

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



PRESENTED TO THE AMERICAN BAR ASSOCIATION

San Francisco, CA

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THE UNITED STATES COAST GUARD

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

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

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

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

Today, the Coast Guard is a military, multi-mission, maritime force within the Department of Homeland Security. It is one of the armed forces, a law-enforcement and regulatory authority, a member of the U.S. Intelligence Community, and a collaborative response partner with federal, state, and local agencies. The Coast Guard conducts a number of distinct yet complementary missions in the maritime domain to fulfill its maritime safety, security, and stewardship roles—**search and rescue; marine safety; drug interdiction; migrant interdiction; defense readiness; ports, waterways and coastal security, protection of living marine resources, marine environmental protection, and other law enforcement, including protection of fisheries.** Its key strengths are broad authorities and an expansive network of partnerships; flexible, adaptable operational capability and presence that allow it to meet all threats and all hazards; and access and relevant expertise within the international community. Missions are executed by **shore-based multi-mission forces** assigned to 35 sectors in 9 Coast

Guard Districts; surface and air **maritime patrol and interdiction forces**, both surface and air, that range thousands of miles beyond our shores; and **specialized deployable forces** that include the Maritime Security Response Team and Maritime Safety and Security Teams designed to respond to terrorist threats; Port Security Units intended to support deployed DoD organizations; Law Enforcement Detachments that deploy on board United States and partner country naval vessels to provide independent, flexible, law enforcement capability; and the National Strike Force that responds to pollution and hazardous substance incidents.

DEEPWATER HORIZON: COAST GUARD ATTORNEYS RESPOND

On the evening of April 20, 2010, the Transocean-owned, BP chartered, Marshall Islands-flagged Mobile Offshore Drilling Unit, located approximately 72 miles Southeast of Venice, Louisiana, reported an explosion and fire onboard. After an intense Search and Rescue, led by the Coast Guard, where 115 of the 126 crewmembers were saved, it became apparent that significant amounts of oil were being discharged into the Gulf of Mexico. This began the largest and most enduring oil spill response operation in United States history. The Coast Guard quickly appointed a Federal On-Scene Coordinator (FOSC) and National Incident Commander (NIC) to direct and coordinate the complex response to this Spill of National Significance. Coast Guard and Department of Homeland Security attorneys were involved from the outset and continue to be involved in every aspect of the response at the local, state, regional and national level in support of the FOSC and the NIC.

Involvement in the response. Coast Guard attorneys are assigned to provide direct legal advice to the FOSC and the NIC. Additionally, Coast Guard attorneys are assigned to the Incident Command Posts in Houma, Louisiana and Mobile, Alabama where they provide advice to their respective Incident Commanders. Other attorneys are supporting the Incident Command Post in Miami as well as other response elements. Attorneys supporting the response, whether at home station or deployed, are available 24/7 and are comprised of both active duty and reserve judge advocates and civilian counsel. Coast Guard attorneys are involved in all critical decisions related to the response at all levels.

Enabling Operations. Coast Guard attorneys have and continue to provide key operational advice. For example, Coast Guard attorneys advised the NIC and FOSC regarding their authorities under the Oil Pollution and the Clean Water Acts, leading to directives to BP to fund a berm project around several barrier islands off the coast of Louisiana, to fund a \$360 million project to create wetlands for migratory birds, to develop redundancies to capture discharged oil in the event of severe weather, and to limit their use of dispersants.

Interagency Coordination. Coast Guard attorneys have been the focal point for many interagency legal issues. For example, Coast Guard attorneys negotiated memorandums of understanding with the Environmental Protection Agency regarding air quality monitoring, with the Department of Labor regarding response worker safety, and with Health and Human Services regarding public safety.

Compensation & Claims. Coast Guard attorneys have been critical participants in implementing the “polluter pays” principle underlying the Oil Pollution Act of 1990 in

this response. They have participated in ensuring effective and efficient funding of federal, state, local, and tribal response activities; payment of claims of individuals and businesses harmed by the event; and billing of responsible parties for these expenses.

Vessel & Navigation Management. Coast Guard attorneys, with the assistance of Maritime Administration and Customs and Border Protection attorneys developed an expedited process to handle requests for waiver of the “Jones Act” which limits coastwise trade to U.S.-flagged vessels. This resulted in seven vessels involved in source control operations to be granted Jones Act waivers by the Secretary of Homeland Security.

Congressional Affairs. Coast Guard attorneys have been actively involved in drafting and commenting on legislation, and responding to Congressional inquiries about the response. Coast Guard attorneys have drafted and reviewed over 400 responses to Congressional questions related to response authorities. Coast Guard attorneys have also briefed members and staffs on a variety of issues, such as the Jones Act, the Oil Pollution Act of 1990, and the National Oil and Hazardous Substance Pollution Contingency Plan.

International Issues. Coast Guard attorneys took lead role in drafting a position paper on the legal ramifications of oil impacting Cuba and/or Mexico. A Coast Guard attorney participated in a State Department brief to Cuban officials on the potential impact. Coast Guard attorneys also actively participated in developing a process for coordinating the influx of foreign offers of assistance.

Freedom of Information Act (FOIA) requests. In response to a large number of Deepwater Horizon FOIA requests, Coast Guard attorneys developed extensive protocols. Efforts led to a FOIA cells being created on the NIC staff, as well as at the Unified Area Command.

Deepwater Horizon Litigation. Recognizing the likelihood of litigation, Coast Guard attorneys prepared written and oral guidance and coordinated with Information Technology personnel to ensure that responders understood the requirements to preserve both electronic and paper documents of all types. Deployed Coast Guard documentation specialists have also monitored and managed response documentation activities in the field.

The Animal Welfare Fund, the Center for Biological Diversity, the Turtle Restoration Network, and the Animal Legal Defense Fund filed a request for a temporary restraining order in the U.S. District Court for the Eastern District of Louisiana to halt in-situ burning. The plaintiff claimed response efforts were damaging to sea turtles that were allegedly caught in the burn area. Coast Guard attorneys drafted an affidavit for the FOSC and assisted Department of Justice (DOJ) in responding to the TRO petition. Prior to the hearing, plaintiff groups requested a delay and reached an interim agreement that would allow the parties to review existing best management practices and suggest possible changes. Subsequently, Coast Guard attorneys assisted the DOJ in drafting a Motion to Dismiss (Motion to Dismiss still is pending).

In another case, the Center for Biological Diversity filed a Notice of Intent to Sue the CG and US EPA. The notice, dated 2 June, alleged violations of the Endangered Species Act related to the approval and use of chemical dispersants. Coast Guard has been engaged in emergency consultation with Environmental Protection Agency (codefendants) as well as Fish and Wildlife Service and National Marine Fisheries Service. The 60 day notice period will toll in early August.

Military Justice. Given the number of responders at the area command and incident command posts, processes were established to handle military justice matters. Coast Guard attorneys drafted and distributed reminders to members in the area highlighting the importance of upholding the service's standard of conduct and reinforcing military discipline concepts.

Investigations. Numerous inquiries have been undertaken into causes and effects, including a investigation convened jointly by the Department of Homeland Security and the Department of Interior. This investigation, authorized by the Outer Continental Shelf Lands Act, and conducted by the Coast Guard and the Bureau of Ocean Exploration Management, Regulation, and Enforcement, is following the model of the Coast Guard's marine board of investigation. A judge advocate is fully integrated in the investigation as legal advisor to the investigation. Other Coast Guard attorneys are supporting him, and providing other support to the numerous other inquiries underway.

THE COAST GUARD LEGAL PROGRAM

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

Coast Guard legal services are provided by 253 attorneys (59% Judge Advocates and 41% civil service attorneys); 92 paralegals, legal technicians, and other support staff; and 37 Coast Guard Reservists. Coast Guard legal professionals are located in 13 offices and staffs of the Judge Advocate General at Coast Guard Headquarters in Washington, D.C., and in 20 legal offices at major Coast Guard units. Judge Advocates rotate through non-legal operational and staff assignments and several have deployed in support of Operation Iraqi Freedom & Operation Enduring Freedom. Currently two Judge Advocates are serving as Flag Officers and a third has been selected for Flag rank. The Judge Advocate General is a Flag Officer normally, although the Deputy Judge Advocate General, a member of the Senior Executive Service, is currently acting. The Legal Program has three distinct organizational groups:

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

Office of the Judge Advocate General



Field Legal Offices & Staffs. Military and civilian attorneys are assigned to every Flag operational command, including the Atlantic and Pacific Areas located in Portsmouth and Alameda and the Coast Guard's nine Districts (Boston, Portsmouth, Miami, New Orleans, Cleveland, Alameda, Seattle, Honolulu, and Juneau). Staff judge advocates or other counsel support the Coast Guard Academy, Training Center Yorktown, Training Center Cape May, Training Center Petaluma, the National Pollution Funds Center, Personnel Service Center, Pay & Personnel Center (Topeka), and the Research & Development Center. These staffs and counsel report to the local commander but are under the technical supervision of the Judge Advocate General. The bi-coastal Legal Service Command, with elements in Norfolk and Alameda, reporting to the Deputy Judge Advocate General, supports the mission support community and support in depth to all other Coast Guard Judge Advocate General activities, particularly in specialized practice areas, like environment and real property, procurement, and civilian personnel.

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



Homeland Security

THE PRACTICE OF LAW IN THE COAST GUARD

Core Competencies

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

Legal Knowledge. To master the law.

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

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

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

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

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

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

Coast Guard Practice Areas

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

◆ **Military Justice**

As an armed force, members of the Coast Guard are subject to the Uniform Code of Military Justice. Coast Guard judge advocates serve as defense counsel and prosecutors for courts-martial and as military judges. Judge advocates assigned as appellate government and defense counsel brief and argue cases before the Coast Guard Court of

Criminal Appeals, the Court of Appeals for the Armed Forces, and the U.S. Supreme Court. Coast Guard attorneys at field offices serve as Staff Judge Advocates providing advice on military criminal matters to field commanders.

Courts-martial and Nonjudicial Punishment.

	<u>2010*</u>	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>
General Courts-Martial	12	12	13	16	16
Special Courts-Martial	18	19	19	24	32
Summary Courts-Martial	6	14	28	31	31
Total Courts-Martial	36	45	60	71	79
Nonjudicial Punishment	888	1,052	1,395	1,437	1,442

*As of 1 July 2010

Appellate Activity. As of July 1, 2010, the Coast Guard Court of Criminal Appeals issued 20 opinions in Fiscal Year 2010. The Court is composed of 1 full-time and 5 collateral-duty appellate judges. The full time judge is the Chief Judge and lone civilian on the Court at present.



LCDR Jowcol Vina and LCDR Marc Zlomek (on the left of the picture) served six months tours with the USF-I SJA in 2009-2010

◆ Maritime and International Law

As the nation's only armed force with domestic law enforcement authority, the Coast Guard is involved daily in enforcing federal law in the areas of drug interdiction, immigration, marine environmental protection, marine safety, fisheries, maritime security, and general federal laws applicable at sea. The Office of Maritime and International Law at Coast Guard Headquarters plays a prominent role in the development and implementation of Coast Guard policy in these areas and in providing real-time advice to Coast Guard operational commanders. The Office of Maritime and International Law also leads Coast Guard efforts in the international legal community as a fully participating member of the U.S. delegation to the International Maritime Organization. The Office of Maritime and International Law is divided into two branches, the Operations Law Group, which addresses issues related to law enforcement, living marine resources, search and rescue and defense operations; and the Prevention Law Group, which addresses issues concerning vessel safety, security and protection of the marine environment. In addition, the Office of Maritime and International Law oversees over a dozen "embedded" attorneys working directly in the offices of their clients that cover a broad range of issues ranging from intelligence to vessel documentation to oceans policy integration.

International Activities:

International Maritime Organization. Coast Guard attorneys serve as advisors or representatives of the United States at meetings of the International Maritime Organization (IMO), headquartered in London, England, including the Maritime Safety Committee, the Flag State Implementation Subcommittee, the Marine Environmental Protection Committee, the Safety of Navigation Subcommittee, the Radio-communications and Search and Rescue Subcommittee, the Bulk Liquid and Gases Subcommittee. The Chief of the Office of Maritime and International Law serves as the Head of the U.S. delegation to the Legal Committee. A Coast Guard attorney served as the legal advisor to the US Delegation to the COMSAR subcommittee meeting, held from 8 March to 12 March, 2010. The Coast Guard took the lead for developing the US Government position with respect to proposed amendments to the Safety of Life at Sea (SOLAS) and Search and Rescue (SAR) Conventions, dealing with the treatment of persons rescued at sea. At the subcommittee meeting, the Coast Guard attorney helped to ensure the US delegation supported positions consistent with international law. A Coast Guard attorney served as an advisor to the U.S. Delegation to two sessions of the Maritime Safety Committee (November 23-December 4, 2009 and 12-21 May 2010) where the issues included implementation of Long Range Identification and Tracking of Ships (LRIT), and amendments to the SOLAS Convention to incorporate Goal Based Standards for the design and construction of ships. Issues progressed with assistance of a Coast Guard attorney at the NAV Subcommittee including substantial movement on the voluntary model audit scheme, and approval and adoption of new ships routing measures for the safety of navigation of ships. Coast Guard attorneys served as head of Delegation and



Alternate Head of Delegation to a Diplomatic Conference that adopted a Protocol to the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage and Hazardous and Noxious Substances by Sea. A Coast Guard attorney served as head of delegation to the International Mobile Satellite Organization Advisory Committee meetings in Venice, Italy, and London, England. The Advisory Committee is composed of select IMSO member States and advises the IMSO Director General on budgetary matters, oversight of the Global Maritime Distress and Safety System, and its new role in review and audit of the LRIT system as the LRIT Coordinator. Further, a Coast Guard attorney served as the head of the U.S. delegation to a working group that led to a diplomatic conference that adopted significant changes to the 1995 Convention on Standards for the Training, Certification and Watchkeeping for Seafarers.

Maritime Operational Threat Response Coordination. Coast Guard attorneys have played a key role in leading the national effort to stand up a Global Maritime Operational Threat Response Center (GMCC). Following the pirate attack and successful rescue of the master of the U.S. flagged M/V MAERSK ALABAMA, the Secretary of the Department of Homeland Security proposed the establishment of the GMCC to ensure the consistent and timely coordination of maritime operational threat response within the U.S. Government. The Global MOTR Coordination Center was established in February 2010 to support interagency MOTR partners and to serve as a national interagency MOTR coordinator and the MOTR executive secretariat. GMCC is responsible for providing trained and dedicated facilitators; institutionalizing MOTR structure and processes; maintaining MOTR protocols; assisting with MOTR war games and exercises; and capturing MOTR lessons learned and best practices. Coast Guard Attorneys coordinated the first use of the GMCC to coordinate three separate piracy cases off the coast of Somalia in April of 2010.

Multilateral Arctic SAR Initiative. Coast Guard attorneys are currently negotiating a multilateral aeronautical and maritime search and rescue (SAR) agreement between U.S., Canada, Denmark, Iceland, Sweden, Russia, Finland and Norway. The treaty is focused on delimiting the contiguous SAR boundaries between countries and negotiating terms consistent with the SAR Convention and the Chicago Convention for coordinated responses in the Arctic and where Arctic conditions are present. The participant countries have held three rounds of negotiations in Washington DC, Moscow and Oslo since December 2009. The next round of negotiations will be held in Helsinki in October. The treaty is expected to be signed sometime in Spring 2011.



Increased Interaction with AFRICOM. Coast Guard attorneys have been heavily involved in coordinating Coast Guard support to Africa Command's African Maritime

Law Enforcement Partnership (AMLEP). AMLEP is a combined law enforcement program designed to build partner nation maritime law enforcement capacity and help detect illicit activities within their exclusive economic zones through joint law enforcement operations. As part of AMLEP, Coast Guard Attorneys have negotiated short-term and permanent bilateral law enforcement agreements with Cape Verde, Senegal, Sierra Leone and Morocco. Lessons learned from first deployment indicated a strong need for legal analysis of partner nation underlying legal frameworks. In response, Coast Guard Attorneys developed robust partnerships, and focused on understanding the regional nuances of case package delivery and handoff procedures for drug and fishery cases with partner nations. The Coast Guard completed the first Pre-Operational Survey of laws in Sierra Leone with support from AFRICOM in March of 2010 and will continue to conduct visits to partner nations going forward.

Maritime Safety, Security, and Environmental Protection:

Environmental Issues. Coast Guard attorneys have continued work on a variety of environmental issues including development of a Notice of Proposed Rulemaking for Ballast Water, Regulated Navigation Areas and Safety Zones to combat the threat posed by Asian carp to the Great Lakes, and with the Environmental Protection Agency on implementation of MARPOL Annex VI, and the Vessel General Permit under the Clean Water Act NPDES program for discharges from vessels.

Seafarer Access. Additionally, Coast Guard attorneys re-examined the agency's legal authority to promulgate a rule requiring reasonable access to facilities regulated under the Maritime Transportation Security Act for seafarers and others having legitimate business on the facility. The resulting legal opinion underpins several enhanced policy measures short of a rule making that the Coast Guard put in place to facilitate shore leave and reasonable access by seafarer welfare organizations, among others to the facility.

Environmental Crimes. The first half of 2010 saw a significant uptick in the number of environmental crimes cases referred to the Department of Justice for prosecution. These cases normally involve the intentional bypassing of pollution control equipment on ships, resulting in the discharge of oily wastes and other hazardous substances into the sea. Referrals normally average 12 cases per year (or about ¼ of 1% of all port state control boardings conducted). So far in 2010, 13 cases have been referred. In one case, the Coast Guard opted against referral in favor of a long term ban on a tanker entering the United States pursuant to 33 U.S.C. 1228. *U.S. v. Fleet Management Corp.*, resulted in criminal penalties including a \$10 million fine after the M/V COSCO BUSAN discharged fuel oil into San Francisco Bay.



Piracy in the Horn of Africa. Another significant matter includes continued refinement of policy guidance for U.S. flagged vessels at risk of pirate attacks including a revised Maritime Security Directive and five Port Security Advisories which provide advice

on variety of issues including how to comply with the International Traffic in Arms Regulations to legally transport firearms from the U.S. to vessels operating in high risk water. Although the guidance is for U.S. flagged vessels it has proved highly influential for other owners and operators resulting in an increase in the use of armed security teams to defend crews against pirate attacks. It has been instrumental in advancing U.S. policy interests and combating piracy attacks such as the successful repulsion of the second pirate attack against the MAERSK ALABAMA.

Haiti. Coast Guard attorneys played important roles in the aftermath of the devastating earthquake in Haiti. The Coast Guard response to the disaster required the call-up of a substantial number of Coast Guard Reservists. Working closely with their DHS and White House counterparts, Coast Guard attorneys quickly produced the documents needed for a Presidential directive authorizing the emergency call-up of these forces, as well as negotiating agreements for operating procedures while in-country

◆ **Civil Advocacy, Claims and Litigation**

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

The Office of Claims and Litigation, in support of its partners from the Department of Justice and various United States Attorney's Offices, continued to defend and assert the Coast Guard's legal interests in a panoply of cases related to its internal operations and 11 statutory missions. Notably, the Office handled cases related to: claims of negligence in carrying out search and rescue and law enforcement, defense of *Bivens* actions, military personnel pay and discharge matters, and matters arising from the Deepwater Horizon disaster.

Shipbuilders Council of America, Inc., v. Coast Guard, 578 F.3d 234 (4th Cir. 2009)

This case involved an Administrative Procedure Act challenge to a decision by the Coast Guard's National Vessel Documentation Center that a vessel that had undergone some alteration work in a Chinese shipyard had not been "rebuilt" and therefore continued to be a United States built vessel eligible to operate in the coastwise trade. It was one of two cases raising similar issues about the Coast Guard's interpretation of the law with respect to the restrictions on foreign rebuilding.

The District Court found that the Coast Guard's interpretation of its "rebuilt" regulations violated the statute they were based upon. The court ordered the Coast Guard to revoke SEABULK TRADER's coastwise endorsement, and remanded the case back to the Coast Guard for further proceedings and consideration, as to whether (1) a major

component was added to the vessel in China; (2) whether the foreign work exceeded the permissible steelweight thresholds; and (3) whether the work resulted in the installation of segregated ballast tanks, which are required by law to be installed in the United States, if a vessel desires to maintain its coastwise trade privileges.

On appeal of the district court's holding with respect to the Coast Guard's application of its "major component" regulation, the Fourth Circuit Court of Appeals reversed the district court's decision. The appeals court found that "the Coast Guard is the interpretive body best positioned to take account of the myriad factors involved at arriving at a reasonable construction for the complex regulatory scheme for coastwise endorsements; and its interpretation offers a way to harmonize the regulation so that each provision has independent significance." It held that the district court had erred in "failing to defer to the agency's persuasive interpretation of [its rebuild regulations]." The case was remanded to the district court, which remanded to the Coast Guard for a decision on how it exercised its discretion when the steel weight performed fell in the discretionary range provided for in the applicable regulation, 46 CFR part 67.177(b)(2), and whether the work performed in the foreign shipyard resulted in the installation of segregated ballast tanks.

United States v. Massachusetts, 2010 WL 1345018 (D.Mass., March 31, 2010)

This is a preemption case brought by the United States regarding state regulation of oil barges in Buzzards Bay, Massachusetts, that was similar to existing Coast Guard regulations or regulations implemented while the litigation was ongoing. Massachusetts counterclaimed with allegations that the Coast Guard regulations failed to comply with the Administrative Procedure Act or the National Environmental Protection Act (NEPA). Under the Ports and Waterways Safety Act and related provisions, the Coast Guard has authority to regulate the manning and operation of oil barges. The Coast Guard had regulations governing oil barges in Buzzard Bay before Massachusetts passed its requirements in 2004. The United States brought suit to invalidate seven provisions that were similar to existing Coast Guard requirements and requirements added while the litigation was ongoing. The Supreme Court had ruled in two prior cases that where the Coast Guard chooses to act and acts to establish requirements that provide both a floor and ceiling, states cannot regulate in the same area. The district court denied the Massachusetts counterclaims, finding that although the Coast Guard did not fully comply with NEPA its errors were harmless in view of the extensive environmental analysis contained in the rulemaking. On the preemption issue, the Court found that the regulations did show that the Coast Guard intended for its regulations to be both a floor and a ceiling and that the similar state requirements must be invalidated. This case is being appealed.

Dresser v. MEBA Medical Benefits Plan, 2010 WL 1254624 (E.D.La., March 24, 2010)

The Coast Guard is responsible for licensing merchant mariners and also for suspending or revoking the licenses for reasons such as misconduct or incompetence. Prior to the suspension or revocation of a merchant mariner's license the mariner is entitled to an Administrative Procedure Act (APA) hearing on the record before an ALJ. Applicable laws provide for an appeal from the decision of the ALJ to the Commandant of the Coast Guard, then to the National Transportation Safety Board and then to a

Circuit Court. In this and two related cases, merchant mariners facing suspension or revocation actions attempted to avoid the normal administrative process and the prescribed path for appeals by bringing a *Bivens* action against the ALJs and their clerks, and asserting violations of due process alleging that the Chief ALJ sought to “fix” cases in favor of the Coast Guard by using his influence over subordinate ALJs. The district court in this opinion found that it did not have jurisdiction to hear the non-*Bivens* issues and dismissed them because the APA does not give district courts jurisdiction to review agency actions and related issues when there is a remedy in another court. The mariner facing a suspension or revocation action must pursue the prescribed administrative process including appeals to the Commandant of the Coast Guard, the National Transportation Safety Board and a Circuit Court if he or she wants a court to hear claims related to the suspension and revocation action. The *Bivens* actions were also dismissed because they are inextricably intertwined with the administrative process. This case is being appealed.

◆ **Procurement Law**

Coast Guard procurement attorneys contribute to the best performance capabilities for Coast Guard missions. Their counsel enables successful acquisitions and provides effective representation in contract litigation before the Government Accountability Office (GAO) and the Civilian Board of Contract Appeals (CBCA), and in federal courts in concert with the Department of Justice. Additionally, the practice includes legal advice and analysis about planned policies, laws and regulations which will affect Coast Guard procurements, and counsel for the suspension and debarments, and contract fraud issues. Attorneys in the Headquarters Office of Procurement Law, Research and Development Center, and the Legal Service Command provide contract law advice to management, technical, and contracting officials at all levels. This ranges from daily advice to field level contracting officers to comprehensive procurement law counsel on approximately 20 currently underway major projects that are part of the Coast Guard’s acquisition investment portfolio of over \$27 billion. Advice is provided from the earliest acquisition planning stages through contract administration.

Several on-going major and significant systems projects are supported by Procurement Law project counsel. The Deepwater Modernization program continues its transition from a single contractor as the Lead Systems Integrator to the Coast Guard serving as the Lead Systems Integrator. This resulted in increasing numbers of stand-alone major projects. The following are examples of Coast Guard major systems that the Coast Guard Procurement Law office supports, assigning project counsel to assist at every stage of the acquisition:

- National Security Cutter (NSC): The NSC is the largest and most technically advanced class of cutter in the Coast Guard, and will replace the aging 378’ Secretary class cutters. Two NCS cutters have been built, a third



is being finished, and the Coast Guard is in the process of contracting for a fourth;

- The Maritime Patrol Aircraft (MPA): The HC144A Ocean Sentry is the first all-new aircraft delivered to the Coast Guard as part of its recapitalization program. The HC-144A is based on the highly successful CASA CN-235 military airplane, already in use around the world as a patrol, surveillance and transport platform. The HC-144A will replace the Coast Guard's aging fleet of HU-25 Falcon jets as the service's medium range surveillance aircraft.
- Response Boat-Medium (RS-M): This \$610M acquisition was established to procure 180 boats to replace the Coast Guard's aging 41-foot utility boats and other larger non-standard boats with assets that are more capable of meeting the Coast Guard's multi-mission operational requirements. Currently the project is on schedule for completion by the end of 2015 with 105 RB-Ms ordered and 28 delivered.

In addition to these major systems, Procurement Law program counsel are also involved in the wide variety of other complex special project procurement activities of the Coast Guard. Representative examples of these include:

- one of the largest Foreign Military Sales transactions in USCG history, acquiring four "Persuader" maritime patrol aircraft, similar to the USCG's version of the same airframe, and a logistics package, for the Republic of Mexico;
- support for the BP Deepwater Horizon oil spill response effort in a variety of ways, including examination of legal issues associated with oil recovery solutions proffered by vendors in response to a Coast Guard Broad Agency Announcement (BAA), and possible use of Public Law 85-804 (Extraordinary Contractual Action) authority;
- development and use of Energy Savings Performance Contracts, Power Purchase Agreements, and establishment of the Landfill Gas Renewable Energy Center at the Coast Guard Yard.

In addition, our attorneys support myriad "routine" supply, service, research and development, IT/C4ISR, construction and A/E support, and traditional platform acquisitions. Examples of contracts include those for: maintenance and cleaning services; uniform supply; construction for base facilities, buildings and training centers; utilities; dry dock and ship repairs; support for surface forces and aircraft logistics centers; complex surface and air systems; IT/communications/ and interoperability solution development and implementation.

Coast Guard Procurement Lawyers also actively litigate, representing the agency before the GAO and CBCA, and with Department of Justice counsel in cases brought in the federal courts. In all aspects of the exceptionally broad contract-focused practice, our Coast Guard Procurement Attorneys consistently ensure that transparent and competitive processes are correctly and appropriately used, while agency service and supply needs are fully satisfied without disruption.

◆ **Environmental and Real Property Law**

Attorneys located in the Office of Environmental Law and in the Legal Service Command provide specialized environmental law advice to other Coast Guard programs, particularly the engineering environmental compliance staffs. Attorneys in field offices provide "front-line" counsel to their commanders regarding their compliance obligations and responsibilities and advise environmental specialists on environmental cleanup necessary to ensure that all real estate conveyed to states and other non-federal entities is safe for the purpose the recipients intend to use the land and is done in a cost-effective manner. Our attorneys review plans for all major construction projects to ensure the Coast Guard builds new facilities in full compliance with real estate, environmental, and fiscal laws and provide advice and support for all Coast Guard real property matters including its management, acquisition and disposal. When issues arise, Coast Guard environmental lawyers work closely with their counterparts in enforcement agencies to reach acceptable solutions.

Pesticide and Herbicide Use in Aids to Navigation Maintenance. Following the Sixth Circuit Court's decision in *National Cotton Council v. EPA*, 553 F.3d 927, Coast Guard environmental law counsel drafted and proposed legislation to exempt Coast Guard employees from the requirement to get Clean Water Act permits each time they spray pesticides at hornet nests and apply herbicides on poison ivy interfering with navigational aids near water. If legislation is passed before April 9, 2011, when the stay of mandate of the Sixth Circuit's 2009 decision in *National Cotton Council* expires, the status quo will be preserved and such permits will not be required.

Biofuel Use and Damage to Coast Guard Vessels. After Coast Guard units in Minnesota reported engine damage resulting from use of biodiesel fuel, Coast Guard environmental counsel sent a letter to the Minnesota Attorney General apprising her of the issue. These problems arose because Minnesota mandates minimum concentrations of biodiesel in diesel fuel sold within the state for use in internal combustion engines. The letter sought clarification of whether it was Minnesota's intent that the statute apply to sales to the United States and asked for assistance from the state in addressing this matter. Following additional contacts with Minnesota State fuel authorities, they agreed to grant the Coast Guard an exception to the law.

Historical Bridge Litigation. Coast Guard bridge permitting offices across the country encountered interesting challenges over the past year. In one case, a non-governmental historic protection organization operating in Louisville, Kentucky, filed a complaint against the Coast Guard in the Federal District Court for Western Kentucky challenging a permit issued by the District 8 Bridge Office in St. Louis. The permit examined potential navigational impacts connected with alteration of the Harrods Creek Bridge on

Louisville, Kentucky's scenic and historic River Road. The plaintiff challenged the use of a categorical exclusion for NEPA compliance and reliance on an agreement with the State Historical Preservation Officer. The court granted summary judgments for the defendants determining as a matter of law that plaintiff could not prevail.

Coast Guard Real Estate Practice. With the assistance of Coast Guard environmental law counsel, the Michigan Lighthouse Alliance and the Michigan Department of Environmental Quality reached agreement on a bottomlands agreement which will allow the Coast Guard to proceed with several pending and planned transfers of lighthouses. Counsel provided significant support in the Coast Guard's efforts to resist the Alliance's efforts to use the Coast Guard as a shield from the state's subsurface property rights policies, thus forcing the Alliance to resume negotiations with the State, which had lapsed for three years.

◆ **General Law**

Coast Guard attorneys provide legal advice on issues including federal fiscal law, gift acceptance and standards of ethical conduct for government employees, military and civilian personnel law, civil rights, intellectual property, health care, privacy and information law. In addition, Attorneys at the Office of General Law at Headquarters and at the Legal Service Command provide advice on labor relations issues and represent the Coast Guard before the Merit Systems Protection Board, Equal Employment Opportunity Commission, and Federal Labor Relations Authority.

Fiscal Law Practice Area. Attorneys in the Fiscal Law practice group provide advice and legal services on the financial aspects of Coast Guard operations. For example, Coast Guard attorneys played a key role in addressing the fiscal issues implicated in several major projects with nationwide and international impact, including polar icebreaker operations. In partnership with the National Science Foundation, icebreaker ships allow scientists to conduct oceanographic research on the high seas and in waters under United States jurisdiction. These large ships are also instrumental to the Coast Guard's mission of providing safety on the high seas. The Fiscal Law group also worked a myriad of issues associated with the Coast Guard's response to the Deepwater Horizon oil spill in the Gulf of Mexico, including reimbursement to the Oil Spill Liability Trust Fund by the Responsible Party, thus ensuring an adequate funding stream to support the Coast Guard led multi-agency response to the worst oil spill in United States history. The Fiscal Law group continued to assist in coordinating the repair and alteration of bridges, partially funded by American Recovery and Reinvestment Act (ARRA), and provided oversight to prevent fraud, waste, error, and abuse of government funds. The completion of these repairs facilitates safe and efficient navigation along the Nation's waterways.

Information Law. The Information Law practice group is one of the most dynamic, challenging and evolving practice groups in the Office of General Law. The growth of new social media devices, including Facebook, Twitter and the Blogosphere continue to present a wide range of challenging and novel legal issues with personal privacy, First

Amendment, Contract Law and information-security implications. Coast Guard attorneys continued to address issues in this developing area of law, while also practicing in the more traditional areas of information law, including ensuring Coast Guard compliance with the Freedom of Information Act, which requires disclosure of information held by the U.S. government. Legal review of FOIA responses must strike the correct balance between protection of personal privacy, legal privileges, exemptions and the Coast Guard's commitment to transparency in government.

Personnel Law. Coast Guard Labor and Employment Law attorneys litigated scores of Equal Employment Opportunity (EEO) Commission and Merit Systems Protection Board (MSPB) cases during the past year, assisted the Department of Justice with cases in Federal district and appellate courts, and handled administrative military Equal Opportunity complaints, representing significant potential financial exposure. In addition, Coast Guard Employment and Labor Law attorneys handled 49 performance improvement plans, labor grievances and other matters. Coast Guard Attorneys are also participating in negotiation of a master labor agreement with the American Federation of Government Employees which represents more than 2,000 employees.

◆ **Regulations and Administrative Law**

The Coast Guard is charged with developing and enforcing regulations to ensure the safety of marine navigation, protect the environment, conduct search and rescue, enforce laws & treaties, and increase marine security. Coast Guard attorneys draft new regulations based on those mandates and also provide advice to field commanders on the implementation of all existing regulations and their enforcement and applicability. The Office of Regulations and Administrative Law also manages the Coast Guard regulatory agenda, oversees regulatory initiatives, works with field attorneys on local field regulations, provides advice about the Federal Advisory Committee Act, and responds to recommendations and complaints of Coast Guard rulemaking actions filed by the public.

Rulemaking continues to balance the need for increased national security measures with its traditional maritime safety and environmental protection functions. Since last year's report, the Coast Guard published 760 field regulations, 10 Headquarters proposed rules, 1 Headquarters notice of withdrawal of a rule, 1 Headquarters interim rule, and 15 Headquarters final rules.

It took only ten days for the Coast Guard and the Environmental Protection Agency to confect and publish a joint significant temporary interim rule relaxing the response time planning requirements for spill response assets so that those assets could move from where they were stationed around the country to the Gulf for utilization in the response.

Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions (CAPS). On August 31, 2009, the Coast Guard published a final rule updating its requirements for oil-spill removal equipment associated with vessel response plans and marine transportation-related facility response

plans. This update was based on an ongoing review of these requirements conducted by the Coast Guard pursuant to our regulations. These changes added requirements for new response technologies and revised methods and procedures for responding to oil spills upon the navigable waters of the United States, adjoining shorelines, and the exclusive economic zone. (74 FR 45004)

Proceedings Issue on Rulemaking. This April, the Coast Guard published its Spring 2010 issue of *Proceedings of the Marine Safety and Security Council*, which focuses on the Coast Guard’s rulemaking process. Authors from within the Coast Guard, the Department of Homeland Security, the Federal Register, academia, and Coast Guard industry and agency partners provide an inside look at the complex procedures in place to issue regulations. Copies of the issue are available for free download at <http://www.uscg.mil/proceedings/>.

Rulemaking Development System Review Result. As reported in previous years, the Coast Guard conducted an internal review of its rulemaking development system, which led to the hiring of a number of additional personnel including economists and attorneys to begin addressing a back log of rulemaking projects. As a result of these increases, the Coast Guard is beginning to see some success in the number of regulatory projects that are able to be advanced in each year.

Webcasting Public Meetings. This year, the Coast Guard held several public meetings on open rulemaking projects that were also available for viewing via live and recorded webcast. The Coast Guard hopes to continue this practice in the future, as it allows more interested individuals to see presentations on proposed rules by the Coast Guard and hear comments from other interested parties without having to travel to the public meeting city. The Coast Guard will also be exploring the possibility of integrating some interactivity into the webcast at future public meetings.

◆ Legislative Support

The Office of Legislation works closely with Coast Guard directorates, the Department of Homeland Security, the Office of Management and Budget, and other federal departments and agencies to develop the Coast Guard’s legislative program and with the Coast Guard’s Office of Congressional Affairs to secure enactment of the program.

Coast Guard Modernization Act; Sportfish and Recreational Boating Safety Act of 2010. The Office of Legislation prepared two content-specific legislative proposals for the fiscal year 2010 cycle, in lieu of the conventional omnibus legislative program: the “Coast Guard Modernization Act” to increase the number of senior officers and give effect to the strategic transformation effort; and the “Sportfish and Recreational Boating Safety Act”, a collaboration with the Department of the Interior’s U.S. Fish and Wildlife Service to reauthorize the funding mechanism for both United States Coast Guard and United States Fish and Wildlife programs that are financed under the Dingell-Johnson Sport Fish Restoration Act.

Based on the pace of legislative activity to date, the Coast Guard anticipates enactment of H.R. 3619, the “Coast Guard Authorization Act of 2010” during the Second Session of the 111th Congress.

◆ **Legal and Defense Services**

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

Legal Assistance. In the past year, legal assistance attorneys provided counsel to over 8,000 clients, helping them with estate planning, family law, consumer law and a myriad other issues. Additionally, our offices maintained a vibrant VITA program. Employing attorney and non-attorney personnel, volunteers filed over 2,000 federal returns at twenty one different sites, which resulted in substantial tax preparation savings to Coast Guard personnel, retirees, and dependents.

The legal assistance attorneys recently held their bi-annual conference to discuss current trends and issues in the practice. Among other accomplishments, the conference served as a springboard for an initiative to assist all members who wish to naturalize. The ambitious goal is to have 100% of the personnel who wish to become citizens either naturalized or in the process by the end of the fiscal year.

Physical Disability Evaluation program. Coast Guard disability cases continued to increase this past year. Approximately 98% of all members in the Physical Disability Evaluation System elected counsel, resulting in a 4% increase from last year.

The Coast Guard joined other services in establishing a Disability Evaluation System (DES) pilot program this year. The pilot program was initiated to improve the speed and consistency of disability evaluations in the service member compensation program. The 2008 National Defense Authorization Act provided a mandate for the DES pilot program which seeks to minimize the time and number of evaluations a service member must endure when they are separated from the service as a result of an unfitting condition.

Military Justice and Member Representation. The Office of Legal and Defense Services oversee the Navy and Coast Guard Memorandum of Understanding on Mutual Support in Military Justice Matters. Under this cross-service agreement, Navy judge advocates provided defense services to over 100 Coast Guard members. Legal and Defense Services detailed both Navy and Coast Guard judge advocates to represent Coast Guard members at courts-martial and other proceedings such as administrative boards (competency, separation, or retention) boards of inquiry, and relief for cause proceedings.

Coast Guard appellate defense counsel currently represents 44 Coast Guard members before the Coast Guard Court of Criminal Appeals, the Court of Appeals for the Armed

Forces, and the United States Supreme Court. In the Fall of 2008, the Judge Advocate General established a new initiative designed to increase opportunities for first tour judge advocates to represent service members so that they better understand the perspective of advocates and clients who find themselves arrayed against the government. To date, over 25 judge advocates, not otherwise assigned to defense counsel or member representation duties, have been detailed to participate as member's counsel in military justice and administrative proceedings.

◆ **Field Legal Operations**

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

◆ **Legal Service Command**

The Legal Service Command (LSC), with offices in Norfolk and Arlington, Virginia, and Alameda, California, provides field-level legal support in environmental law, procurement law, employment and civilian personnel law, real property law, fiscal law, claims with all claims functions centralized in the Norfolk office, collections, military justice for Mission Support units, and legal assistance for the Fifth and Eleventh District geographic areas



The LSC is divided into four divisions, covering the practice areas of military justice (criminal law); claims, collections, and litigation; contract & fiscal law; and mission support (property, environmental compliance, information law, ethics/standards of conduct).

The Contracts Division supported technical and contracting effort to establish the 875 kW solar photovoltaic (PV) array at Coast Guard Training Center Petaluma, CA. The project consists of 5,232 panels with a peak output of 875 kW and an expected annual generation of 1.5 million kWh. The project is expected to save the Coast Guard \$1.5 million in energy costs over the life of the project, while preventing over 2 million pounds of greenhouse gas emissions annually.

The project was executed as part of an alternatively financed 25-year Power Purchase Agreement (PPA), the first of its kind for both the Coast Guard and the Department of Homeland Security. The contractor owns and operates the array, selling electricity to the Coast Guard at a known rate through the contract period. The contractor claims the California Solar Initiative financial incentive and the tax benefits associated with renewable generation, while the Coast Guard earns the renewable energy credits, which

count towards statutory requirements. Coast Guard cost savings are realized through reduced cost of electricity and reduced peak demand charges. The project went live April 1, 2010. The lessons learned during this project will serve to facilitate future Coast Guard and other Federal agency energy projects.

On October 29, 2009 a Coast Guard C-130 flight CG-1705 was lost during a Search and Rescue Mission taking the lives of seven crewmembers. The LSC West Legal Assistance Branch spearheaded legal support to family members and dependents. On Sunday, November 1, 2009, the Legal Assistance Branch Chief traveled to CG Air Station, Sacramento to organize legal assistance services for the survivors of the deceased crewmembers and to render assistance to the Casualty Assistance Officers assigned to each of the survivor's dependents. Coordinating support from legal assistance attorneys throughout the Coast Guard, the Legal Assistance Branch rendered assistance to the deceased crewmembers dependents regarding probate, insurance and compensation matters. The Legal Assistance Branch Chief gained permission through the Expanded Legal Assistance Program to represent one of the surviving dependents in Placer County Superior Court.



◆ LANTAREA

Established as an independent Staff Judge Advocate office in April 2009, LANTAREA legal is a high operational tempo, high visibility office, providing comprehensive advice & counsel to the LANTAREA Commander and his staff, field units and cutters on a wide range of comprehensive legal matters including operational law, Ports, Waterways and Coastal Security (“PWCS”), marine safety, military justice, personnel actions, ethics, regulatory projects, administrative investigations & legal assistance to Coast Guard members. Headquartered in Portsmouth, Virginia, LANTAREA is responsible for Coast Guard operations that include the Eastern half of the United States, as well as migrant and counter-drug operations in the Caribbean and international partnership and crisis/contingency/recovery operations around the world.

Highlights over the past year include:

Emergency Response. LANTAREA legal was deeply involved in the response to the devastating Haitian earthquake in January 2010. Lawyers participated in the Operations Planning Group to advise on overall response actions. In addition, one of the legal team members deployed to District Seven to assist that legal office as it was unexpectedly overwhelmed with Haitian response, while still supporting continuing operations throughout the District and the Caribbean.



DEEPWATER HORIZON oil spill response – LANTAREA legal was involved in the planning and response to the DEEPWATER HORIZON explosion and subsequent oil spill

response providing real time legal advice to the Atlantic Area Commander and units. Many of the lessons learned as Legal Advisor to the National Incident Commander for the Spill of National Significance Exercise, SONS 2010, were put into practice in the response.

International Engagement. The LANTAREA legal office is heavily involved in an African partnership mission and has been advising the LANT staff on issues encountered while developing U.S. maritime partnerships in West Africa to enhance maritime security in that region. Over the course of the last year, LANTAREA has conducted 2 separate engagements in the region, and the 2010 evolution has recently begun. In addition, the Deputy SJA recently attended the first ever Africa Military Law Conference, in Ghana, where military law representatives from 14 African nations met at the Kofi Anan Center to present information on military justice in their respective countries.

Military Justice. Attorneys of the LANTAREA legal office provide comprehensive legal advice to the Area Commander and subordinate field unit and cutter Commanders as they pursue just resolution of criminal allegations under the Uniform Code of Military Justice (UCMJ). Recently, LANTAREA convened a General Court Martial where the accused was sentenced to 12 months confinement, reduction to the lowest enlisted rank, and a bad conduct discharge following a guilty plea reached under a pre-trial agreement. In addition, one judge advocate participated in the review and revision of the existing Administrative Separations Manual, and an updated manual is pending approval.

International Port Security. Spring 2010 saw the addition of a civilian lawyer billet in Portsmouth, Virginia, advising the International Port Security office as the Coast Guard complies with a government mandate to review the security of ports across the globe and assist partner nations with efforts to comply with the International Ship and Port Facility Security Code (ISPS Code).

Exercises. LANTAREA has been engaged in multiple exercises to prepare for the challenges the organization expects to face over the coming years, with the legal office advising on the legality of proposed actions and responses in each respective situation. One of the most helpful and ultimately well-timed exercises was the Spill of National Significance Exercise 2010, completed just before the Deepwater Horizon explosion and spill. Due to advanced preparation and partnership engagement by CG members of all levels, including the legal office, LANTAREA was well-prepared to address the real-world concerns of a spill of such great magnitude. In addition, the Unified Support Exercise, in support of OPLAN VIGILANT SENTRY was instrumental in the response to the Haitian Earthquake.

Operations Law. The Coast Guard seeks to enforce all applicable Federal laws in its role as a leader in maritime law enforcement. Attorneys of the LANTAREA legal office stand a rotational duty schedule to provide 24/7 legal advice to our cutters and other operators throughout the LANT area of responsibility. Duty attorneys responded to well over 1000 after-hours calls from LANT clients in 2010.

Legal Assistance. Leveraging limited in-house resources and through close partnering with the Coast Guard Legal Service Command attorney dedicated to legal assistance and the Fifth District Legal Office ensured that clients received comprehensive assistance with a wide variety of legal concerns, including estate planning, landlord-tenant issues, creditor issues, housing matters, and more.

◆ **PACAREA**

Coast Guard Pacific Area, with its 20,000+ active duty, reserve and civilian employees, is responsible for Coast Guard operations across 74 million square miles, ranging from South America, north to the Arctic Circle and west to the Far East. The vast region is patrolled by 23 large Coast Guard cutters, including three ice breakers, in addition to the sea, air and shore resources of the four Coast Guard Districts within Pacific Area (PACAREA). Like the operations of PACAREA, the practice of law in the PACAREA Legal Office is extremely diverse. Located in Alameda, California, the Legal Office consists of two permanently assigned Judge Advocates and one support Yeoman, augmented by three judge advocates on rotational assignment from the Legal Service Command. The PACAREA Legal Office is also the Coast Guard Force Readiness Command (FORCECOM) legal office under the Coast Guard Modernization plan.

This was a dynamic year, not only due to Modernization, but because of a variety of milestone events and operations. PACAREA Legal served an integral role in planning the commissioning of the Coast Guard’s second National Security Cutter – an event with over 2000 attendees, and involving complex issues of gift acceptance, fiscal and contract law, and security. The legal office assisted with many novel issues related to hosting the North Pacific Heads of Coast Guard conference in Alameda.



The PACAREA Legal staff also responded to natural and geo-political events worldwide. As the Deployable Operations Group (“DOG”), one of PACAREA’s commands, deployed field units to Haiti following the devastating earthquake, the PACAREA Legal

office assisted DOG legal staff with predeployment readiness and in-theater operational issues. Also in support of DOG, PACAREA judge advocates became leading Coast Guard experts in processing piracy cases emerging from the Horn of Africa. PACAREA deployed judge advocates to Africa three times to support Kenya's prosecution of captured pirates, and became the premiere trainer for Coast Guard units preparing to deploy to the Horn of Africa for counter-piracy operations. Closer to home, the PACAREA Legal Office promptly deployed two judge advocates to Gulf Coast Incident Command Posts to serve as legal advisors in the Deepwater Horizon oil spill response.

The PACAREA Legal Office is responsible for assisting the District Legal Offices within PACAREA by ensuring alignment of legal support through all echelons of command, from Coast Guard Headquarters to field units. One of the more notable operational events for which PACAREA assisted the cognizant District Legal Office was Operation Podium, the Canada-U.S. government security effort for the Vancouver 2010 Olympics.

Force Readiness Command: PACAREA Legal devoted much of the past year to implementing the stand-up of FORCECOM, a key component of Coast Guard Modernization: the Coast Guard's first command solely responsible for all individual and asset-level training, including boats, cutters, aviation and shore units. Established in June 2009, FORCECOM is charged with the current and future readiness of the Coast Guard's workforce -- Active Duty, Reserve, Auxiliary, Civilian and Contractor -- and operational resources to ensure they will be ready when called to execute their missions. PACAREA/FORCECOM legal staff assisted in creating a system for future development of tactics, techniques and procedures ("TTP"), a key function of the new command. The legal staff also participated in developing memoranda of agreement between the FORCECOM and United States Navy counterparts to facilitate inter-service training.

◆ **First Coast Guard District**

The First Coast Guard District, headquartered in Boston, Massachusetts, is comprised of the eight state area from Maine to northern New Jersey and eastern New York, and includes over 2,000 miles of shoreline and ten of the busiest ports (by tonnage) in the country. The First District is one of the Coast Guard's most operationally diverse Districts, having a hand in every major Coast Guard mission, from the regulation of industry in the ports of New York and Boston to fisheries enforcement off the coast of Massachusetts, search and rescue in Long Island Sound, and ice breaking in Maine. The practice of law for the five active duty, five Reserve, and one civilian Coast Guard attorneys assigned to the First District Legal Office is likewise diverse, ranging from providing real-time operational law advice, to facilitating the administration of military justice while ensuring the delivery of legal assistance to the more than 4,000 active duty, reserve, and civilian member First District workforce. Three areas of emphasis during the past year merit specific mention:

Environmental Crimes. First District judge advocates continued to serve as Special Assistant U.S. Attorneys and assist U.S. Attorneys with the prosecution of vessel

pollution cases. In *U.S. v. The Rockmore Company, Inc.*, a Massachusetts-based dinner and sightseeing cruise boat operator pleaded guilty to two violations of the Rivers and Harbors Act arising out of its practice of dumping human waste into local waters. As part of the agreed upon sentence, the company issued a public apology for its conduct through full page ads in various Massachusetts newspapers, will serve three years of court-ordered probation, and will pay over \$300,000 in monetary penalties. \$75,000 of the penalty will be in the form of a community service payment to the Massachusetts Environmental Trust to be used for water quality improvement projects in coastal Massachusetts. Additionally, in *U.S. v. Dalnave Navigation et al.* (D.NJ.), a First Coast Guard District attorney helped conclude a 2008 joint investigation, which originated after Coast Guard inspectors uncovered evidence that crewmembers aboard the M/V MYRON N, a Cypriot-flagged bulk carrier, had improperly handled and disposed of the ship's oil-contaminated bilge water and falsified entries in the ship's official oil record book to conceal these activities. The investigation culminated in a plea agreement whereby the vessel operator was sentenced to three years probation (including a three-year environmental compliance plan) and agreed to pay a total of \$1.35 million for its criminal violations of the Act to Prevent Pollution from Ships (APPS). As part of the agreement, \$350,000 of the resolution was designated as a community service payment to The National Fish and Wildlife Foundation to be used for the protection, scientific study, and restoration of marine and aquatic resources in the District of New Jersey. In two of the *Dalnave Navigation* companion cases, *U.S. v. Stamatakis* (Chief Engineer) and *U.S. v. Papadakis* (Second Engineer), the Chief Engineer pleaded guilty to one count of violating APPS and was sentenced to 30 days community confinement (halfway house) and three months probation. The Second Engineer pleaded guilty to one count of violating APPS and was sentenced to 30 days community confinement (halfway house), three months probation, and a \$1,000 fine.

Alternative Energy Projects. With 15 energy projects currently active within the First District, First District attorneys continue to play an integral part in the Coast Guard's regulatory and advisory roles. Two projects in Maine—Downeast LNG and Calais LNG—continue to move forward, and involve complex legal issues due their proximity to the United States' maritime border with Canada. First District attorneys, working with The Judge Advocate General's Office of Maritime and International Law, continue to provide critical coordination and advice to the Coast Guard's local Captain of the Port in dealing with Canada's stated intention to never allow LNG vessels through its adjoining waters. In another LNG citing project, First District attorneys provided critical guidance to the Captain of the Port while he formulated his recommendation to the Federal Energy Regulatory Commission on the suitability of the Narragansett and Mount Hope Bays for the contentious Weaver's Cove LNG proposal, a major milestone in the project. Further, First District attorneys advised both the Captain of the Port and the First District Commander in reviewing and addressing numerous appeals of the Captain of the Port's recommendation.

Legal Assistance VITA Program. Another highlight from this past year was the First District's ability to support a robust Voluntary Income Tax Assistance (VITA) tax program which enabled the legal assistance staff, comprised of a single full-time civilian

attorney and a paralegal, to assist in completing more than 234 federal and state tax returns for 114 active duty members and their families. In support of this important program, the legal assistance staff conducted tax road shows in Maine, Massachusetts, and New York to provide first hand tax advice and preparation services. These road shows enable active duty members and their families, many of whom are assigned to remote locations, to receive professional tax assistance and advice, and to file their taxes electronically through the Coast Guard. The tax road shows were a continuation of the legal assistance staff's ongoing efforts to bring legal assistance services to field units scattered throughout the eight state regions that we serve.

◆ **Fifth Coast Guard District**

Established 23 April 2009, the Fifth District SJA provides in-house legal advice to the Fifth Coast Guard District, headquartered in Portsmouth, Virginia. The Fifth Coast Guard District is responsible for Coast Guard operations on 156,000 square miles of the mid-Atlantic region from central New Jersey south to the North Carolina-South Carolina state line, including all of Chesapeake Bay, the National Capital Region, Baltimore, and the Hampton Roads region. With missions ranging from search and rescue throughout that region, marine environmental protection in the critical Chesapeake Bay watershed, national security missions protecting US Navy assets at the world's largest naval base in Norfolk, Virginia, and exercising port state control over a non-stop flow of commerce to the busy ports in Delaware, North Carolina, and along Chesapeake Bay, the Fifth District has a significant role in every Coast Guard mission area. The practice of law for the Coast Guard attorneys assigned to the Fifth District legal office is equally diverse, serving the more than 10,295 active duty, reserve, civilian and volunteer Auxiliary members of Team Coast Guard. The office will add a fourth attorney in Fall 2010. Despite its small size, the office has a reputation for excellent service to Coast Guard clients, and outstanding teamwork with State and Federal partners throughout the Fifth Coast Guard District.

Environmental Crimes. Recent activity includes support to several U.S. Attorneys for criminal prosecution of the crew members and owners/operators of the M/V CHEM FAROS, M/V IORANA and M/V CAPITOLA for allegations that oily water was illegally discharged directly to the sea, and that official ship's documents were falsified to hide the discharges. So far, an \$850,000 fine was assessed in one case, with \$2.5 million in surety for the potential fines in the remaining two cases. Prosecution of these cases provides a significant deterrent to future willful pollution. Furthermore, environmental compliance plans were implemented for the fleet of the convicted company, providing additional protection against future illegal oil discharges.

Operations Law. In the past year, the primary focus for the Fifth District has been on protection of living marine resources, improvement of commercial fishing vessel safety, and prosecution of hoax callers. Our office provided an attorney to serve as a part time Special Assistant US Attorney (SAUSA) for prosecution of a number of criminal cases with Coast Guard interests. These included three related cases involving a conspiracy to

send a large number of false distress calls to the Coast Guard for Search and Rescue assistance. The primary instigator of the calls was ordered to pay \$234,619 in restitution for the cost of Coast Guard responses, and was sentenced to imprisonment for 12 months and 1 day.

Military Justice. Attorneys of the Fifth District Legal Office provide comprehensive legal advice to the District Commander and subordinate field unit Commanders as they pursue just resolution of criminal allegations under the Uniform Code of Military Justice (UCMJ). The most recent trial involved a Special Court Martial where the accused was sentenced to four months confinement, reduction to the lowest enlisted rank, and a bad conduct discharge following a guilty plea reached under a pre-trial agreement.

Legal Assistance. Leveraging limited in-house resources and through close partnering with the Coast Guard Legal Service Command attorney dedicated to legal assistance, the Fifth District Legal Office ensures that clients receive comprehensive assistance. Our attorneys helped coordinate services to over 3,500 active duty and reserve Coast Guard members and their dependents, and provided direct legal assistance service to 48 clients. In November 2009, our staff attended a full day of well received training sponsored by the ABA Standing Committee on Legal Assistance for Military Personnel at Coast Guard Training Center Yorktown, VA.

◆ Seventh Coast Guard District

The Seventh Coast Guard District Legal Office, headquartered in Miami, Florida, provides legal oversight to facilitate successful mission performance & support functions in an area of responsibility covering South Carolina, Georgia, Florida, Puerto Rico, and the Caribbean Sea, encompassing 25 countries & 10 foreign territories. Eight active duty judge advocates, one Reserve judge advocate, one civilian attorney, one paralegal, and two legal administrative assistants staff three sections: Response Law, Prevention Law, and Legal Assistance.



Haiti Earthquake Response: On 12 January 2010, a catastrophic magnitude 7.0 earthquake struck near Port-au-Prince, Haiti, devastating the city and surrounding areas. More than 200,000 lives were lost, and many more people were injured. Seventh District judge advocates provided extensive guidance on rules for the use of force, privileges and immunities, and Rules of Engagement. Seventh District judge advocates also coordinated with United States Southern Command (SOUTHCOM) judge advocates to ensure seamless Coast Guard support for military operations in Haiti. A Response Law judge advocate was deployed to a Coast Guard command ship offshore, to render legal guidance on maritime and international law issues, such as: law of the sea, application of

counter-drug and alien smuggling bilateral agreements, and risk-based security boardings of foreign flag commercial vessels departing Haiti and bound for the United States.

Homeland Security Task Force Southeast (HSTF-SE): In addition, Seventh District judge advocates played a leadership role guiding Homeland Security Task Force Southeast (HSTF-SE), an interagency task force focused on the preparing for, deterring and preventing, and responding to a mass-migration event in the Caribbean region. Seventh District judge advocates coordinated with attorneys from the Department of Justice, Department of Defense (DoD), other Department of Homeland Security (DHS) component agencies, and the State of Florida to develop plans to support the Department of State to conduct an emergency evacuation of U.S. citizens from Haiti, coordinate the transportation of urban search and rescue teams, equipment, and relief supplies into Haiti, and coordinate the emergency evacuation of injured persons. In addition, Seventh District judge advocates developed detailed plans for augmenting HSTF-SE operations with Navy ships and personnel in the event of a mass migration, providing guidance on DoD support for Coast Guard law enforcement activity, integrating law enforcement detachments on Navy ships, entering archipelagic and foreign territorial seas entry.

Great Inagua Hangar Crown Lease: Seventh District judge advocates reviewed a draft lease agreement signed by Government of the Commonwealth of the Bahamas (GoCB) to facilitate construction of Coast Guard helicopter hangar on Great Inagua island in the Bahamas. Based on a limited lease term, inadequate for full amortization of the construction cost, Seventh District judge advocates revised the lease term, developed several alternative provisions, consulted with Department of State attorneys, and negotiated compromise language with Bahamian Ministry of Foreign Affairs attorney. These efforts resulted in a signed lease agreement, which is instrumental in paving the way for deployed Operation Bahamas, Turks and Caicos (OPBAT) helicopters carrying out counter-drug and alien migrant interdiction operations.

Response Law Section. Response Law judge advocates analyze law enforcement and search and rescue issues to enhance mission execution, render real-time advice in mission support, and ensure the Coast Guard operates within its authorities and policies. For example, the Response Law Section, by providing direct legal guidance on all United States maritime drug law enforcement boardings in the Caribbean, has provided advice on the applicability and enactment of bilateral counter-drug agreements, guided the District Commander in authorizing airborne use of force in time-compressed go-fast chases, and reviewed the factual predicate to support lawful use of drug detection enhancement technologies (e.g., IONSCAN, drug dogs) and intrusive searches in appropriate cases. These efforts were instrumental in managing 34 successful drug interdiction cases, including the seizure of 67,203 pounds of cocaine, and 9,447 pounds of marijuana in 2009. District Seven judge advocates have also been involved in 18 drug interdictions to date in 2010.

The Response Law Section also supports federal criminal prosecutions resulting from at-sea migrant interdictions, and actively participates in the Southern District of Florida Anti-Migrant Smuggling Task Force, which is led by the U.S. Attorney's Office for the Southern District of Florida. One Response Law judge advocate is assigned as a full-

time Special Assistant U.S. Attorney (SAUSA) to the U.S. Attorney's Office in Miami. This judge advocate was involved in 76 indictments related to maritime alien smuggling in 2009, and 37 to date in 2010.

Response Law judge advocates played a key role in establishing the Caribbean Border Interdiction Group in San Juan, Puerto Rico, and have been instrumental in the developing a Virgin Islands Border Interdiction Group to facilitate successful prosecution of migrant smuggling cases. Another full-time judge advocate is detailed as a SAUSA in the U.S. Attorney's Office for the District of Puerto Rico. This judge advocate was involved in 73 indictments related to alien smuggling in 2009.

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

In 2010, the Seventh District referred two cases to the Department of Justice for prosecution. The first case resulted from tips from two whistleblowers. After receiving these tips, Coast Guard inspectors from Coast Guard Sector St. Petersburg discovered evidence suggesting a "bypass pipe" was being used to pump oily waste directly overboard, rather than processing it through the oily water separator. The criminal case was resolved with a plea agreement. The terms of the plea agreement included a \$725,000 fine, 3 years probation, and the requirement to follow an Environmental Compliance Plan. The second case involved the M/V AVENUE STAR. The case was referred to the Department of Justice for prosecution for violations regarding both the oil record book and garbage record book violations. This case is currently pending.

In addition to criminal referrals, District Seven examined two cases in which the ownership company self-reported MARPOL violations to the Coast Guard. After extensive investigation, it was decided that the M/V STEN CONQUEROR had complied with the Coast Guard's Voluntarily Disclosure policy. As a result, the case, which involved an oil record book violation, was not referred to the Department of Justice. M/V SEVEN SEAS NAVIGATOR also self-reported to the Coast Guard. As there were unresolved issues as to whether the operator or the owner had self-reported, the case was referred to the Department of Justice. The Department of Justice is currently investigating the matter.

Prevention judge advocates facilitated formal consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to develop a new biological opinion for Coast Guard operations and marine event permitting, in light of new designations of protected marine species and habitat in District Seven waters. Prevention judge advocates, after consulting with several Federal and State environmental agencies, developed pre-approved permit conditions acceptable to these agencies, which streamlined the permit approval process during the formal consultation period.

Prevention judge advocates also developed a revised Standard Operating Procedure (SOP) to guide Coast Guard field units through development and approval of marine event permits.

Legal Assistance Section. The legal assistance office currently has one civilian attorney, two reserve attorneys, a paralegal, and yeoman. One attorney serves families during various weekend drills and another local reserve attorney who specializes in immigration law drills with the civilian attorney during the week. In 2010 the Seventh Coast Guard legal assistance office assisted 1060 clients, and continued its efforts to work with military members affected by the housing and foreclosure crisis. The office was proactive in notifying and advising members and their families about the DOD Homeowner's Assistance Program. This legislation may enable eligible members facing foreclosure or financial ruin due to transfer orders during the housing crisis both monetary and emotional relief. The legal assistance branch has also seen the financial and emotional effect the housing crisis has caused military families who face possible eviction due to their landlord's foreclosure proceedings. The legal assistance section assisted dozens of tenants with negotiating settlements with their landlords and/or delaying foreclosure actions through court intervention.

Military Justice/Personnel Law. The Seventh District legal office provides legal and prosecutorial support to field commands and the District staff on issues ranging from general courts-martial through non-judicial punishment under Article 15 of the UCMJ, as well as personnel issues such as relief for cause and administrative discharge. All of our judge advocates participate in military justice actions, primarily as trial counsel.

◆ **Eighth Coast Guard District**

The Eighth Coast Guard District Legal Office is located in New Orleans, LA. Its area of responsibility encompasses twenty-six states bordering the U.S. Western Rivers from the Great Lakes to the Gulf of Mexico.

The Eighth Coast Guard District Legal Office is multifaceted, full service legal office; providing a broad range of legal advice and counsel to numerous clients on a daily basis in a 26-state region. For example, this year it reviewed 218 field regulations that were later published in Federal Register; it processed 88 requests under the Freedom of Information Act resulting in legal review of over 2,500 documents; and successfully completed 2 Courts-Martial and 3 administrative separation boards. In addition to these efforts, Eighth Coast Guard District Legal Office highlights its successes in three distinct areas: Deepwater Horizon response efforts; Environmental Crime prosecutions; and Legal Assistance services.

On April 20, 2010 the mobile offshore drilling unit, Deepwater Horizon, exploded, caught fire and eventually sank in the Gulf of Mexico off the coast of Louisiana. Upon initial reports of the explosion, the Eighth District Staff Judge Advocate (SJA) and staff attorneys responded to the command center and began providing real-time legal advice in

the critical early hours of the response. Demonstrating the multi-mission focus of the legal community, the SJA was designated as the Federal On-Scene Coordinator's (FOSC) Chief of Staff during the first days of the oil spill with District Eight staff attorneys providing legal advice to the FOSC. As the response developed, the SJA later shifted primary responsibilities and served as the FOSC's principal legal advisor for the weeks that followed. Although, the current command structure allows for District Eight to resume its normal operations, it continues to assist the FOSC by providing legal support to the five attorney-advisors in the field.



The attorneys of the Eighth District continued to play a vital role in the enforcement of environmental laws and regulations through support of prosecutorial efforts by the Department of Justice. The Eighth District in concert with the Department of Justice successfully investigated and prosecuted multiple environmental crime cases stemming from violations of the Act to Prevent Pollution from Ships under 33 U.S. Code §1908(a), the False Statements Act under 18 U.S. Code §1001 and the Clean Water Act under 33 U.S. Code §1319(c) (2) (A) and §1321(b) (3). These cases have resulted in multi-million dollars in fines and multiple years of probation for the owner/operators.

Highlighting its dedication to Coast Guard members and their families' legal well-being, the Eight Coast Guard District Legal Office provided legal assistance in over 1600 separate matters. Furthermore, the Legal Office conducted legal assistance site visits to nearly 20 Coast Guard units; provided advanced Volunteer Income Tax Assistance (VITA) to over 50 tax clients and IRS informational support to all VITA forces in the New Orleans area; and conducted legal assistance training throughout the Eighth District on topics including the **Uniformed Services Employment and Reemployment Rights Act (USERRA)**, the Servicemembers' Civil Relief Act (SCRA), post-military service retirement benefits and landlord-tenant laws.

The Eight Coast Guard District Legal Office maximized the provision of legal assistance expertise through:

- The use of Reserve and Auxiliary attorneys licensed in Alabama, Illinois, Missouri, Louisiana, Mississippi, Pennsylvania, Tennessee, Texas, Kentucky, Maryland and Washington, D.C.
- Liaisons with Army JAG Reserves in Houston and Mobile, the Texas National Guard, and Texas LAMP to expand legal services to Coast Guard personnel; and
- The development of distributable legal assistance material for wide dissemination of legal services including state legal guides, military naturalization, social security disability, foreclosure, post-9/11 GI Bill, consumer law, absentee voting, and taxes.

Furthermore, the Eighth Coast Guard District Legal Office provided legal assistance in support of contingency operations such as Deepwater Horizon and continuing legal assistance support from Hurricanes Katrina and Rita. It also expertly preserved the military death benefits for families of five Reserve members as well as the families of the personnel lost in an air collision off the coast of California. In doing so, the Legal Office developed and streamlined a process by which it could provide quality representation to families who have lost a military member. For these efforts and others, it earned the ABA LAMP Distinguished Service Award.

◆ **Ninth Coast Guard District**

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

The Ninth Coast Guard District Volunteer Income Tax Assistance team (D9 VITA) provided assistance to 63 clients from January to April 2010. D9 VITA e-filed 65 federal returns, 20 state returns, and gave advice on 25 occasions. D9 VITA saved its clients an estimated \$16,890 in preparation fees and had a total return amount of \$175,623. In addition, in FY 2010, the office opened over 655 legal assistance cases executing over 472 wills, Power of Attorneys and notary documents, assisting over 53 landlord tenant clients, 67 family law clients, 46 consumer law clients, 7 Service members Civil Relief Act cases, 16 real property clients, 29 tax law cases, and 33 divorce/separation cases. The office also published numerous preventative law newsletters for military personnel as well as several articles published in nationally distributed journals. During the past year, the Ninth District Legal Assistance Attorney published an article entitled “An Introduction to Legal Services and Protections for Military Personnel and Their Family Members” in the Journal of Poverty Law and Policy. In January, the Ninth District Legal Assistance Attorney was appointed to the ABA Standing Committee on Legal Assistance to Military Personnel (LAMP). Among all the noteworthy accomplishments during the past year, the Ninth District Legal Assistance Attorney is on the advisory committee for a national web site devoted to assisting servicemembers, veterans and family members with legal needs.

The legal office has continued its strong partnership with the Canada/US Law Institute, an entity jointly supported by Case Western Reserve - School of Law and the University of Western Ontario Faculty of Law. In addition, this was the fourth year of a Memorandum of Agreement (MOA) between the Ninth District and Case Western Reserve School of Law -Institute for Global Security Law and Policy (IGSLP). Under the MOA, the IGSLP holds a Coast Guard/Homeland Security course annually. Ninth District attorneys provide a block of instruction on authorities and jurisdiction and submit research topics for the course. The capstone of the course is preparation of memoranda

of law for the benefit of the Coast Guard on topics relating to Coast Guard missions, homeland security or international law. A strong relationship has been forged with Case Western Reserve – School of Law allowing the Ninth District Legal Office to have two summer law interns to assist in operational law, military justice and legal assistance.

The Ninth District Legal Office continues to play a significant role in environmental stewardship and compliance issues. The legal office is at the forefront of developing novel regulations designed to protect mariners who transit the navigable waters adjacent to, or over an electric dispersal barrier located on the Chicago Sanitary and Ship Canal. The barrier, constructed and operated by the Army Corp of Engineers, generates a low-voltage electric field across the canal to block the passage of Asian Carp, an aquatic



nuisance species between the Mississippi River basin and the Great Lakes. The electric current in the water poses a safety risk to commercial and recreational boaters transiting the area, which necessitated establishing navigational and operational restrictions on all vessels transiting the area. In the past year, the Ninth District has issued several new safety and security zones in the Chicago Sanitary and Ship Canal due to the increase in voltage of the electric

dispersal barrier and the shutdown of the Canal for several days. The legal office also promulgated regulations to control the carriage of water on board vessels that potentially could contain non-indigenous species from one side of the barrier to the other.

The legal office is also working closely with investigators and prosecutors on two trash dumping cases. The legal office, Coast Guard Investigative Service Central Region and Coast Guard Sector personnel have continued active participation in several environmental crimes task forces throughout the Ninth District AOR.

The Ninth District Legal Office has embarked on a mission to leverage technology in furtherance of delivering legal services. One of these initiatives is making navigable waterway determinations available to the public via the internet. Navigable waterway determinations were previously stored in numerous binders containing aged documents. Currently, navigability determinations for eight states in the Ninth District area of responsibility are available online at <http://www.uscg.mil/d9/D9Legal/Waterways.asp>

Ninth District attorneys negotiated and drafted several important MOAs this year, including agreements with the United States Customs and Border Protection, Office of Air and Marine, Great Lakes Air and Marine Branch regarding utilization of CG personnel, facilities to assist any federal agency by performing any activity for which such persons or facilities are especially qualified. The Ninth District also concluded an agreement with the St. Lawrence Seaway Development Corporation ensuring seamless and continued Coast Guard support for lock operations in the St. Lawrence River.

The Ninth District Legal Office played a pivotal role in the development and promulgation of safety regulations for the Red Bull air races as well as the Great Lakes Tall Ships challenge. The Red Bull air race occurs on the Detroit River, between downtown Windsor, Canada and Detroit, Michigan. Implementation of effective safety regulations was more complicated given that half of the Detroit River lies on the U.S. side of the border and half is on the Canadian side. The Red Bull air races are an international series of air races in which competitors have to navigate a challenging obstacle course in the fastest time. Pilots fly individually against the clock and have to complete tight turns through a slalom course consisting of pylons, known as "Air Gates." The event drew hundreds of spectators on the shore and over 600 recreational vessels. The Tall Ships Challenge includes safety zones and special local regulations for port calls at several major cities throughout the Great Lakes.

The Ninth District Legal Office is currently supporting the Deepwater Horizon response operations by deploying attorneys and two reservists on long term orders.

The Ninth District Legal Office continues to expand its efforts in the Federal Ticket program in conjunction with US Attorney's Office offering an additional tool for Boarding Officers.

The Ninth District Legal Office continues to work closely with U.S. Attorney offices and state prosecutors to prosecute several hoax/mayday cases throughout the AOR. During the past year, three cases have been successfully prosecuted for the CG resulting in restitution to the CG for a total sum of \$172,712.00.

◆ **Eleventh Coast Guard District**

The legal office is located on Coast Guard Island in Alameda, California, providing legal support to three Sectors, one Group/Air Station, three other Air Stations, seventeen Cutters, thirteen Small Boat Stations and four Aids to Navigation Teams, as well as the District Commander and Staff this office is always confronted with challenging legal issues. The 2,600+ active duty, reserve, and civilian employees of the Eleventh District conduct or support missions over 3.3 million square miles of water. This area of responsibility includes the Eastern Pacific Ocean from South America to the Northern California border with Oregon as well as three of the top five busiest commercial container ports in the United States. The legal office consists of the Staff Judge Advocate and a Deputy with support from three additional Judge Advocates and one support Yeoman on rotational assignment from the Legal Service Command. This year the Office benefited from one academic year intern, and one summer intern rotating from the Legal Service Command.

Counter Drug Operations Support: Eleventh District counter-drug operations to date in fiscal year 2009 resulted in just over 250,000 pounds of cocaine, and 63,095 pounds of marijuana removed from the marketplace. The legal office provided evidence handling

and case package preparation training to most of the boarding team members involved in these interdictions. Additionally, Coast Guard Air Stations and Customs and Border Protection aviators benefitted from District Eleven legal briefings on how to successfully develop evidence of Drug Trafficking Vessel Interdiction Act of 2009 (DTVIA) violations. To date, 8 suspects have been tried and found guilty of violating the DTVIA. Typically these cases involve several tons of cocaine, although the precise amount is difficult to determine. Judge Advocates also supported several conferences in Mexico and Latin America furthering the development of strong international agreements to combat the flow of illicit substances across national boundaries. Panama, Ecuador, Columbia, Coast Rica, Guatemala, Nicaragua, and Mexico participated in these conferences and have engaged in officer exchanges to better understand each nation's legal regime.

Significant pollution cases & Marine Casualties: The legal office partnered with the US Attorney's Office in San Francisco to prosecute a maritime pollution case originating from the M/V NEW FORTUNE. Additionally, the one attorney designated as a Special Assistant US Attorney was an integral member of the prosecution team for the criminal case arising from the collision of the M/V COSCO BUSAN with the San Francisco-Oakland Bay Bridge in 2007. This case resulted in an unprecedented guilty plea from the Operator as well as the Pilot. Attorneys provided on scene advice to the Sector San Francisco responders when the M/V DUBAI STAR spilled oil into San Francisco Bay during transfer operations.

General Law Enforcement: The legal office continues to support proactive enforcement of all security and enforcement zones within the District. In San Diego and San Francisco this includes operations involving armed helicopters to enforce Naval Vessel Protective Zones while in transit and moored. The specialized skills include use of force training from attorneys assigned to support the Sector.

◆ **Thirteenth Coast Guard District**

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

The legal office played a key role in the planning and exercise of legal authorities in support of the Vancouver 2010 Olympic security operations. The Thirteenth Coast Guard District worked closely with the United States Navy to provide integrated support to Canadian military forces and the Royal Canadian Mounted Police (RCMP), focusing on mitigating and responding to potential threats in, the Straits of Juan de Fuca and

throughout the San Juan Islands, the maritime approaches to Vancouver. From a legal stand point, the most interesting aspect of Olympic Security Operations was the Shiprider Program, in which Coast Guardsmen worked on RCMP platforms in Canadian waters under RCMP supervision and Mounties worked on USCG platforms in United States waters under USCG supervision. By imbedding law enforcement officers and authorities from across the border, both countries were postured to effectively respond to any cross-border incident.

Attorneys from the Thirteenth District legal office obtained designations as Special Assistant Chief Counsel with the Seattle Office of Immigration and Customs Enforcement (ICE) Chief Counsel's Office and participated in Immigration Court proceedings. This partnership with the ICE Chief Counsel's Office provided the attorneys involved with exposure to a new area of practice and furthered Secretary Napolitano's vision of "One DHS."

The legal office worked closely with the U.S. Attorney's Office for the Western District of Washington to facilitate the prosecution of the China Navigation Company for violations of the Act to Prevent Pollution from Ships. This case resulted in a fine and fees in excess of \$100,000 for charges related to the disposal of garbage and oily wastes at sea.

The legal office assisted 760 personnel on over 1,100 legal issues and drafted over 1800 documents, including; wills, powers-of-attorney, appointments of medical agent, Washington State child support documents, and orders dividing military retired pay. This was accomplished through extensive travel of the legal assistance attorney, conducting 25 on-site visits, providing in-person consultation for all members along the remote Washington and Oregon coasts.

◆ **Fourteenth Coast Guard District**

The Fourteenth District Legal Office, headquartered in Honolulu, Hawaii, supports Coast Guard operational units within the main Hawaiian islands, Guam, American Samoa, Saipan and Japan (Activities Far East). The Fourteenth District's area of responsibility covers nearly 12.2 million square miles of the Central Pacific Ocean, an area more than two and a half times larger than the Continental United States. The legal staff includes three active duty attorneys, one civilian Legal Assistance attorney, one civilian paralegal, and a support Yeoman.

The Fight for Fish. District Fourteen attorneys have been instrumental in supporting the District Commander's top strategic priority – domestic and international fisheries enforcement, also known as the "fight for fish." Working closely with their partners in enforcement and international affairs, District Fourteen attorneys ensure the successful operational execution of six fisheries enforcement bilateral agreements, as well as high seas boardings and inspections of foreign flag vessels party to the Western and Central Pacific Fisheries Commission, a treaty based organization established to conserve and

manage tuna and other highly migratory fish stocks across the western and central areas of the Pacific Ocean. District Fourteen lawyers are currently working to expand the number of bilateral fisheries enforcement agreements, and further integrate the United States Navy into the “fight for fish” mission.

Interagency Partnerships. District Fourteen attorneys work closely with their interagency partners. Over the past year, the District Fourteen Legal Office supported several U.S. Attorneys Offices in multiple cases, including the conviction of a mariner operating on a fraudulent license, the conviction of an individual that initiated a fraudulent search and rescue call, and, as Special Assistant United States Attorney, was lead counsel in the conviction of a former Coast Guard member that stole thousands of dollars of government property before leaving the service. District Fourteen attorneys also served as co-counsel with the NOAA Office of Law Enforcement in two contested civil penalty cases for violations of the Endangered Species Act within the Hawaiian Islands Humpback Whale National Marine Sanctuary, helping secure over \$40,000 in civil penalties in addition to the \$60,000 they assisted NOAA in securing as co-counsel the previous year. District Fourteen attorneys also regularly serve as Article 32 Officers for the United States Marine Corps in military justice cases.

Military Justice Advocacy Working Group. In December of 2009, the Coast Guard Office of Military Justice chartered a working group to examine the delivery of trial defense services to Coast Guard members, and ascertain whether there is a need for a military justice sub-specialty within the Coast Guard legal community. The Deputy Staff Judge Advocate for the District Fourteen Legal Office is a member of this working group and over the past year has supported the working group’s charter by collaboratively developing recommendations on these questions, and by serving as Assistance Defense Counsel in three Coast Guard cases.

◆ **Seventeenth Coast Guard District**

The Seventeenth District Legal Office, located in Juneau, Alaska, supports the District Commander and subordinate operational units throughout Alaska, an environmentally diverse and vast geographic region. Alaska is a maritime state and the “Gateway to the Arctic.” Alaskan waters encompass 3,853,500 square miles and over 33,000 miles of coastline. The majority of the public relies on the waterways for income, sustenance and recreation and thusly looks to the Coast Guard to provide for safety, security and the performance of the entire myriad of the Service’s mission set. There is no more formidable physical environment for Coast Guard operations than Alaska. The District legal staff consists of three judge advocates and two legal technicians in Juneau and one civilian legal assistance attorney and a paralegal located in Kodiak. Throughout the past year, the office has advised clients on a wide variety of fiscal law, administrative law, civilian and military personnel, claims and litigation, and military justice matters and has provided the legal support necessary to ensure the effective execution of search and rescue, maritime safety, marine environmental protection, fisheries enforcement, and defense readiness missions throughout the North Pacific, the Bering Sea, and the Arctic.

A sampling of the matters worked on by the District's judge advocates and legal assistance attorney includes:

- A military justice case involving interviews of nearly three-dozen witnesses and gathering of evidence across eleven time zones by 17 Coast Guard Investigative Service special agents.
- Leading a delegation of five United States Coast Guard officers at a planning meeting with the Russian Border Guard in Petropavlovsk-Kamchatsky, Russia.
- Advising the Federal On-Scene Coordinator during the recovery of 110,000 gallons of bunker oil and additional amounts of other oils and contaminated water from a sunken 369-foot passenger vessel that had grounded just north of Juneau, Alaska, nearly 58 years earlier.
- Participating in a panel discussion about the legal and regulatory framework governing vessel traffic in the Aleutian Islands with a risk assessment advisory panel to ensure future risk reduction measures for the Aleutians and Bering Sea are consistent with United States policy and law.
- Assisting clients throughout Alaska, including those at duty stations on remote islands in the middle of the Bering Sea and at the end of the Aleutian chain, with trusts and estates, marriage dissolution, adoption, landlord-tenant, and consumer law issues.
- Working with the Royal Canadian Mounted Police and United States civilian authorities to obtain evidence and properly dispose of child pornography case.
- Working with a local district attorney in a search and rescue hoax case that resulted in recovery of \$60,000.
- Providing advice to the Federal On-Scene Coordinator and the investigating officer in the aftermath of a commercial tug grounding on Bligh Reef in Prince William Sound – the scene of the EXXON VALDEZ grounding twenty years earlier.

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

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

The SJA and his staff furnish all legal advice to the Superintendent, Assistant Superintendent, and all other Academy divisions. The two Assistant SJAs serve as trial counsel for Academy court-martial cases and may be periodically detailed to serve as Summary Courts-Martial or Article 32 Investigating Officers. One ASJA serves as a Special Assistant United States Attorney (SAUSA) by the U.S. Attorney for the District of Connecticut for criminal cases arising on Academy grounds and administers the Federal Magistrate Program at the Coast Guard Academy. Under the Magistrate Program, the SAUSA may prosecute civilians that commit offenses on Academy grounds

(assault and drunken driving are examples). Additionally, the ASJAs provide legal assistance to eligible beneficiaries, client support to staff elements, and in partnership with the IRS, supervise the Volunteer Income Tax Assistance Program. In 2010, the Coast Guard Academy's VITA program filed a total of 614 federal and state returns, helped clients recover over \$566,000.00 in refunds, and saved clients over \$110,000.00 in tax preparation fees.

All three judge advocates serve as law instructors to various Leadership Development Center (LDC) course and provide introductory military justice and standards of conduct briefings for the Corps of Cadets. The staff trained over 400 LDC students and 500 cadets and provided over 250 hours of classroom instruction.

The SJA was selected by the Judge Advocate Association as the 2010 Coast Guard Career Outstanding Judge Advocate.

The Law Section at the Coast Guard Academy enjoyed continued success during the past year. The faculty taught courses in Maritime Law Enforcement, Criminal Justice, Trial Advocacy, International Law and Constitutional Law to hundreds of cadets.

Faculty members published in several law reviews, including the Case Western Journal of International Law, the University of Pennsylvania International Law Journal, and the University of Toledo Law Review. In addition, a faculty member had a book published by Oxford University Press.

The Law Section sponsored the third annual Guardian Mock Trial Tournament at the Academy. In what has become a prestigious event, twenty colleges competed. Six cadets attended the annual Law of Armed Conflict Competition in San Remo, Italy. This annual event included cadets and midshipmen from all over the world. The Coast Guard Academy team placed fourth in overall competition.

Cadets received numerous opportunities for exposure to the law in myriad capacities, including visits to the International Institute for Humanitarian Law and the Carr Center for Human Rights Policy at Harvard's Kennedy School of Government, attendance at a hearing in Federal court in Boston, MA, followed by meeting with the U.S. Attorney for the District of Massachusetts, and a visit from Mr. Eugene Fidell of the Yale Law School and the National Institute for Military Justice.

One member of the Law Section received a Department of Justice award for his efforts in several cases involving environmental crimes. Two members provided legal advice in support of the National Incident Commander during the Deepwater Horizon oil spill response.

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

Coast Guard Training Center Yorktown is the largest training center in the Coast Guard; one of three Coast Guard commands where legal advice is provided by a single independent duty attorney. This active duty SJA, assisted by an active duty legal assistant, provides advice on a broad range of legal issues that cover the full spectrum of the training center's operations. The principle job of the training center's attorney is to advise the commanding officer and command staff on a broad range of legal issues, including military and criminal justice, real property, ethics, environmental law and fiscal and contract law.

In addition to being the legal counsel for the commanding officer, the SJA serves as a legal assistance attorney for all of the command's students and permanent party members, as well as several outlying units and provided assistance to over 150 members last year. The legal office also provided assistance under the Volunteer Income Tax Assistance program to well over 100 members, garnering more than \$200,000 in refunds and saving Coast Guard families over \$15,000 in commercial preparation fees. Instruction is also a part of the SJA's duties. The training center is home to 16 separate schools, including the National Search and Rescue School, the International Maritime Officers School, the National Aids to Navigation School, the Coast Guard's Operational Intelligence, Marine Inspections and Investigations, and Port Operations Schools. The assigned attorney provides instruction during these courses on a variety of legal subjects including the 4th and 5th Amendments. The Training Center SJA also provides instruction on Coast Guard legal issues during the Coast Guard's Sector Department Head and Sector Commander courses.

Training Center Yorktown was the site of the 2009 LAMP Committee meeting.

Yorktown's recent focus has been on training response personnel for Operation Deepwater Horizon. Legal training has included ethics during spill response, entry onto private property and the proper use of safety and security zones.

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

One Coast Guard attorney is assigned as the Staff Legal Officer/SJA for the Coast Guard's 6th largest base and only Recruit Training Center. Coast Guard Training Center Cape May is the home of the Coast Guard enlisted corps -- it is our Coast Guard enlisted accession point and recruit training center. The finest young men and women in service to the United States of America pass through our gates each year. Our goal is to graduate Guardians who are morally, mentally and physically ready to serve the American Public in the U.S. Coast Guard. At Training Center Cape May, we instill, in all our people, the Coast Guard's Core Values of Honor, Respect and Devotion to Duty.

The Staff Legal Officer advises the Commanding Officer in all legal matters involving the Training Center. Major areas requiring advice include community relations, real property management, licenses, Recruit separations, government contracts, acquisitions, environmental matters, philanthropic support, claims and litigation, conflicts of interest,

fiscal law, personnel law and labor/management relations, and Freedom of Information Act and Privacy Act. In addition, the Staff Legal Officer assists the Training Center's 14 tenant commands.

The Staff Legal Officer is the Staff Judge Advocate and, as such, is directly responsible to the Commanding Officer for all military justice matters.

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

The Staff Legal Officer provides local liaison with Coast Guard Investigative Service, the U.S. Attorney's Office, and the Cape May County Prosecutor.

◆ **Coast Guard Training Center Petaluma, California**

Training Center Petaluma's legal office is staffed by a single independent duty attorney who acts as the center's SJA. The base has 47 schools for introductory and advanced specialty ratings with over 5,600 students each year, 300 staff, plus more than 500 residents in family housing. The SJA advises the commanding officer and staff regarding military and criminal justice, administrative law, real property/installation law, ethics, claims, environmental law, procurement/fiscal and contract law, and protects the U.S. government from liability in all legal practice areas.

Over the past year, the SJA administered a court-martial and advised the Convening Authority on a case in which a yeoman ultimately pleaded guilty to stealing government traveler's checks worth \$3,000. Upon the return of two members from unauthorized absences, the SJA handled their pretrial confinement, including successful justification arguments at both brig hearings, then arranged other-than-honorable discharges that saved the base all trial expenses. The SJA also handled an unusual surge of UCMJ cases that generated 50 nonjudicial-punishment hearings. In a command effort to access a municipal communications network during base emergencies, the SJA formulated the key legal pieces necessary for a successful agreement with the county. The SJA also acted as DHS Agency Counsel in two wrongful-termination cases, winning dismissal in one and settling the other for an amount significantly below litigation costs. During periods of acting as base commanding officer, the SJA responded to reports of sexual assault, burglary, drug and alcohol violations, homosexual conduct, abuse of privileges, housing neighbor tensions, and domestic violence, including child abuse. In the Legal Assistance arena, the SJA resolved all legal issues for two clients who lost family members in the October C-130 crash. Last year, an active-duty yeoman assisted the SJA; this year, the yeoman (a member of the Texas bar) was chosen for a direct commission to further serve the Coast Guard legal program as a Judge Advocate.