

U.S. Coast Guard's Maritime Commerce Strategic Outlook: Protecting and Regulating the MTS

The Marine Transportation System, or MTS, consists of waterways, ports, and inter-modal land-side connections that allow the various modes of transportation to move people and goods to, from, and on the water.

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The U.S. MTS is regulated by a complex of statutory and treaty regimes. Some key examples are:

- U.S.C. Title 33 – Navigation and Navigable Waters
- U.S.C. Title 46 – Shipping
- U.S.C. Title 14 – U.S. Coast Guard authorities
- Maritime Transportation Security Act, 46 U.S.C. §§ 70101-25
- Oil and Pollution Act, 33 U.S.C. §§ 2701-61
 - *USCG's National Pollution Funds Center administers the Oil Spill Liability Trust Fund
- MARPOL (domestically enforced through APPS, 33 U.S.C §§1901-15)
- STCW Convention (Standards of Training, Certification and Watchkeeping for Seafarers)
- SOLAS Convention
 - SOLAS includes the International Safety Management Code, and the International Ship and Port Facility Code

Facilitating Lawful Trade and Travel on Secure Waterways

- Officer in Charge, Marine Inspection (OCMI) are authorized to inspect and certificate vessels and facilities to ensure regulatory compliance and to investigate marine casualties. (See 33 CFR 1.101-20). Field-level Coast Guard inspectors and their local prevention offices generally answer to their respective OCMI's.
 - All of Title 46 of the Code of Federal Regulations is within their purview.
- Captains of the Port (COTP) are authorized to take actions to ensure the safety and security of the harbor, facilities, marine environment and vessels within her jurisdiction. (See 33 CFR 1.01-30).
 - The COTP authorities stems from Port Waterways Safety Act (33 U.S.C. §§ 1221, *et seq*, 33 CFR 160 & 165), and the Magnuson Act (50 U.S.C. § 191, 33 CFR 6).
 - includes the power to establish safety and security zones or direct and control vessels that pose safety/security risks within the COTP jurisdiction.

*In most situations the OCMI and the COTP are the same individual wearing both hats ◇
A Coast Guard Sector Commander (33 CFR 1.01-1(d)(1)).

After the September 11th attacks, Congress empowered the Coast Guard with oversight over security of port operations and over vessels to prevent, respond and mitigate threats to the MTS:

Maritime Transportation Security Act/SAFE Port Act, 46 U.S.C. §§ 70101-25, placed responsibility on the Coast Guard to manage the security of ports and facilities in the MTS.

- Domestic Facilities develop security plans that are reviewed and approved by the Federal Maritime Security Coordinator (another hat typically worn by the Sector Commander). (46 U.S.C. § 70103).
- International Port Security Program – CG reviews international ports for security liabilities and can impose Conditions of Entry to the United States on vessels from countries deemed to be deficient in port security -> a COTP can impose control and compliance measures on non-compliant vessels (46 U.S.C. § 70108-10, 33 CFR 101.410).
- TWIC (Transportation Worker Identification Credential): A required ID card and card reader system to restrict access to “secure areas” in accordance with a facility’s security plan. (46 U.S.C. 70105). The program is being implemented with the Transportation Security Administration.
- Coast Guard maintains deployable specialized operations forces for advanced tactical maritime security operations, law enforcement, interdiction, and counterterrorism operations (46 U.S.C. § 70106).

Modernizing Aids to Navigation and Mariner Information Systems

Aging and obsolete waterways and congested ports inhibit America's competitiveness and resiliency.

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The Aids to Navigation Mission (ATON) is one of the federal government's and the Coast Guard's longest-serving mission. See 14 USC §§ 2, 81-85, 93. Regulating the navigable waterways is a federal authority that is a vital and settled exercise of the Commerce Clause. See, *Gibbon v. Ogden*, 22 U.S. 1, (1824). "All navigable waters are under the control of the United States for the purpose of improving navigation..." *Gibson v. U.S.*, 166 U.S. 269, 271 (1897).

The acquisition of the Waterways Commerce Cutter will drastically revitalize the Coast Guard's ability to service ATONs. The further use of Electronic-ATONS, along with encouragement of Electronic Navigation Charts will continue to supplement and strengthen the interconnected management of Vessel Traffic in the waterways and ports of the MTS.

Transforming Workforce Capacity and Partnerships

Third Party Organization (TPO) Oversight

- 46 CFR Subchapter M – Towing Vessels has recently come into effect. It is intended to allow for robust use of Third Party Organizations to assist with the massive challenge of assessing thousands of vessels now subject to regulations.
 - 46 CFR 136.110-Definitions: *Third-party Organization or TPO means an organization approved by the Coast Guard to conduct independent verifications to assess whether towing vessels or their TSMSs [Towing Safety Management System] comply with applicable requirements contained in this subchapter.*
- In the aftermath of the EL FARO tragedy the Marine Board of Inspection recommended that the Coast Guard exercise greater oversight over TPOs, including the Approved Classification Societies (ACS) that surveyed domestic vessels like EL FARO. These recommendations included:
 - improving USCG's auditing ability of TPO/ACS
 - an annual domestic vessel compliance report
 - implement assessment process for surveyors
 - improving TPO/ACS surveyor trainings for certain inspection activities(Marine Board of Investigation Report, September 24, 2017)

The CG will be releasing an Alternative Compliance Program Navigation & Vessel Circular (ACP NVIC) to clarify TPO performance standards, expectations, and review

Well-managed Alternative Compliance Programs and overseen partnerships with TPOs are regulating force-multipliers

The Maritime industry's desire to remain viable in a competitive global marketplace drives innovation in new technologies, including increasingly complex vessels, propulsion systems, fuels and advanced operational models. Greater interconnectivity and automation within the MTS increase risks in the cyber domain. Advanced autonomous vessel and robotic technologies, projected to be commonplace within the next decade, may revolutionize maritime shipping and present new regulatory, legal, and operational challenges.

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- A USCG NVIC on cyber technology at facilities is in-process, as well as early-stage planning of overall Coast Guard policy on Cyber threats to the Maritime Transportation System.
- Coast Guard is engaged with the International Maritime Organization regarding Maritime Autonomous Surface Ships (MASS). The IMO endorsed a framework for a regulatory scoping exercise on MASS (MSC 99/22).
- USCG has implemented Standard Operating Practice and instructions for its use of aerial drones for Coast Guard operations.