

# CRS Report for Congress

## Coast Guard Deepwater Program: Background, Oversight Issues, and Options for Congress

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Prepared for Members and  
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# Coast Guard Deepwater Program: Background, Oversight Issues, and Options for Congress

## Summary

The Integrated Deepwater Systems (IDS) program, or Deepwater program for short, is a \$24 billion, 25-year project to replace and modernize the Coast Guard's aging fleet of deepwater-capable ships and aircraft. It is the largest and most complex acquisition effort in Coast Guard history, encompassing 91 new cutters, 124 new small surface craft, and 244 new or converted airplanes, helicopters, and unmanned aerial vehicles (UAVs). The Deepwater program has received a net total of about \$5.1 billion through FY2008, including a net total of \$650.9 million in FY2008.

The year 2007 was a watershed year for the Deepwater program. The management and execution of the program was strongly criticized in reports and testimony from the Department of Homeland Security Inspector General (DHS IG), the Government Accountability Office (GAO), the Defense Acquisition University (DAU), and other observers. House and Senate committees held several oversight hearings on the program, at which several Members of Congress strongly criticized the management and execution of the program, particularly regarding problems in programs to acquire new and modernized cutters and patrol boats. Bills were introduced to restructure or reform the program in various ways. Coast Guard and industry officials acknowledged certain problems in the program's management and execution and defended the program's management execution in other respects. The Coast Guard announced a number of reform actions intended to improve its management and execution of the program. Among these was a decision to phase out the Coast Guard's reliance on Integrated Coast Guard Systems (ICGS) — an industry team led by Lockheed Martin and Northrop Grumman Ship Systems (NGSS) — as the lead system integrator (LSI) for executing the Deepwater program.

Legislation in 2007 relating to the Deepwater program included the following:

- **H.R. 2830/S. 1892**, the Coast Guard Authorization Act of 2007;
- **H.R. 2638/S. 1644**, the FY2008 Department of Homeland Security appropriations act, which was incorporated into the FY2008 Consolidated Appropriations Act (**H.R. 2764/P.L. 110-161** of December 26, 2007);
- **H.R. 2722/S. 924**, the Integrated Deepwater Program Reform Act;
- **S. 889**, the Deepwater Accountability Act; and
- **H.R. 2206/P.L. 110-28**, the FY2007 emergency supplemental appropriations act.

A potential key issue for Congress in 2008 is whether the reform actions announced by the Coast Guard in 2007 are sufficient, whether the Coast Guard is implementing these reform actions adequately, and whether additional legislation needs to be passed to restructure or reform the program. This report will be updated as events warrant.

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# Coast Guard Deepwater Program: Background, Oversight Issues, and Options for Congress

## Introduction

The Integrated Deepwater Systems (IDS) program, or Deepwater program for short, is a \$24 billion, 25-year project to replace and modernize the Coast Guard's aging fleet of deepwater-capable ships and aircraft. It is the largest and most complex acquisition effort in Coast Guard history, encompassing 91 new cutters, 124 new small surface craft, and 244 new or converted airplanes, helicopters, and unmanned aerial vehicles (UAVs). The Deepwater program has received a net total of about \$5.1 billion through FY2008, including a net total of \$650.9 million in FY2008.

The year 2007 was a watershed year for the Deepwater program. The management and execution of the program was strongly criticized in reports and testimony from the Department of Homeland Security Inspector General (DHS IG), the Government Accountability Office (GAO), the Defense Acquisition University (DAU), and other observers. House and Senate committees held several oversight hearings on the program, at which several Members of Congress strongly criticized the management and execution of the program, particularly regarding problems in programs to acquire new and modernized cutters and patrol boats. Bills were introduced to restructure or reform the program in various ways. Coast Guard and industry officials acknowledged certain problems in the program's management and execution and defended the program's management execution in other respects. The Coast Guard announced a number of reform actions intended to improve its management and execution of the program. Among these was a decision to phase out the Coast Guard's reliance on Integrated Coast Guard Systems (ICGS) — an industry team led by Lockheed Martin and Northrop Grumman Ship Systems (NGSS) — as the lead system integrator (LSI) for executing the Deepwater program.

A potential key issue for Congress in 2008 is whether the reform actions announced by the Coast Guard in 2007 are sufficient, whether the Coast Guard is implementing these reform actions adequately, and whether additional legislation needs to be passed to restructure or reform the program.

## Background<sup>1</sup>

### Coast Guard's Deepwater Missions

The Coast Guard performs a variety of missions in the deepwater environment, which generally means waters more than 50 miles from shore. These mission include drug interdiction, alien migrant interdiction, fisheries enforcement, search and rescue, the International Ice Patrol in northern waters; overseas maritime intercept (sanctions-enforcement) operations, overseas port security and defense, overseas peacetime military engagement; general defense operations in conjunction with the Navy; marine pollution law enforcement, enforcement of lightering (i.e., at-sea cargo-transfer) zones, and overseas inspection of foreign vessels entering U.S. ports. Deepwater-capable assets are also used closer to shore for various operations.

### Deepwater Program Basics

**Program Origin.** The Coast Guard initiated the Deepwater program in the late 1990s, following a determination by the Coast Guard that many of its existing (i.e., “legacy”) Deepwater-capable legacy assets were projected to reach their retirement ages within several years of one another. The Coast Guard’s legacy assets at the time included 93 aging cutters and patrol boats and 207 aging aircraft. Many of these ships and aircraft are expensive to operate (in part because the cutters require large crews), increasingly expensive to maintain, technologically obsolete, and in some cases poorly suited for performing today’s deepwater missions.

**System-of-Systems (SOS) Acquisition.** Rather than replacing its various deepwater-capable cutters, patrol boats, and aircraft through a series of individual procurement programs, the Coast Guard decided to pursue the Deepwater program as a system-of-systems (SOS) acquisition, under which a combination of new and modernized cutters, patrol boats, aircraft, along with associated C4ISR systems<sup>2</sup> and logistics support, would be procured as a single, integrated package. The Coast Guard believes that a system-of-systems approach permits the Deepwater project to be optimized (i.e., made maximally cost effective) at the overall, system-of-systems level, rather than suboptimized at the level of individual platforms and systems.

**Lead Systems Integrator (LSI).** To execute this system-of-systems acquisition approach, the Coast Guard initially decided to use a private-sector lead system integrator (LSI) — an industry entity responsible for designing, building, and integrating the various elements of the package so that it met the Coast Guard’s projected deepwater operational requirements at the lowest possible cost. The Coast Guard initially decided to use a private-sector LSI to execute the Deepwater program in part because the size and complexity of the project was thought to be beyond the system-integration capabilities of the Coast Guard’s relatively small in-house

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<sup>1</sup> For additional background information on the Deepwater program on the internet, log onto [<http://www.uscg.mil/deepwater/>] and [<http://www.teamdeepwater.com>].

<sup>2</sup> C4I stands for command, control, communications, computers, intelligence, surveillance, and reconnaissance.

acquisition work force. Another major acquisition effort being pursued as a system-of-systems acquisition with an LSI is the Army's Future Combat System (FCS).<sup>3</sup>

**Performance-Based Acquisition.** The Coast Guard also decided to pursue the Deepwater program as a performance-based acquisition, meaning that it would set performance requirements for the program and permit the Deepwater LSI some latitude in determining how the various elements of the Deepwater system would meet those requirements.

**ICGS Contract Award and Extension.** The Coast Guard ran a competition for the Deepwater LSI role. Three industry teams competed, and on June 25, 2002, the Coast Guard awarded the role to Integrated Coast Guard Systems (ICGS) — an industry team led by Lockheed Martin and Northrop Grumman Ship Systems (NGSS). ICGS was awarded an indefinite delivery, indefinite quantity (ID/IQ) contract for the Deepwater program that included a five-year baseline term that ended in June 2007, and five potential additional award terms of up to five years (60 months) each. On May 19, 2006, the Coast Guard announced that it was awarding ICGS a 43-month first additional award term, reflecting good but not excellent performance by ICGS. With this additional award term, the contract has been extended to January 2011.

**Revised Implementation Plan.** The original (1998) Deepwater implementation plan reflected a pre-9/11 analysis of Coast Guard mission demands. On March 25, 2005, the Coast Guard submitted to Congress a revised Deepwater implementation plan reflecting an analysis of the Coast Guard's expanded post-9/11 missions. The revised implementation plan increased the capabilities to be acquired under the Deepwater program. Primarily because of the increase in capabilities to be acquired, the Deepwater program's estimated acquisition cost increased from \$17 billion to \$24 billion, and the program's acquisition period increased from about 20 years to 25 years.

Some observers have expressed concern that the Deepwater program's estimated total acquisition cost has increased from \$17 billion to \$24 billion. An April 2006 Government Accountability Office (GAO) report stated the following:

The revised Deepwater implementation plans change the balance between new and legacy assets, alter the delivery schedule for some assets, lengthen the overall acquisition schedule by 5 years, and increase the projected program cost from \$17 billion to \$24 billion. The higher cost generally relates to upgrading assets to reflect added homeland security mission requirements. Upgrades to vessels account for the single largest area of increase; with upgrades to the command, control, communications and other capabilities being second highest. In contrast, because the revised plans upgrade rather than replace most legacy aircraft and reduce the number of unmanned aircraft, the cost for Deepwater

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<sup>3</sup> For more on the FCS program, see CRS Report RL32888, *The Army's Future Combat System (FCS): Background and Issues for Congress*, by Andrew Feickert. For more on LSIs in general, see CRS Report RS22631, *Defense Acquisition: Use of Lead System Integrators (LSIs) — Background, Oversight Issues, and Options for Congress*, by Valerie Bailey Grasso.

aircraft drops. The revised plans, like the original plan, are heavily dependent on receiving full funding each year. Coast Guard officials state that a shortfall in funding in any year could substantially increase total costs.<sup>4</sup>

Some observers expected the revised Deepwater implementation plan to include more ships and aircraft than the original (1998) Deepwater plan. A 2004 RAND Corporation report recommended substantially increasing the numbers of cutters and aircraft to be acquired under the original plan.<sup>5</sup> The revised implementation plan, however, did not substantially increase ship and aircraft numbers. The Coast Guard says the revised force would have considerably more capability than the 1998-planned force because the ships and aircraft would be individually more capable than under the 1998 plan. Coast Guard officials have also acknowledged, however, that the revised force would not have enough capacity to meet long-term (FY2005-FY2009) Government Performance and Review Act (GPRA) goals. An April 2006 GAO report concluded that

The Coast Guard's analytical methods were appropriate for determining if the revised asset mix would provide greater mission performance and whether the mix is appropriate for meeting Deepwater missions. GAO and other independent experts found the Coast Guard's methods were reliable for assessing the effects of changing the asset mix and a Department of Defense review board facilitated accreditation of the Coast Guard's approach."<sup>6</sup>

**Systems to Be Procured or Converted.** The revised Deepwater implementation plan includes the acquisition of the following:

**Ships, boats, and surface craft:**

- 8 new *National Security Cutters, or NSCs*, displacing about 4,000 tons each (i.e., ships analogous to today's high-endurance cutters);
- 25 new *Offshore Patrol Cutters, or OPCs*, displacing about 3,200 tons each (i.e., ships analogous to today's medium-endurance cutters);

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<sup>4</sup> Government Accountability Office: *Coast Guard[:] Changes to Deepwater Plan Appear Sound, and Program Management Has Improved, but Continued Monitoring Is Warranted*, GAO-06-546, June 2006.

<sup>5</sup> John Birkler, et al., *The U.S. Coast Guard's Deepwater Force Modernization Plan: Can It Be Accelerated? Will It Meet Changing Security Needs?* RAND, National Security Research Division, MG-114, 2004.

<sup>6</sup> Government Accountability Office: *Coast Guard[:] Changes to Deepwater Plan Appear Sound, and Program Management Has Improved, but Continued Monitoring Is Warranted*, GAO-06-546, June 2006.

For further discussion regarding the adequacy of proposed Deepwater assets, see Statement of Ronald O'Rourke, Specialist in National Defense, Congressional Research Service, Before the Senate Commerce, Science, and Transportation Committee Subcommittee on Fisheries and the Coast Guard Hearing on the Coast Guard's Revised Deepwater Implementation Plan, June 21, 2005, pp. 1-5.

- *58 new Fast Response Cutters (FRCs) displacing 200 tons each, to replace the Coast Guard's existing 110-foot Island-class patrol boats;*
- *33 new Long Range Interceptor (LRI) craft displacing 15 tons each;*  
and
- *91 new Short Range Prosecutor (SRP) craft displacing 9 tons each.*

**Aircraft:**

- *6 missionized HC-130J and 16 converted HC-130H Long Range Search (LRS) aircraft;*
- *36 new HC-144A Medium Range Maritime Patrol Aircraft (MPA) based on the European Aeronautic Defence and Space Company (EADS) CASA HC-235 Persuader MPA aircraft design;*
- *42 converted HH-60J Medium Range Recovery (MRR) helicopters;*
- *95 converted HH-65C Multi-Mission Cutter Helicopters (MCHs);*
- *45 new HV-911 Eagle Eye VTOL (vertical take-off or landing) Unmanned Aerial Vehicles (VUAVs); and*
- *4 leased RQ-4A Global Hawk High Altitude Endurance UAVs (HAEUAVs).*

In addition to the above items, the Deepwater program encompasses other work, including, originally, the conversion of the Coast Guard's existing 49 Island-class 110-foot patrol boats into modernized, 123-foot patrol boats, so that these boats could remain in service until the delivery of replacement FRCs.

**Program Funding.**

***Prior-Year Funding.*** Table 1 below shows prior-year funding for the Deepwater program. As can be seen in the table, the program has received a net total of about \$5.1 billion through FY2008, including a net total of \$650.9 million in FY2008.

**Table 1. Deepwater Program Funding History**  
(in millions of dollars, rounded to nearest tenth)

	Prior <sup>a</sup>	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09
Request	n/a	320.2	500.0	500.0	678	966.0	934.4	836.9	
Appropriation	n/a	320.2	478.0	668.2	724.0	933.1	1,065.9	783.3	
Rescissions	n/a		3.1	57.6	38.9	98.7		83.6	
Transfers	n/a				49.7	77.8	78.7		
Supplemental appropriations	n/a					124.2			
<b>Total<sup>b</sup></b>	<b>117.0</b>	<b>320.2</b>	<b>474.9</b>	<b>610.6</b>	<b>734.8</b>	<b>1,036.4</b>	<b>1,144.6</b>	<b>650.9</b>	
<b>Cumulative total<sup>b</sup></b>	<b>117.0</b>	<b>437.2</b>	<b>912.1</b>	<b>1,522.7</b>	<b>2,257.5</b>	<b>3,293.9</b>	<b>4,438.5</b>	<b>5089.4</b>	

**Source:** Prepared by CRS using Coast Guard data provided on January 29, 2007 (FY2007 and prior years), and FY2008 Consolidated Appropriations Act (FY2008).

n/a = not available

a. Pre-award funding prior to 2002.

b. Excludes HC-130J funding prior and airborne use-of-force funding prior to FY2007.

As shown in **Table 2**, the Coast Guard for FY2008 requested \$836.9 million in new appropriations and the rescission of \$48.8 million in prior-year appropriations, for a net total request of \$788.1 million. As shown in the table, the House version of the FY2008 DHS appropriations bill (**H.R. 2638**) recommended \$698.4 million in new appropriations and the rescission of \$107.4 million in prior-year appropriations for the program, for a net total of \$590.9 million, while the Senate version (**S. 1644**) recommended \$826.9 million in new appropriations and the rescission of \$58.7 million in prior-year appropriations for the program, for a net total of \$770.1 million. The FY2008 DHS appropriations bill was made part of **H.R. 2764/P.L. 110-161**, the FY2008 Consolidated Appropriations Act. **H.R. 2764/P.L. 110-161** provided \$783.3 million in new appropriations and rescinded \$83.6 million in prior-year appropriations for the program, for a net total of \$650.9 million.

**FY2009 Funding Request.** The Coast Guard's FY2009 funding request for the Deepwater program will be submitted in early February 2008 as part of the Administration's proposed FY2008 DHS budget.

**Table 2. FY2008 Deepwater Funding Request and Congressional Action**

(in millions of dollars, rounded to nearest tenth)

	Request	House (H.R. 2638)	House change from request	Senate (S. 1644)	Senate change from request	Conference (H.R. 2764)	Conference change from request
<i>Aircraft</i>							
Maritime patrol aircraft	170.0	100.0	-70.0	170.0	0	170.0	0
HH-60 conversion	57.3	57.3	0	52.3	-5.0	57.3	0
HC-130H conversion	18.9	18.9	0	13.9	-5.0	18.9	0
HH-65 conversion	50.8	50.8	0	50.8	0	50.8	0
Armed helo equipment	24.6	24.6	0	24.6	0	24.6	0
C-130J	5.8	5.8	0	5.8	0	5.8	0
<i>Subtotal aircraft</i>	<i>327.4</i>	<i>257.4</i>	<i>-70.0</i>	<i>317.4</i>	<i>-10.0</i>	<i>327.4</i>	<i>0</i>
<i>Surface ships</i>							
NSC	165.7	105.8	-59.9	165.7	0	165.7	0
FRC-B	53.6	0	-53.6	53.6	0	0	-53.6
Small boats	2.7	2.7	0	2.7	0	2.7	0
Patrol boats sustainment	40.5	61.0	20.5	40.5	0	40.5	0
Medium-endurance cutter sustainment	34.5	50.0	15.5	34.5	0	34.5	0
<i>Subtotal surface ships</i>	<i>297.0</i>	<i>219.5</i>	<i>-77.5</i>	<i>297.0</i>	<i>0</i>	<i>243.4</i>	<i>-53.6</i>
Technology obsolescence prevention	0.7	0.7	0	0.7	0	0.7	0
C4ISR	89.6	89.6	0	89.6	0	89.6	0
Logistics	36.5	36.5	0	36.5	0	36.5	0
Systems engineering and integration	35.1	35.1	0	35.1	0	35.1	0
Govt. program mgt.	50.5	59.5	9.0	50.5	0	50.5	0
<b>TOTAL FY2008</b>	<b>836.9</b>	<b>698.4</b>	<b>-138.5</b>	<b>826.9</b>	<b>-10.0</b>	<b>783.3</b>	<b>-53.6</b>
<i>Rescissions</i>							
OPC	-48.8	-68.8	-20.1	-48.8	0	-98.6	-49.8
VUAV	0	-38.6	-38.6	0	0	-33.8*	-33.8*
FRC-B	0	0	0	-8.0	-8.0	0	0
<i>Subtotal rescissions</i>	<i>-48.8</i>	<i>-107.4</i>	<i>-58.7</i>	<i>-56.8</i>	<i>-8.0</i>	<i>-132.4</i>	<i>-83.6</i>
<b>NET TOTAL</b>	<b>788.1</b>	<b>590.9</b>	<b>-197.2</b>	<b>770.1</b>	<b>-18.0</b>	<b>650.9</b>	<b>-137.2</b>

**Source:** House and Senate reports on H.R. 2638 and S. 1644, respectively. Totals may not add due to rounding.

\* Total of three rescissions in H.R. 2764 bill language for VUAV (\$162,850), UAVs (\$32,942,138), and VTOL UAVs (\$716,536).

**Earlier Interest in Program Acceleration.** Prior to the program developments in 2007, some Members of Congress expressed interest in accelerating procurement of Deepwater assets and thereby compressing the Deepwater acquisition period from 25 years to 15 or 10 years, so as to reduce total Deepwater acquisition

costs and more quickly replace legacy assets. Some of these Members expressed disappointment that the Coast Guard's revised implementation plan lengthened the program's acquisition period from about 20 years to 25 years. Compressing the Deepwater program's acquisition period to 15 or 10 years could reduce total Deepwater acquisition costs but would require substantially increasing annual Deepwater acquisition funding levels.<sup>7</sup> GAO has cautioned that accelerating the Deepwater program could increase program-management risks, but has also acknowledged that accelerating selected parts of the program might be more feasible.

## Problems in Program Management and Execution

The management and execution of the Deepwater program was strongly criticized in 2007 by the Department of Homeland Security Inspector General (DHS IG),<sup>8</sup> the Government Accountability Office (GAO),<sup>9</sup> the Defense Acquisition

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<sup>7</sup> Section 888(I) of H.R. 5005/P.L. 107-296 directed DHS to report to Congress on the idea of compressing the Deepwater program from 20 years to 10 years. On March 12, 2003, the Coast Guard submitted the report, which concluded that compressing the Deepwater acquisition period to 10 years was feasible, that it would increase Deepwater acquisition costs over the period FY2005-FY2011 by about \$7.4 billion in then-year dollars, but reduce total Deepwater acquisition costs over the long run from \$16.022 billion in then-year dollars to \$11.473 billion in then-year dollars. (U.S. Coast Guard, *Report to Congress on the Feasibility of Accelerating the Integrated Deepwater System*, 2003.)

A 2004 RAND Corporation report, using the original (pre-2005) Deepwater implementation plan, concluded that "the shipbuilding and air vehicle industrial bases could produce the USCG's Deepwater assets on either the 15-year or the 10-year schedule. Manufacturers would require no major facility upgrades to accommodate acceleration." (John Birkler, et al., *The U.S. Coast Guard's Deepwater Force Modernization Plan: Can It Be Accelerated? Will It Meet Changing Security Needs?* RAND, National Security Research Division, MG-114, 2004.)

<sup>8</sup> See, for example, Statement of Richard L. Skinner, Inspector General, U.S. Department of Homeland Security, Before the Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation, U.S. House of Representatives, "Deepwater: 120-Day Update," June 12, 2007; as well as Department of Homeland Security, Office of Inspector General, *Acquisition of the National Security Cutter*, OIG -07-23, January 2007 (available online at [[http://www.dhs.gov/xoig/assets/mgmttrpts/OIG\\_07-23\\_Jan07.pdf](http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_07-23_Jan07.pdf)]); Department of Homeland Security, Office of Inspector General, 110'/123' Maritime Patrol Boat Modernization Project, OIG -07-27, January 2007 (available online at [[http://www.dhs.gov/xoig/assets/mgmttrpts/OIG\\_07-27\\_Feb07.pdf](http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_07-27_Feb07.pdf)]); U.S. Department of Homeland Security, Office of Inspector General, *Major Management Challenges Facing the Department of Homeland Security (Excerpts from the FY 2006 DHS Performance and Accountability Report)*, December 2006. (OIG-07-12); and U.S. Department of Homeland Security, Office of Inspector General. *Improvements Needed in the U.S. Coast Guard's Acquisition and Implementation of Deepwater Information Technology Systems*, August 2006. (Office of Information Technology, OIG-06-55).

<sup>9</sup> See, for example, Government Accountability Office, *Coast Guard[:] Challenges Affecting Deepwater Asset Deployment and Management and Efforts to Address Them*, GAO-07-874, June 2007; Government Accountability Office, *Coast Guard[:] Status of* (continued...)

University (DAU),<sup>10</sup> several Members of Congress from committees and subcommittees that oversee the Coast Guard, and other observers.

Criticism of the management and execution of the program has focused to a large degree on problems in three cutter acquisition efforts, and on overall management of the program. Each of these is discussed below. Problems with other parts of the Deepwater program, such as the VUAV, have also attracted oversight attention.

**Cutter Acquisition Efforts.** The Deepwater cutter acquisition efforts that have experienced problems are the new National Security Cutter (NSC), the 110-foot patrol boat modernization effort, and the new Fast Response Cutter (FRC).

**National Security Cutter (NSC).** A DHS IG report released in January 2007 strongly criticized the NSC program, citing design flaws in the ship and the Coast Guard's decision to start construction of NSCs in spite of early internal notifications about these flaws. The design flaws involved, among other things, areas in the hull with insufficient fatigue life — that is, with insufficient strength to withstand the stresses of at-sea operations for a full 30-year service life. The DHS IG report also noted considerable growth in the cost to build the first two NSCs, and other issues.<sup>11</sup> On September 28, 2007, it was reported that

The Coast Guard has found hundreds of deficiencies in the communication and electronics systems being installed in the flagship of its new fleet, threatening to delay the delivery of the ship, known as a national security cutter, internal documents show.

The problems with the electronics in the \$640 million, 418-foot ship include design flaws and improper installation of cables for its classified communications systems, according to a written summary of a Coast Guard review of the program...

Coast Guard officials and executives at Lockheed Martin, the contractor responsible for the ship electronics, said the shortcomings are to be expected

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<sup>9</sup> (...continued)

*Efforts to Improve Deepwater Program Management and Address Operational Challenges, Statement of Stephen L. Caldwell, Acting Director Homeland Security and Justice Issues, Testimony Before the Subcommittee on Coast Guard and Maritime Transportation, Committee on Transportation and Infrastructure, House of Representatives, GAO-07-575T, March 8, 2007; and Government Accountability Office, Coast Guard[:] Coast Guard Efforts to Improve Management and Address Operational Challenges in the Deepwater Program, Statement of Stephen L. Caldwell, Acting Director Homeland Security and Justice Issues, Testimony Before the Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard, Committee on Commerce, Science and Transportation, U.S. Senate, GAO-07-460T, February 14, 2007.*

<sup>10</sup> Defense Acquisition University, *Quick Look Study, United States Coast Guard Deepwater Program*, February 2007.

<sup>11</sup> Department of Homeland Security, Office of Inspector General, *Acquisition of the National Security Cutter*, OIG -07-23, January 2007. The report is available online at [[http://www.dhs.gov/xoig/assets/mgmttrpts/OIG\\_07-23\\_Jan07.pdf](http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_07-23_Jan07.pdf)].

because they turned up in what they said was an unusually early inspection as the equipment was still being installed. This early check, they added, shows that the project managers had learned from earlier problems with the \$24 billion fleet rebuilding program known as Deepwater.

“We want to make sure we are catching everything,” said Troy Scully, a spokesman for Lockheed, which is building the ship in a partnership with Northrop Grumman. “This is exactly why we test.”

Brendan McPherson, a Coast Guard spokesman, said officials had expected that the inspection would find flaws.

“It is almost impossible not to find problems because you are looking even before the work is done,” he said, adding that before the ship is delivered, the Coast Guard “fully expects our industry counterparts to meet their contractual obligations.”...

With its millions of dollars of high-tech communications and surveillance equipment, the cutter is designed to go far beyond traditional agency missions like drug interdiction and off-shore patrols. It is supposed to be able to help prevent or respond to terror attacks and be ready, on short notice, to join Department of Defense convoys, which means its classified communications equipment is essential to its mission.

An internal agency report late last month by Rear Adm. Ronald J. Rábago, the head of the Deepwater project, said there was a high probability that the ship, at the time of delivery, “will be unable to process classified information” because of the deficiencies. The problems with the electronics networks were first reported Wednesday [September 26] on the Internet site of Wired magazine.<sup>12</sup>

**110-Foot Patrol Boat Modernization.** As mentioned earlier, as part of the Deepwater program, the Coast Guard originally planned to modernize its 49 existing Island-class 110-foot patrol boats so as to improve their capabilities and extend their lives until their planned eventual replacement with new Deepwater Fast Response Cutters (FRCs) starting in 2018. Among other things, the modernization lengthened the boats to 123 feet. The program consequently is referred to as the 110-foot or 123-foot modernization program.

Eight of the boats were modernized at a total cost of roughly \$100 million. The Coast Guard acknowledged in 2007 that the program is a failure.

The first of the eight modernized boats was delivered in March 2004. Structural problems were soon discovered in them. In June 2005, the Coast Guard stopped the modernization effort at eight boats after determining that they lacked capabilities needed for meeting post-9/11 Coast Guard operational requirements.

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<sup>12</sup> Eric Lipton, “Early Flaws Seen In New Coast Guard Cutter,” *New York Times*, September 28, 2007: 25. See also Bettina H. Chavanne, “USCG Review Of NSC Finds Issues But No Leaks,” *Aviation Week*, September 27, 2007.

In August 2006, a former Lockheed engineer posted on the Internet a video alleging four other problems with the 110-foot patrol boat modernization effort.<sup>13</sup> The engineer had previously presented these problems to the DHS IG, and a February 2007 report from the DHS IG confirmed two of the four problems.<sup>14</sup>

On November 30, 2006, the Coast Guard announced that it was suspending operations of the eight modernized boats (which were assigned to Coast Guard Sector Key West, FL) because of the discovery of additional structural damage to their hulls. The suspension prompted expressions of concern that the action could reduce the Coast Guard's border-enforcement capabilities in the Caribbean. The Coast Guard said it was exploring options for addressing operational gaps resulting from the decision.<sup>15</sup>

On April 17, 2007, the Coast Guard announced that it would permanently decommission the eight converted boats and strip them of equipment and components that might be reused on other Coast Guard platforms.<sup>16</sup>

On May 17, 2007, the Coast Guard issued a letter to ICGS revoking its previous acceptance of the eight converted boats — an action intended to facilitate Coast Guard attempts to recover from ICGS funds that were spent on the eight converted boats.<sup>17</sup>

On January 7 and 8, 2008, it was reported that the Coast Guard is seeking a repayment of \$96.1 million from ICGS for the patrol boats and had sent a letter to ICGS on December 28, 2007, inviting ICGS to a negotiation for a settlement of the

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<sup>13</sup> Patricia Kime, "Video Alleges Security Problems With Converted U.S. Coast Guard Cutters," *DefenseNews.com*, August 7, 2006. See also Griff Witte, "On YouTube, Charges Of Security Flaws," *Washington Post*, August 29, 2006. The video is posted on the Internet at [<http://www.youtube.com/watch?v=qd3VV8Za04g>].

<sup>14</sup> Department of Homeland Security, Office of Inspector General, *110'/123' Maritime Patrol Boat Modernization Project*, OIG -07-27, January 2007. The report is available online at [[http://www.dhs.gov/xoig/assets/mgmttrpts/OIG\\_07-27\\_Feb07.pdf](http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_07-27_Feb07.pdf)].

<sup>15</sup> "Coast Guard Statement on Suspension of Converted Patrol Boat Operations," *InsideDefense.com*, November 30, 2006; Patricia Kime, "U.S. Coast Guard Pulls 123s Out of Service," *DefenseNews.com*, November 30, 2006; Calvin Biesecker, "Coast Guard Suspends 123-Foot Patrol Boat Operations," *DefenseDaily*, December 1, 2006; Robert Block, "Coast Guard Fleet Cuts Could Hurt Border Patrols," *Wall Street Journal*, December 1, 2006; Renae Merle, "Coast Guard Finds Flaws In Converted Patrol Boats," *Washington Post*, December 2, 2006; Renae Merle and Spencer S. Hsu, "Costly Fleet Update Falts," *Washington Post*, December 8, 2006.

<sup>16</sup> Coast Guard Press Release dated April 17, 2007, entitled "Statement by Adm. Thad Allen on the Converted 123-Foot Patrol Boats and Changes to the Deepwater Acquisition Program." See also Geoff Fein, "Coast Guard Nixes 123-Foot Patrol Boat, Assumes Lead of Deepwater Effort," *Defense Daily*, April 18, 2007; Patricia Kime, "Coast Guard To Decommission Troubled 123s," *NavyTimes.com*, April 18, 2007.

<sup>17</sup> Dan Caterinicchia, "Coast Guard Wants Refund For Ships," *Associated Press*, May 17, 2007; Renae Merle, "Coast Guard Seeks Deepwater Refund," *Washington Post*, May 18, 2007: D3.

issue.<sup>18</sup> Some observers have questioned the strength of the government's legal case, and thus its prospects for recovering the \$96.1 million or some figure close to that.<sup>19</sup>

**Fast Response Cutter (FRC).** As a result of the problems in the 110-foot patrol boat modernization project, the Coast Guard accelerated the FRC design and construction effort by 10 years. Problems, however, were discovered in the FRC design, and the Coast Guard in February 2006 suspended work on the design.

The Coast Guard has now divided the 58-ship FRC effort into two classes — FRC-Bs, which are to be procured as a near-term stop-gap measure and which are to be based on an existing patrol boat design (which the Coast Guard calls a “parent craft” design), and subsequent FRC-As, which are to be based on a fixed version of the new FRC design. Of the 58 FRCs, at least 12 are to be FRC-Bs.

In December 2006, the Coast Guard issued a Request for Proposals (RFP) to ICGS for the FRC-B. On March 14, 2007, the Coast Guard announced that it intends to procure the 12 FRC-B cutters directly from the manufacturer, rather than through ICGS.<sup>20</sup>

**Overall Management of Program.** Some observers believed the problems experienced in the three cutter acquisition efforts were the product of broader problems in the Coast Guard's overall management of the Deepwater program. Reports and testimony from the DHS IG and GAO, as well as a February 2007 DAU “quick look study,”<sup>21</sup> expressed serious concerns about the Coast Guard's overall management of the Deepwater program. These reports and testimony, as well as Members of Congress and other observers, raised concerns about a number of actual or alleged problems.

Some observers expressed the view that using an LSI to implement the Deepwater program made a complex program more complex, and set the stage for waste, fraud, and abuse by effectively outsourcing oversight of the program to the private sector and by creating a conflict of interest for the private sector in executing the program.

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<sup>18</sup> See Andrea Shalal-Esa, “Lockheed, Northrop Asked To Pay \$96 Mln For Bad Boats,” *Reuters*, January 7, 2008; Geoff Fein, “Coast Guard Invites ICGS To Negotiate A Settlement Over 123-Foot Boat Issue,” *Defense Daily*, January 8, 2008; Dan Caterinicchia, “Gov't Wants \$96M Refund For Faulty Ships,” *Business Week*, January 8, 2008. See also Emelie Rutherford, “Coast Guard Wants \$96 Million From Deepwater Team For Bad Ships,” *Inside the Navy*, January 14, 2008.

<sup>19</sup> See, for example, Geoff Fein, “Coast Guard Invites ICGS To Negotiate A Settlement Over 123-Foot Boat Issue,” *Defense Daily*, January 8, 2008.

<sup>20</sup> Coast Guard press release, “Coast Guard Reassigns Deepwater Replacement Patrol Boat Acquisition Project,” March 14, 2007; Calvin Biesecker, “Coast Guard Strips FRC-B Patrol Boat Acquisition From ICGS,” *Defense Daily*, March 15, 2007; Renae Merle, “Coast Guard Cancels Contract,” *Washington Post*, March 15, 2007; and David Stout, “Coast Guard Cancels Contract For Vessel,” *New York Times*, March 15, 2007.

<sup>21</sup> Defense Acquisition University, *Quick Look Study, United States Coast Guard Deepwater Program*, February 2007.

Other observers, including GAO and the DAU, expressed the view that the LSI approach is basically valid, but that the contract the Coast guard used to implement the LSI approach for the Deepwater program was flawed in various ways, undermining the Coast Guard's ability to assess contractor performance, control costs, ensure accountability, and conduct general oversight of the program.<sup>22</sup>

Observers raised various issues about the Deepwater contract. Among other things, they expressed concern that the contract was an indefinite delivery, indefinite quantity (ID/IQ) contract, which, they said, can be an inappropriate kind of contract for a program like the Deepwater program. Observers also expressed concern that the contract:

- transferred too much authority to the LSI for defining performance specifications, for subsequently modifying them, and for making technical judgements;
- permitted the LSI to certify that certain performance goals had been met — so-called self-certification, which, critics argue, can equate to no meaningful certification;
- provided the Coast Guard with insufficient authority over the LSI for resolving technical disputes between the Coast Guard and the LSI;
- was vaguely worded with regard to certain operational requirements and technical specifications, reducing the Coast Guard's ability to assess performance and ensure that the program would achieve Coast Guard goals;
- permitted the firms making up the LSI to make little use of competition between suppliers in selecting products to be used in the Deepwater program, to tailor requirements to fit their own products, and consequently to rely too much on their own products, as opposed to products available from other manufacturers;
- permitted the LSI's performance during the first five-year period to be scored in a way that did not sufficiently take into account recent problems in the cutter acquisition efforts;
- permitted award fees and incentive fees (i.e., bonuses) to be paid to the LSI on the basis of "attitude and effort" rather than successful outcomes; and
- lacked sufficient penalties and exit clauses.

Observers also expressed concern that the Coast Guard did not have enough in-house staff and in-house expertise in areas such as program management, financial

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<sup>22</sup> For additional discussion about LSIs in general, see CRS Report RS22631, *Defense Acquisition: Use of Lead System Integrators (LSIs) — Background, Oversight Issues, and Options for Congress*, by Valerie Bailey Grasso.

management, and system integration, to properly oversee and manage an acquisition effort as large and complex as the Deepwater program, and that the Coast Guard did not make sufficient use of the Navy or other third-party, independent sources of technical expertise, advice, and assessments. They also expressed concern that the Coast Guard, in implementing the Deepwater program, placed a higher priority on meeting a schedule as opposed to ensuring performance.

In addition, observers stated that the Coast Guard proceeded with construction of the first NSCs in spite of early internal warnings about flaws in the NSC design, failed to report problems about the NSC effort to Congress on a timely basis, resisted efforts by the DHS IG to investigate the NSC effort, and appeared to have altered briefing slides on the NSC effort so as to downplay the design flaws to certain audiences. On May 17, 2007, the DHS IG testified that the Coast Guard's cooperation with the DHS IG had substantially improved (though some issues remained), but that Deepwater contractors had establishing unacceptable conditions for DHS IG to interview contractor personnel about the program.<sup>23</sup>

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<sup>23</sup> A January 2008 report from the office of the DHS Inspector General on major management challenge facing DHS summarized the problems in the Coast Guard's overall management of the Deepwater program as follows:

Over the past year, the OIG, the GAO, the Defense Acquisition University, and Acquisitions Solutions, Inc. have conducted audits and studies of the Coast Guard's Deepwater Program. These reviews have identified a number of management challenges and risks with the Deepwater Program which raise fundamental questions about the viability of the Coast Guard's "System of System" strategy for re-capitalizing and upgrading its Deepwater fleet of small boats, patrol boats, cutters, helicopters, and fixed-wing aircraft. These challenges and risks include:

- A contract structure that did not easily adapt to the environment of changing missions and requirements, and major systems integration;
- A Deepwater Executive Officer who did not exercise his oversight authority and, as a result, relied on a lead systems integrator to manage the Deepwater program;
- A contract structure that inhibited the Coast Guard's ability to exercise an appropriate level of technical oversight over the acquisition of key Deepwater assets and systems;
- A Deepwater acquisition work force that lacks the requisite training, experience, certification, and structure to acquire assets and systems of significant scope and complexity;
- The Coast Guard's unwillingness to enforce contract performance requirements; and
- The Coast Guard's acceptance of contractor self-certification of technical standards in lieu of independent third party certification.

(Department of Homeland Security, Office of Inspector General, *Major Management Challenges Facing the Department of Homeland Security (Excerpts from the FY 2007 DHS Annual Financial Report)*, OIG-08-11, January 2008, p. 12) (available online at: [http://www.dhs.gov/xoig/assets/mgmttrpts/OIG\_08-11\_Jan08.pdf])

**Coast Guard and Industry Perspectives.** In response to criticisms of the management and execution of the Deepwater program, Coast Guard and industry officials acknowledged certain problems in the program's management and execution and defended the program's management execution in other respects.<sup>24</sup>

## Justice Department Investigation of Program

On April 18, 2007, it was reported that the Justice Department is conducting an investigation of the Deepwater program. The investigation reportedly centers on communications systems, the conversion of the Coast Guard's 110-foot patrol boats, and the National Security Cutter (NSC). Justice reportedly notified Lockheed, Northrop, and certain other firms involved in the Deepwater program of the investigation on December 13, 2006, and directed the firms to preserve all documents relating to the program.<sup>25</sup>

## Coast Guard Reform Actions Announced In 2007

On April 17, 2007, the Coast Guard announced six changes intended to reform the management of the Deepwater program. Among other things, the Coast Guard announced it would assume the role of lead system integrator (LSI) for the program. In announcing the actions, Admiral Thad Allen, the Commandant of the Coast Guard, stated in part:

Working together with industry, the Coast Guard will make the following six fundamental changes in the management of our Deepwater program:

The Coast Guard will assume the lead role as systems integrator for all Coast Guard Deepwater assets, as well as other major acquisitions as appropriate....

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<sup>24</sup> For examples of Coast Guard testimony, see Department of Homeland Security, U.S. Coast Guard, Statement of Admiral Thad W. Allen, Commandant, on Deepwater: 120-Days Later, Before the Subcommittee on Coast Guard & Maritime Transportation, Committee on Transportation & Infrastructure, U.S. House of Representatives, June 12, 2007; and Department of Homeland Security, U.S. Coast Guard, Statement of Rear Admiral Gary T. Blore and Captain Steven Baynes on Deepwater: Charting a Course For Safer Waters, Before the Committee on Homeland Security, U.S. House of Representatives, Subcommittees on Management, Investigations, and Oversight and Border, Maritime and Global Counterterrorism, May 17, 2007.

For examples of industry testimony, see Statement for the Record, Mr. James E. Anton, Vice President Deepwater Program, Northrop Grumman Ship Systems (NGSS), Testimony Before: The House Maritime and Global Counter-Terrorism Subcommittee And The House Management, Investigations and Oversight Subcommittee, May 17, 2007; and Testimony of Fred P. Moosally, President, Lockheed Martin Maritime Systems and Sensors, to The House Committee on Homeland Security Subcommittee on Border, Maritime and Global Counterterrorism, May 17, 2007.

<sup>25</sup> Ana Radelat, "Justice Investigating Deepwater Contractors," *NavyTimes.com*, April 18, 2007; Chris Strohm, "Deepwater Contractors Face Justice Probe" *GovExec.com*, April 19, 2007; Patricia Kime, "Justice Investigating Deepwater Contract," *NavyTimes.com*, April 20, 2007.

The Coast Guard will take full responsibility for leading the management of all life cycle logistics functions within the Deepwater program under a new improved logistics architecture established with the new mission support organization.

The Coast Guard will expand the role of the American Bureau of Shipping, or other third-parties as appropriate, for Deepwater vessels to increase assurances that Deepwater assets are properly designed and constructed in accordance with established standards.

The Coast Guard will work collaboratively with Integrated Coast Guard Systems to identify and implement an expeditious resolution to all outstanding issues regarding the national security cutters.

The Coast Guard will consider placing contract responsibilities for continued production of an asset class on a case-by-case basis directly with the prime vendor consistent with competition requirements if: (1) deemed to be in the best interest of the government and (2) only after we verify lead asset performance with established mission requirements.

Finally, I will meet no less than quarterly with my counterparts from industry until any and all Deepwater program issues are fully adjudicated and resolved. Our next meeting is to be scheduled within a month.

These improvements in program management and oversight going forward will change the course of Deepwater.

By redefining our roles and responsibilities, redefining our relationships with our industry partners, and redefining how we assess the success of government and industry management and performance, the Deepwater program of tomorrow will be fundamentally better than the Deepwater program of today....

As many of you know, I have directed a number of significant organizational changes [to the Coast Guard], embedded within direction and orders, to better prepare the Coast Guard to meet and sustain mission performance long into the future as we confront a broad range of converging threats and challenges to the safety, security and stewardship of America's vital maritime interests.

What's important to understand here is that these proposed changes in organizational structure, alignment and business processes, intended to make the Coast Guard more adaptive, responsive and accountable, are not separate and distinct from what we have been doing over the past year to improve Deepwater.

In fact, many of these initiatives can be traced directly to challenges we've faced, in part, in our Deepwater program. Consequently, we will be better organized, better trained, and better equipped to manage large, complex acquisitions like Deepwater in the coming days, weeks, months and years as we complete these service-wide enhancements to our mission support systems, specifically our acquisition, financial and logistics functions. That is the future of the Coast Guard, and that is the future of Deepwater.

To be frank, I am tired of looking in the rearview mirror - conducting what has been the equivalent of an archaeological dig into Deepwater. We already

understand all too well what has been ailing us within Deepwater in the past five years:

We've relied too much on contractors to do the work of government as a result of tightening AC&I budgets, a dearth of contracting personnel in the federal government, and a loss of focus on critical governmental roles and responsibilities in the management and oversight of the program.

We struggle with balancing the benefits of innovation and technology offered through the private sector against the government's fundamental reliance on robust competition.

Both industry and government have failed to fully understand each other's needs and requirements, all too often resulting in both organizations operating at counter-odds to one another that have benefited neither industry nor government.

And both industry and government have failed to accurately predict and control costs.

While we can — and are — certainly learning from the past, we ought to be about the business of looking forward — with binoculars even — as we seek to see what is out over the horizon so we can better prepare to anticipate challenges and develop solutions with full transparency and accountability. That is the business of government. And it's the same principle that needs to govern business as well.

And it's precisely what I intend to do: with the changes in management and oversight I outlined for you here today, with the changes we are making in the terms and conditions of the Deepwater contract, and with the changes we will make in our acquisition and logistics support systems throughout the Coast Guard. If we do, I have no doubt in my mind that we will exceed all expectations for Deepwater....

The Deepwater program of tomorrow will be fundamentally better than the Deepwater program of today.

The Coast Guard has a long history of demonstrating exceptional stewardship and care of the ships, aircraft and resources provided it by the public, routinely extending the life of our assets far beyond original design specifications to meet the vital maritime safety, security and stewardship needs of the nation....

Knowing that to be the case, I am personally committed to ensuring that our newest ships, aircraft and systems acquired through the Coast Guard's Integrated Deepwater System are capable of meeting our mission requirements from the moment they enter service until they are taken out of service many, many years into the future....

As I've said many times in the past, the safety and security of all Americans depends on a ready and capable Coast Guard, and the Coast Guard depends on our Deepwater program to keep us ready long into the future.

The changes to Deepwater management and oversight I outlined here for you today reflect a significant change in the course of Deepwater. I will vigorously implement these and other changes that may be necessary to ensure that our Coast Guard men and women have the most capable fleet of ships, aircraft and systems they need to do the job I ask them to do each and every day on behalf of the American people.<sup>26</sup>

Coast Guard officials stated that the Coast Guard intended to proceed with the 43-month award term with ICGS and use the contract to complete Deepwater acquisition efforts that are already underway. Coast Guard official stated that task orders that the Coast Guard issues under the 43-month award term will be for performance periods of 18 months, with the aim of closing out efforts already underway.<sup>27</sup>

On August 8, 2007, the Coast Guard announced that it had reached agreement with ICGS to settle design and contractual issues regarding the first three National Security Cutters.<sup>28</sup> An August 13, 2007, press report provided additional information on the settlement.<sup>29</sup>

In addition to the April 17, 2007, Coast Guard announcement about Deepwater management reforms, the August 8, 2007, announcement about the settlement of NSC-related issues, and the March 14, 2007, Coast Guard announcement concerning the procurement of FRC-Bs, the Coast Guard in 2007 did the following:

- announced a reorganization of certain Coast Guard commands — including the creation of a unified Coast Guard acquisition office — that is intended in part to strengthen the Coast Guard’s ability to manage acquisition projects, including the Deepwater program;
- stated that would alter the terms of the Deepwater contract for the 43-month award term that commences in June 2007 so as to address concerns raised about the current Deepwater contract;
- stated that it was hiring additional people with acquisition experience, so as to strengthen its in-house capability for managing the Deepwater program and other Coast Guard acquisition efforts;

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<sup>26</sup> Coast Guard Press Release dated April 17, 2007, entitled “Statement by Adm. Thad Allen on the Converted 123-Foot Patrol Boats and Changes to the Deepwater Acquisition Program.”

<sup>27</sup> See, for example, the spoken testimony of Admiral Thad Allen, Commandant of the Coast Guard, before the Oceans, Atmosphere, Fisheries, and Coast Guard subcommittee of the Senate Commerce, Science, and Transportation Committee on April 18, 2007, and before the Coast Guard and Maritime Transportation subcommittee of the House Transportation and Infrastructure Committee on June 12, 2007.

<sup>28</sup> Coast Guard Press Release, August 8, 2007, entitled “Coast Guard Awards Contract For Third National Security Cutter,” accessed on August 23, 2007, at [<https://www.piersystem.com/go/doc/786/167626/>].

<sup>29</sup> Christopher P. Cavas, “USCG, Contractors Agree on New Cutters,” *Defense News*, August 13, 2007.

- stated that it concurs with many of the recommendations made in the DHS IG reports, and is moving to implement them;
- stated that it is weighing the recommendations of the DAU quick look study; and
- stated that it has also implemented many recommendations regarding Deepwater program management that have been made by GAO.

On May 17, 2007, the Coast Guard testified that its Deepwater acquisition staff had increased from about 250 to about 450, and that it would continue to grow about 10% per year. The Coast Guard testified that it would be generally capable of acting as the LSI for the Deepwater program within about 12 to 18 months, that the area of in-house acquisition expertise that is most in need of improvement during this period is C4ISR, and that the increase in acquisition-related staffing would not impact other Coast Guard activities because of the service's increasing end strength. The Coast Guard testified that it will continue to use the services of independent, third-party sources of support, such as the Carderock division of the Naval Surface Warfare Center (NSWC), the Navy's center of excellence for ships and ship systems.<sup>30</sup>

The Coast Guard in 2007 published its overall acquisition-reform plan in a document entitled *Blueprint For Acquisition Reform*.<sup>31</sup>

## **Congressional Oversight Hearings in 2007**

House and Senate committees and subcommittees conducted several oversight hearings in 2007 devoted entirely or partly to problems and concerns regarding the management and execution of the program. Examples of such hearings include:

- January 30, March 8, and June 12, 2007, hearings before the Coast Guard and Maritime Transportation subcommittee of the House Transportation and Infrastructure Committee;
- February 6 and 15, 2007, hearings before the Homeland Security subcommittee of the House Appropriations Committee
- a February 8, 2007, hearing before the House Committee on Oversight and Government Affairs;

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<sup>30</sup> Spoken testimony of Rear Admiral Gary Blore at May 17, 2007, joint hearing before the Border, Maritime, and Global Counterterrorism subcommittee and the Management, Investigations, and Oversight subcommittee of the House Homeland Security Committee.

<sup>31</sup> United States Coast Guard, Acquisition Directorate, *Blueprint For Acquisition Reform*. Washington, 2007. 61 pp. (This citation is for Version 2.0 of the document, which is dated July 13, 2007 and is available at [<http://www.uscg.mil/acquisition/newsroom/pdf/blueprintforacquisitionreform.pdf>].)

- a February 14, 2007, hearing before the Oceans, Atmosphere, Fisheries, and Coast Guard subcommittee of the Senate Commerce, Science and Transportation Committee;
- an April 18, 2007, hearing before the full House Transportation and Infrastructure Committee;
- an April 18, 2007, hearing before the Oceans, Atmosphere, Fisheries, and Coast Guard subcommittee of the Senate Commerce, Science, and Transportation Committee; and
- a May 17, 2007, joint hearing before the Border, Maritime, and Global Counterterrorism subcommittee and the Management, Investigations, and Oversight subcommittee of the House Homeland Security Committee.

## **Oversight Issues for Congress**

### **Coast Guard's Announced Management Reforms**

In light of the Deepwater management reforms announced by the Coast Guard in 2007, potential oversight questions for Congress regarding management and execution of the Deepwater program include the following:

- Are the Coast Guard's announced reforms appropriate? Are they sufficient? Does additional legislation need to be passed to restructure or reform the program?
- Is the Coast Guard implementing its reform actions adequately? Has the Coast Guard, for example, developed a detailed plan for transitioning the Deepwater LSI role from ICGS to the Coast Guard? Is the plan realistic in terms of the schedule and manner in which various system-integration functions are to be transferred from ICGS to the Coast Guard over time? Which specific system-integration responsibilities will continue to be performed by ICGS, and for how long?
- When will the Coast Guard have enough in-house technical and program-management expertise to take on various aspects of the role of Deepwater LSI? Does the Coast Guard have a detailed plan for expanding its in-house technical and program-management staff? Is this plan adequate? Does the Coast Guard have a career path for acquisition personnel similar to that for acquisition personnel in the Department of Defense?
- To what degree will the Coast Guard continue to need technical and program-management support from the Navy or other third parties? Does the Coast Guard have an adequate strategy for seeking out third-party help?

- Has the Coast Guard established milestones that Congress can use to assess the success of the Coast Guard's announced management reforms? If so, what are the milestones, and how were they determined? If not, does the Coast Guard plan to develop such milestones?
- What implications, if any, does the Coast Guard's decision to perform the Deepwater LSI role have for the concept of using private-sector LSIs on other federal acquisition programs?<sup>32</sup>

A January 2008 report from the office of the DHS Inspector General on major management challenge facing DHS summarized the problems in the Coast Guard's overall management of the Deepwater program stated:

To its credit, the Coast Guard now recognizes the need for urgent and immediate changes to the way it manages its major acquisitions in general, and the Deepwater Program in particular. For example, the Coast Guard recently issued its *Blueprint for Acquisition Reform*, July 13, 2007 (Blueprint), which catalogues many of the aforementioned challenges and risks that have historically impeded the efficient execution of the Deepwater contract acquisition projects. According to the Coast Guard, implementing this Blueprint will enhance its ability to efficiently execute asset-based "traditional" projects, effectively employ a governmental or commercial entity as a systems integrator for complex acquisitions, and efficiently execute non-major acquisitions and contracts for necessary goods and services.

The Blueprint specifically outlines the Coast Guard's plans for reorganizing its acquisition workforce, an effort that is expected to take several years and an unknown amount of money to implement. The Blueprint, however, does not contain critical measures of performance that would allow the Department and the Congress to assess the progress being made. For example, the Blueprint does not describe the number and type of acquisition professionals needed or when they are scheduled to arrive on board. In addition, while the Blueprint contains a number of key initiatives, it does not clearly state the outcomes that will be achieved, and at what cost to the Coast Guard. Finally, neither the Blueprint nor the Coast Guard has identified the changes to the Deepwater contract that will be made to ensure full implementation of the Blueprint. Consequently, it is difficult to determine whether these initiatives will satisfactorily address the cost, schedule, and performance issues associated with the Deepwater Program.<sup>33</sup>

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<sup>32</sup> For more on LSIs in general, see CRS Report RS22631, *Defense Acquisition: Use of Lead System Integrators (LSIs) — Background, Oversight Issues, and Options for Congress*, by Valerie Bailey Grasso.

<sup>33</sup> Department of Homeland Security, Office of Inspector General, *Major Management Challenges Facing the Department of Homeland Security (Excerpts from the FY 2007 DHS Annual Financial Report)*, OIG-08-11, January 2008, p. 13 (available online at [[http://www.dhs.gov/xoig/assets/mgmttrpts/OIG\\_08-11\\_Jan08.pdf](http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_08-11_Jan08.pdf)]).

## Revolving Door and Potential for Conflicts of Interest

The so-called revolving door, which refers to the movement of officials between positions in government and industry, can create benefits for government and industry in terms of allowing each side to understand the other's needs and concerns, and in terms of spreading best practices from one sector to the other. At the same time, some observers have long been concerned that the revolving door might create conflicts of interest for officials carrying out their duties while in government positions. A March 25, 2007, news article stated in part:

Four of the seven top U.S. Coast Guard officers who retired since 1998 took positions with private firms involved in the Coast Guard's troubled \$24 billion fleet replacement program, an effort that government investigators have criticized for putting contractors' interests ahead of taxpayers'.

They weren't the only officials to oversee one of the federal government's most complex experiments at privatization, known as Deepwater, who had past or subsequent business ties to the contract consortium led by industry giants Northrop Grumman and Lockheed Martin.

The secretary of transportation, Norman Y. Mineta, whose department included the Coast Guard when the contract was awarded in 2002, was a former Lockheed executive. Two deputy secretaries of the Department of Homeland Security, which the Coast Guard became part of in 2003, were former Lockheed executives, and a third later served on its board.

Washington's revolving-door laws have long allowed officials from industry giants such as Lockheed, the nation's largest defense contractor, to spend parts of their careers working for U.S. security agencies that make huge purchases from those companies, though there are limits.

But Deepwater dramatizes a new concern, current and former U.S. officials said: how dwindling competition in the private sector, mushrooming federal defense spending and the government's diminished contract management skills raise the stakes for potential conflicts of interest.

Deepwater also illustrates how federal ethics rules carve out loopholes for senior policymakers to oversee decisions that may benefit former or prospective employers. These include outsourcing strategies under which taxpayers bear most of the risks for failure, analysts said.

There is no sign that any of the retired admirals or former Lockheed officials did anything illegal.

But the connections between the agencies and the contractors have drawn the attention of the DHS inspector general, Richard L. Skinner. "That is on our radar screen," he said. "It's something we are very sensitive to."<sup>34</sup>

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<sup>34</sup> Spencer S. Hsu and Renae Merle, "Coast Guard's Purchasing Raises Conflict-Of-Interest Flags," *Washington Post*, March 25, 2007.

## Potential Options for Congress

Potential options for Congress regarding the Deepwater program — some of which might have the effect of legislatively mandating reforms that the Coast Guard has already announced — include but are not limited to the following:

- track and assess the changes that the Coast Guard has stated it will implement regarding management and execution of the Deepwater program;
- institute additional or stricter reporting requirements for the Deepwater program;
- encourage or require the Coast Guard to implement recommendations for the Deepwater program made by the DHS IG, GAO, and the DAU that the Coast Guard has not already agreed to implement;
- encourage or require the Coast Guard to make greater use than the Coast Guard now plans of the Navy or other third-party, independent sources of expertise to help the Coast Guard manage the program;
- encourage or require the Coast Guard to replace the Deepwater program with a series of separate procurement programs for replacing individual classes of cutters, boats, and aircraft; and
- prohibit the obligation or expenditure of some or all FY2009 funding for the Deepwater program until the Coast Guard or DHS takes certain actions or makes certain certifications regarding the Deepwater program.

## Legislative Activity in 2007<sup>35</sup>

### FY2008 Coast Guard Authorization Act (H.R. 2830/S. 1892)

#### House.

**House Transportation Committee.** In H.R. 2830 as reported by the House Transportation Committee (H.Rept. 110-338, Part 1, of September 20, 2007), Section 101(2)(B) authorizes \$836.9 million in acquisition, construction, and improvement (AC&I) funds for the Deepwater program. Section 101(1)(D) states that, of operation and maintenance funds authorized for the Coast Guard, “\$80,500,000 shall be available only for paying for operating expenses of the Integrated Deepwater System program.” The report states that the \$80.5 million is “for personnel that manage the Integrated Deepwater Systems programs. In prior years, the personnel costs for the

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<sup>35</sup> Dollar figures in this section are rounded to the nearest tenth of a million. Figures may not add due to rounding.

Deepwater program had been authorized under the Acquisition, Construction, and Improvement Account.”

**House Homeland Security Committee.** In H.R. 2830 as subsequently reported by the House Homeland Security Committee (H.Rept. 110-338, Part 2, of October 1, 2007), Section 101(2)(B) authorizes \$1,065.9 million in acquisition, construction, and improvement (AC&I) funds for the Deepwater program. Section 101(1)(D) states that, of operation and maintenance funds authorized for the Coast Guard, “not less than \$80,500,000 shall be available only for paying for operating expenses of the Integrated Deepwater System program.”

Title VIII (Sections 801-808) of the bill as reported by the House Homeland Security Committee incorporates the text of H.R. 2722, the Integrated Deepwater Program Reform Act (see discussion of H.R. 2722, below). Title VIII states:

SEC. 801. SHORT TITLE.

This title may be cited as the ‘Integrated Deepwater Program Reform Act’.

SEC. 802. IMPLEMENTATION OF COAST GUARD INTEGRATED DEEPWATER ACQUISITION PROGRAM.

(a) Use of Private Sector Entity as a Lead Systems Integrator-

(1) IN GENERAL- Except as otherwise provided in this subsection, the Secretary may not use a private sector entity as a lead systems integrator for procurements under, or in support of, the Deepwater Program beginning on the earlier of October 1, 2011, or the date on which the Secretary certifies in writing to the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that the Coast Guard has available and can retain sufficient contracting personnel and expertise within the Coast Guard, through an arrangement with other Federal agencies, or through contracts or other arrangements with private sector entities, to perform the functions and responsibilities of the lead system integrator in an efficient and cost-effective manner.

(2) COMPLETION OF EXISTING DELIVERY ORDERS AND TASK ORDERS- The Secretary may use a private sector entity as a lead systems integrator to complete any delivery order or task order under the Deepwater Program that was issued to the lead systems integrator on or before the date of enactment of this Act.

(3) ASSISTANCE OF OTHER FEDERAL AGENCIES- In any case in which the Secretary is the systems integrator under the Deepwater Program, the Secretary may obtain any type of assistance the Secretary considers appropriate, with any systems integration functions, from any Federal agency with experience in systems integration involving maritime vessels and aircraft.

(4) ASSISTANCE OF PRIVATE SECTOR ENTITIES- In any case in which the Secretary is the systems integrator under the Deepwater Program, the Secretary may, subject to the availability of appropriations, obtain by grant, contract, or cooperative agreement any type of assistance the Secretary considers appropriate,

with any systems integration functions, from any private sector entity with experience in systems integration involving maritime vessels and aircraft.

(b) Competition-

(1) IN GENERAL- Except as otherwise provided in this subsection, the Secretary shall use full and open competition for each class of asset acquisitions under the Deepwater Program for which an outside contractor is used, if the asset is procured directly by the Coast Guard or by the Integrated Coast Guard System acting under a contract with the Coast Guard.

(2) EXCEPTION- The Secretary may use a procurement method that is less than full and open competition to procure an asset under the Deepwater Program, if

—  
(A) the Secretary determines that such method is in the best interests of the Federal Government; and

(B) by not later than 30 days before the date of the award of a contract for the procurement, the Secretary submits to the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report explaining why such procurement is in the best interests of the Federal Government.

(3) LIMITATION ON APPLICATION- Paragraph (1) shall not apply to a contract, subcontract, or task order that was issued before the date of enactment of this Act, if there is no change in the quantity of assets or the specific type of assets procured.

(c) Required Contract Terms- The Secretary shall include in each contract, subcontract, and task order issued under the Deepwater Program after the date of the enactment of this Act the following provisions, as applicable:

(1) TECHNICAL REVIEWS- A requirement that the Secretary shall conduct a technical review of all proposed designs, design changes, and engineering changes, and a requirement that the contractor must specifically address all engineering concerns identified in the technical reviews, before any funds may be obligated.

(2) RESPONSIBILITY FOR TECHNICAL REQUIREMENTS- A requirement that the Secretary shall maintain the authority to establish, approve, and maintain technical requirements.

(3) COST ESTIMATE OF MAJOR CHANGES- A requirement that an independent cost estimate must be prepared and approved by the Secretary before the execution of any change order costing more than 5 percent of the unit cost approved in the Deepwater Program baseline in effect as of May 2007.

(4) PERFORMANCE MEASUREMENT- A requirement that any measurement of contractor and subcontractor performance must be based on the status of all work performed, including the extent to which the work performed met all cost, schedule, and mission performance requirements outlined in the Deepwater Program contract.

(5) EARLY OPERATIONAL ASSESSMENT- For the acquisition of any cutter class for which an Early Operational Assessment has not been developed —

(A) a requirement that the Secretary of the Department in which the Coast Guard is operating shall cause an Early Operational Assessment to be conducted by the Department of the Navy after the development of the preliminary design of the cutter and before the conduct of the critical design review of the cutter; and

(B) a requirement that the Coast Guard shall develop a plan to address the findings presented in the Early Operational Assessment.

(6) TRANSIENT ELECTROMAGNETIC PULSE EMANATION- For the acquisition or upgrade of air, surface, or shore assets for which compliance with transient electromagnetic pulse emanation (TEMPEST) is a requirement, a provision specifying that the standard for determining such compliance shall be the air, surface, or shore asset standard then used by the Department of the Navy.

(7) OFFSHORE PATROL CUTTER UNDERWAY REQUIREMENT- For any contract issued to acquire an Offshore Patrol Cutter, provisions specifying the service life, fatigue life, days underway in general Atlantic and North Pacific Sea conditions, maximum range, and maximum speed the cutter shall be built to achieve.

(8) INSPECTOR GENERAL ACCESS- A requirement that the Department of Homeland Security's Office of the Inspector General shall have access to all records maintained by all contractors working on the Deepwater Program, and shall have the right to privately interview any contractor personnel.

(d) Life Cycle Cost Estimate-

(1) IN GENERAL- The Secretary shall develop an authoritative life cycle cost estimate for the Deepwater Program.

(2) CONTENTS- The life cycle cost estimate shall include asset acquisition and logistics support decisions and planned operational tempo and locations as of the date of enactment of this Act.

(3) SUBMITTAL- The Secretary shall —

(A) submit the life cycle cost estimate to the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate within 4 months after the date of enactment of this Act; and

(B) submit updates of the life cycle cost estimate to such Committees annually.

(e) Contract Officers- The Secretary shall assign a separate contract officer for each class of cutter and aircraft acquired or rehabilitated under the Deepwater Program, including the National Security Cutter, the Offshore Patrol Cutter, the Fast Response Cutter A, the Fast Response Cutter B, maritime patrol aircraft, the aircraft HC-130J, the helicopter HH-65, the helicopter HH-60, and the vertical unmanned aerial vehicle.

(f) Technology Risk Report- The Secretary shall submit to the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report identifying the technology risks and level of maturity for major technologies used on each class of asset acquisitions under the Deepwater Program, including the Fast Response Cutter A (FRC-A), the Fast Response Cutter B (FRC-B), the Offshore Patrol Cutter (OPC), and the Vertical Unmanned Aerial Vehicle (VUAV), not later than 90 days before the date of award of a contract for such an acquisition.

(g) Submission of Assessment Results and Plans to Congress- The Commandant of the Coast Guard shall submit to the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate —

(1) the results of each Early Operational Assessment conducted pursuant to subsection (c)(5)(A) and the plan approved by the Commandant pursuant to subsection (c)(5)(B) for addressing the findings of such assessment, within 30 days after the Commandant approves the plan; and

(2) a report describing how the recommendations of each Early Operational Assessment conducted pursuant to subsection (c)(5)(A) on the first in class of a new cutter class have been addressed in the design on which construction is to begin, within 30 days before initiation of construction.

#### SEC. 803. CHIEF ACQUISITION OFFICER.

(a) In General- Chapter 3 of title 14, United States Code, is further amended by adding at the end the following:

Sec. 56. Chief Acquisition Officer

(a) Establishment of Agency Chief Acquisition Officer- The Commandant shall appoint or designate a career reserved employee as Chief Acquisition Officer for the Coast Guard, who shall —

(1) have acquisition management as that official's primary duty; and

(2) report directly to the Commandant to advise and assist the Commandant to ensure that the mission of the Coast Guard is achieved through the management of the Coast Guard's acquisition activities.

(b) Authority and Functions of the Chief Acquisition Officer- The functions of the Chief Acquisition Officer shall include —

(1) monitoring the performance of acquisition activities and acquisition programs of the Coast Guard, evaluating the performance of those programs on the basis of applicable performance measurements, and advising the Commandant regarding the appropriate business strategy to achieve the mission of the Coast Guard;

(2) increasing the use of full and open competition in the acquisition of property and services by the Coast Guard by establishing policies, procedures, and

practices that ensure that the Coast Guard receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government's requirements (including performance and delivery schedules) at the lowest cost or best value considering the nature of the property or service procured;

`(3) ensuring the use of detailed performance specifications in instances in which performance-based contracting is used;

`(4) making acquisition decisions consistent with all applicable laws and establishing clear lines of authority, accountability, and responsibility for acquisition decisionmaking within the Coast Guard;

`(5) managing the direction of acquisition policy for the Coast Guard, including implementation of the unique acquisition policies, regulations, and standards of the Coast Guard;

`(6) developing and maintaining an acquisition career management program in the Coast Guard to ensure that there is an adequate professional workforce; and

`(7) as part of the strategic planning and performance evaluation process required under section 306 of title 5 and sections 1105(a)(28), 1115, 1116, and 9703 of title 31 —

`(A) assessing the requirements established for Coast Guard personnel regarding knowledge and skill in acquisition resources management and the adequacy of such requirements for facilitating the achievement of the performance goals established for acquisition management;

`(B) in order to rectify any deficiency in meeting such requirements, developing strategies and specific plans for hiring, training, and professional development; and

`(C) reporting to the Commandant on the progress made in improving acquisition management capability.'.

(b) Clerical Amendment- The table of sections at the beginning of such chapter is further amended by adding at the end the following:

`56. Chief Acquisition Officer.'.

(c) Special Rate Supplements-

(1) REQUIREMENT TO ESTABLISH- Not later than 1 year after the date of enactment of this Act and in accordance with part 9701.333 of title 5, Code of Federal Regulations, the Commandant of the Coast Guard shall establish special rate supplements that provide higher pay levels for employees necessary to carry out the amendment made by this section.

(2) SUBJECT TO APPROPRIATIONS- The requirement under paragraph (1) is subject to the availability of appropriations.

SEC. 804. TESTING AND CERTIFICATION.

(a) In General- The Secretary shall —

(1) cause each cutter, other than a National Security Cutter, acquired by the Coast Guard and delivered after the date of enactment of this Act to be classed by the American Bureau of Shipping, before acceptance of delivery;

(2) cause the design and construction of each National Security Cutter, other than National Security Cutter 1 and 2, to be certified by an independent third party with expertise in vessel design and construction certification to be able to meet a 185-underway-day requirement under general Atlantic and North Pacific sea conditions for a period of at least 30 years;

(3) cause all electronics on all aircraft, surface, and shore assets that require TEMPEST certification and that are delivered after the date of enactment of this Act to be tested and certified in accordance with TEMPEST standards and communications security (COMSEC) standards by an independent third party that is authorized by the Federal Government to perform such testing and certification; and

(4) cause all aircraft and aircraft engines acquired by the Coast Guard and delivered after the date of enactment of this Act to be certified for airworthiness by an independent third party with expertise in aircraft and aircraft engine certification, before acceptance of delivery.

(b) First in Class of a Major Asset Acquisition- The Secretary shall cause the first in class of a major asset acquisition of a cutter or an aircraft to be subjected to an assessment of operational capability conducted by the Secretary of the Navy.

(c) Final Arbiter- The Secretary shall be the final arbiter of all technical disputes regarding designs and acquisitions of vessels and aircraft for the Coast Guard.

#### SEC. 805. NATIONAL SECURITY CUTTERS.

(a) National Security Cutters 1 and 2-

(1) REPORT ON OPTIONS UNDER CONSIDERATION- The Secretary shall submit to the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate —

(A) within 120 days after the date of enactment of this Act, a report describing in detail the cost increases that have been experienced on National Security Cutters 1 and 2 since the date of the issuance of the task orders for construction of those cutters and explaining the causes of these cost increases; and

(B) within 180 days after the date of enactment of this Act, a report on the options that the Coast Guard is considering to strengthen the hulls of National Security Cutter 1 and National Security Cutter 2, including —

(i) the costs of each of the options under consideration;

(ii) a schedule for when the hull strengthening repairs are anticipated to be performed; and

(iii) the impact that the weight likely to be added to each the cutter by each option will have on the cutter's ability to meet both the original performance requirements included in the Deepwater Program contract and the performance requirements created by contract Amendment Modification 00042 dated February 7, 2007.

(2) DESIGN ASSESSMENT- Not later than 30 days before the Coast Guard signs any contract, delivery order, or task order to strengthen the hull of either of National Security Cutter 1 or 2 to resolve the structural design and performance issues identified in the Department of Homeland Security Inspector General's report OIG-07-23 dated January 2007, the Secretary shall submit to the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate all results of an assessment of the proposed hull strengthening design conducted by the Naval Surface Warfare Center, Carderock Division, including a description in detail of the extent to which the hull strengthening measures to be implemented on those cutters will enable the cutters to meet a 185-underway-day requirement under general Atlantic and North Pacific sea conditions for a period of at least 30 years.

(b) National Security Cutters 3 Through 8- Not later than 30 days before the Coast Guard signs any contract, delivery order, or task order authorizing construction of National Security Cutters 3 through 8, the Secretary shall submit to the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate all results of an assessment of the proposed designs to resolve the structural design, safety, and performance issues identified by the Department of Homeland Security Office of Inspector General report OIG-07-23 for the hulls of those cutters conducted by the Naval Surface Warfare Center, Carderock Division, including a description in detail of the extent to which such designs will enable the cutters to meet a 185-underway-day requirement under general Atlantic and North Pacific sea conditions.

#### SEC. 806. MISCELLANEOUS REPORTS.

(a) In General- The Secretary shall submit the following reports to the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate:

(1) Within 4 months after the date of enactment of this Act, a justification for why 8 National Security Cutters are required to meet the operational needs of the Coast Guard, including —

(A) how many days per year each National Security Cutter will be underway at sea;

(B) where each National Security Cutter will be home ported;

(C) the amount of funding that will be required to establish home port operations for each National Security Cutter;

(D) the extent to which 8 National Security Cutters deployed without vertical unmanned aerial vehicles (VUAV) will meet or exceed the mission capability (including surveillance capacity) of the 12 Hamilton-class high endurance cutters that the National Security Cutters will replace;

(E) the business case in support of constructing National Security Cutters 3 through 8, including a cost-benefit analysis; and

(F) an analysis of how many Offshore Patrol Cutters would be required to provide the patrol coverage provided by a National Security Cutter.

(2) Within 4 months after the date of enactment of this Act, a report on —

(A) the impact that deployment of a National Security Cutter and other cutter assets without the vertical unmanned aerial vehicle (VUAV) will have on the amount of patrol coverage that will be able to be provided during missions conducted by the National Security Cutter and all other cutters planned to be equipped with a VUAV;

(B) how the coverage gap will be made up;

(C) an update on the current status of the development of the VUAV; and

(D) the timeline detailing the major milestones to be achieved during development of the VUAV and identifying the delivery date for the first and last VUAV.

(3) Within 30 days after the elevation to flag-level for resolution of any design or other dispute regarding the Deepwater Program contract or an item to be procured under that contract, including a detailed description of the issue and the rationale underlying the decision taken by the flag officer to resolve the issue.

(4) Within 4 months after the date of enactment of this Act, a report detailing the total number of change orders that have been created by the Coast Guard under the Deepwater Program before the date of enactment of this Act, the total cost of these change orders, and their impact on the Deepwater Program schedule.

(5) Within 180 days after the date of enactment of this Act, a report detailing the technology risks and level of maturity for major technologies used on maritime patrol aircraft, the HC-130J, and the National Security Cutter.

(6) Not less than 60 days before signing a contract to acquire any vessel or aircraft, a report comparing the cost of purchasing that vessel or aircraft directly from the manufacturer or shipyard with the cost of procuring it through the Integrated Coast Guard System.

(7) Within 30 days after the Program Executive Officer of the Deepwater Program becomes aware of a likely cost overrun exceeding 5 percent of the overall asset acquisition contract cost or schedule delay exceeding 5 percent of the estimated asset construction period under the Deepwater Program, a report by the Commandant containing a description of the cost overrun or delay, an explanation of the overrun or delay, a description of Coast Guard's response, and a description of significant delays in the procurement schedule likely to be caused by the overrun or delay.

(8) Within 90 days after the date of enactment of this Act, articulation of a doctrine and description of an anticipated implementation of a plan for management of acquisitions programs, financial management (including earned value management and cost estimating), engineering and logistics management, and contract management, that includes —

(A) a description of how the Coast Guard will cultivate among uniformed personnel expertise in acquisitions management and financial management;

(B) a description of the processes that will be followed to draft and ensure technical review of procurement packages, including statements of work, for any class of assets acquired by the Coast Guard;

(C) a description of how the Coast Guard will conduct an independent cost estimating process, including independently developing cost estimates for major change orders; and

(D) a description of how Coast Guard will strengthen the management of change orders.

(9) Within 4 months after the date of enactment of this Act, a report on the development of a new acquisitions office within the Coast Guard describing the specific staffing structure for that directorate, including —

(A) identification of all managerial positions proposed as part of the office, the functions that each managerial position will fill, and the number of employees each manager will supervise; and

(B) a formal organizational chart and identification of when managerial positions are to be filled.

(10) Ninety days prior to the issuance of a Request for Proposals for construction of an Offshore Patrol Cutter, a report detailing the service life, fatigue life, maximum range, maximum speed, and number of days underway under general Atlantic and North Pacific Sea conditions the cutter shall be built to achieve.

(11) The Secretary shall report annually on the percentage of the total amount of funds expended on procurements under the Deepwater Program that has been paid to each of small businesses and minority-owned businesses.

(12) Within 120 days after the date of enactment of this Act, a report on any Coast Guard mission performance gap due to the removal of Deepwater Program assets from service. The report shall include the following:

(A) A description of the mission performance gap detailing the geographic regions and Coast Guard capabilities affected.

(B) An analysis of factors affecting the mission performance gap that are unrelated to the Deepwater Program, including deployment of Coast Guard assets overseas and continuous vessel shortages.

(C) A description of measures being taken in the near term to fill the mission performance gap, including what those measures are and when they will be implemented.

(D) A description of measures being taken in the long term to fill the mission performance gap, including what those measures are and when they will be implemented.

(E) A description of the potential alternatives to fill the mission performance gap, including any acquisition or lease considered and the reasons they were not pursued.

(b) Report Required on Acceptance of Delivery of Incomplete Asset-

(1) IN GENERAL- If the Secretary accepts delivery of an asset after the date of enactment of this Act for which a contractually required certification cannot be achieved within 30 days after the date of delivery or with any system that is not fully functional for the mission for which it was intended, the Secretary shall submit to the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the United States Senate within 30 days after accepting delivery of the asset a report explaining why acceptance of the asset in such a condition is in the best interests of the United States Government.

(2) CONTENTS- The report shall —

(A) specify the systems that are not able to achieve contractually required certifications within 30 days after the date of delivery and the systems that are not fully functional at the time of delivery for the missions for which they were intended;

(B) identify milestones for the completion of required certifications and to make all systems fully functional; and

(C) identify when the milestones will be completed, who will complete them, and the cost to complete them.

**SEC. 807. USE OF THE NAVAL SEA SYSTEMS COMMAND, THE NAVAL AIR SYSTEMS COMMAND, AND THE SPACE AND NAVAL WARFARE SYSTEMS COMMAND TO ASSIST THE COAST GUARD IN EXERCISING TECHNICAL AUTHORITY FOR THE DEEPWATER PROGRAM AND OTHER COAST GUARD ACQUISITION PROGRAMS.**

(a) Findings- Congress finds that the Coast Guard's use of the technical, contractual, and program management oversight expertise of the Department of the Navy in ship and aircraft production complements and augments the Coast Guard's organic expertise as it procures assets for the Deepwater Program.

(b) Inter-Service Technical Assistance- The Secretary may enter into a memorandum of understanding or a memorandum of agreement with the Secretary of the Navy to provide for the use of the Navy Systems Commands to assist the Coast Guard with the oversight of Coast Guard major acquisition programs. Such memorandum of understanding or memorandum of agreement shall, at a minimum provide for —

(1) the exchange of technical assistance and support that the Coast Guard Chief Engineer and the Coast Guard Chief Information Officer, as Coast Guard Technical Authorities, may identify;

(2) the use, as appropriate, of Navy technical expertise; and

(3) the temporary assignment or exchange of personnel between the Coast Guard and the Navy Systems Commands to facilitate the development of organic capabilities in the Coast Guard.

(c) Technical Authorities- The Coast Guard Chief Engineer, Chief Information Officer, and Chief Acquisition Officer shall adopt, to the extent practicable, procedures that are similar to those used by the Navy Senior Acquisition Official to ensure the Coast Guard Technical Authorities, or designated Technical Warrant Holders, approve all technical requirements.

(d) Coordination- The Secretary, acting through the Commandant of the Coast Guard, may coordinate with the Secretary of the Navy, acting through the Chief of Naval Operations, to develop processes by which the assistance will be requested from the Navy Systems Commands and provided to the Coast Guard.

(e) Report- Not later than 120 days after the date of enactment of this Act and every twelve months thereafter, the Commandant of the Coast Guard shall report to the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the activities undertaken pursuant to such memorandum of understanding or memorandum of agreement.

#### SEC. 808. DEFINITIONS.

In this title:

(1) DEEPWATER PROGRAM- The term `Deepwater Program' means the Integrated Deepwater Systems Program described by the Coast Guard in its report to Congress entitled `Revised Deepwater Implementation Plan 2005', dated March 25, 2005. The Deepwater Program primarily involves the procurement of cutter and aviation assets that operate more than 50 miles offshore.

(2) SECRETARY- The term `Secretary' means the Secretary of the department in which the Coast Guard is operating.

The House Homeland Security Committee's report stated:

The Deepwater Program has suffered from a lack of managerial oversight for several years. This lack of oversight has cost the American taxpayer millions of dollars and hours wasted. The Committee on Homeland Security is encouraged by the Commandant's recent changes to the program and recommends pursuing an aggressive Congressional outreach program to allow for a consistent dialogue that might reinforce confidence in the Coast Guard's ability to manage such a major acquisition program. As part of its continued oversight of the Coast Guard, the Committee on Homeland Security will continue to ensure that the necessary steps are taken to improve the program.

The report also stated:

Section 101 authorizes \$7,374,061,000 in discretionary spending, a modest 5.3 percent above the President's budget request of \$7,000,121,000. As reported by the Committee on Transportation and Infrastructure, this section would authorize \$7,145,055,000 in discretionary spending, an increase of 2.1 percent above the President's budget request. The Committee of Homeland Security (Committee) notes that the difference is an increase of \$229,006,000 for the Integrated Deepwater System Program, which the Committee funded at the Fiscal Year 2007 appropriated level. The Committee also added the requisite oversight for such an improvement by attaching the text of H.R. 2722, the 'Integrated Deepwater Program Reform Act,' as a new Title VIII.

**House Judiciary Committee.** H.R. 2830 was subsequently reported by the House Judiciary Committee (H.Rept. 110-338, Part 3, of October 30, 2007).

**Senate.** Section 101(2) of S. 1892, as introduced on July 26, 2007, authorizes \$998.1 million for the acquisition, construction, renovation, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including equipment related thereto, but does not authorize a specific sum within this figure for the Deepwater program.

## **FY2008 DHS Appropriations Act (H.R. 2638/S. 1644)/FY2008 Consolidated Appropriations Act (H.R. 2764/P.L. 110-161)**

**Funding Summary.** As shown earlier in the report in **Table 2**, the Coast Guard for FY2008 requested \$836.9 million in new appropriations and the rescission of \$48.8 million in prior-year appropriations for the Deepwater program, for a net total request of \$788.1 million.

As also shown in **Table 2**, the House version of the FY2008 DHS appropriations bill (**H.R. 2638**) recommends \$698.4 million in new appropriations and the rescission of \$107.4 million in prior-year appropriations for the program, for a net total of \$590.9 million, while the Senate version (**S. 1644**) recommends \$826.9 million in new appropriations and the rescission of \$58.7 million in prior-year appropriations for the program, for a net total of \$770.1 million. The FY2008 DHS appropriations bill was made part of **H.R. 2764/P.L. 110-161** of December 26, 2007, the FY2008 Consolidated Appropriations Act. **H.R. 2764/P.L. 110-161** provides \$783.3 million in new appropriations and rescinds \$83.6 million in prior-year appropriations for the program, for a net total of \$650.9 million.

**House.** The House-passed version of H.R. 2638 would appropriate \$698.35 million in new appropriations for the Deepwater program,

*Provided*, That of the funds made available for the Integrated Deepwater Systems program, \$257,400,000 is for aircraft and \$219,500,000 is for surface ships:  
*Provided further*, That \$400,000,000 of the funds provided for the Integrated Deepwater Systems program may not be obligated until the Committees on Appropriations of the Senate and the House of Representatives receive and approve a plan for expenditure directly from the Coast Guard that —

- (1) defines activities, milestones, yearly costs, and lifecycle costs for each procurement of a major asset, including an independent cost estimate for each;
- (2) identifies lifecycle staffing and training needs of Coast Guard project managers and of procurement and contract staff;
- (3) identifies competition to be conducted in each procurement;
- (4) describes procurement plans that do not rely on a single industry entity or contract;
- (5) contains very limited indefinite delivery/indefinite quantity contracts and explains the need for any indefinite delivery/indefinite quantity contracts;
- (6) complies with all applicable acquisition rules, requirements, and guidelines, and incorporates the best systems acquisition management practices of the Federal Government;
- (7) complies with the capital planning and investment control requirements established by the Office of Management and Budget, including circular A-11, part 7;
- (8) includes a certification by the Head of Contracting Activity for the Coast Guard and the Chief Procurement Officer of the Department of Homeland Security that the Coast Guard has established sufficient controls and procedures and has sufficient staffing to comply with all contracting requirements and that any apparent conflicts of interest have been sufficiently addressed;
- (9) includes a description of the process used to act upon deviations from the contractually specified performance requirements and clearly explains the actions taken on such deviations;
- (10) includes a certification that the Assistant Commandant of the Coast Guard for Engineering and Logistics is designated as the technical authority for all engineering, design, and logistics decisions pertaining to the Integrated Deepwater Systems program;
- (11) identifies use of the Defense Contract Auditing Agency; and
- (12) is reviewed by the Government Accountability Office....

*Provided further*, That of amounts made available under this heading in Public Law 109-90 for the Offshore Patrol Cutter, \$68,841,000 is rescinded: *Provided further*, That of amounts made available under this heading in Public Law 109-90 and Public Law 109-295 for unmanned aerial vehicles, \$38,608,000 is rescinded: *Provided further*, That the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives, in conjunction with the President's fiscal year 2009 budget, a review of the Revised Deepwater Implementation Plan that identifies any changes to the plan for the fiscal year; an annual performance comparison of Deepwater assets to pre-Deepwater legacy assets; a status report of legacy assets; a detailed explanation of how the costs of legacy assets are being accounted for within the Deepwater program; and the earned value management system gold card data for each Deepwater asset: *Provided further*, That the Secretary shall submit to the

Committees on Appropriations of the Senate and the House of Representatives a comprehensive review of the Revised Deepwater Implementation Plan every five years, beginning in fiscal year 2011, that includes a complete projection of the acquisition costs and schedule for the duration of the plan through fiscal year 2027....

Section 530 of the bill states:

SEC. 530. (a) IN GENERAL- Any contract, subcontract, task or delivery order described in subsection (b) shall contain the following:

(1) A requirement for a technical review of all designs, design changes, and engineering change proposals, and a requirement to specifically address all engineering concerns identified in the review before the obligation of further funds may occur.

(2) A requirement that the Coast Guard maintain technical warrant holder authority, or the equivalent, for major assets.

(3) A requirement that no procurement subject to subsection (b) for lead asset production or the implementation of a major design change shall be entered into unless an independent third party with no financial interest in the development, construction, or modification of any component of the asset, selected by the Commandant of the Coast Guard, determines that such action is advisable.

(4) A requirement for independent life-cycle cost estimates of lead assets and major design and engineering changes.

(5) A requirement for the measurement of contractor and subcontractor performance based on the status of all work performed. For contracts under the Integrated Deepwater Systems program, such requirement shall include a provision that links award fees to successful acquisition outcomes (which shall be defined in terms of cost, schedule, and performance).

(6) A requirement that the Commandant of the Coast Guard assign an appropriate officer or employee of the Coast Guard to act as chair of each integrated product team and higher-level team assigned to the oversight of each integrated product team.

(7) A requirement that the Commandant of the Coast Guard may not award or issue any contract, task or delivery order, letter contract modification thereof, or other similar contract, for the acquisition or modification of an asset under a procurement subject to subsection (b) unless the Coast Guard and the contractor concerned have formally agreed to all terms and conditions or the head of contracting activity of the Coast Guard determines that a compelling need exists for the award or issue of such instrument.

(b) CONTRACTS, SUBCONTRACTS, TASK AND DELIVERY ORDERS COVERED- Subsection (a) applies to —

(1) any major procurement contract, first-tier subcontract, delivery or task order entered into by the Coast Guard;

(2) any first-tier subcontract entered into under such a contract; and

(3) any task or delivery order issued pursuant to such a contract or subcontract.

(c) REPORTS- Not later than 30 days after the date of enactment of this Act, the Commandant of the Coast Guard shall submit to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives: (1) a report on the resources (including training, staff, and expertise) required by the Coast Guard to provide appropriate management and oversight of the Integrated Deepwater Systems program; and (2) a report on how the Coast Guard will utilize full and open competition for any contract entered into after the date of enactment of the Act that provides for the acquisition or modification of assets under, or in support of, the Integrated Deepwater Systems program.

The House Appropriations Committee's report on H.R. 2638 (H.Rept. 110-181 of June 8, 2007) shows recommended funding levels for individual Deepwater program line items on page 70.

The report states:

The Department [of Homeland Security] leaves itself vulnerable to cost increases if its programs are defined at the same time they are being implemented. In general, the Committee has not funded initiatives for which the Department can provide no detailed plan, and has withheld from obligation a total of \$1.9 billion in partial funding for nine programs until detailed plans are provided to the Congress. For example, \$400,000,000 is withheld from obligation until the Coast Guard submits a Deepwater expenditure plan that lays out key management items... (Page 7)

The report also states:

#### DEEPWATER PROGRAM ACQUISITION MANAGEMENT

The Committee agrees that the Commandants' recent announcement outlining six management changes to the Deepwater acquisition program appears to help put Coast Guard on a more successful acquisition path. Nevertheless, the proof will be whether Coast Guard maintains a firm hand in steadying its acquisition program. The Committee remains concerned about Coast Guard's ability to manage complex, large-scale contracts. Of particular concern are frequent changes to estimates of the acquisition funding Coast Guard plans to obligate over the next two years. For example, within approximately a one month time period, the Committee received three different estimates of the amount of Deepwater funding Coast Guard planned to carry forward into fiscal year 2008: \$248,120,000; \$445,602,996; and \$740,710,000. These changing estimates reveal poor planning and management.

Therefore, the Committee includes new bill language requiring Coast Guard to submit a detailed expenditure plan, which shall be reviewed by GAO and approved by the Committees on Appropriations, prior to the obligation of \$400,000,000 of Deepwater funding. The expenditure plan must:

- (1) define activities, milestones, yearly costs, and lifecycle costs for each procurement of a major asset, including an independent cost estimate for each;
- (2) identify lifecycle staffing and training needs of Coast Guard project managers and of procurement and contract staff;

- (3) identify competition to be conducted in each procurement;
- (4) describe procurement plans that do not rely on a single industry entity or contract;
- (5) contain very limited indefinite delivery/indefinite quantity contracts and explain the need for any indefinite delivery/indefinite quantity contracts;
- (6) comply with all applicable acquisition rules, requirements, and guidelines, and incorporate the best systems acquisition management practices of the Federal Government;
- (7) comply with the capital planning and investment control requirements established by the Office of Management and Budget, including circular A — 11, part 7;
- (8) include a certification by the head of contracting activity for Coast Guard and the Chief Procurement Officer of the Department of Homeland Security that Coast Guard has established sufficient controls and procedures and has sufficient staffing to comply with all contracting requirements, and that any apparent conflicts of interest have been sufficiently addressed;
- (9) include a description of the process used to act upon deviations from the contractually specified performance requirements and that clearly explains the actions taken on such deviations;
- (10) include a certification that the Assistant Commandant of the Coast Guard for Engineering and Logistics is designated as the technical authority for all engineering, design, and logistics decisions pertaining to the Integrated Deepwater System program; and
- (11) identify use of the Defense Contract Auditing Agency.

The Committee also includes a provision (Sec. 530) mandating specific Coast Guard contracting reforms. The Committee recommends \$59,475,000 for Deepwater government program management, \$9,000,000 above the amount requested. Additional funding is provided to enable Coast Guard to collocate all acquisition staff.

#### DEEPWATER

The Committee recommends \$698,350,000 for Deepwater, \$138,516,000 below the amount requested and \$367,522,000 below the amount provided for fiscal year 2007. Specific changes to the President's request are discussed below.

#### MARITIME PATROL AIRCRAFT (MPA)

The Committee recommends \$100,000,000 for the MPA, \$70,016,000 below the amount requested. Funding is reduced because the lead aircraft is at least one year behind schedule. At this time, it has not yet entered the Development Test and Evaluation phase.

In April 2003, Coast Guard informed the Committee that the requirements for the MPA were as follows: (1) ability to arrive on the scene of 90 percent of search and rescue emergencies within two hours of initial notification; and (2) ability to travel 300 nautical miles in 90 minutes (212 knot ground speed, with time to climb factored in), stay on scene for approximately four hours, and return over 300 nautical miles with required fuel reserves.

The first MPA was conditionally accepted by Coast Guard, with the exception that it did not have the mission pallet integrated and tested. The aircraft is currently at the Coast Guard Aircraft Repair and Supply Center

undergoing integration of the mission systems pallet. As the aircraft has not yet entered Developmental Test and Evaluation or subsequent Operational Test and Evaluation, Coast Guard currently is unable to verify that the aircraft will meet listed requirements.

#### NATIONAL SECURITY CUTTER (NSC)

The Committee recommends \$105,800,000 for the NSC, \$59,900,000 below the amount requested. The request includes \$67,000,000 for long lead material for the fifth NSC as well as \$98,700,000 for engineering change proposals for the first four NSCs. The additional funds requested for the first four NSCs are a result of economic and customer changes. The customer changes are the result of additional requirements added to the NSC as part of the post-9/11 revised mission needs; costs due to delay and disruption in production schedules that were required to implement the changes; and structural enhancement to increase the fatigue life of the NSC hull. The economic changes are the result of cost overruns incurred due to long-term Gulf Coast regional economic inflation resulting from Hurricane Katrina. The first NSC is currently 77 percent complete and is scheduled to be operational in fiscal year 2008. The second NSC is currently 26 percent complete, with all units under construction. Due to a recent strike in the shipyard, the schedule of both the first and second cutters will likely be delayed, at least by one month. Because long lead materials for NSC 3 were only recently put under contract, that cutter is not expected to be under contract until the summer of 2007.

The Committee has reduced funding for long lead material because Coast Guard has informed the Committee that long lead material items are put under contract three to six months before the cutter is put under contract. Because the NSC 4 long lead materials and contract will be negotiated before NSC 5, the Committee would be surprised if NSC 5 long lead materials need to be purchased in fiscal year 2008.

#### FAST RESPONSE CUTTER (FRC)/REPLACEMENT PATROL BOAT

The Committee does not provide the requested amount of \$53,600,000 for the FRC-B/Replacement Patrol Boat. No funding is recommended the Coast Guard currently projects that previously appropriated funds of \$101,889,000 for the FRC-B and \$41,500,000 for the FRC-A, the original composite patrol boat, will be carried forward into fiscal year 2008. Since previous appropriation Acts allowed this \$143,389,000 to be used for the FRC-B and for sustainment of the 110' cutters, Coast Guard does not require an additional appropriation in 2008. If funding beyond this is needed, the Committee directs the Coast Guard to submit a reprogramming of unobligated Offshore Patrol Boat funding.

On March 14, 2007, the Commandant reassigned the FRC-B project to the Coast Guard Office of Acquisition. Coast Guard's goal, which the Committee supports, is to deliver an operating patrol boat in the shortest time possible to help reduce Coast Guard's patrol boat mission hour gap. Coast Guard is currently operating 25,000 hours, or twenty-five percent, short of its needed patrol boat mission hours. This "gap" means that undocumented migrants, drugs, and other unlawful persons and activities are less likely to be intercepted by Coast Guard. Procuring new patrol boats and completing service life extensions is even more critical now that the Navy has informed Coast Guard that it plans to extend the current Memorandum of Agreement for continued use of only three of the Navy's five 179-foot patrol boats beyond 2008. This decision to eliminate the use of two 179-foot patrol boats after 2008 means that Coast Guard will reduce

patrol hours by an additional 5,000 per year, further exacerbating the patrol boat mission hour deficit.

Coast Guard does not expect to award a contract for the lead FRC-B replacement patrol boat until the second quarter of fiscal year 2008. The lead cutter is expected to be delivered two years later, in the second quarter of fiscal year 2010. The Committee understands Coast Guard is currently determining the best structure for this contract and may decide to quickly procure two cutters instead of one, a strategy that would have procurement risks. Coast Guard is directed to continue to brief the Committees on Appropriations monthly on the status of all patrol boat operations and procurement plans.

#### PATROL BOAT SUSTAINMENT

The Committee recommends \$61,000,000 for sustainment of existing 110' patrol boats, \$20,500,000 above the amount requested. The Committee has been told repeatedly how the 110' patrol boats operating in Iraq are able to operate at a significantly higher mission tempo than those in the United States because they are under a more aggressive maintenance regime. In order to further mitigate the patrol boat mission hour gap discussed above, the Committee has included additional funding to institute an intensive maintenance and sustainment regime for the 110' patrol boats operating stateside similar to that used for 110' boats operating in Iraq. The Committee directs Coast Guard to report within 30 days after enactment of this Act on its plan to utilize this additional funding and increase patrol boat operating hours.

#### OFFSHORE PATROL CUTTER (OPC)

The Committee rescinds \$68,841,000 of OPC unobligated funding, \$20,054,000 more than the amount requested. Currently, \$104,000,000 in OPC funding is unobligated. The OPC is the replacement cutter for the current 210' and 270' Medium Endurance cutters. In March 2006, Coast Guard suspended OPC design efforts due to cost concerns. While a revised schedule indicated that Coast Guard would restart the OPC design process in 2007, it now appears that OPC design will be postponed until 2009, at the earliest, with production to follow. The lead OPC is tentatively planned for delivery in 2015.

#### MEDIUM ENDURANCE CUTTER SUSTAINMENT

With the delays discussed above related to the OPC, robust sustainment of the Medium Endurance cutters is even more critical. The Committee recommends \$50,000,000, \$15,500,000 above the amount requested, to sustain the 25-year-old plus Medium Endurance cutters. Recently the Committee saw first-hand the increasing difficulty of maintaining old cutters and how a lack of maintenance negatively impacts unit readiness, sanitary conditions, and crew morale. Coast Guard has invested little in sustaining these cutters because they were due to be replaced. With replacement postponed, rigorous and robust sustainment has become more important. The Committee directs Coast Guard to report within 30 days after enactment of this Act on its plan to utilize this additional funding.

## UNMANNED AERIAL VEHICLES

The Committee rescinds \$38,608,000 for the vertical takeoff and landing unmanned aerial vehicle (VUAV). The VUAV was originally conceived to be launched off of the NSC, enhancing the NSC's operational effectiveness by extending its surveillance range to approximately 100 nautical miles for up to twelve hours per day. In fact, the number of planned NSCs was reduced from 12 to 8 in part due to this anticipated extension of operational effectiveness.

Unfortunately, the VUAV has not worked as planned. Coast Guard recently chartered a research study to investigate the viability of the VUAV and explore alternatives to fill the VUAV "gap" if the project is not continued. The study concluded that additional research is needed and that the original solutions contemplated by Coast Guard were not cost effective. Based on the current plan, it is clear that the first, second, and third NSCs will likely be launched without a VUAV, thereby reducing their surveillance range. The Committee has included funding within Coast Guard's Research, Development, Test and Evaluation account to accelerate the further research needed in this area. (Pages 71-75)

The report also states:

The Committee is concerned with the limited quality of Coast Guard's quarterly acquisition reports and notes that the Deepwater project was recently rated by Coast Guard as being "moderate" on cost risk, "moderate" on schedule risk, and "low" on technical risk. This is despite the fact that the 123' cutters procured by Deepwater have structural failures and have been decommissioned, that Coast Guard currently lacks a plan for the Offshore Patrol Cutter or the Vertical Unmanned Aerial Vehicle, and that the National Security Cutter is 20 percent above post-9/11 cost estimates. In addition, no outyear funding estimates are included in this report. The Committee directs Coast Guard to develop robust metrics for cost, schedule, and technical risk and to relay those to the Committee. In addition, the Committee directs that outyear funding estimates, by asset, be included in the quarterly report. (Pages 70-71)

The report also states:

Coast Guard plans to increase its use of multi-crewing with some of the new cutters that will be fielded by the Deepwater program. In addition, Coast Guard will begin multi-crewing eight 110' patrol boats to help mitigate the reduction in patrol boat hours created by the decommissioning of the 123' cutters. The Committee expects Coast Guard to utilize lessons learned from the 110' multi-crewing endeavor, and to report quarterly to the Committee on the following multi-crewing metrics: (1) actual support expense compared to the standard support level; (2) percent availability, as defined by the time each cutter is not in pier side maintenance status, compared with the goal of more than 70 percent availability; (3) percent of time the cutter is fully mission capable, or has no category three or category four casualty reports compared with the goal of 95 percent mission capable; and (4) average number of casualty reports per operational day compared with the goal of 0.3 or less. (Page 67)

The report also presents additional views of Representatives Jerry Lewis and Harold Rogers, which include the following:

## COAST GUARD

The bill continues the Committee's aggressive oversight of the Coast Guard's troubled Deepwater program. However, the bill also makes substantial cuts of almost \$200 million to Deepwater that will, in effect, slow down the program's acquisition schedule and delay the much needed modernization of the Coast Guard's ships and aircraft. After what has been considerable oversight by the Congress, we are confident the Coast Guard is putting in place the right managerial controls and organizational improvements to get Deepwater heading in the right direction. We firmly believe that too much of our national security is at stake to fund Deepwater at a level that may unnecessarily prolong the operation of antiquated systems — some dating back to World War II. (Page 197)

**Senate.** The Senate reported version of S. 1644 appropriates a net total (i.e., new appropriations less rescissions of prior-year appropriations) of \$770.079 million for the Deepwater program,

*Provided further*, That of amounts made available under this heading in Public Law 109-90, \$48,787,000 for the Offshore Patrol Cutter are rescinded: *Provided further*, That of the amounts made available under this heading in Public Law 109-295, \$8,000,000 for the Fast Response Cutter (FRC-A) are rescinded: *Provided further*, That the Secretary shall submit an expenditure plan to the Committees on Appropriations of the Senate and the House of Representatives within 60 days after the date of enactment of this Act for funds made available for the Integrated Deepwater Program, that: (1) defines activities, milestones, yearly costs, and life-cycle costs for each procurement of a major asset; (2) identifies life-cycle staffing and training needs of Coast Guard project managers and of procurement and contract staff; (3) includes a certification by the Chief Human Capital Officer of the Department that current human capital capabilities are sufficient to execute the plans discussed in the report; (4) identifies individual project balances by fiscal year, including planned carryover into fiscal year 2009 by project; (5) identifies operational gaps for all Deepwater assets and an explanation of how funds provided in this Act address the shortfalls between current operational capabilities and requirements; (6) includes a listing of all open Government Accountability Office and Office of Inspector General recommendations related to the program and the status of Coast Guard actions to address the recommendations, including milestones for fully addressing them; (7) includes a certification by the Chief Financial Officer of the Department that the program has been reviewed and approved in accordance with the investment management process of the Department, and that the process fulfills all capital planning and investment control requirements and reviews established by the Office of Management and Budget, including Circular A-11, part 7; (8) identifies competition to be conducted in each procurement; (9) includes a certification by the head of contracting activity for the Coast Guard and the Chief Procurement Officer of the Department that the plans for the program comply with the Federal acquisition rules, requirements, guidelines, and practices, and a description of the actions being taken to address areas of non-compliance, the risks associated with them along with plans for addressing these risks and the status of their implementation; (10) identifies the use of independent validation and verification; and (11) is reviewed by the Government Accountability Office: *Provided further*, That the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives, in conjunction with the President's fiscal year 2009 budget, a review of the

Revised Deepwater Implementation Plan that identifies any changes to the plan for the fiscal year; an annual performance comparison of Deepwater assets to pre-Deepwater legacy assets; a status report of legacy assets; a detailed explanation of how the costs of legacy assets are being accounted for within the Deepwater program; and the earned value management system gold card data for each Deepwater asset: *Provided further*, That the Secretary shall submit to the Committees on Appropriations of the Senate and the House of Representatives a comprehensive review of the Revised Deepwater Implementation Plan every five years, beginning in fiscal year 2011, that includes a complete projection of the acquisition costs and schedule for the duration of the plan through fiscal year 2027....

Section 523 of the bill states:

SEC. 523. Any funds appropriated to United States Coast Guard, ‘Acquisition, Construction, and Improvements’ in fiscal years 2002, 2003, 2004, 2005, and 2006 for the 110-123 foot patrol boat conversion that are recovered, collected, or otherwise received as the result of negotiation, mediation, or litigation, shall be available until expended for the Replacement Patrol Boat (FRC-B) program.

The Senate Appropriations Committee’s report on S. 1644 (S.Rept. 110-84 of June 18, 2007) shows recommended funding levels for individual Deepwater program line items on pages 73-74 (see also pages 142-143).

The report states:

The recommendation includes \$770,079,000 for the Integrated Deepwater Systems program, \$18,000,000 below the request and \$275,793,000 below the fiscal year 2007 level. Consistent with the request, the recommendation includes a rescission of \$48,787,000 from prior year balances for the Offshore Patrol Cutter. In addition, the Committee rescinds \$8,000,000 from prior year balances for the Fast Response Cutter-A, due to delays in the development of a composite hull. The Committee reduces \$5,000,000 from the request for the HC-130H conversion and sustainment program, and \$5,000,000 from the HH-60 conversion program, due to unobligated balances projected to be carried forward into fiscal year 2009. (Pages 72-73)

The report also states:

#### DEEPWATER ACQUISITION PROGRAM

The Committee includes a requirement for the Secretary to submit, within 60 days after the date of enactment of this act, an expenditure plan to the Committee for the Integrated Deepwater Systems Program, as specified in bill language. The Committee directs the Government Accountability Office [GAO] to continue its oversight of the Integrated Deepwater Systems program. GAO’s review should focus on: (1) the expenditure plan requirements detailed in the bill; (2) the status of development and delivery of the major aviation and maritime assets of the program; and (3) the management and oversight of the program, specifically the Coast Guard’s transition to the role of lead systems integrator.

## VERTICAL UNMANNED AERIAL VEHICLE

The Committee is concerned that no funding is requested for the vertical unmanned aerial vehicle [VUAV] in the President's fiscal year 2008 budget request for the Coast Guard. The VUAV is intended to be an integral part of the enhanced capability provided by the National Security Cutter [NSC], the first of which is scheduled to be commissioned in fiscal year 2008. Launching from the NSC, the VUAV will greatly expand the surveillance coverage for the cutter. (Page 75)

The report also states:

Consistent with the budget request and the need for both increased oversight and increased ability to manage multiple major acquisition projects, the Committee includes budget authority for Acquisition, Construction, and Improvements [AC&I] personnel compensation, benefits and related support within the "Operating Expenses" [OE] appropriation to address acquisition personnel shortfalls and ensure good stewardship of major systems acquisition, such as the Integrated Deepwater Systems Program. By transferring AC&I funding to the OE appropriation, personnel can be surged to and from AC&I projects where needed and provide the flexibility to match competencies to core requirements. The Committee is also aware of an effort by the Coast Guard to conduct an independent workforce assessment of current competencies and staffing levels, including the need for future staffing requirements. The Coast Guard is directed to brief the Committee on the results of this assessment no later than 45 days after the date of enactment of this act. (Page 69)

The report states:

The Committee notes the Department remains nearly 50 percent below its desired number of contract specialists. The DHS procurement budget is currently the third largest of all Federal departments. The Government Accountability Office [GAO] has concluded that DHS agencies have experienced ongoing cost, schedule, and performance problems with major acquisitions, such as the Coast Guard's Integrated Deepwater Systems Program. Without adequate staffing and rigorous oversight — waste, fraud, and abuse of taxpayer dollars will continue. The Committee includes funding to annualize acquisition positions funded in fiscal year 2007 and create an acquisition workforce intern program. (Page 17)

In discussing the DHS Secure Border Initiative (SBI) program, the report states that:

the failures in the Coast Guard's Integrated Deepwater Systems Program have raised many red flags and require the Congress to approach similarly large programs with an extra degree of caution. It is imperative that a Government program of this magnitude be managed and overseen by qualified Federal Government employees, not contractors out to make a buck off the American taxpayer. (Page 37)

**Conference.** The FY2008 DHS appropriations bill became Division E of the FY2008 Consolidated Appropriations Act. H.R. 2764 as passed by Congress states that, within the Coast Guard's Acquisition, Construction, and Improvements (AC&I) account,

\$783,266,000 shall be available until September 30, 2012, for the Integrated Deepwater Systems program: Provided, That of the funds made available for the Integrated Deepwater Systems program, \$327,416,000 is for aircraft and \$243,400,000 is for surface ships: Provided further, That of the amount provided in the preceding proviso for aircraft, \$70,000,000 may not be obligated for the Maritime Patrol Aircraft until the Commandant of the Coast Guard certifies that the mission system pallet Developmental Test and Evaluation of the HC-144A CASA Maritime Patrol Aircraft is complete: Provided further, That no funds shall be available for procurements related to the acquisition of additional major assets as part of the Integrated Deepwater Systems program not already under contract until an alternatives analysis has been completed by an independent qualified third party: Provided further, That \$300,000,000 of the funds provided for the Integrated Deepwater Systems program may not be obligated until the Committees on Appropriations of the Senate and the House of Representatives receive and approve a plan for expenditure directly from the Coast Guard that —

(1) defines activities, milestones, yearly costs, and lifecycle costs for each procurement of a major asset, including an independent cost estimate for each;

(2) identifies lifecycle staffing and training needs of Coast Guard project managers and of procurement and contract staff;

(3) identifies competition to be conducted in each procurement;

(4) describes procurement plans that do not rely on a single industry entity or contract;

(5) includes a certification by the Chief Human Capital Officer of the Department that current human capital capabilities are sufficient to execute the plans discussed in the report;

(6) contains very limited indefinite delivery/indefinite quantity contracts and explains the need for any indefinite delivery/indefinite quantity contracts;

(7) identifies individual project balances by fiscal year, including planned carryover into fiscal year 2009 by project;

(8) identifies operational gaps by asset and explains how funds provided in this Act address the shortfalls between current operational capabilities and requirements;

(9) includes a listing of all open Government Accountability Office and Office of Inspector General recommendations related to the program and the status of Coast Guard actions to address the recommendations, including milestones for fully addressing them;

(10) includes a certification by the Chief Procurement Officer of the Department that the program has been reviewed and approved in accordance with the investment management process of the Department, and that the process fulfills all capital planning and investment control requirements and reviews established by the Office of Management and Budget, including Circular A-11, part 7;

(11) identifies use of the Defense Contract Auditing Agency;

(12) includes a certification by the head of contracting activity for the Coast Guard and the Chief Procurement Officer of the Department that the plans for the program comply with the Federal acquisition rules, requirements, guidelines, and practices, and a description of the actions being taken to address areas of non-compliance, the risks associated with them along with plans for addressing these risks, and the status of their implementation;

(13) identifies the use of independent validation and verification; and

(14) is reviewed by the Government Accountability Office:

Provided further, That the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives, in conjunction with the President's fiscal year 2009 budget, a review of the Revised Deepwater Implementation Plan that identifies any changes to the plan for the fiscal year; an annual performance comparison of Deepwater assets to pre-Deepwater legacy assets; a status report of legacy assets; a detailed explanation of how the costs of legacy assets are being accounted for within the Deepwater program; and the earned value management system gold card data for each Deepwater asset: Provided further, That the Secretary shall submit to the Committees on Appropriations of the Senate and the House of Representatives a comprehensive review of the Revised Deepwater Implementation Plan every five years, beginning in fiscal year 2011, that includes a complete projection of the acquisition costs and schedule for the duration of the plan through fiscal year 2027:...

Provided further, That of amounts made available under this heading in Public Laws 108-334 and 109-90 for the Offshore Patrol Cutter, \$98,627,476 are rescinded: Provided further, That of amounts made available under this heading in Public Law 108-334 for VTOL unmanned aerial vehicles (VUAV), \$162,850 are rescinded: Provided further, That of amounts made available under this heading in Public Law 109-90 for unmanned air vehicles (UAVs), \$32,942,138 are rescinded: Provided further, That of amounts made available under this heading in Public Law 109-295 for VTOL unmanned aerial vehicles (UAVs), \$716,536 are rescinded:...

In lieu of a conference report on H.R. 2764, the chairman of the House Appropriations Committee submitted an explanatory statement that, under Section 4 of H.R. 2764, "shall have the same effect with respect to the allocation of funds and implementation of divisions A through K of this Act as if it were a joint explanatory statement of a committee of conference." The explanatory statement was printed in Book II of the *Congressional Record* for December 17, 2007 (see pages H15741-H16380). The discussion of Division E (the DHS appropriations bill) begins on page H16078. Within the discussion of the DHS appropriations bill, the discussion of the Coast Guard budget begins on page H16088.

Regarding to the Coast Guard's Operating Expenses (OE) account, the explanatory statement states:

#### Intensive Maintenance for Patrol Boats

The Committees on Appropriations provide \$11,500,000 for Coast Guard to pilot an intensive maintenance regime for 110-foot Island Class patrol boats

in District Seven. The House provided an additional \$20,500,000 within the Acquisition, Construction, and Improvements appropriation for an intensive maintenance and sustainment regime for the 110-foot patrol boats. The Senate provided funding at the request level. Such a regime is operational with the six patrol boats assigned to Operation Iraqi Freedom, which has enabled Coast Guard to substantially increase the operational hours of these boats. The additional funding provided will allow eight 110-foot patrol boats home-ported in Miami, Key West and St. Petersburg, Florida to operate an additional 3,200 hours per year. Coast Guard is directed to brief the Committees on Appropriations on the results of this pilot six months after it is put into operation. (Page H16088)

Regarding the Coast Guard's Acquisition, Construction, and Improvements (AC&I) account, the explanatory statement states:

#### Deepwater Expenditure Plan

The amended bill requires Coast Guard to submit an expenditure plan for Deepwater that contains the following: lifecycle staffing and training needs; identification of procurement competition and procurement plans that do not rely on a single entity or contract and contain only limited indefinite delivery, indefinite quantity contracts; activities, milestones, yearly costs, and lifecycle costs of each major asset, including independent cost estimates; DHS Chief Human Capital Officer certification of sufficient human capital capabilities; identification of project balances by fiscal year and operational gaps for each asset; DHS Chief Procurement Officer (CPO) certification of investment management process compliance; DHS CPO certification of compliance with Federal acquisition rules and action taken to address areas of noncompliance; status of open IG and GAO recommendations; and identification of the use of the Defense Contract Auditing Agency. GAO is directed to continue oversight of the Deepwater program, with focus on review of the expenditure plan and assessment of the operational gaps identified by the Coast Guard and Coast Guard's plans to address these gaps. Coast Guard is directed to brief the Committees on Appropriations on the process it will use to resolve deviations from specified contract requirements and to promptly notify the Committees on Appropriations of specific procurement contract deviations.

#### Maritime Patrol Aircraft

The Committees on Appropriations provide \$170,016,000 for the maritime patrol aircraft as proposed by the Senate instead of the \$100,000,000 as proposed by the House. Bill language is included providing that \$70,000,000 of this amount may not be obligated until Coast Guard certifies that this aircraft has completed developmental testing and evaluation (DT&E). The Committees on Appropriations are concerned about the significant shortfall of maritime patrol aircraft (MPA) resource hours currently confronting Coast Guard. Coast Guard currently estimates that it will be nearly 50 percent below its MPA resource hour needs in 2008. This shortfall is the result of multiple factors, including the significant loss of legacy aircraft over the last 16 years, and is exacerbated by delays in DT&E and formal acceptance of the replacement MPA as integration problems with the mission pallet are solved. The failure to develop a cogent Unmanned Aerial Surveillance program is also threatening the long-term plan to mitigate this significant gap. Similar to the patrol boat mission hour shortfall, Coast Guard let this gap languish for several years before recognizing it as a

substantial problem. Maritime intelligence and surveillance capabilities are critical for Coast Guard's effective execution of its maritime safety and security mission. Therefore, Coast Guard is directed to analyze short term stop-gap measures to address its MPA capability needs until its large-scale acquisitions are in full operation. Coast Guard should utilize outside experts to assist with this analysis and brief the Committees on Appropriations on the results of this analysis within six months from the date of enactment of this Act. Coast Guard is directed to continue to keep the Committees on Appropriations informed of the progress of the DT&E of the MPA and to provide updated details on cost and schedule resulting from the delayed acceptance of the MPA mission pallet.

#### C-130J Missionization and Fleet Introduction

The Committees on Appropriations provide \$5,800,000 for fleet introduction of the C-130Js, as proposed by the House and the Senate. The requested funds were to continue missionization of six C-130J aircraft to include radars, sensors, identification systems, displays, antennas, and a mission operator's station. The Committees on Appropriations understand that the missionization project has experienced an increase in estimated cost that exceeds eight percent of the total contracted cost and Coast Guard has directed an independent audit of the project. Pending approval of a remediation plan to address the cost overrun, Coast Guard does not intend to expend funds missionizing C-130J four through six. Coast Guard is directed to brief the Committees on Appropriations no later than 45 days after enactment of this Act on the impact of missionization delays on full fleet introduction; remediation plans to address the cost overrun; and plans to address the gap in flight hours lost due to project delays.

#### National Security Cutter

The Committees on Appropriations provide \$165,700,000 for the National Security Cutter (NSC) as proposed by the Senate instead of \$105,800,000 as proposed by the House. Since the House and Senate bills passed, Coast Guard revised its budget request to reflect changes in projected spending and need for additional funds for the first three NSCs. In August 2007, Coast Guard entered into a Consolidated Contract Action to resolve all outstanding cost overruns incurred by the contractor due to economic and customer changes that have occurred over the past four years. As a result, the Committees on Appropriations provide funding consistent with the revised request for Government Furnished Equipment, certifications and logistics for NSC #3 and #4, as well as long lead material for the fourth NSC.

#### Replacement Patrol Boat

The replacement patrol boat procurement is critically needed given the significant gap in patrol boat hours and the delays of the Fast Response Cutter (FRC) program. Coast Guard is directed to provide bimonthly briefings to the Committees on Appropriations on the status of this procurement, including critical decision points and dates, planned service life extensions of existing 110-foot patrol boats, and patrol boat operational metrics.

## Rescissions

The amended bill rescinds \$132,449,000 in unobligated balances for the Offshore Patrol Cutter and the Unmanned Aerial Vehicle. Both of these programs are in a state of pre-acquisition and development. Funding has been provided in the Research, Development, Test, and Evaluation appropriation for Coast Guard to study the application of unmanned aerial systems. (Pages H16090-H16091)

Regarding the Coast Guard's research, development, test, and evaluation (RDT&E) account, the explanatory statement states:

The amended bill provides \$25,000,000 for Research, Development, Test, and Evaluation instead of \$17,583,000 as proposed by the House and \$25,583,000 as proposed by the Senate. Additional funding above the request is for priority research to determine the most effective unmanned aerial system to operate off the NSC and for increased research on ways to best manage ballast water to prevent the introduction and spread of aquatic invasive species. Coast Guard is directed to brief the Committees on Appropriations on the preliminary results of the unmanned aerial system research. (Page H16091)

## **Integrated Deepwater Program Reform Act (H.R. 2722/S. 924)**

**House.** H.R. 2722 was introduced on June 14, 2007, reported with amendments by the House Transportation Committee on July 30, and passed by the House on July 31. The text of the bill was subsequently incorporated as Title VIII (sections 801-808) of H.R. 2830 as reported by the House Homeland Security Committee (see discussion of H.R. 2830, above).

The House report on H.R. 2722 (H.Rept. 110-270 of July 30, 2007) stated:

Significant problems have been encountered in procurements conducted under Deepwater, including structural buckling of the eight 110-foot patrol boats that were lengthened to 123 feet, failure of the first design for the new Fast Response Cutter, and failure of the initial design effort of the vertical unmanned aerial vehicle. Most recently, the Department of Homeland Security's Office of the Inspector General ('OIG') has found that the hull fatigue life on the National Security Cutter ('NSC'), the most expensive asset to be procured under the Deepwater Program, may not meet contractual requirements. The Coast Guard does not agree that the NSC will be unable to meet contractual requirements because its interpretation of contractual requirements differs from the OIG's interpretation of these requirements. However, the Coast Guard does agree that there are problems associated with the fatigue life of the hulls of the NSCs and will utilize a design for the construction of NSC 3 that is different from that utilized for NSCs 1 and 2.

Numerous studies on Deepwater issued by the OIG, the Government Accountability Office, and the Defense Acquisitions University have analyzed problems in the Deepwater contract and shortcomings in the Coast Guard's management of the contract that have contributed to the problems encountered in the procurement. Among other factors, these groups have criticized the issuance of a performance-based contract that lacked clear standards for

assessing performance and that ceded too much authority for technical decisions from the Coast Guard and to the ICGS contractor. Analysts have also criticized the lack of in-house management and technical oversight capacity within the Coast Guard.

On January 30, 2007, the Subcommittee on Coast Guard and Maritime Transportation held its first oversight hearing of the 110th Congress on the Deepwater Program. The Subcommittee received testimony from Admiral Thad Allen, Commandant of the United States Coast Guard; Dr. Leo Mackay, President of Integrated Coast Guard Systems; and Mr. Phillip Teel, President of Northrop Grumman Ship Systems.

In his testimony, Admiral Allen stated that the Coast Guard is creating a new acquisitions directorate to professionalize the management of acquisitions efforts in the Coast Guard and the management of human capital. The Commandant also announced that the Coast Guard would serve as the final technical authority on acquisitions efforts. Further, he testified that the Coast Guard would put business practices into place intended to guarantee contractor performance, allow clear assignment of responsibility and accountability, and address problems that had arisen from contractor self-certification.

Admiral Allen indicated that he did not agree with the conclusion of the OIG claim that the contract for Deepwater required the National Security Cutter to be built to be underway for at least 230 days per year. Admiral Allen stated that the contract requires the ship to be built to be away from its home port for 230 days per year but to be able to serve only 170- to 180-mission days. He further argued that building a ship to be operating in a mission area for 230 days per year would require construction of a ship much heavier and more expensive than the Coast Guard actually needs.

In his testimony, Mr. Teel discussed the changes that are occurring in techniques for forecasting the fatigue life of vessels and indicated that current techniques for developing such forecasts continue to be refined. In response to questions about the NSC, he indicated that he could not be certain when or if a crack would occur in the NSC.

On March 8, 2007, the Subcommittee on Coast Guard and Maritime Transportation held a hearing on the Coast Guard's fiscal year 2008 budget, including the budget for the Deepwater Program. The Subcommittee received testimony from Admiral Thad Allen, the Commandant of the United States Coast Guard; Master Chief Petty Officer Charles W. Bowen, the Master Chief Petty Officer of the Coast Guard; Mr. Richard Skinner, the Inspector General of the Department of Homeland Security; and Mr. Stephen Caldwell of Government Accountability Office.

Admiral Allen testified that he was uncertain if the Coast Guard could complete the Deepwater Program within the currently projected \$24 billion budget. He further testified regarding the NSC that Northrop Grumman felt they had met the contractual requirements for the ship but the Coast Guard did not agree.

Mr. Skinner testified that the Inspector General's office had conducted four audits of Deepwater over the past two and one-half years and these audits revealed the dominant influence of expediency over performance quality, flaws

with the terms and conditions of the contract, and that the Coast Guard lacks the appropriate number of people and the right mix of expertise to manage the Deepwater Program. Mr. Skinner indicated that the Coast Guard was moving to correct all of these problems — but that the implementation of corrections would require a change of culture within the service. He further stated that one of the most important practices to ensuring the success of performance-based contracting is continuity in personnel. The appointment of military personnel to oversee acquisitions is directly contrary to this objective because it ensures turnover. Further, he indicated that there is no career path in the Coast Guard for military personnel who aspire to manage acquisitions to receive the work experience and training that they will need to be able to manage any acquisition program, particularly one as complicated as Deepwater.

Mr. Caldwell testified that there were many areas of uncertainty in the Deepwater contract that could cause the program to exceed \$24 billion in costs, including continued growth in the costs of individual assets. He also supported the point that civilians could bring needed continuity to the Deepwater Program.

On April 18, 2007, the Committee on Transportation and Infrastructure held an investigative hearing to examine contractor compliance with the requirements of the Deepwater contract, particularly on the 123-foot patrol boat program. The Committee received testimony from 13 witnesses, including two former employees of Lockheed Martin, five current or former employees of the Coast Guard, Admiral Gary Blore, who will head the Coast Guard's new acquisitions directorate, and Vice Admiral Paul Sullivan, Commander of the United States Navy's Naval Sea Systems Command.

The Committee heard testimony indicating that the ICGS team installed non-conforming topside equipment, non-low-smoke cabling, cameras that did not provide a 360-degree field of coverage, and non-shielded cabling. Further, the Committee heard testimony indicating that the Coast Guard may not have followed all standard procedures in obtaining transient electromagnetic pulse emanation ('TEMPEST') certifications for the vessels. The Coast Guard maintains that no data was transmitted over non-TEMPEST standard communications equipment.

During the April 18, 2007 hearing, the Committee also examined the circumstances regarding the decisions made by the Coast Guard to implement the ICGS proposal to lengthen the hulls of 110-foot patrol boats to 123 feet. Specifically, the Committee heard testimony indicating that the Coast Guard decided to move ahead with the lengthening effort despite warnings from the United States Navy that the proposed design for the lengthened boat was flawed and could lead to problems with the hulls. The U.S. Navy was correct and the boats have subsequently been determined unseaworthy.

Ms. Cathy Martindale, a contracting officer for the Coast Guard, testified that there were an insufficient number of contracting officers assigned to oversee the major procurement programs within Deepwater during its early years. Other witnesses indicated that, at the time of the 123-foot patrol boat program, the Coast Guard did not have the necessary personnel in place to effectively manage contractor performance.

On June 12, 2007, the Subcommittee on Coast Guard and Maritime Transportation held a hearing to assess changes made in the Coast Guard's

management of Deepwater. The Subcommittee received testimony from Admiral Thad Allen, Commandant of the United States Coast Guard; and Mr. Richard Skinner, the Inspector General of the Department of Homeland Security.

Admiral Allen testified that he was in the process of hiring 50 additional personnel to work in the Deepwater Program management office. He indicated that the Coast Guard would move the integration functions currently being performed in the Systems Integration Program Office to Coast Guard Headquarters as part of the ongoing reorganization. However, he estimated it would take six to 12 months to accomplish the reorganization.

Admiral Allen testified that the Coast Guard had moved to rescind acceptance of the delivery of the 123-foot patrol boats, which have been removed from service due to hull buckling. Admiral Allen further testified that the American Bureau of Shipping would classify the new Fast Response Cutter being procured directly by the Coast Guard. He stated that changes that the Coast Guard anticipates making in the hull of NSC 1 to strengthen the hull's fatigue life will be made at government expense because Northrop Grumman believes that it has met the requirements of the Deepwater contract.

Inspector General Skinner testified that a transitional period — perhaps lasting two to three years — will be required before the Coast Guard is ready to assume the role of lead systems integrator. He further emphasized the need to ensure continuity on the integrated teams created under Deepwater and stated that civilians can bring such continuity to the program. Inspector General Skinner testified that he is concerned that the Coast Guard may have difficulty resolving the structural design and performance issues associated with NSCs 1 and 2 as well as NSCs 3 through 8. He also stated that he believes that the cost and operational impact of structural modifications to all of the cutters should be identified and evaluated fully before the Coast Guard authorizes construction of any new NSC.

With regard to Section 3 of H.R. 2722 (incorporated as Section 803 of H.R. 2830; see discussion of H.R. 2830 above), the report stated:

The Committee believes that the appointment of a civilian with extensive professional experience in acquisitions management to head the Deepwater acquisitions effort will provide the senior-level expertise and technical skills necessary to effectively and efficiently manage the Deepwater Program.

**Senate.** S. 924 was introduced on March 20, 2007, and reported by the Senate Commerce, Science, and Transportation Committee on May 24, 2007, with an amendment in the nature of a substitute, and passed by the Senate with an amendment by unanimous consent on December 19, 2007. The text of the bill as reported by the Senate Commerce, Science, and Transportation Committee is as follows:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE-** This Act may be cited as the 'Integrated Deepwater Program Reform Act'.

(b) **TABLE OF CONTENTS-** The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Procurement structure.
- Sec. 3. Analysis of alternatives.
- Sec. 4. Certification.
- Sec. 5. Contract requirements.
- Sec. 6. Improvements in Coast Guard management.
- Sec. 7. Procurement and report requirements.
- Sec. 8. GAO review and recommendations.
- Sec. 9. Inspector General review of Deepwater program.
- Sec. 10. Definitions.

## SEC. 2. PROCUREMENT STRUCTURE.

### (a) In General-

(1) **USE OF LEAD SYSTEMS INTEGRATOR-** Except as provided in subsection (b), the United States Coast Guard may not use a private sector entity as a lead systems integrator for procurements under, or in support of, the Integrated Deepwater Program after the date of enactment of this Act.

(2) **FULL AND OPEN COMPETITION-** The United States Coast Guard shall utilize full and open competition for any other procurement for which an outside contractor is used under, or in support of, the Integrated Deepwater Program after the date of enactment of this Act.

### (b) Exceptions-

(1) **COMPLETION OF PROCUREMENT BY LEAD SYSTEMS INTEGRATOR-** Notwithstanding subsection (a), the Coast Guard may use a private sector entity as a lead systems integrator —

(A) to complete any delivery order or task order that was issued to the lead systems integrator on or before the date of enactment of this Act without any change in the quantity of assets or the specific type of assets covered by the order;

(B) for procurements of —

(i) the HC-130J and the C41SR, and

(ii) National Security Cutters or Maritime Patrol Aircraft under contract or order for construction as of the date of enactment of this Act,

if the requirements of subsection (c) are met with respect to such procurements;  
and

(C) for the procurement of additional National Security Cutters or Maritime Patrol Aircraft if the Commandant determines, after conducting the analysis of alternatives required by section 3, that —

(i) the justifications of FAR 6.3 are met;

(ii) the procurement and the use of a private sector entity as a lead systems integrator for the procurement is in the best interest of the Federal government;  
and

(iii) the requirements of subsection (c) are met with respect to such procurement.

(2) AWARDS TO TIER 1 SUBCONTRACTORS- The Coast Guard may award to any Tier 1 subcontractor or subcontractor below the Tier 1 level any procurement that it could award to a lead systems integrator under paragraph (1).

(3) REPORT ON DECISION-MAKING PROCESS- If the Coast Guard determines under paragraph (1) that it will use a private sector lead systems integrator for a procurement, the Commandant shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure notifying the Committees of its determination and explaining the rationale for the determination.

(c) LIMITATION ON LEAD SYSTEMS INTEGRATORS- Neither an entity performing lead systems integrator functions for a procurement under, or in support of, the Integrated Deepwater Program, nor a Tier 1 subcontractor, for any procurement described in subparagraph (B) or (C) of subsection (b)(1) may have a financial interest in a subcontractor below the tier 1 subcontractor level unless —

(1) the entity was selected by the Coast Guard through full and open competition for such procurement;

(2) the procurement was awarded by the lead systems integrator or a subcontractor through full and open competition;

(3) the procurement was awarded by a subcontractor through a process over which the lead systems integrator or a Tier 1 subcontractor exercised no control;  
or

(4) the Commandant has determined that the justifications of FAR 6.3 are met.

### SEC. 3. ANALYSIS OF ALTERNATIVES.

(a) IN GENERAL- Except with respect to a procurement described in subparagraph (A) or (B) of section 2(b)(1) of this Act, or a procurement for which a request for proposals consistent with the FAR has been issued before the date of enactment of this Act, no procurement may be awarded under the Integrated Deepwater Program until an analysis of alternatives has been conducted under this section.

(b) INDEPENDENT ANALYSIS- As soon as possible, but no later than 120 days after the date of enactment of this Act, the Commandant shall execute a contract for an analysis of alternatives with a Federally Funded Research and Development Center, an appropriate entity of the Department of Defense, or a similar independent third party entity that has appropriate acquisition expertise for independent analysis of all of the proposed procurements under, or in support of, the Integrated Deepwater Program, including procurements described in section 2(b)(1)(B), and for any future major changes of such procurements. The Commandant may not contract under this subsection for such an analysis with any entity that has a substantial financial interest in any part of the Integrated Deepwater Program as of the date of enactment of this Act or in any alternative being considered.

(c) ANALYSIS- The analysis of alternatives provided pursuant to the contract under subsection (b) for procurements and feasible alternatives shall include —

(1) an examination of capability, interoperability, and other advantages and disadvantages;

(2) an evaluation of whether different quantities of specific assets could meet the Coast Guard's overall performance needs;

(3) a discussion of key assumptions and variables, and sensitivity to changes in such assumptions and variables;

(4) an assessment of technology risk and maturity;

(5) an evaluation of safety and performance records; and

(6) a calculation of costs, including life-cycle costs.

(d) REPORT TO CONGRESS- As soon as possible after an analysis of alternatives has been completed, the Commandant shall develop a plan for the procurements addressed in the analysis, as well as procurements described in subsection (a) for which no analysis of alternatives is required, and shall transmit a report describing the plan, and the schedule and costs for delivery of such procurements to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

#### SEC. 4. CERTIFICATION.

(a) IN GENERAL- After the date of enactment of this Act, a contract, delivery order, or task order exceeding \$10,000,000 for procurement under, or in support of, the Coast Guard's Integrated Deepwater Program may not be executed by the Coast Guard until the Commandant certifies that —

(1) appropriate market research has been conducted prior to technology development to reduce duplication of existing technology and products;

(2) the technology has been demonstrated to the maximum extent practicable in a relevant environment;

(3) the technology demonstrates a high likelihood of accomplishing its intended mission;

(4) the technology is affordable when considering the per unit cost and the total procurement cost in the context of the total resources available during the period covered by the Integrated Deepwater Program;

(5) the technology is affordable when considering the ability of the Coast Guard to accomplish its missions using alternatives, based on demonstrated technology, design, and knowledge;

(6) funding is available to execute the contract, delivery order, or task order; and

(7) the technology complies with all relevant policies, regulations, and directives of the Coast Guard.

(b) LIMITATION- Nothing in this section shall prevent the Coast Guard from executing contracts or issuing deliver orders or task orders, for research and development or technology demonstrations under, or in support of, the Integrated Deepwater Program.

(c) REPORT TO CONGRESS- The Commandant shall transmit a copy of each certification required under subsection (a) to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 30 days after the completion of the certification.

#### SEC. 5. CONTRACT REQUIREMENTS.

The Commandant shall ensure that any contract, delivery order, or task order for procurement under, or in support of, the Integrated Deepwater Program executed by the Coast Guard —

(1) addresses the recommendations related to award fee determination and award term evaluation made by the Government Accountability Office in its March, 2004, report entitled Coast Guard's Deepwater Program Needs Increased Attention to Management and Contractor Oversight, GAO-04-380, and any subsequent Government Accountability Office recommendations relevant to the contract terms issued before March 1, 2007, including the recommendation that any award or incentive fee be tied to program outcomes;

(2) provides that certification of any Integrated Deepwater Program procurement for performance, safety, and other relevant factors determined by the Commandant will be conducted by an independent third party;

(3) does not include —

(A) for any contract extending the existing Integrated Deepwater Program contract term that expires in June, 2007, minimum requirements for the purchase of a given or determinable number of specific assets;

(B) provisions that commit the Coast Guard without express written approval by the Coast Guard;

(C) any provision allowing for equitable adjustment that differs from the Federal Acquisition Regulations;

(4) for any contract extending the existing Integrated Deepwater Program contract term that expires in June, 2007, is reviewed by, and addresses recommendations made by, the Under Secretary of Defense for Acquisition, Technology, and Logistics through the Defense Acquisition University in its Quick Look Study dated February 5, 2007; and

(5) meets the requirements of the Systems Acquisition Manual.

#### SEC. 6. IMPROVEMENTS IN COAST GUARD MANAGEMENT.

(a) IN GENERAL- As soon as practicable after the date of enactment of this Act, the Commandant shall take action to ensure that —

(1) the measures contained in the Coast Guard's report entitled Coast Guard: Blue Print for Acquisition Reform are implemented fully;

(2) any additional measures for improved management recommended by the Defense Acquisition University in its Quick Look Study of the United States Coast Guard Deepwater Program, dated February 5, 2007, are implemented;

(3) integrated product teams, and all higher-level teams that oversee integrated product teams, are chaired by Coast Guard personnel; and

(4) the Assistant Commandant for Engineering and Logistics is designated as the Technical Authority for all design, engineering, and technical decisions for the Integrated Deepwater Program.

(b) TRANSFER-

(1) IN GENERAL- Section 93(a) of title 14, United States Code, is amended —

(A) by striking `and' after the semicolon in paragraph (23);

(B) by striking `appropriate.' in paragraph (24) and inserting `appropriate; and'; and

(C) by adding at the end thereof the following:

`(25) notwithstanding any other provision of law, in any fiscal year transfer funds made available for personnel, compensation, and benefits from the appropriation account `Acquisition, Construction, and Improvement' to the appropriation account `Operating Expenses' for personnel compensation and benefits and related costs necessary to execute new or existing procurements of the Coast Guard.'.

(2) NOTIFICATION- Within 30 days after making a transfer under section 93(a)(25) of title 14, United States Code, the Commandant shall notify the Senate Committee on Commerce, Science, Transportation and Infrastructure, the Senate

Committee on Appropriations, the House Committee on Transportation and Infrastructure, and the House Committee on Appropriations.

SEC. 7. PROCUREMENT AND REPORT REQUIREMENTS.

(a) **SELECTED ACQUISITION REPORTS-** The Commandant shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure reports on the Integrated Deepwater Program that contain the same type of information with respect to that Program, to the greatest extent practicable, as the Secretary of Defense is required to provide to the Congress under section 2432 of title 10, United States Code, with respect to major defense procurement programs.

(b) **UNIT COST REPORTS-** Each Coast Guard program manager under the Coast Guard's Integrated Deepwater Program shall provide to the Commandant, or the Commandant's designee, reports on the unit cost of assets acquired or modified that are under the management or control of the Coast Guard program manager on the same basis and containing the same information, to the greatest extent practicable, as is required to be included in the reports a program manager is required to provide to the service procurement executive designated by the Secretary of Defense under section 2433 of title 10, United States Code, with respect to a major defense procurement program.

(c) **REPORTING ON COST OVERRUNS AND DELAYS-** Within 30 days after the Commandant becomes aware of a likely cost overrun or scheduled delay, the Commandant shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure that includes —

- (1) a description of the known or anticipated cost overrun;
- (2) a detailed explanation for such overruns;
- (3) a detailed description of the Coast Guard's plans for responding to such overrun and preventing additional overruns; and
- (4) a description of any significant delays in procurement schedules.

(d) **PATROL BOAT REPORT-** Not later than 90 days after the date of enactment of this Act the Commandant shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on how the Coast Guard plans to manage the annual readiness gap of lost time for 110-foot patrol boats from fiscal year 2008 through fiscal year 2014. The report shall include —

- (1) a summary of the patrol hours that will be lost due to delays in replacing the 110-foot cutters and reduced capabilities of the 110-foot cutters that have been converted;
- (2) an identification of assets that may be used to alleviate the annual readiness gap of lost time for such patrol boats;
- (3) a projection of the remaining operational lifespan of the 110-foot patrol boat fleet;

(4) a description of how extending through fiscal year 2014 the transfer agreement between the Coast Guard and the United States Navy for 5 Cyclone class 179-foot patrol coastal ships would effect the annual readiness gap of lost time for 110-foot patrol boats; and

(5) an estimate of the cost to extend the operational lifespan of the 110-foot patrol boat fleet for each of fiscal years 2008 through 2014.

#### SEC. 8. GAO REVIEW AND RECOMMENDATIONS.

(a) AWARD FEE AND AWARD TERM CRITERIA- The Coast Guard shall consult with the Comptroller General no later than June 1, 2007 to ensure that the Government Accountability Office's recommendations, in its March, 2004, report entitled Coast Guard's Deepwater Program Needs Increased Attention to Management and Contractor Oversight, GAO-04-380, and any subsequent Government Accountability Office recommendations issued before March 1, 2007, with respect to award fee and award term criteria will be addressed to the maximum extent practicable in any contract, delivery order, or task order or extension of the existing contract for procurement under or in support of the Integrated Deepwater Program entered into after the date of enactment of this Act.

(b) OTHER RECOMMENDATIONS- The Commandant shall ensure that all other recommendations in that report, and any subsequent recommendations issued before March 1, 2007, are implemented to the maximum extent practicable by the Coast Guard within 1 year after the date of enactment of this Act. The Commandant shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the Coast Guard's progress in implementing such recommendations.

(c) GAO REPORTS ON IMPLEMENTATION- Beginning 6 months after the date of enactment of this Act, the Comptroller General shall submit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the Coast Guard's progress in implementing the provisions of this Act, the Government Accountability Office's recommendations, in its March, 2004, report entitled Coast Guard's Deepwater Program Needs Increased Attention to Management and Contractor Oversight, GAO-04-380, and any subsequent Government Accountability Office recommendations issued before March 1, 2007.

#### SEC. 9. INSPECTOR GENERAL REVIEW OF DEEPWATER PROGRAM.

Not later than 240 days after the date of the enactment of this Act, the Inspector General of the Department of Homeland Security shall submit to the Secretary, and to Congress, a report on the acquisition of assets under the Deepwater program. The report shall include —

(1) a description of each decision, if any, of the Coast Guard or Integrated Coast Guard Systems relating to the acquisition of assets under the Deepwater program that directly or indirectly resulted in cost overruns or program cost increases to the United States;

(2) an assessment whether any decision covered by paragraph (1) violated the terms of the contract of Integrated Coast Guard Systems for the Deepwater program;

(3) an assessment of how much program costs under the Deepwater program have increased as a result of any such decision; and

(4) an assessment of whether the Coast Guard or Integrated Coast Guard Systems is responsible for the payment of any cost overruns associated with any such decision.

#### SEC. 10. DEFINITIONS.

In this Act:

(1) COMMANDANT- The term `Commandant' means the Commandant of the United States Coast Guard.

(2) INTEGRATED DEEPWATER PROGRAM- The term `Integrated Deepwater Program' means the Integrated Deepwater Systems Program described by the Coast Guard in its Report to Congress on Revised Deepwater Implementation Plan, dated March 25, 2005, including any subsequent modifications, revisions, or restatements of the Program.

(3) PROCUREMENT- The term `procurement' includes development, production, sustainment, modification, conversion, and missionization.

The Senate Commerce, Science, and Transportation Committee's report on S. 924 (S.Rept. 110-72 of May 24, 2007) stated:

Problems with the Deepwater program, many of which have been documented in reports from the DHS IG and the GAO, have raised serious concerns about specific acquisitions under the program, as well as more fundamental problems with the program as a whole. The GAO issued a report in March 2004, citing significant risks with the use of the LSI contracting model, and recommended changes to address three broad areas of concern: (1) improving program management; (2) strengthening contractor accountability; and (3) promoting cost control through greater competition among potential subcontractors. A report of the GAO in January 2006 detailed problems with the design of one of the three major new vessel assets to be acquired, the Fast Response Cutter (FRC), that led the Coast Guard to issue a stop-work order to ICGS. On November 30, 2006, the Coast Guard announced the decision to suspend all operations of the eight 110-foot patrol boats that had been converted to 123-foot patrol boats, due to structural damage and safety concerns. A report of the DHS IG issued on January 23, 2007, found that the largest new vessel to be delivered under the contract, the National Security Cutter (NSC), would not meet the Coast Guard's performance requirements and had design flaws that could result in significant additional costs. Another report from the DHS IG dated February 9, 2007, found that ICGS failed to install low-smoke cable and other elements of the command, control, communications, computers, intelligence, surveillance, and reconnaissance (C4ISR) system on the converted 123-foot vessels, as required by the contract specifications.

The DAU, housed within the Department of Defense (DOD), released a study on February 5, 2007, which found problems with nearly every aspect of the Deepwater program, including the implementation of the 'system-of-systems' approach; the LSI contractual arrangement; and Coast Guard management, workforce and organizational structure, financial management, and logistics. The report encompasses many specific recommendations on all fronts, including improvements to acquisition strategy, contract structure, and management.

The Coast Guard has started to take steps to respond to these recommendations; however, many specific details of reforms remain unclear. The Coast Guard is currently negotiating with ICGS on a new contract, possibly for the full 43-month period of the next award term, to replace the existing contract which expires in June 2007. Although the Coast Guard has stated that it is making changes to the contract to address Congressional concerns, significant uncertainty remains.

The report also stated:

The bill would [among other things] require an analysis of alternatives by an independent third party expert of all proposed Deepwater assets, other than those already under contract or which the LSI is allowed to complete, or those being competed. This analysis would include additional NSCs and MPAs, and any major future changes to the Deepwater acquisitions program. It also would require a plan from the Coast Guard outlining how the agency will move forward with the program, including revised cost and schedule information.

An analysis of alternatives is routinely used for major changes to DOD contracts. The rationale for undertaking such a review for the Deepwater program is two-fold. First, various concerns with proposed Deepwater assets, including the NSC, have been identified. Second, since problems with the program surfaced, the Coast Guard has made many significant changes to what it plans to procure. For example, the Coast Guard has decided to alter its plans for three of the four planned major vessel components. It has halted the conversion of its 110-foot patrol boats to 123-foot vessels, stopped work on the original Fast Response Cutter and is rethinking whether to build a newly-designed vessel for its Offshore Patrol Cutter or to purchase a different vessel. It also has put on hold the development of the Vertical Unmanned Aerial Vehicle (VUAV), after Bell Helicopter, the company making the VUAV, encountered problems in the asset's development. The VUAV was to be a 'force multiplier' used in combination with the NSCs and was a factor in the decision to purchase only eight NSCs to replace the twelve Hamilton Class 378-foot cutters. Given this situation, an analysis of alternatives for proposed Deepwater assets is warranted to ensure that the Coast Guard will procure the mix of assets that best meets its needs.

## **Deepwater Accountability Act (S. 889)**

This bill was introduced on March 15, 2007. Section 1 provides a short title for the bill. The remaining sections of the bill are as follows:

SEC. 2. IMPROVEMENT OF ACQUISITION UNDER THE DEEPWATER PROGRAM OF THE COAST GUARD.

(a) Competition Requirements for Future Acquisitions-

(1) REQUIREMENT- The Secretary of Homeland Security shall, upon reaching the end of the period of performance currently under contract with Integrated Coast Guard Systems in June 2007 under the Deepwater program of the Coast Guard, acquire the completion, delivery, and acceptance of all assets under that contract through new contracts solicited under the full and open competition requirements of section 6.1 of the Federal Acquisition Regulation.

(2) PROHIBITION ON USE OF LEAD SYSTEMS INTEGRATOR- The Secretary shall not utilize the services of a lead systems integrator in any manner to acquire the completion, delivery, or acceptance of assets under this subsection.

(b) Exception-

(1) IN GENERAL- Notwithstanding subsection (a), the Secretary may enter into a new contract with Integrated Coast Guard Systems for the completion, delivery, and acceptance of assets for which construction has commenced, but not been completed, under the contract referred to in that subsection as of the date of the enactment of this Act if the Secretary certifies that —

(A) the completion, delivery, and acceptance of such assets under a contract other than with Integrated Coast Guard Systems would pose an immediate or near-term risk to the national security interests of the United States; or

(B) the cost of the completion, delivery, and acceptance of such assets under a contract with other than Integrated Coast Guard Systems would exceed the cost of the completion, delivery, and acceptance of such assets under a contract with Integrated Coast Guard Systems.

(2) REPORTS TO CONGRESS- If the Secretary determines under paragraph (1) to acquire the completion, delivery, and acceptance of assets under a contract with Integrated Coast Guard Systems, the Secretary shall, not later than 180 days after the date of such determination and every 180 days thereafter until the completion, delivery, and acceptance of such assets, submit to Congress a report on the current construction status of such assets.

(c) Report on Proposed Acquisition to Acquire Completion, Delivery, and Acceptance of Assets- Not later than 30 days after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the acquisition of assets under the Deepwater program. The report shall set forth the following:

(1) A list of each asset under the Deepwater program that has not been completed, delivered, and accepted as of the date of such report.

(2) A list of each such asset of which the Secretary proposes to acquire completion, delivery, and acceptance under contracts entered into under subsection (a).

(3) A list of each such asset of which the Secretary proposes to acquire completion, delivery, and acceptance under a contract under subsection (b) with Integrated Coast Guard Systems.

(d) Inspector General Review of Deepwater Program- Not later than 180 days after the date of the enactment of this Act, the Inspector General of the Department of Homeland Security shall submit to the Secretary, and to Congress, a report on the acquisition of assets under the Deepwater program. The report shall include —

(1) a description of each decision, if any, of the Coast Guard or Integrated Coast Guard Systems relating to the acquisition of assets under the Deepwater program that directly or indirectly resulted in cost overruns or program cost increases to the United States;

(2) an assessment whether any decision covered by paragraph (1) violated the terms of the contract of Integrated Coast Guard Systems for the Deepwater program;

(3) an assessment of how much program costs under the Deepwater program have increased as a result of any such decision;

(4) an assessment of whether the Coast Guard or Integrated Coast Guard Systems is responsible for the payment of any cost overruns associated with any such decision.

(e) Definitions- In this section:

(1) The term ‘asset’ means any product to be acquired under the contract of the Coast Guard for the Deepwater program referred to in subsection (a), including vessels, fixed-wing aircraft, and rotary-wing aircraft, and any component thereof.

(2) The term ‘Integrated Coast Guard Systems’ means the joint venture, commonly referred to as ‘Integrated Coast Guard Systems’ or ‘ICGS’ between Lockheed Martin Corporation and Northrop Grumman Corporation for the purposes of completing and delivering assets to the Coast Guard under the Deepwater program.

## **FY2007 Emergency Supplemental Appropriations Act (H.R. 2206/P.L. 110-28)**

**As Agreed to or Passed by House and Senate.** H.R. 2206 was introduced in the House on May 8, 2007, passed by the House and Senate on May 10 and May 17, 2007, respectively, and signed into law by the President on May 25, 2007, as P.L. 110-28.

H.R. 2206/P.L. 110-28 is effectively the successor to H.R. 1591 (see below), which was vetoed by the President. As there was no report accompanying H.R. 2206, report language accompanying H.R. 1591 that is reprinted below can be viewed as applying to analogous provisions of H.R. 2206.

**Section 6402.** Section 6402 of H.R. 2206/P.L. 110-28 states:

SEC. 6402. (a) IN GENERAL- Any contract, subcontract, task or delivery order described in subsection (b) shall contain the following:

(1) A requirement for a technical review of all designs, design changes, and engineering change proposals, and a requirement to specifically address all engineering concerns identified in the review before the obligation of further funds may occur.

(2) A requirement that the Coast Guard maintain technical warrant holder authority, or the equivalent, for major assets.

(3) A requirement that no procurement subject to subsection (b) for lead asset production or the implementation of a major design change shall be entered into unless an independent third party with no financial interest in the development, construction, or modification of any component of the asset, selected by the Commandant, determines that such action is advisable.

(4) A requirement for independent life-cycle cost estimates of lead assets and major design and engineering changes.

(5) A requirement for the measurement of contractor and subcontractor performance based on the status of all work performed. For contracts under the Integrated Deepwater Systems program, such requirement shall include a provision that links award fees to successful acquisition outcomes (which shall be defined in terms of cost, schedule, and performance).

(6) A requirement that the Commandant of the Coast Guard assign an appropriate officer or employee of the Coast Guard to act as chair of each integrated product team and higher-level team assigned to the oversight of each integrated product team.

(7) A requirement that the Commandant of the Coast Guard may not award or issue any contract, task or delivery order, letter contract modification thereof, or other similar contract, for the acquisition or modification of an asset under a procurement subject to subsection (b) unless the Coast Guard and the contractor concerned have formally agreed to all terms and conditions or the head of contracting activity for the Coast Guard determines that a compelling need exists for the award or issue of such instrument.

(b) CONTRACTS, SUBCONTRACTS, TASK AND DELIVERY ORDERS COVERED- Subsection (a) applies to —

(1) any major procurement contract, first-tier subcontract, delivery or task order entered into by the Coast Guard;

(2) any first-tier subcontract entered into under such a contract; and

(3) any task or delivery order issued pursuant to such a contract or subcontract.

(c) EXPENDITURE OF DEEPWATER FUNDS- Of the funds available for the Integrated Deepwater Systems program, \$650,000,000 may not be obligated until the Committees on Appropriations of the Senate and the House of Representatives receive an expenditure plan directly from the Coast Guard that —

(1) defines activities, milestones, yearly costs, and life-cycle costs for each procurement of a major asset;

(2) identifies life-cycle staffing and training needs of Coast Guard project managers and of procurement and contract staff;

(3) identifies competition to be conducted in each procurement;

(4) describes procurement plans that do not rely on a single industry entity or contract;

(5) contains very limited indefinite delivery/indefinite quantity contracts and explains the need for any indefinite delivery/indefinite quantity contracts;

(6) complies with all applicable acquisition rules, requirements, and guidelines, and incorporates the best systems acquisition management practices of the Federal Government;

(7) complies with the capital planning and investment control requirements established by the Office of Management and Budget, including circular A-11, part 7;

(8) includes a certification by the head of contracting activity for the Coast Guard and the Chief Procurement Officer of the Department of Homeland Security that the Coast Guard has established sufficient controls and procedures and has sufficient staffing to comply with all contracting requirements, and that any conflicts of interest have been sufficiently addressed;

(9) includes a description of the process used to act upon deviations from the contractually specified performance requirements and clearly explains the actions taken on such deviations;

(10) includes a certification that the Assistant Commandant of the Coast Guard for Engineering and Logistics is designated as the technical authority for all engineering, design, and logistics decisions pertaining to the Integrated Deepwater Systems program; and

(11) identifies progress in complying with the requirements of subsection (a).

(d) REPORTS- (1) Not later than 30 days after the date of enactment of this Act, the Commandant of the Coast Guard shall submit to the Committees on Appropriations of the Senate and the House of Representatives; the Committee on Commerce, Science and Transportation of the Senate; and the Committee on Transportation and Infrastructure of the House of Representatives: (i) a report on the resources (including training, staff, and expertise) required by the Coast Guard to provide appropriate management and oversight of the Integrated Deepwater Systems program; and (ii) a report on how the Coast Guard will utilize full and open competition for any contract that provides for the acquisition or modification of assets under, or in support of, the Integrated Deepwater Systems program, entered into after the date of enactment of this Act.

(2) Within 30 days following the submission of the expenditure plan required under subsection (c), the Government Accountability Office shall review the plan and brief the Committees on Appropriations of the Senate and the House of Representatives on its findings.

**Section 6404(b)(1).** Section 6404(b)(1) appropriates \$30 million in additional appropriations to mitigate the Coast Guard's patrol boat operational gap.

**Section 6405.** Section 6405 states:

SEC. 6405. (a) IN GENERAL- With respect to contracts entered into after July 1, 2007, and except as provided in subsection (b), no entity performing lead system integrator functions in the acquisition of a major system by the Department of Homeland Security may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(b) EXCEPTION- An entity described in subsection (a) may have a direct financial interest in the development or construction of an individual system or element of a system of systems if —

(1) the Secretary of Homeland Security certifies to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Homeland Security of the House of Representatives, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Commerce, Science and Transportation of the Senate that —

(A) the entity was selected by the Department of Homeland Security as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(B) the Department took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) the entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

(c) CONSTRUCTION- Nothing in this section shall be construed to preclude an entity described in subsection (a) from performing work necessary to integrate two or more individual systems or elements of a system of systems with each other.

(d) REGULATIONS UPDATE- Not later than July 1, 2007, the Secretary of Homeland Security shall update the acquisition regulations of the Department of Homeland Security in order to specify fully in such regulations the matters with respect to lead system integrators set forth in this section. Included in such regulations shall be: (1) a precise and comprehensive definition of the term 'lead system integrator', modeled after that used by the Department of Defense; and (2) a specification of various types of contracts and fee structures that are appropriate for use by lead system integrators in the production, fielding, and sustainment of complex systems.

## **FY2007 Emergency Supplemental Appropriations Act (H.R. 1591) (vetoed)**

H.R. 1591 was vetoed by the President on May 1, 2007 and failed of passage in House over the veto on May 2, 2007. H.R. 2206 (see above) is effectively the successor to H.R. 1591.

**House.** Sections 4403 and 4404 of the House-passed version of H.R. 1591 stated:

SEC. 4403. (a) IN GENERAL- Any contract, subcontract, or task order described in subsection (b) shall contain the following:

(1) A requirement for a technical review of all designs, design changes, and engineering change proposals, and a requirement to specifically address all engineering concerns identified in the review before the obligation of further funds may occur.

(2) A requirement that the Coast Guard maintain technical warrant holder authority, or the equivalent, for major assets.

(3) A requirement for independent cost estimates of major changes.

(4) A requirement for measurement of contractor and subcontractor performance based on the status of all work performed.

(b) CONTRACTS, SUBCONTRACTS, AND TASK ORDERS COVERED- Subsection (a) applies to —

(1) any major procurement contract entered into by the Coast Guard;

(2) any subcontract entered into under such a contract; and

(3) any task order issued pursuant to such a contract or subcontract.

(c) PLAN FOR EXPENDITURE OF DEEPWATER FUNDS- The funds appropriated in Public Law 109-295 for the Integrated Deepwater Systems program may not be obligated until the Committees on Appropriations of the Senate and the House of Representatives receive and approve a plan for expenditure that —

(1) defines activities, milestones, yearly costs, and lifecycle costs for each procurement of a major asset, including an independent cost estimate for each;

(2) identifies lifecycle staffing and training needs of Coast Guard project managers and of procurement and contract staff;

(3) identifies all Integrated Product Teams that are not chaired by Coast Guard personnel and explains why the Coast Guard does not chair;

(4) identifies competition to be conducted in each procurement;

- (5) does not rely on a single industry entity or contract;
- (6) contains very limited indefinite delivery/indefinite quantity contracts and explains the need for any indefinite delivery/indefinite quantity contracts;
- (7) complies with all applicable acquisition rules, requirements, and guidelines, and incorporates the best systems acquisition management practices of the Federal Government;
- (8) complies with the capital planning and investment control requirements established by the Office of Management and Budget, including circular A-11, part 7;
- (9) includes a certification by the Chief Procurement Officer of the Department of Homeland Security that the Coast Guard has established sufficient controls and procedures to comply with all contracting requirements and that any apparent conflicts of interest have been sufficiently addressed;
- (10) includes a description of the process used to act upon deviations from the contractually specified performance requirements and clearly explains the actions taken on such deviations; and
- (11) is reviewed by the Government Accountability Office.

SEC. 4404. (a) IN GENERAL- With respect to contracts entered into after May 1, 2007, and except as provided in subsection (b), no entity performing lead system integrator functions in the acquisition of a major system by the Department of Homeland Security may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(b) EXCEPTION- An entity described in subsection (a) may have a direct financial interest in the development or construction of an individual system or element of a system of systems if —

(1) the Secretary of Homeland Security certifies to the Committees on Appropriations of the Senate and the House of Representatives and the House Committee on Homeland Security that —

(A) the entity was selected by the Department of Homeland Security as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(B) the Department took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) the entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

(c) CONSTRUCTION- Nothing in this section shall be construed to preclude an entity described in subsection (a) from performing work necessary to integrate two or more individual systems or elements of a system of systems with each other.

(d) REGULATIONS UPDATE- Not later than May 1, 2007, the Secretary of Homeland Security shall update the acquisition regulations of the Department of Homeland Security in order to specify fully in such regulations the matters with respect to lead system integrators set forth in this section. Included in such regulations shall be (1) a precise and comprehensive definition of the term 'lead system integrator', modeled after that used by the Department of Defense, and (2) a specification of various types of contracts and fee structures that are appropriate for use by lead system integrators in the production, fielding, and sustainment of complex systems.

With regard to these two sections, the House report on the bill (H.Rept. 110-060 of March 20, 2007) states:

The Committee includes a provision [Section 4403] tightening Coast Guard procurement practices. Numerous studies, including one by the Defense Acquisition University, have recommended changes to Coast Guard procurement procedures and contracting practices in order to control costs and procure equipment that works. The most recent failure in procurement resulted in eight Coast Guard cutters that are currently grounded due to hull buckling problems. In order to ensure that Coast Guard quickly reforms its major procurement systems, the Committee has included bill language mandating: technical reviews of design and design changes; independent cost estimates of major changes; and Coast Guard maintaining technical warrant holder equivalent authority and measuring contractor performance on all work performed. In addition, the provision requires a robust expenditure plan that is reviewed by the Government Accountability Office for Coast Guard's Deepwater program before any 2007 Deepwater funding is obligated.

The Committee includes a provision [Section 4404] limiting the use of lead system integrator contracts, similar to requirements in law for the Department of Defense.

**Senate.** Section 3402 of the Senate-passed version of H.R. 1591 stated:

SEC. 3402. INTEGRATED DEEPWATER SYSTEM. (a) COMPETITION FOR ACQUISITION AND MODIFICATION OF ASSETS-

(1) IN GENERAL- The Commandant of the Coast Guard shall utilize full and open competition for any contract entered into after the date of enactment of this Act that provides for the acquisition or modification of assets under, or in support of, the Integrated Deepwater System Program of the Coast Guard.

(2) EXCEPTIONS- Paragraph (1) shall not apply to the following:

(A) The acquisition or modification of the following asset classes for which assets of the class and related systems and components under the Integrated Deepwater System are under a contract for production:

(i) National Security Cutter;

(ii) Maritime Patrol Aircraft;

(iii) Deepwater Command, Control, Communications, Computer, Intelligence, Surveillance, and Reconnaissance (C4ISR) System; and

(iv) HC-130J Fleet Introduction.

(B) The modification of any legacy asset class under the Integrated Deepwater System Program being performed by a Coast Guard entity.

(b) CHAIR OF PRODUCT AND OVERSIGHT TEAMS- The Commandant of the Coast Guard shall assign an appropriate officer or employee of the Coast Guard to act as chair of each of the following:

(1) Each integrated product team under the Integrated Deepwater System Program.

(2) Each higher-level team assigned to the oversight of a product team referred to in paragraph (1).

(c) LIFE-CYCLE COST ESTIMATE- The Commandant of the Coast Guard may not enter into a contract for lead asset production under the Integrated Deepwater System Program until the Commandant obtains an independent estimate of life-cycle costs of the asset concerned.

(d) REVIEW OF ACQUISITIONS AND MAJOR DESIGN CHANGES-

(1) IN GENERAL- With the exception of assets covered under (a)(2) of this section, the Commandant of the Coast Guard may not carry out an action described in paragraph (2) unless an independent third party with no financial interest in the development, construction, or modification of any component of the Integrated Deepwater System Program, selected by the Commandant for purposes of the subsection, determines that such action is advisable.

(2) COVERED ACTIONS- The actions described in the paragraph are as follows:

(A) The acquisition or modification of an asset under the Integrated Deepwater System Program.

(B) The implementation of a major design change for an asset under the Integrated Deepwater System Program.

(e) LINKING OF AWARD FEES TO SUCCESSFUL ACQUISITION OUTCOMES- The Commandant of the Coast Guard shall require that all contracts under the Integrated Deepwater System Program that provide award fees link such fees to successful acquisition outcomes (which shall be defined in terms of cost, schedule, and performance).

(f) CONTRACTUAL AGREEMENTS-

(1) IN GENERAL- The Commandant of the Coast Guard may not award or issue any contract, task or delivery order, letter contract modification thereof, or other similar contract, for the acquisition or modification of an asset under the Integrated Deepwater System Program unless the Coast Guard and the contractor concerned have formally agreed to all terms and conditions.

(2) EXCEPTION- A contract, task or delivery order, letter contract, modification thereof, or other similar contract described in paragraph (1) may be awarded or

issued if the head of contracting activity of the Coast Guard determines that a compelling need exists for the award or issue of such instrument.

(g) **DESIGNATION OF TECHNICAL AUTHORITY**- The Commandant of the Coast Guard shall designate the Assistant Commandant of the Coast Guard for Engineering and Logistics as the technical authority for all engineering, design, and logistics decisions pertaining to the Integrated Deepwater System Program.

(h) **REPORT ON PERSONNEL REQUIRED FOR ACQUISITION MANAGEMENT**- Not later than 30 days after the date of the enactment of this Act, the Commandant of the Coast Guard shall submit to the Committees on Appropriations of the Senate and the House of Representatives; the Committee on Commerce, Science and Transportation of the Senate; and the Committee on Transportation and Infrastructure of the House of Representatives a report on the resources (including training, staff, and expertise) required by the Coast Guard to provide appropriate management and oversight of the Integrated Deepwater System Program.

(i) **COMPTROLLER GENERAL REPORT ON PROGRESS**- Not later than 60 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committees on Appropriations of the Senate and the House of Representatives; the Committee on Commerce, Science and Transportation of the Senate; and the Committee on Transportation and Infrastructure of the House of Representatives a report describing and assessing the progress of the Coast Guard in complying with the requirements of this section.

**Conference.** The conference report (H.Rept. 110-107) on H.R. 1591 was submitted on April 24, 2007.

**Section 4402.** Section 4402 of the conference report stated:

SEC. 4402. (a) **IN GENERAL.** — Any contract, subcontract, task or delivery order described in subsection (b) shall contain the following:

(1) A requirement for a technical review of all designs, design changes, and engineering change proposals, and a requirement to specifically address all engineering concerns identified in the review before the obligation of further funds may occur.

(2) A requirement that the Coast Guard maintain technical warrant holder authority, or the equivalent, for major assets.

(3) A requirement that no procurement subject to subsection (b) for lead asset production or the implementation of a major design change shall be entered into unless an independent third party with no financial interest in the development, construction, or modification of any component of the asset, selected by the Commandant, determines that such action is advisable.

(4) A requirement for independent life-cycle cost estimates of lead assets and major design and engineering changes.

(5) A requirement for the measurement of contractor and subcontractor performance based on the status of all work performed. For contracts under the

Integrated Deepwater Systems program, such requirement shall include a provision that links award fees to successful acquisition outcomes (which shall be defined in terms of cost, schedule, and performance).

(6) A requirement that the Commandant of the Coast Guard assign an appropriate officer or employee of the Coast Guard to act as chair of each integrated product team and higher-level team assigned to the oversight of each integrated product team.

(7) A requirement that the Commandant of the Coast Guard may not award or issue any contract, task or delivery order, letter contract modification thereof, or other similar contract, for the acquisition or modification of an asset under a procurement subject to subsection (b) unless the Coast Guard and the contractor concerned have formally agreed to all terms and conditions or the head of contracting activity for the Coast Guard determines that a compelling need exists for the award or issue of such instrument.

(b) **CONTRACTS, SUBCONTRACTS, TASK AND DELIVERY ORDERS COVERED.** — Subsection (a) applies to —

(1) any major procurement contract, first-tier subcontract, delivery or task order entered into by the Coast Guard;

(2) any first-tier subcontract entered into under such a contract;

(3) any task or delivery order issued pursuant to such a contract or subcontract.

(c) **EXPENDITURE OF DEEPWATER FUNDS.** — Of the funds available for the Integrated Deepwater Systems program, \$650,000,000 may not be obligated until the Committees on Appropriations of the Senate and the House of Representatives receive an expenditure plan directly from the Coast Guard that —

(1) defines activities, milestones, yearly costs, and life-cycle costs for each procurement of a major asset, including an independent cost estimate for each;

(2) identifies life-cycle staffing and training needs of Coast Guard project managers and of procurement and contract staff;

(3) identifies competition to be conducted in each procurement;

(4) describes procurement plans that do not rely on a single industry entity or contract;

(5) contains very limited indefinite delivery/indefinite quantity contracts and explains the need for any indefinite delivery/indefinite quantity contracts;

(6) complies with all applicable acquisition rules, requirements, and guidelines, and incorporates the best systems acquisition management practices of the Federal Government;

(7) complies with the capital planning and investment control requirements established by the Office of Management and Budget, including circular A — 11, part 7;

(8) includes a certification by the head of contracting activity for the Coast Guard and the Chief Procurement Officer of the Department of Homeland Security that the Coast Guard has established sufficient controls and procedures and has sufficient staffing to comply with all contracting requirements, and that any conflicts of interest have been sufficiently addressed;

(9) includes a description of the process used to act upon deviations from the contractually specified performance requirements and clearly explains the actions taken on such deviations;

(10) includes a certification that the Assistant Commandant of the Coast Guard for Engineering and Logistics is designated as the technical authority for all engineering, design, and logistics decisions pertaining to the Integrated Deepwater Systems program; and

(11) identifies progress in complying with the requirements of subsection (a).

(d) REPORTS. — (1) Not later than 30 days after the date of enactment of this Act, the Commandant of the Coast Guard shall submit to the Committees on Appropriations of the Senate and the House of Representatives; the Committee on Commerce, Science and Transportation of the Senate; and the Committee on Transportation and Infrastructure of the House of Representatives: (i) a report on the resources (including training, staff, and expertise) required by the Coast Guard to provide appropriate management and oversight of the Integrated Deepwater Systems program; and (ii) a report on how the Coast Guard will utilize full and open competition for any contract that provides for the acquisition or modification of assets under, or in support of, the Integrated Deepwater Systems program, entered into after the date of enactment of this Act; and (2) within 30 days following the submission of the expenditure plan required under subsection (c), the Government Accountability Office shall review the plan and brief the Committees on Appropriations of the Senate and the House of Representatives on its findings.

**Section 4404(b)(1).** Section 4404(b)(1) of the conference report appropriates \$30 million in additional appropriations to procure four new coastal patrol boats so as to mitigate the Coast Guard's patrol boat operational gap. In discussing this appropriation, the conference report states:

to address an urgent operational need, the conferees provide \$30,000,000 for Coast Guard "Acquisition, Construction, and Improvements" to help mitigate the patrol boat operational gap. No additional appropriation was included in either the House or Senate bills. The Coast Guard is currently operating 25,000 hours, or twenty-five percent, short of its needed patrol boat mission hours. This "gap" means that undocumented migrants, drugs, and other unlawful activity are less likely to be intercepted by the Coast Guard. Funding provided in this section is to be used to acquire four new Coastal Patrol Boats, as was requested by the Department of Homeland Security via official correspondence on March 11, 2007. This includes the production, warranty, training, spares, outfitting and project management costs for all four patrol boats. The Coast Guard has indicated these new Coastal Patrol Boats will partially relieve the burden on existing 110' patrol boats until a replacement patrol boat can be placed in service. Currently, Florida-based 110' patrol boats average more than 5,500 mission hours annually which can be performed by the smaller 87' Coastal Patrol Boats operating out of the three primary Florida ports of Tampa, Miami and Key

West. This will allow the 110' patrol boats currently operating in these areas to be utilized farther south where undocumented migrant traffic and drug smuggling are more prevalent.

**Section 4405.** Section 4405 of the conference report states:

SEC. 4405. (a) IN GENERAL. — With respect to contracts entered into after June 1, 2007, and except as provided in subsection (b), no entity performing lead system integrator functions in the acquisition of a major system by the Department of Homeland Security may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(b) EXCEPTION. — An entity described in subsection (a) may have a direct financial interest in the development or construction of an individual system or element of a system of systems if —

(1) the Secretary of Homeland Security certifies to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Homeland Security of the House of Representatives, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Commerce, Science and Transportation of the Senate that —

(A) the entity was selected by the Department of Homeland Security as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and (B) the Department took appropriate steps to prevent any organizational conflict of interest in the selection process; or (2) the entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

(c) CONSTRUCTION. — Nothing in this section shall be construed to preclude an entity described in subsection (a) from performing work necessary to integrate two or more individual systems or elements of a system of systems with each other.

(d) REGULATIONS UPDATE. — Not later than June 1, 2007, the Secretary of Homeland Security shall update the acquisition regulations of the Department of Homeland Security in order to specify fully in such regulations the matters with respect to lead system integrators set forth in this section. Included in such regulations shall be (1) a precise and comprehensive definition of the term “lead system integrator,” modeled after that used by the Department of Defense, and (2) a specification of various types of contracts and fee structures that are appropriate for use by lead system integrators in the production, fielding, and sustainment of complex systems.