transportation to issue an Eligibility Certification with respect to any vessel that the Administrator determines, in his or her sole discretion, meets the requirements set forth in the "eligible vessel" rules.

The legislation authorizes, notwithstanding sections 55102, 55103, and 55111 of title 46, United States Code, that an Eligibility Certification shall be conclusive evidence to the Secretary of the Department of Homeland Security of the qualification of the vessel for which it has been issued to participate in the 34th America's Cup as a competing vessel or a supporting vessel.

The legislation states that any vessel participating in the 34th America's Cup as a competing vessel or supporting vessel that has not received an Eligibility Certification or is not in compliance with section 12112 of title 46, United States Code, shall be subject to the applicable penalties provided in chapters 121 and 551 of title 46, United States Code.

The legislation authorizes, notwithstanding sections 12112 and 12132 and chapter 551 of title 46, United States Code, the Secretary of the Department in which the Coast Guard is operating may issue a certificate of documentation with a coastwise endorsement for each of the following vessels:

- M/V GEYSIR (United States official number 622178);
- MACY-RENEE (United States official number 1107319);
- OCEAN VERITAS (IMO number 7366805);
- LUNA (United States official number 280133);
- IL MORO DI VENEZIA IV (United States official number 1028654);
- LNG GEMINI (United States official number 595752);
- LNG LEO (United States official number 595753);
- LNG VIRGO (United States official number 595755).

The legislation authorizes the Coastwise to be limited to carriage of natural gas. The legislation also authorizes that the coastwise endorsement issued under the 34th America's Cup for a vessel will expire on the date of the sale of the vessel by the owner of the vessel on the date of enactment of this bill to a person who is not related by ownership or control to such owner. Lastly, the legislation requires that a vessel transported in Dry Dock #2 (State of Alaska registration AIDEA FDD-2) is not merchandise for purposes of section 55102 of title 46, United States Code, if, during such transportation, Dry Dock #2 remains connected by a utility or other connecting line to pier side moorage.

**Background:** The Jones Act governs the domestic transportation of merchandise and passengers by water and it requires that merchandise transported entirely or partly by water between U.S. points--either directly or via a foreign point--must travel in U.S.-built, U.S.-citizen owned vessels that are U.S.-documented by the Coast Guard for such carriage. The navigation laws (including the Jones Act) can only be waived under the authority provided by the Act of

December 27, 1950 (64 Stat. 1120; note preceding 46 U.S.C. App. § 1) and then only *in the interest of national defense*. Waivers may also be accomplished through special legislation. H.R. 3321 makes in order waivers through special legislation to allow the 34<sup>th</sup> America's Cup. Additional Jones Act waivers that are attached to this bill are contained in Sec. 606 of H.R. 2838, the Coast Guard and Maritime Transportation Act of 2011. The intent in attaching these waivers to the Americas Cup legislation is to reflect an understanding that in fairness, such Jones Act waivers should move through the process together rather than giving special treatment to one specific waiver over another, based on union opposition or other influences. (Unions generally support the protectionist Jones Act policy, and as a result they generally oppose most waivers sought through Congressional action.)

According to the [bill text](#), the “34<sup>th</sup> America's Cup is a sailing competition, commencing in 2011, to be held in the United States in response to the challenge to the defending team from the United States, in accordance with the terms of the America's Cup governing Deed of Gift, dated October 24, 1887. The legislation further clarifies if a United States yacht club successfully defends the America's Cup, the legislation authorizes additional sailing competitions conducted by the America's Cup Race Management during the 1-year period beginning on the last date of such defense.”

**Committee Action:** H.R. 3321 was introduced on November 2, 2011 by Rep. Wally Herger, and referred to House Committee on Transportation and Infrastructure.

**Administration Position:** No Statement of Administration Policy is available.

**Cost to Taxpayers:** A CBO score was unavailable at press time.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates:** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

**Constitutional Authority:** According Rep. Herger's statement of constitutional authority, “Congress has the power to enact this legislation pursuant to the following: Article I Section 8 of the United States Constitution which allows the Congress of the United States To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”

**RSC Staff Contact:** Ja'Ron Smith, [ja'ron.smith@mail.house.gov](mailto:ja'ron.smith@mail.house.gov), (202) 226-2076.

