

MARITIME SECURITY

A BRIEF OVERVIEW

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HISTORY

Prior to September 11, 2001, maritime security, while being considered as a necessary element of the management of the maritime community, was a relatively small priority in actual application to the overall scheme of commercial shipping and port operations in the United States. Historically, the two major exceptions to this statement were the two World Wars, where port security and vessel protection were major concerns because of the substantial role the maritime community had in prosecuting the war effort. The terrorist attacks in 2001 altered the maritime security culture in a way not heretofore seen in the country by making maritime security a part of the normal operating environment, something readily obvious to be continued for the foreseeable future.

Among the first laws applied to maritime security was the Espionage Act of 1917. This was a broad brush law that extended far beyond the maritime realm to encompass any and all acts of sedition against the United States, and came at the height of World War I. Also during World War I, the U. S. Coast Guard first designated officers as Captains of the Port. Most were senior officers who oversaw the loading of cargoes, particularly dangerous ones such as munitions. Over time and with the threats and actual attacks of World War II and the Cold War environment, maritime security became better defined. Much of the increased responsibility for maritime security and clarification of roles resided in the Coast Guard's Captains of the Port. The Safety of Naval Vessels Act of 1941 authorized them to control the anchorage and movement of any vessel in the navigable waters of the United States to ensure the safety and security of any U. S. naval vessel. The Magnuson Act and Executive Order 10173 provided broad power to order vessel movements, place guards on vessels and even take possession of those vessels in United States internal and territorial waters. This Act authorized the Coast Guard to conduct duties it had carried out during both World Wars to ensure the security of U.S. ports "from subversive or clandestine attacks". Other laws over the next fifty years further refined and broadened the authorities of the Captain of the Port to include routine port and shipping controls and management, and pollution response. In many cases, these acts were modified over time to address security concerns. As an example, the Port and Tanker Safety Act of 1978, which later became know as the Ports and Waterways Safety Act, was enacted to improve the navigation and vessel safety and protection of the marine environment brought about by increased commercial traffic and poorly maintained tankships. It authorized increased inspections of vessels, particularly those carrying hydrocarbons and chemicals, and required compliance with enhanced safety standards coming into effect at that time. It also contained language that addressed planning and protective measures for the nation's ports, waterways and marine environment. In 1986, additional language through amendments were implemented in the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986, which authorized the Coast Guard to carry out or require measures, including "the establishment of security and safety zones...to prevent or respond to acts of terrorism" against a person, vessel, or structure that is 1) subject to the jurisdiction of the United States and located within or adjacent to the marine environment or 2) a vessel of the United States or an individual on board that vessel. It also authorized the Coast Guard to recruit and train regular and reserve members in the techniques of

preventing and responding to acts of terrorism. Not by coincidence, the hijacking of the passenger ship ACHILLE LAURO had occurred the previous year. Concerns for maritime terrorism rose and fell rather quickly.

So there was both a history and reasonably extensive library of laws that have recognized the threat of maritime terrorism, typically from a well-identified enemy, and fairly complete set of authorities to prosecute action against it. However, all said, the general concern for maritime security was that it was still a small and not usually conscious portion of the operational management of the maritime community, and that threats to the United States ports and vessel traffic were reasonably inconsequential.

MARITIME TRANSPORTATION SECURITY ACT OF 2002 (MTSA 2002)

In November 2002, President Bush signed the Maritime Transportation Security Act of 2002. For maritime security, this is a landmark piece of legislation, both for what it includes and what it omits. MTSA 2002 is truly the first effort to develop a systematic methodology for maritime security. It develops a new positional authority for the Coast Guard Captain of the Port known as the Federal Maritime Security Coordinator. MTSA 2002 and the regulations derived from this law charge the Coast Guard with the responsibilities of planning, prevention and preparation for maritime security issues. Each Marine Safety Office, and now each Sector, was required to develop an Area Maritime Security Committee to coordinate the maritime security activities within its area of responsibility. The committee was modeled after the very successful Area Committees that addressed pollution prevention and response, and were initiated in the early 1990s after the grounding and oil spill from the tankship EXXON VALDEZ. The maritime security committees take into account the reality that the Coast Guard has neither the personnel nor resources to handle the nation's maritime security on its own. Incorporated within the committee membership are all the federal, state and local governmental agencies that have a role in maritime security. These include the FBI, Customs and Border Protection, Investigations and Customs Enforcement, the U.S. Attorney, National Guard, other appropriate military components, state and local law enforcement, state and local emergency management. From the private sector, port directors and senior leadership from major maritime industries located in the area. Other organizations that have key responsibilities in the region, such as utilities, are also included. The Federal Maritime Security Coordinator serves as the chair for this committee, and a member of the committee is selected to serve as co-chair. From the large committee, a steering committee is appointed to set direction for maritime security within the zone. Each committee was tasked with developing the security plan for the port, conducting risk analyses and assessments, and corporately creating a prevention-focused plan.

Also, MTSA 2002 required individual plans for each waterfront facility that handles cargo across a dock, and each U.S.-flagged vessel that measures greater than 300 gross tons. The United States, led by the Coast Guard, was instrumental in driving international agreements through the International Maritime Organization (IMO), an agency of the United Nations, that require vessel and port plans for all signatory countries of IMO. The U.S. regulations and international agreements all entered into effect on July 1, 2004.

Plan review for U. S. vessels was conducted at the national level at the Coast Guard's Marine Safety Center in Washington, D.C. Plan review for marine facilities was conducted at the local level.

Plan review for foreign vessels was done by the flag state or their representative, typically a classification society. Each flag state was and continues to be responsible for the security conditions of the vessels registered under their flags. The vessels are required to meet the IMO vessel security standards.

In the United States, joint boardings are conducted by the Coast Guard and Customs and Border Protection based on a risk criteria matrix. This tool assists the two agencies in determining both the location and overall nature of the boarding, and is based on the vessel's flag state, crew makeup and cargo among other parameters. These boardings are typically armed. The boardings typically consist of a general inspection of each vessel, an examination of the vessel's documents, crew lists and passports and licenses that verify the actual presence of the crew members against the crew lists, verification through documentation and on-board plans that the ship has met its security requirements. Verification of the ship's actual security readiness can, by policy, only be conducted when obvious circumstances indicate that there are serious security concerns with the vessel. This entire boarding philosophy was consciously implemented to minimize the potential for unjustified reciprocal boardings of U.S.-flagged vessels in foreign ports.

The Coast Guard at the Sector level also conducts frequent and varied security inspections of the marine facilities within its zone. These serve as both a verification of each facility's plan and an oversight program to ensure that it is properly conducted.

MARITIME SECURITY SUCCESSES

- MTSA 2002 and the subsequent annual legislations that added to and modified the original act have consolidated maritime security authorities more than any legislation in history, and initiated making maritime security a national priority.
- The Act and its regulations and policies implemented risk models and priorities and established methodologies to address some of the biggest maritime risks.
- One of the most effective outcomes of the Act was that it required the Federal government, through the Coast Guard, to better identify the maritime community members and charter a team through the Area Maritime Security Committees to support mutual aid and action for planning, prevention, preparedness, response and mitigation.
- Some port areas have advanced their Area Maritime Security Committees to incorporate an all hazards mentality.
- While far from perfect, sharing of maritime intelligence has improved dramatically over the span of time since September 11, 2001. More of the appropriate agencies are able to communicate intelligence, though often it would seem, grudgingly.

MARITIME SECURITY WEAKNESSES AND LIMITATIONS

- There continue to be major gaps in the current laws and regulations:

- The requirements for vessels require that they have security plans if they are more than 300 Gross Tons. This precludes a significant number of vessels that transit into and out of U. S. ports, including vessels exceeding 100 feet in length and most of the commercial fishing fleets. While there is widespread recognition that a system needs to be developed to address the littoral portions of our coastline, and efforts are actually being made to do so, nothing beyond random boardings currently exists.
- The current notification system requires a 96-hour notification prior to the arrival of vessels into U. S. ports. While this is sufficient time to effectively screen the vessels required to provide notification, it is a screening based in large part on the honesty of those providing the information regarding the vessel, its owners and operators, its cargoes and its crew make-up, a characteristic not expected of terrorists. And the screening doesn't apply to those vessels less than 300 Gross Tons, as described above.
- The position of Federal Maritime Security Coordinator created by Congress in the MTSA 2002 legislation has helped to develop a focal point for port security, even with the limitations discussed above, and in many respects puts maritime security ahead of landward security. There currently does not exist a complementary coordinator for the landward portion of the nation in order to effectively address all security issues for the nation.
- MTSA 2002 and its regulations provide for primarily a planning, prevention and preparation system. As such, the Coast Guard is the supported agency. Should a security incident actually occur, the Attorney General, usually through the FBI, is responsible for the law enforcement response. Even at this point, it remains unclear exactly who would assume the overall leadership for the response and mitigation, although it would obviously require a Unified Command. Much effort is still required to resolve the membership of that command and how it would function. That effort is severely lacking and guidance hasn't been forthcoming.
- Especially in light of the recent hurricane responses, the National Response Plan, newly revised and promulgated in 2005 just a few months before Hurricane Katrina, demonstrated extremely large organizational gaps that remain to be revised or otherwise addressed. While many jurisdictions have been able to effectively demonstrate the ability to prosecute responses for reasonably limited events and limited geographical areas, methodologies for dealing with larger responses are still too much a mystery to most agencies and the national planning still lags.
- Each port area isn't viewed as a system, with the landward portion of the port, including the facilities and shore, the waterways and approaches. Currently, the Coast Guard is responsible for overseeing the security preparations of facilities that conduct cargo operations across a dock. It is not responsible for the shore or other facilities located along shoreside which do not conduct such cargo operations. This falls under the purview of other federal or state agencies, and in the case of most shore areas, local law enforcement. While many, if not most, of the various agencies are included in the Area Maritime Security Committee, addressing the security of the overall port system remains a hodge-podge of authorities.
- There is a question about the effectiveness of some flag states in applying the IMO vessel security requirements. Just as there is a broad spectrum of fleet structural conditions

(although this has improved over time) from flag state to flag state, some flag states are suspect in their ability to ensure the security of the vessels they register. The Coast Guard has taken steps to address this concern through the International Port Security Program.

U. S. CUSTOMS AND BORDER PROTECTION

The U. S. Customs and Border Protection has a complementary role with the Coast Guard in maritime security. With the Coast Guard, they share an interest in crew make-up, certain aspects of the vessel and are responsible for the actual cargo conveyance and cargo containment at the port facilities. Currently, there exist some redundancies in what the two DHS agencies do in dealing with both vessels and port facilities, which have been recognized within DHS and may be resolved over time as the Department matures. However, there is fairly strong resistance to significant change on the part of either agency.

SECURITY AND ACCOUNTABILITY FOR EVERY (SAFE) ACT OF 2006

A new piece of legislation that will address several significant gaps in maritime security is the Security and Accountability for Every (SAFE) Act of 2006. It will include a number of measures, several of which were initiated well before the Act was promulgated, that will address issues in both U. S. and foreign ports.

ENHANCING SECURITY AT U. S. PORTS

- Screen 100 percent of all containers for radiation, including the deployment of radiation portal monitors at all remaining identified ports. Develop standard operating procedures for container inspections. (Customs and Border Protection has been deploying these for a number of years at ports with significant container traffic.)
- Provide risk-based funding through a dedicated Port Security Grant program.
- Develop a terrorist watch list for all port employees with access to secure areas and a methodology for dealing with list matches. (This has been an ongoing process for several years, and includes an initial screening and the issuance of an identification card, and is similar to that developed for airport employees. The program was the sole subject of HSPD 12, signed by President Bush in August 2004. It has proven to be a daunting task because it includes not only port employees but vendors, delivery and all other personnel who are required by their work assignments to have access to secure port areas. Short term, the logistics of screening, and designing and issuing the identifications has been major sticking points. However, long term, it will be beneficial for all. Most ports designed and issued identifications for the same pool of personnel that were often only accepted at the port that issued them. In many cases, such as truck drivers, they were required to have several. This program will result in a single nationwide card issued after a standardized national screening.)
- Establish joint operations centers at ports to bring together federal, state, local and private organizations to coordinate security measures and unify response efforts. (As we heard in Port Huron, MI, this can be a challenging task.)
- Protocols to resume trade after a transportation security incident

PREVENTING THREATS FROM REACHING THE U. S.

- DHS, through Customs and Border Protection, is required to conduct thorough security assessments of foreign ports interested in participating in the Container Security Initiative (CSI) program to examine high-risk cargoes. CSI has four key elements:
 - Identify high-risk containers using automated targeting tools to identify containers that pose a potential risk for terrorism, based on advance information and strategic intelligence.
 - Prescreen and evaluate containers before they are shipped, as early in the supply chain as possible, generally at the port of departure.
 - Use technology to prescreen high-risk containers to ensure that screening can be done rapidly without slowing down the movement of trade. This technology includes large-scale X-ray and gamma ray machines and radiation detection devices.
 - Use smarter, more secure containers, which will allow CBP officers at U. S. ports of arrival to identify containers that have been tampered with during transit.
- Strengthen the Customs-Trade Partnership Against Terrorism (C-TPAT) program, creating partnerships between DHS and the private sector to establish transparency in the supply chain, enhance security measures and improve information sharing. C-TPAT is a voluntary program involving importers, carriers, consolidators, licensed customs brokers, and manufacturers. It involves the following business types:
 - U.S. Importers of record
 - U.S./Canada Highway Carriers
 - U.S./Mexico Highway Carriers
 - Rail Carriers
 - Sea Carriers
 - Air Carriers
 - U.S. Marine Port Authority/Terminal Operators
 - U.S. Air Freight Consolidators, Ocean Transportation Intermediaries and Non-Vessel Operating Common Carriers (NVOCC)
 - Mexican manufacturers
 - Certain Invited Foreign Manufacturers
 - Licensed U.S. Customs Brokers
- Set minimum standards for participating in C-TPAT, creating a tiered system based on each country's security cooperation
- Creates a top tier for most trusted private sector partners participating in C-TPAT which will provide cargo processing benefits
- DHS is authorized to provide training and loan detection equipment to participating nations to examine containers bound for the U. S.

TRACKING AND PROTECTING CONTAINERS EN ROUTE TO THE U. S.

- Improve the Automated Targeting System (ATS) designed to identify high-risk containers prior to reaching the U. S. Containerized cargo shippers must submit their cargo manifests 24 hours prior to loading the containers in foreign ports. ATS is used to determine the need for further security screenings and actions.

- Improve the International Trade Data System that links all Federal commercial data and provides the private sector with a single system through which to submit required information.
- Establish standards for securing containers.
- Revive Operation Safe Commerce to improve use of private sector initiatives, boost research and development and improve internal DHS coordination.
- Additional research and testing for technology integration, access control and data sharing.

INTERNATIONAL PORT SECURITY PROGRAM

In harmony with the Container Security Initiative, the Coast Guard works with foreign ports through the International Port Security Program to evaluate the host countries' overall compliance with the IMO's International Ship and Port Facility Security Code. The Coast Guard will use the information gained from these visits to improve U. S. security practices and to determine if additional security precautions will be required for vessels arriving in the U. S. from other countries. The Coast Guard began visiting countries in June 2003 with the anticipation that the program will better protect the global shipping industry through improved security in ports around the world. The program has both Coast Guard personnel assigned to a traveling team that visits about 45 countries each year and stationed in countries around the world to liaison with the host nations and provide support for the traveling team.

The traveling team and liaison officers meet with appropriate national authorities to discuss the nation's maritime security regime and its interpretation and implementation of the international code. They jointly visit representative ports within the country to view implementation and jointly verify with the host nation the effectiveness of the country's approval process for port facility and vessel security assessments and plans required under the international code. When and as necessary they provide technical assistance as necessary to assist countries with compliance and share information about best practices, both from within the country and around the world. The Coast Guard also invites officials from other nations for reciprocal visits to the U. S. and select ports to observe the Coast Guard's procedures for implementing the international code.

The Coast Guard will use the information gained from these visits to improve U. S. security practices and to determine if additional security precautions will be required for vessels arriving in the U. S. from other countries. Vessels that make port calls at countries that are not participants or that are not in compliance with the requirements of the international code could be delayed when attempting to enter a U.S. port as a result of additional enforcement actions. Enforcement actions may include boarding the vessel at sea prior to port entry, controlling the vessel's movement with armed escorts, conducting a comprehensive security inspection at sea or at the dock, or even denying entry into U. S. waters. These measures remain in place until the country demonstrates compliance.

NORTHERN NEW JERSEY SEAPORTS

The northern New Jersey seaports together with the seaports of New York comprise the Port Authority of New York and New Jersey. The New Jersey port components include the Port Newark-Elizabeth Marine Terminal, and Bayonne and Jersey City, and comprise most of the commercial and economic ports for the Authority, handling some 85 percent of all cargoes that pass through the Port Authority. Most of the port facilities actually in New York are largely symbolic. The New Jersey ports transfer petroleum and chemical products, automobile and railcar transshipment, refrigerated cargoes, have a rapidly growing cruise ship trade and is the East Coast's leading container port with 4,792,922 twenty foot equivalent units (TEUs) in 2005. In total, the Authority was the third largest port by tonnage in the nation, exceeded only by the ports of South Louisiana and Houston, TX and ranks twentieth worldwide. Similarly, the container facilities rank third in the nation, behind only Los Angeles and Long Beach, CA. As recently as 1985, the Port Newark-Elizabeth portion of the Authority was ranked first in the world in tonnage.

The volume and diversity of cargoes discussed above each have well-documented security concerns. The biggest challenges specific to the New Jersey port complex of the Authority focus on access. With the exception of a few small terminals, all the major terminals are located on narrow channels which could be threatened with blockage through the damage or sinking of a ship at any of a number of critical locations. Additionally, the major terminals have a one or more bridges between them and clear water; damage to these bridge structures could well affect vessel traffic through these channels.

SOUTHERN NEW JERSEY SEAPORTS

Two port authorities manage much of the maritime port operations in south New Jersey along the Delaware River, the South Jersey Port Corporation and the Delaware River Port Authority. The South Jersey Port Corporation, located in Camden and Gloucester, NJ, specializes in break bulk and bulk cargoes such as fruits, steel, petroleum coke and wood. It ranks 69th nationally. The Delaware River Port Authority is largely responsible for passenger vessel terminal operations. Additionally, there are three oil refineries located on the New Jersey side of the Delaware River, two in Paulsboro and one in Westville.

CONTAINER SECURITY INITIATIVE - CURRENTLY OPERATIONAL PORTS

In the Americas and Caribbean:

- Montreal, Vancouver & Halifax, Canada
- Santos, Brazil
- Buenos Aires, Argentina
- Puerto Cortes, Honduras
- Caucedo, Dominican Republic
- Kingston, Jamaica
- Freeport, The Bahamas

In Europe:

- Rotterdam, The Netherlands
- Bremerhaven & Hamburg, Germany
- Antwerp and Zeebrugge, Belgium
- Le Havre and Marseille, France
- Gothenburg, Sweden
- La Spezia, Genoa, Naples, Gioia Tauro, and Livorno, Italy
- Felixstowe, Liverpool, Thamesport, Tilbury, and Southampton, United Kingdom (U.K.)
- Piraeus, Greece
- Algeciras, Barcelona, and Valencia, Spain
- Lisbon, Portugal

In Asia and the East:

- Singapore
- Yokohama, Tokyo, Nagoya and Kobe, Japan
- Hong Kong
- Pusan, South Korea
- Port Klang and Tanjung Pelepas, Malaysia
- Laem Chabang, Thailand
- Dubai, United Arab Emirates (UAE)
- Shenzhen and Shanghai
- Kaohsiung and Chi-Lung
- Colombo, Sri Lanka
- Port Salalah, Oman

In Africa:

- Durban, South Africa