U.S. Department of Homeland Security

Report of
THE JUDGE ADVOCATE GENERAL
of the U.S. COAST GUARD to the
American Bar Association

2017 Annual Meeting: New York, New York
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.

— CGJAG Mission
The U.S. Coast Guard Cutter JAMES transits toward its home port of Charleston, S.C.

THE COAST GUARD LEGAL PROGRAM (CGJAG)

One of the great strengths of the United States Coast Guard is the broad suite of legal authorities that underpins our eleven statutory missions. Coast Guard Judge Advocates are involved in every facet of Coast Guard operations and mission support, and this broad and diverse suite of legal authorities provides an incredibly dynamic and challenging environment in which to work.

The Coast Guard is the principal Federal agency responsible for maritime safety, security, and environmental stewardship in U.S. ports and waterways. In this capacity, the Coast Guard protects and defends more than 100,000 miles of U.S. coastline and inland waterways, and safeguards an Exclusive Economic Zone (EEZ) encompassing 4.5 million square miles stretching from North of the Arctic Circle to South of the equator, from Puerto Rico to Guam, encompassing nine time zones – the largest EEZ in the world.

As one of the five Armed Services of the United States, the Coast Guard is the only military branch within the Department of Homeland Security. In addition to its role as an Armed Service, the Coast Guard is a first responder and humanitarian service that provides aid to people in distress or impacted by natural and man-made disasters whether at sea or ashore.

The Coast Guard is a member of the Intelligence Community, and is a law enforcement and regulatory agency with broad legal authorities associated with maritime transportation, hazardous materials shipping, bridge administration, oil spill response, pilotage, and vessel construction and operation. From law enforcement to disaster response, from intelligence operations to marine safety and security, CGJAG is actively engaged in every Coast Guard mission. We provide commanders a decision-making advantage and drive mission execution by delivering proactive legal advice and counsel across the full spectrum of Coast Guard operations.
Rear Admiral Steve Andersen assumed duties as the Judge Advocate General and Chief Counsel of the Coast Guard in July 2016. He has the privilege to lead a dedicated group of legal professionals who are responsible for the delivery of all legal services in support of the Coast Guard’s missions, its units and its people.

Andersen’s previous assignment was the Assistant Commandant for Intelligence where he had the honor to serve with the Coast Guard’s 1,100 intelligence professionals who were accountable for the Service’s intelligence programs, to include counterintelligence, cyber, and cryptology. Prior to that he had the honor to serve four years as the Commanding Officer of Legal Service Command in Norfolk, Virginia, where he led the dedicated men and women of the Coast Guard’s nationwide legal command.

Other rewarding assignments include: a one-year deployment at NATO Training Mission-Afghanistan where he served as chief of anti-corruption; three years in command of Coast Guard Base Portsmouth; Deputy Chief of the Maintenance and Logistics Command Atlantic Legal Division; military judge; operational law attorney for Atlantic Area and the Fifth District; and Assistant Legal Officer at the Seventh District Office in Miami.

Andersen began his career serving as student engineer aboard CGC STEADFAST, and as Commanding Officer on CGC CAPE KNOX and CGC STURGEON BAY. Andersen graduated from the U.S. Coast Guard Academy in 1985. He entered the Coast Guard legal program after receiving a Juris Doctor from George Mason University School of Law in 1997 and is a member of the Virginia Bar.

Andersen wears several decorations, which are all a direct result of the professionalism, loyalty, and excellence of the men and women with whom he served. His 2012 receipt of the ABA’s Outstanding Military Service Career Judge Advocate Award is one such example.
Overview of the U.S. Coast Guard

**CGJAG WORKFORCE**

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<th>Total Active Duty JAGs</th>
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<td>Reserve Attorneys</td>
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<td>(RJAG Workforce)</td>
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<td>Total Out-of-Specialty</td>
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<td>Total Support Staff</td>
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Coast Guard legal services are provided by 265 attorneys (163 Judge Advocates in legal specialty billets and 107 civil service attorneys); 87 paralegals, legal technicians, and other support staff; and 48 Coast Guard Reserve Judge Advocates.

The Coast Guard has personnel assigned to five DoD Combatant Commands. The Coast Guard also has approximately 210 Judge Advocates serving on Active Duty in both legal and non-legal assignments. Out-of-specialty tours include Commanding Officers of Coast Guard Cutters (including, recently, the first unaccompanied U.S. icebreaker to reach the North Pole), Coast Guard Sector Commanders, and Captains of the Port.

Currently five Judge Advocates are Flag Officers: the Judge Advocate General; a Rear Admiral who serves as the First District Commander; a Rear Admiral who serves as Assistant Commandant for Command, Control, Communications, Computers, and Information Technology (C4IT) and Commander, Coast Guard Cyber Command; a Rear Admiral who serves as Deputy Director of Operations at U.S. Northern Command (NORTHCOM); and, most notably, an Admiral who serves as the Vice Commandant of the Coast Guard and is the first career Judge Advocate to be promoted to the rank of Admiral and receive a fourth star.
Evolution of Coast Guard Legal Authorities

In 1790, the First Congress of the United States established a small maritime law enforcement component within the Treasury Department to assist in collecting the new Nation’s customs duties. For the next eight years, this Revenue Marine (later called the Revenue Cutter Service) was the Nation’s only naval force and was soon assigned military duties. Over time, the Revenue Cutter Service merged with or absorbed other federal agencies. The Service acquired new legal authorities and responsibilities based upon its ability to perform them with existing assets and minimal disruption to its other duties. In some cases, the Service absorbed other agencies because their maritime responsibilities were seen as intersecting with or complementing its own. The result is today’s U.S. Coast Guard is a unique force with a broad and diverse suite of legal authorities that carries out an array of civil and military responsibilities touching every facet of the maritime environment of the United States. Tracing its history to the Act of May 26, 1906, that established a military discipline system for the Revenue Cutter Service, CGJAG has evolved in step with the expanding missions of the Coast Guard.

The Coast Guard’s broad suite of legal authorities that provides so much of our unique value to the Nation evolved as the Service grew and acquired additional missions and responsibility.

The Revenue-Cutter Service, originally known as the Revenue Marine, was established to help collect revenue on imports to help pay the Nation’s war debts following the Revolutionary War. While the smuggling of goods initially helped support the war effort, those same smuggling activities later deprived the country of much needed revenue. With the Tariff Act of 1790, Congress provided: “more effectually for the collection of the duties... [t]hat the President of the United States be empowered to cause to be built and equipped so many boats and cutters, not exceeding ten, as may be necessary to be employed for the protection of the revenue....” The Coast Guard still retains customs authority and has been boarding vessels at sea to enforce U.S. law since construction of those first ten cutters.

The U.S. Lifesaving Service was established and combined with the Coast Guard in 1915 to form the modern-day Coast Guard: “Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled. That there shall be established in lieu of the existing Revenue-Cutter Service and the Life-Saving Service, to be comprised of those two existing organizations, with existing offices and positions and the incumbent officers and men of those two services, the Coast Guard, which shall constitute a part of the military forces of the United States....”

First established in 1789 as the U.S. Lighthouse Establishment and later reorganized as the Lighthouse Board in 1852, the U.S. Lighthouse Service (or Bureau of Lighthouses) was created in 1910. The Lighthouse Service merged with the Coast Guard in 1939. Under Title 14 of the U.S. Code, the Coast Guard still has responsibility to develop, establish, maintain and operate aids to navigation.

The Steamboat Inspection Service was created in 1871. The Bureau of Navigation was created in 1884. The Steamboat Inspection Service merged with the Bureau of Navigation in 1932 to form the Bureau of Navigation and Steamboat Inspection, which then reorganized in 1936 to become the Bureau of Marine Inspection and Navigation.

U.S. Bureau of Marine Inspection and Navigation was created in 1936 and transferred to the U.S. Coast Guard in 1946. This agency was created the 1932 merger of the Steamboat Inspection Service and the Bureau of Navigation to form the Bureau of Navigation and Steamboat Inspection, which reorganized in 1936 to become the Bureau of Marine Inspection and Navigation.
THE COAST GUARD'S 11 STATUTORY MISSIONS

The Coast Guard is all times a military service and a branch of the armed forces, a federal law enforcement agency, a regulatory agency, a first responder, a humanitarian service, and a member of the Intelligence Community (IC). The United States Coast Guard is the world’s premier, multi-mission, maritime service responsible for the safety, security, and stewardship of the Nation’s waters.

The Coast Guard has 11 statutory missions, all of which contribute to national policy objectives and are fundamental to preserving the sovereign maritime interests of the United States. Many of these missions, such as Search and Rescue; Ports, Waterways, and Coastal Security; Living Marine Resources; and Drug Interdiction present steady-state demands that require continuous or near-continuous use of intelligence and other operational capabilities to meet mission requirements. Other missions, such as Alien Migrant Interdiction Operations, have both steady-state demands and the need to surge for major events such as a mass migration. Finally, missions such as Defense Readiness require capabilities to maintain a high state of readiness for war and other defense contingencies, and also allow the Coast Guard to serve the Nation as a unique instrument of foreign policy.

While diverse, these missions are closely interrelated, and are carried out most effectively and efficiently by a single government entity. The Coast Guard’s multi-mission focus and culture of adaptability allow it to shift seamlessly from one mission to another as conditions or national priorities change. Likewise, the Coast Guard’s expansive authorities, capabilities, competencies, and partnerships allow it to lead or support a broad range of operations both domestically and internationally.

Drug Interdiction

Drug Interdiction supports national and international strategies to deter and disrupt the market for illegal drugs, dismantle Transnational Organized Crime and Drug Trafficking Organizations, and prevent transnational threats from reaching the U.S. The Coast Guard is the lead federal agency for drug interdiction on the high seas. Our strategy is to maintain a strong interdiction presence that denies smugglers access to maritime routes and deters trafficking activity; to strengthen ties with source and transit zone nations to increase their willingness and ability to reduce the production and trafficking of illicit drugs within their sovereign boundaries and territorial seas; and to support interagency and international efforts to combat drug smuggling through increased cooperation and coordination.

Lawyers from across the Coast Guard assist operational units in drug interdiction efforts. Area and District lawyers provide real-time legal advice to Coast Guard commands during the initial interdiction phase through post-boarding. Typical responsibilities include analyzing the authority to stop, board, and search vessels; assessing legal risk and utility for using force against non-compliant vessels; evaluating the level of suspicion articulated by boarding officers to conduct lawful searches aboard vessels; addressing constitutional concerns for conducting searches and seizures of property and personal belongings; and advising boarding teams on the appropriate collection of evidence. Following interdiction, headquarters lawyers communicate with Department of Justice attorneys on the feasibility of prosecution, coordinate proper case venue, and liaise with Department of Justice and Department of State officials on cases involving foreign vessels and other sensitive foreign affairs issues. Coast Guard lawyers play a vital role in maintaining global partnerships, an invaluable asset in combating transnational organized crime, through significant legal advice and negotiation with foreign nations on international agreements and other diplomatic issues.
Alien and Migrant Interdiction Operations

Alien Migrant Interdiction Operations provide effective law enforcement presence at-sea and achieve three main objectives: deter undocumented migrants and transnational smugglers from using maritime routes to enter the U.S.; detect and interdict undocumented migrants and smugglers far from the U.S. border; and expand Coast Guard participation in multi-agency and bi-national border security initiatives.

Coast Guard lawyers provide real-time advice to operational commands on Alien Migrant Interdiction Operations in South Florida and Caribbean areas of operation. Lawyers assist commanders in identifying the sources of authority and jurisdictional basis to interdict migrant vessels and ensure national policy requirements are followed for processing and repatriation of interdicted migrants. Lawyers advise commands on the proper enactment of bilateral and multilateral agreements with foreign nations in order to maintain our close relationships with these nations to combat illegal migration. Coordination with intra-agency entities such as CBP, ICE, and USCIS, and interagency partners such as DOS and DOJ, require routine legal counsel from Coast Guard attorneys to develop desired national outcomes on sensitive immigration issues. Coast Guard lawyers work closely with United States Attorney’s offices and law enforcement agents to determine whether undocumented migrants and transnational human smugglers should be brought into the United States for prosecution.

Defense Readiness

Our Defense Operations mission exercise the Coast Guard’s unique authorities and capabilities to support the National Military Strategy. Coast Guard Defense Operations include: Maritime Interception and Interdiction Operations; Military Environmental Response; Port Operations Security and Defense (including maintaining a Title 10 Reserve force and providing Aids to Navigation support for battle-space preparation); Theater Security Cooperation; Coastal Sea Control Operations (including providing DoD the only assured access in ice-covered and ice diminished waters); Rotary Wing Air Intercept Operations; Combating Terrorism Operations; and Maritime Operational Threat Response Support.

Coast Guard lawyers provide legal advice and counsel to commanders, command staff, and headquarters staff on missions which support the National Military Strategy and Department of Defense (DoD) operations. Lawyers advise both afloat and ashore commands on the authority to conduct Coast Guard, DoD, and joint operations; adherence to proper use of force and the standing rules of engagement; and the legal risk for conducting interdictions and boardings in support of domestic and international missions. Lawyers also provide advice on missions relating to our foreign partners to improve mutual cooperation as a joint force and support U.S. diplomatic efforts in general—promoting democracy, economic prosperity, and trust between nations.
Other Law Enforcement

Other Law Enforcement involves the enforcement of marine resource regulations on foreign fishing vessels. This enforcement takes two forms. The first is the deterrence, detection, and interdiction of illegal foreign fishing vessel incursions into the U.S. Exclusive Economic Zone (EEZ), which represent a threat to our nation’s renewable natural resources and a violation of United States sovereignty. Protecting the U.S. EEZ is a fundamental Coast Guard maritime security objective. The second aspect is ensuring compliance with international agreements for the management of living marine resources. This is accomplished through enforcement of conservation and management measures created by Regional Fishery Management Organizations. The Coast Guard also helps build organic enforcement capacity within partner nations for resource management and commercial fishery regulations. These partnerships serve as force multipliers, helping to monitor compliance with various international agreements and deter illegal, unreported and unregulated fishing activity worldwide.

Lawyers advise units on conducting boardings of foreign flagged fishing vessels, both in the U.S. EEZ and on the high seas. On the high seas, these boardings are conducted under various cooperative fishing agreements such as the United Nations Fish Stocks Agreement that enforce regulations to curtail Illegal, Unreported, and Unregulated (IUU) fishing. International partnerships are an integral part of combating IUU fishing, necessitating legal review and counsel regarding international partnerships and negotiating bilateral agreements with cooperating countries. Lawyers analyze risk and respond to encroachments in United States EEZ by foreign fishing vessels in remote areas where sensitive fisheries are found, such as in the Bering Sea along the U.S.-Russian Maritime Boundary Line, in the western and central Pacific around Hawaii and outlying U.S. territories, and in the Gulf of Mexico along the United States-Mexican maritime border.

Ports, Waterways, and Coastal Security

The Ports, Waterways, and Coastal Security (PWCS) mission protects people and property in the Marine Transportation System by preventing, disrupting, and responding to terrorist attacks, sabotage, espionage, or subversive acts. PWCS establishes and oversees maritime security regimes in the coastal and inland operational areas and is enforced through Maritime Security and Response Operations (MSRO). Activities under PWCS include preparedness planning and exercises, initiatives to enhance the resilience of maritime Critical Infrastructure and Key Resources and the MTS, the execution of antiterrorism and counterterrorism activities, and initial recovery efforts after attacks. PWCS especially relies upon the Coast Guard’s broad authorities and long standing partnerships with governmental, maritime industry, and international partners. PWCS activities are primarily directed by Coast Guard Sector commanders assigned as the Federal Maritime Security Coordinators (FMSC) for the maritime ports in the U.S.
Coast Guard attorneys support the PWCS mission at several levels. Lawyers from across the Coast Guard advise commands on protecting the United States Maritime Transportation System, including the prevention and disruption of terrorist attacks, sabotage, espionage, or other subversive acts. Headquarters legal offices provide advice on organizational program and policy development, conduct legal interpretation of Coast Guard authorities, and draft and review proposed legislation and regulations. Additionally, these lawyers advise on issues such as the development of authorities and policy to address the emerging threat of unmanned aircraft systems interference in the Coast Guard’s enforcement of security zones and the deployment of specialized forces to secure ports during times of crises. Area and district legal offices address localized PWCS legal issues, such as advising on Captain of the Port Orders, reviewing local field regulations, and coordinating agreements with local government and industry. These offices also provide military personnel and military justice support to PWCS units such as Maritime Security Response Teams, Maritime Safety and Security Teams, and Maritime Force Protection Units.

Search and Rescue

The Coast Guard is the lead federal agency for maritime search and rescue in U.S. waters. We render aid to those in distress in the maritime environment and elsewhere when Coast Guard interdiction can influence the outcome of life-threatening incidents.

We coordinate search and rescue efforts of afloat and airborne Coast Guard Units with those of other federal, state and local responders and use Captain of the Port authorities and responsibilities to coordinate response efforts on waterways after and incident or disaster.

Coast Guard attorneys provide organizational and operational advice on the execution of the Coast Guard’s authority and obligations, both domestically and internationally. Typical responsibilities include negotiating and concluding international search and rescue bilateral agreements with foreign partners, advising on the extent of the Coast Guard’s use of force authorities in search and rescue missions and analyzing international law regarding assistance entry. Coast Guard attorneys serve as advisors or representatives of the United States at meetings of the International Maritime Organization, including the Subcommittee on Navigation, Communications and Search and Rescue. Coast Guard attorneys provide counsel and liaison with the Department of Justice on cases arising from claims of negligence against the Coast Guard in carrying out search and rescue missions. Coast Guard procurement law attorneys enable the Coast Guard to acquire the products and services necessary for carrying out search and rescue missions, such as the acquisition of new Coast Guard assets and communications platforms.

Living Marine Resources

Living Marine Resources (LMR) Law Enforcement is an obligation under the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act and several other federal laws focused on the protection of marine resources. The core objective of these efforts is to provide effective and professional enforcement to advance national goals for the conservation, management, and recovery of living marine resources, marine protected species, and national marine sanctuaries and monuments.
Coast Guard attorneys advise commands on the enforcing living marine resources regulations on domestic commercial, recreational, and charter fishing vessels in support of domestic law regarding catch limitations, gear restrictions, permits, closed areas, regulated seasons, and other management measures in partnership with National Oceanic and Atmospheric Administration. Lawyers routinely advise ashore and afloat commands on the applicability of legislation such as the Magnuson-Stevens Fisheries Conservation and Management Act and the Lacey Act.

**Marine Safety**

The focus of the USCG’s marine safety mission is the prevention of deaths, injuries, and property loss. Marine safety responsibilities include ensuring the safe and environmentally sound operation of millions of recreational vessels and thousands of U.S. flagged commercial vessels. The USCG develops and enforces Federal marine safety regulations, certifies and provides credentials to more than 218,000 mariners, documents U.S. vessels, investigates marine casualties and shares its findings, and conducts compulsory inspections as well as voluntary safety exams.

Coast Guard attorneys provide legal advice to program elements within the Coast Guard to interpret existing laws and regulations which aid in determining the extent of Coast Guard authority to act in the safety realm, both with respect to safety equipment required on vessels and the qualifications of those individuals working aboard. This includes assistance in administering compliance requirements and initiating enforcement actions when violations are discovered. Attorneys assist in drafting new regulations to address recent developments in technology and safe practices. Coast Guard attorneys also provide legal advice to United States delegations attending United Nations bodies such as the International Maritime Organization and International Labour Organization to ensure that developed international standards are aligned with existing United States law and interests.
Aids to Navigation

With over 50,000 Aids to Navigation (ATON), the United States operates the largest ATON constellation in the world. Coast Guard navigational aids include not only traditional floating buoys, fixed structures such as pilings, dayboards, ranges, and lighthouses, but also electronic systems like the Global Positioning System and the Nationwide Automatic Information System, which is required on most commercial vessels operating in U.S. waters. In addition to federally owned ATON, our waterways are marked by thousands of privately owned aids, which are permitted by the Coast Guard and must comply with CG regulations.

Coast Guard attorneys work closely with the Office of Navigation Systems to develop regulations and policy consistent with statutory authority to establish and maintain ATON, and required navigational safety equipment on commercial vessels. Beyond domestic requirements, CG attorneys travel with and advise the US delegation to the International Maritime Organization’s subcommittee on Navigation, Communications and Search and Rescue on matters of international law and domestic implementation of treaties and conventions, such as the Safety of Life at Sea Convention and the International Regulations for Preventing Collisions at Sea. Coast Guard attorneys with ATON and navigation expertise assist with the investigation of significant marine accidents that could involve CG navigational aids or associated vessel equipment, and also assist the Department of Justice in defending the US Government against claims arising from mariner reliance on the Coast Guard’s ATON system.

Marine Environmental Protection

Protecting the delicate ecosystem of our oceans is a vital Coast Guard mission. The Coast Guard works with a variety of groups and organizations to ensure the livelihood of endangered marine species and their habitat. There are five areas of emphasis in the Marine Environmental Protection mission: (1) prevention—stopping pollution before it occurs through training, equipment, and procedures; (2) enforcement—providing civil and criminal penalties for illegal acts; (3) surveillance—protecting the marine environment by conducting pollution over-flights, vessel boardings, harbor patrols, transfer monitoring, and facility inspections; (4) response—removing and mitigating spills of oil and hazardous substances; and (5) in-house abatement—ensuring that Coast Guard vessels and facilities comply with federal environmental laws and regulations.

Coast Guard attorneys support the Marine Environmental Protection mission by assisting in developing and enforcing regulations to avert the introduction of invasive species into the maritime environment, taking enforcement action against unauthorized ocean dumping, and providing legal advice in preventing and responding to oil and hazardous substance spills. Coast Guard attorneys support the mission on international delegations, interagency negotiations, and program development for environmental protection. Additionally, Coast Guard attorneys pursue enforcement actions against environmental law violators while also providing in-house advice to ensure internal compliance with federal environmental laws.
STATUTORY MISSIONS

Ice Operations

The Polar Regions are becoming the focal point of maritime interest in terms of shipping, living marine resources, mineral and oil exploration, and scientific research. Coast Guard presence in the Polar Regions is growing with greater demands. Coast Guard polar icebreakers support national security and sovereignty, and national science missions in the Polar Regions. They are used to determine and demonstrate the extent of the U.S. extended continental shelf claim, enforce U.S. laws and international treaty obligations in the Polar Regions, and provide a science platform in the Arctic region for obtaining vital ecological and geographic data necessary to protect U.S. Arctic marine environment and resources.

The Coast Guard has brought its experience and resources to bear in international fora devoted to polar issues. At the IMO, Coast Guard leadership has helped frame the new Polar Code for shipping; the Coast Guard participates in numerous Arctic Council working groups across a wide array of arctic issues. The Coast Guard, asserting its initiative, has developed the Arctic Coast Guard Forum, which includes bringing the Arctic states together to discuss mutual issues impacting their Coast Guards and providing recommendations for mutual support across the related mission sets.

Similarly, Coast Guard icebreakers, in cooperation with the Canadian Coast Guard, keep Great Lakes and Northeastern U.S. connecting waterways open for commercial traffic, assist vessels transiting ice filled waterways and prevent ice-related flooding. The International Ice Patrol promotes safe navigation by monitoring icebergs and broadcasting the limit of all known ice to vessels transiting the North Atlantic between North America and Europe.

Coast Guard attorneys support the development and implementation of U.S. arctic strategy through effective participation in interagency working groups and partnerships across all of the maritime objectives. Coast Guard attorneys participate in numerous U.S. delegations, prepare these delegations for international meetings and implement the outcomes of these meetings. Coast Guard attorneys ensure domestic implementation of international requirements, such as the IMO Polar Code. Coast Guard attorneys research and advise senior leaders on the application of the Law of the Sea Convention and customary international law to emerging polar related issues, including the extended continental shelf claim. Coast Guard attorneys are critical in the procurement process to build new icebreakers and associated Coast Guard assets that must be designed to operate in polar environments.

The picture on the left is the Coast Guard Cutter HEALY and her crew at the North Pole. In 2015, HEALY became the first U.S. surface vessel to transit the North Pole unaccompanied. The Commanding Officer at the time, CAPT Jason Hamilton, pictured above, is a member of CGJAG. On May 2, 2017, he was sworn in as a Coast Guard Court of Criminal Appeals Judge.
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.

Policy and expertise is developed at Coast Guard Headquarters in the Office of Military Justice. This office aids and trains the Judge Advocates in the field. It also works extensively with the Department of Defense and sister Services to develop and execute military justice initiatives.

Before a case ever makes it to trial, it has been vetted through a Staff Judge Advocate (SJA). SJAs provide military justice advice to their Commanders and Officers in Charge on a regular basis. Judge advocates at field units provide legal oversight and advice in respect to initial actions upon receiving a report, through investigation, and final disposition. Many times, a case may not warrant a trial but may be resolved at an Article 15 proceeding (non-judicial punishment) or by another means. The SJA is instrumental in working with commands to determine the best forum for resolution. These Staff Judge Advocates are located at the Coast Guard’s Pacific Area Command and Atlantic Area Command, its nine District Offices, the Service’s three Training Centers, and the Coast Guard Academy.

**Trial Activity.** Judge advocates from the Legal Service Command, Areas, Districts, and Academy serve as trial counsel in prosecution efforts to maintain good order and discipline.

Through an agreement with the U.S. Navy, defense services are provided by the Navy. The Coast Guard has nine attorney positions embedded as full-time defense counsel at Navy Defense Service Offices located throughout the United States.

During this past year, judge advocates handled a variety of cases, including but not limited to fraud, drugs, sexual assault, child pornography, larceny, conduct unbecoming, simple assault, and dereliction of duty. The below chart portrays trials handled throughout the Coast Guard during the course of this year and past years.

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*Incomplete FY17 data current as of 23 June 2017
PRACTICE AREAS

Military Justice

Appellate Activity. The Coast Guard Court of Criminal Appeals consists of eight members, both military and civilian. The Court reviews cases on appeal as well as extraordinary writs filed at the trial level. The CGCCA has issued 20 opinions in FY 2017 as of June.

The Coast Guard has seen an increase in its appellate practice before Court of Appeals for the Armed Forces in FY17. The CAAF heard oral arguments in four Coast Guard cases and granted review in an additional three cases, which will be heard in the next fiscal year.

Growth of Practitioners. The Coast Guard continues to augment its court-martial litigation capabilities. The Coast Guard trial judiciary consists of three full-time military judges performing general and special courts-martial cases. Two of the three full-time military judges are new positions added this fiscal year. They will be located in Norfolk, Virginia, and Alameda, California. The Service also has several collateral military judges throughout the nation who perform special courts-martial on an ad-hoc basis and serve as magistrates for search authorization requests and other judicial duties.

The Legal Service Command, the Coast Guard’s largest field legal office, having offices in Norfolk, Virginia, and Alameda, California, is the only legal office where judge advocates serve full-time as trial counsel. The 2017 assignment year brought ten new attorney positions to LSC, nearly doubling the number of Coast Guard judge advocates who will be prosecuting courts-martial full-time. There are sixteen dedicated trial counsel comprised of two trial branch chiefs, four senior trial counsel, and ten lieutenants that work exclusively on military justice matters. LSC now serves as a resource to all other Coast Guard field legal offices for courts-martial trial counsel support and is in the process of transitioning to assume responsibility for all military prosecutions of serious misconduct throughout the service. The LSC also partners with Sexual Assault Response Coordinators and the Coast Guard Investigative Service to offer Sexual Assault Prevention Workshops to various commands.

The Special Victims’ Counsel (SVC) program is maturing in expertise and has substantially increased its practitioners, to include eight full-time SVCs and additional judge advocates serving as special duty SVCs in some cases.
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.

In 2016, the Office of Claims and Litigation, in support of its partners from the Department of Justice and various United States Attorney offices, continued to defend and assert the Coast Guard’s legal interests in a panoply of cases related to its internal operations and its eleven statutory missions. Notably, the Office handled cases related to: claims of negligence in carrying out search and rescue, law enforcement, Aids to Navigation, and marine safety mission functions; military personnel pay and discharge matters; matters involving Merchant Mariner Credentialing; matters arising from violations of the Clean Water Act; and cost-recovery matters arising from the Oil Pollution Act of 1990. Examples of significant litigation are reported below.


The Coast Guard referred a judicial civil penalty case arising from systemic Clean Water Act violations involving the tuna fleet owned by Tri-Marine companies. The violations stemmed from the improper storage and transfer of fuel oil which permitted the fishing vessels to conduct longer voyages. Tri-Marine entered into a consent decree with the United States that provided for a $1.05 million civil penalty and injunctive relief, including a three-year compliance program across its fleet.

*United States v. Kirby Inland Marine, 16-cv-269, (S.D. Tx.)*

Kirby entered into a consent decree agreeing to pay $4.9 million in Clean Water Act civil penalties to settle claims stemming from a 4,000-barrel oil spill in the Houston Ship Channel in March 2014. This spill occurred when a Kirby tow boat pushing two barges crossed the channel in front of a 585-foot bulk cargo ship. In addition to payment of the civil penalties, Kirby, in the consent decree, committed to improve its operations across its entire fleet of hundreds of vessels operating in the inland waters of the United States. The remedial measures required Kirby to install enhanced navigational equipment on vessels, provide employee training on the new and enhanced equipment, provide additional navigation skills training (including a simulator-based exercise involving a Texas City Y scenario), and improve operational practices, such as entering complete tow dimensions in each vessel’s automatic identification systems before embarking on every transit.
PRACTICE AREAS

Civil Advocacy, Claims and Litigation

Bethell v. United States, et al., 0:15-cv-62390-BB, (S.D. Fl.)

Coast Guard Special Purpose Craft-Law Enforcement ("SPC-LE") vessel CG-33126 responded to a mayday call from a 63-foot commercial fishing vessel named JOYCE LYNN II, which had run aground just outside Port Everglades Inlet. Four crewmembers were aboard. The Coast Guard recovered the first and second survivors without incident. However, following the embarkation of the second survivor, the third survivor attempted to jump and fell between the stern of the fishing vessel and the starboard bow of CG-33126. This fall resulted in injuries to his midsection, leg, and groin. As a result of his injuries, the third survivor filed suit in the Southern District of Florida, alleging a single cause of action for negligence. The court held a three-day in November 2016. The trial team included a Coast Guard Claims & Litigation attorney. The court found that, pursuant to the Good Samaritan Rule, the crew of the CG33126 was not negligent under the circumstances and did not worsen the position of Plaintiff. Accordingly, the court entered judgment in favor of the United States.

Attorneys at Areas and Districts are authorized as agency counsel to respond to requests for Coast Guard documents and witness testimony in litigation in which the United States is not a party. (i.e. Touhy requests. See e.g., States ex rel. Touhy v. Ragen, 340 U.S. 462 (1950), 5 C.F.R 5.41-5.48) Recently, the First District Legal Office in Boston coordinated with the Office of Claims & Litigation and the Department of Homeland Security, Office of General Counsel to obtain approval for a Coast Guard search and rescue ("SAR") expert to provide expert testimony in connection with the murder of a three-year-old child. The Coast Guard expert utilized unique software tools and expert local knowledge to assist local law enforcement during their investigation with drift analysis and to determine where the killer placed the child in the water surrounding Boston. See Commonwealth v. McCarthy, Suffolk Superior Court Dkt. No. 1584CR11292.

Judge advocates throughout the Coast Guard also provide critical local support to USAOs on behalf of the Office of Claims & Litigation, attending depositions with Coast Guard witnesses, assisting with motion practice, and supporting mediations. In a recent case, the Eighth District Legal Office in New Orleans worked with the Coast Guard’s Office of Claims & Litigation and the U.S. Attorney’s Office (“USAO”) for the Eastern District of Louisiana after a Coast Guard member acquitted of a sexual assault charge at a general court-martial brought a civil suit under Louisiana law against two complaining witnesses (both Coast Guard members at the time of the alleged assault and report). The United States substituted itself for the two defendants under the Westfall Act, removed the action to federal court, and with Coast Guard counsel participating in court, moved to dismiss the case for lack of subject matter jurisdiction. The plaintiff then challenged the certification and asked the Court to find that the complaining witnesses were not acting in the course and scope of their employment because they testified untruthfully. Ultimately, the Court denied the plaintiff’s challenge to the certifications and dismissed the case.
Civil Advocacy, Claims and Litigation

In another recent case, attorneys from the Seventh Coast Guard District in Miami made significant contributions to the United States’ defense against a challenge to the Coast Guard’s decision in December 2016 to approve a temporary deviation to the operating schedule of FEC Bridge in Fort Lauderdale, Florida. Despite earlier community outreach by the bridge owners and Coast Guard, numerous local maritime businesses filed an emergency motion seeking a temporary restraining order (TRO) and a preliminary injunction to prevent the change to the bridge’s schedule. The Court accepted briefing and heard arguments, which District 7 attorneys attended, and it ultimately denied the TRO request. See Rolly Marine Service v. FECR et al., 17-cv-60053, (S.D. Fla.).

Finally, Legal Services Command personal injury/property damage legal experts processed more than 300 claims, worth approximately $60 million dollars, and resolved many of these matters for a fraction of that amount before litigation ensued.

Legislation

The Judge Advocate General oversees the development of the Coast Guard’s annual legislative agenda and the Coast Guard’s views on pending legislation. The legislative counsel assigned to the Judge Advocate General’s staff, working closely with Coast Guard directorates, are responsible for the development, review, and clearance of the Coast Guard’s annual legislative agenda and the development and clearance of Coast Guard views on pending legislation. Additionally, the legislative counsel supports the efforts of the Coast Guard’s Office of Congressional Affairs to secure congressional consideration of that agenda.

The Coast Guard’s legislative agenda for the First Session of the 115th Congress includes 40 legislative proposals, the majority of which would improve agency operations. Congress is currently considering the “Coast Guard Authorization Act of 2017.” While still in draft form, the legislation includes several important legislative proposals, including—(1) a proposal to clarify the ability of Coast Guard health professionals to counsel patients via telehealth; (2) a proposal that enables the Service to continue hiring much-needed acquisition personnel on an expedited basis; and (3) a proposal that allows the Coast Guard to utilize the funds in the Abandoned Seafarers Fund for costs related to supporting alien seafarers stranded within U.S. jurisdiction.
General Law

Within the CGJAG Office of General Law, attorneys provide legal advice in the practice areas of Fiscal Law, Employment Law (military and civilian, including advice and Coast Guard representation on matters involving the Merit Systems Protection Board, Equal Employment Opportunity Commission, and labor relations), Ethics Law, Real Property Law, and Administrative Law.

Fiscal Law. Attorneys in the fiscal law practice group provide advice and legal services on the financial aspects of Coast Guard operations. Over the past year, fiscal attorneys were relied on to craft language for appropriations bills and legislation with a budgetary nexus, including but not limited to the national Coast Guard Museum and the modernized retirement system. The fiscal law practice group provided critical legal support to the Comptroller of the Coast Guard on investigations into proper use of appropriated funds and financial management internal controls policy. Attorneys provided substantive guidance and input into several investigations into alleged Anti Deficiency Act violations. They also provided advice regarding the use of child care subsidies for employees, nannies, and widows, which clarified the Coast Guard’s eligibility for funding under the Military Child Care Act.

Employment Law. For the period of July 2016 to the present, the Coast Guard employment and labor law attorneys handled over 100 EEOC and MSPB cases, and assisted the Department of Justice with four cases in federal district and appellate courts. Attorneys provided de novo review of nine military physical disability evaluation board cases and six military administrative separation boards. In addition, Coast Guard employment and labor law attorneys provided command advice to Coast Guard leadership and commands in over 200 employment related matters.

Ethics. For the period of July 2016 to the present, the Coast Guard’s ethics attorney handled approximately one thousand ethics matters, including advice on matters of misuse of position, lobbying, gifts, conflicts of interest, outside employment/activities, and fundraising. The ethics attorney manages the Coast Guard’s decentralized Confidential Financial Disclosure Report program (over 1100 filers) as well as the Coast Guard’s Public Financial Disclosure Report program. The ethics attorney also advised on matters of ethics policy and helped to revamp the ethics training system, advocating for an improved training and tracking system for new hires.

Real Property. The real property attorney provides legal advice and services on myriad real property matters. Since July 2016, the real property attorney assisted clients on matters related to land transfers between federal agencies; compliance with National Environmental Protection Act, the Coastal Zone Management Act, and the Clean Water Act; as well as a potential civil claim regarding a Coast Guard lease. In performing these duties, the real property attorney works directly with other federal agencies, including the General Services Administration, the Department of the Interior, and the National Park Service. The real property attorney also continued to advise the Coast Guard on the numerous issues related to the establishment of a National Coast Guard museum.
General Law

Administrative Law. This group of military attorneys advises senior program managers on a broad array of legal issues related to the efficient administration of the Coast Guard. Since July 2016, this group was instrumental in the development of numerous service-wide policies, including the Military Transgender Service policy, primary/secondary caregiver leave, and the new modernized military retirement system. These attorneys also regularly provided Coast Guard leadership with guidance on the appropriate use of Coast Guard aircraft, physical security measures, and recoupment of educational benefits. This group submitted over 200 Coast Guard advisory opinions to the Coast Guard Board for Correction of Military Records and reviewed nearly all Coast Guard-wide guidance for legal sufficiency. Attorneys from this group also provided guidance to field legal offices on 10 major incident investigations (MIIs) that occurred across the Coast Guard.

Field Units. Judge advocates throughout the Coast Guard advise on general law matters. Attorneys at Areas and Districts are designated as Command Ethics Advice Attorneys and provide determinations for their respective units. Judge advocates also review inter-agency agreements relied upon by commands.

Field legal office attorneys also serve as legal advisors to MIIs and the public release of those reports. Attorneys from PACAREA and Eleventh District in Alameda, California, advised investigations involving Airborne Use of Force (AUF) fatalities the occurred during counter-drug interdiction operations in the Eastern Pacific Ocean. Attorneys from Coast Guard Legal Services Command (LSC) advised on investigations into two deaths of Coastguardsmen. Attorneys from District Legal Offices in the Seventh (Miami), Eight (New Orleans), and Thirteenth (Seattle) districts advised on operational mishaps involving a bridge allision during a search and rescue case, an aviation mishap involving hoisting operations, and an aids to navigation boat capsizing during operations throwing all crewmembers into the water.

LSC provided comprehensive real property, environmental, claims litigation, civilian human resources law, and ethics advice services to clients across the Deputy Commandant for Mission Support (DCMS) enterprise. Notably, LSC general law attorneys resolved numerous civilian employee matters and properly advised more than 200 Coast Guard members on proper conduct in countless factual scenarios with formal ethics opinions and advice. Additionally, our environmental lawyers provided legal services for more than half of the environmental law cases for the entire Coast Guard and surged to provide substantial real property counsel to clients within the DCMS enterprise and beyond.

The Coast Guard Academy SJA and staff furnish all the legal advice to the Superintendent, Assistant Superintendent, and all other Academy divisions. They provide legal advice on a diverse range of issues, including issues unique to the Academy, involving NCAA athletics compliance, use of non-appropriated funds, and the cadet disciplinary system. The office manages all military justice cases at the Academy and advises on federal ethics, fiscal & contract law, environmental law, real property, claims, administrative law, and employment law.
**Procurement Law**

Coast Guard procurement law attorneys enable the Coast Guard to acquire the products and services necessary for mission success. The legal counsel provided covers all aspects of the acquisition cycle, from acquisition planning through contract close-out. Procurement law attorneys also provide representation in contract litigation before the Government Accountability Office and the Civilian Board of Contract Appeals, 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 on suspension and debarment, 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 modernization investment portfolio of over $27 billion.

Several ongoing major and significant system projects are supported by Procurement Law project counsel, including:

**C-27 Aircraft Program.** The Coast Guard has received 12 of a planned 14 C-27 aircraft deemed excess by the United States Air Force. This transfer continues the recapitalization of the Coast Guard’s fleet of medium range surveillance aircraft by supplementing the HC-144 aircraft acquisition. The receipt of the C-27s will result in significant savings (at least $500M) to the Coast Guard in its recapitalization budget, and once modified to the unique HC-27J configuration will maintain the Coast Guard’s ability to perform air surveillance in accomplishing its missions concerning drug interdiction, deterring illegal immigrants, detecting water pollution, and maritime search and rescue. The Coast Guard is working to secure the spares and training facilities to ensure a successful integration of the C-27 into the Medium Range Surveillance program.

**National Security Cutter (NSC).** The NSC is the largest and most technically advanced class of cutter in the United States Coast Guard. It is replacing aging 378’ Secretary Class cutters. This has been a very successful acquisition program. Last year we accepted delivery of NSC 6 and currently have 7 and 8 under construction. We are at various stages of production for each. In part because of the success of the program, Congress has approved additional the procurement of two more NSCs and has appropriated funds for construction of the a ninth cutter in the class and for the Long Lead Time Materials for the 10th cutter. In order to assure a 30 year fatigue life for the first two NSCs, the USCG is currently having structural enhancements added to the hulls. The technical changes needed to guarantee this longevity are built into the remaining ships as a result of an engineering change to the specifications. SEDA will prevent pre-mature metal failure due to repetitive flexing of the structure from operations at sea. The first of the two NSCs to undergo the structural enhancements is now going through acceptance trials post the enhancements, and the second will begin the dry-dock availability to commence the process shortly.

**Fast Response Cutter (FRC).** The Coast Guard has taken delivery of twenty-four of the Sentinel-class FRC, a 154-foot multi-mission cutter that replaces the aging Island-class 110-foot patrol boat. In May 2016, the Coast Guard awarded a contract for Phase 2 of the FRC procurement to acquire cutters 33-58.
**Procurement Law**

**Off Shore Patrol Cutter (OPC).** The OPC procurement, at an estimated $11 Billion, is the largest single class cutter acquisition, in terms of cost, in Coast Guard history. The OPC will provide a critical capability bridge between the NSC, which patrols the open ocean, and the FRC, which serves closer to shore. The OPC will feature state-of-the-market technology and will replace the service’s aging 270’ and 210’ medium endurance cutters, which are technologically, obsolete and expensive to operate and maintain. Twenty-five vessels are planned. The Coast Guard adopted a two-phased design-build strategy to acquire the OPC. Source selection for Phase 1 was completed in February 2014 with the award of three firm fixed price contracts for Preliminary and Contract Design to Bollinger Shipyards of Lockport, LA; Bath Iron Works of Bath, ME, and Eastern Shipbuilding Group, Inc., of Panama City, FL. Protests of the awards to the Government Accountability Office by two unsuccessful offers were denied in June 2014. In September 2016, after approximately 18 months of work by the contractors and a thorough review of the proposals by Coast Guard technical experts, a contract for the Detailed Design and Construction of the OPC was awarded to Eastern Shipbuilding Group, Inc. The award was not protested. The Coast Guard has established a Project Resident Office (PRO) in Panama City, FL to manage the construction. The success of this program is critical to the Coast Guard’s ability to fulfill its maritime mission in the future.

**Small Unmanned Airborne Systems (SUAS).** The Coast Guard is using SUAS to increase its ability to accomplish law enforcement missions on the high seas. The Coast Guard acquired a SUAS from the Navy for deployment from one of the Coast Guard’s National Security Cutters. The Coast Guard’s acquisition strategy is to garner experience with the Navy’s SUAS contractor in preparing to procure the Coast Guard’s own SUAS on the open market for deployment on the entire NSC fleet.

**Polar Icebreaker Program.** The Coast Guard requires a minimum of two new heavy icebreakers to support the country’s economic, commercial, maritime and national security needs. The new icebreakers will be national assets that will ensure access to both polar regions and be capable of executing key Coast Guard missions, including defense readiness; marine environmental protection; ports, waterways and coastal security; and search and rescue. The ships will operate worldwide and face the range of extreme environmental conditions found in the polar, tropical and temperate regions. The Coast Guard is in the Analyze/Select phase of acquiring a new polar icebreaker. This phase involves evaluating acquisition approaches and assessing the merits of each approach. The program is moving expeditiously to acquire these important national assets. Key recent developments include the Coast Guard and the United States Navy establishing an Integrated Program Office (IPO) to accelerate and manage the design and construction of heavy icebreakers. The IPO is using a tailored approach to leverage best practices from Coast Guard and Navy shipbuilding programs. The Department of Homeland Security Science and Technology Directorate (on behalf of the Coast Guard) and the Canadian Government established an agreement enabling the Coast Guard to test and validate potential heavy icebreaker design models at the Canada’s National Research Council’s unique ice testing facility in ST John’s Newfoundland. The IPO also awarded five firm fixed price contracts for heavy polar icebreaker Industry Studies. The objectives of the studies are to have these five shipbuilders identify design and system approaches to reduce acquisition costs and production timelines. The contractors are also examining major design drivers and approaches to address potential acquisition, technology and productions risks and benefits associated with different contract types. Results of the industry studies will help shape the plan to acquire the heavy icebreakers.

Additionally, Coast Guard Legal Service Command contract attorneys provided legal review on contracting actions valued at more than $2 billion.
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 maintain 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.

The Coast Guard’s rulemaking program continues to balance a portfolio of regulations touching on a wide variety of Coast Guard missions, including maritime security, maritime safety, and environmental stewardship. Since last year’s report, the Coast Guard Office of Regulations and Administrative Law published five Headquarters proposed rules, one Headquarters interim rule, three Headquarters final rules, and two Headquarters notices (such as a notice of intent, availability, or withdrawal).

Regulatory Reform Pursuant to Executive Orders 13771, 13777, and 13783. The Coast Guard has, for much of this calendar year, been engaged in an extensive review of its regulations, guidance documents, and collections of information. The President recently issued three executive orders that affect agency regulation. The first order, E.O. 13771, requires that the cost of a new “significant” regulation must be offset by elimination of equivalent costs associated with at least two existing regulations. The second, E.O. 13777, directs agencies to create regulatory reform task forces to identify regulations that are outdated, unnecessary, ineffective, excessively costly, or otherwise appropriate for removal. The third order, E.O. 13783, directs agencies to review all existing regulations and guidance that potentially burden the development or use of domestically produced energy resources.

In response to these Executive Orders, the Coast Guard established a Regulatory Reform Task Force chaired by the Judge Advocate General. Under the leadership of the Task Force, the Coast Guard is conducting a thorough review of its regulations, guidance, and collections of information consisting of the following three main lines of effort.

Federal Register Notice: On June 8, 2017, the Coast Guard published a Federal Register notice requesting public input on Coast Guard rules, information collections, and guidance documents that may be candidates to repeal, replace, or modify pursuant to Executive Orders 13771, 13777, and 13783. In response to requests from the public, the Coast Guard extended the comment period from 30 to 90 days. The Coast Guard also intends to conduct additional outreach to industry trade associations and quality partnerships to ensure their concerns are heard and will consider any input received from other government agencies.

Federal Advisory Committees: The Coast Guard has provided a task statement to request all Federal Advisory Committee Act (FACA) committees to review the regulations within their purview and provide recommendations to the Coast Guard on rules, information collections, or guidance documents to replace, replace, or modify. Federal Register notices announcing meetings of each FACA committee for the purpose of assigning the tasking to a subcommittee began publishing on July 6, 2017, and meetings of all 11 Coast Guard FACA committees are expected to be completed by the end of August 2017.

Internal Review: Coast Guard program offices have been asked to review the CFR parts for which each office is responsible. Included in this review, the Coast Guard will work with its field units to review the Coast Guard’s field regulations, consisting of anchorages, drawbridge regulations, special local regulations, regulated navigation areas, safety zones, and security zones for deregulatory action opportunities.

In all of these lines of effort, emphasis is being placed on areas where the Coast Guard has discretion to reduce burden within the bounds imposed by legislation, where advances in technology not available at the time a rule was published provide an opportunity to reduce an existing burden, or where the cost of a rule has exceeded the estimate developed at the time of publication. In addition, E.O. 13783 specifically requires review of regulations and other agency actions that affect the domestic energy industry, including offshore activities, tank vessels, carriage of liquid natural gas, and waterfront facilities involved in energy development.
Regulations and Administrative Law

**Field Regulations.** Coast Guard field units, specifically Areas and Districts, draft field regulations or non-controversial rules that affect only localized areas. Attorneys are the servicing legal office responsible for the legal sufficiency of those field regulations and coordination with the Office of Regulations and Administrative Law. Area Commanders have the authority to issue a Naval Vessel Protective Zone. In general, only District Commanders have the authority to issue regulations concerning anchorages, drawbridges, regulated navigation areas, lightering zones, special local regulations, and Outer Continental Shelf safety zones. District Commanders may, in their discretion, delegate in writing to Captain of the Ports (COTP) the authority to issue special local regulations for regattas and marine parades. Each District Commander and COTP has the authority to issue safety and security zone regulations. Since last year's report, the Coast Guard published 484 field regulations.

The Department, including Coast Guard's, regulatory agenda for the next year may be found at: https://www.reginfo.gov/public/do/eAgendaMain.

Intelligence and Information Law

The Office of Intelligence and Information Law provides legal counsel to the Coast Guard Intelligence program and to the Command, Control, Communications, Computer, and Information Technology program. The Office provides legal support and expertise across the broad range of information law subjects, including Freedom of Information Act, Privacy Act, Records Management, Congressional requests for information, and information sharing with foreign governments, other agencies, state, federal, local, and tribal governments, and academic institutions. Attorneys are embedded in the Coast Guard Investigative Service, the CG Counterintelligence Service, the CG Cryptologic Group, the Intelligence Coordination Center, and the Maritime Intelligence Fusion Center (MIFC) Pacific. The Atlantic Area legal office also has an attorney providing intelligence oversight for the MIFC, Atlantic.

**Information Law.** This practice area involves legal advice and guidance on issues pertaining to the proper disclosure of information, including sensitive but unclassified (SBU) information, to the public, Congress, and other agencies. Proper disclosure involves detailed review and analysis to legally justify any denial of requests made by the public under the Freedom of Information and Privacy Acts. The practice directs and facilitates administrative compliance with disclosure law whenever the Coast Guard makes sensitive government investigatory records available to outside entities. Privacy and civil rights issues are often analyzed within this practice area, especially in developing policy on government collection and access to sensitive personally identifiable information via new technologies, including the handling of privacy incidents, and the analysis of useful mitigation strategies in light of potential and actual breaches whether via unauthorized access or cyber threat. Information Law also serves as intermediate intellectual property legal advisor, in consultation with the DHS Office of General Counsel attorneys, in the areas of copyright, trademark, branding, and licensing. The practice also provides review and analysis of Memoranda of Understanding/Agreement between the Coast Guard and other entities, both public and private, whenever such memoranda, in whole or in part, include direction for SBU information sharing, disclosure, handling and protection weather in bulk as data transfers or under other arrangements. Some of this information is being used to support medical research to ultimately improve care for our members and veterans.
Intelligence and Information Law

CG-LII attorneys directly participate in the U.S. Delegation to the International Maritime Safety Organization Advisory Committee meetings, frequently traveling overseas and representing the United States in ongoing negotiations regarding spectrum management and allocation, and the potential addition of approved maritime satellite telephones. The office provided legal counsel for the development of international information sharing initiatives.

CG-LII continues to assist our client develop a comprehensive records management system, both with regards to an automated email retention and destruction system, as well as an overarching system that will better facilitate searches under the Freedom of Information Act, as well as retention of documents in support of litigation holds.

Intelligence Law. As a member of the Intelligence Community (IC) since December 2001, Coast Guard Intelligence is required to comply with Executive Branch and statutory oversight requirements, including mandatory reporting to Congress. The Coast Guard Intelligence Enterprise (CG-2) is divided into two elements. The Law Enforcement Intelligence Element plans, directs, collects, reports, processes, exploits, analyzes, produces, and disseminates information pursuant to Coast Guard law enforcement and authorities enabling mission performance. The National Intelligence Element (NIE) conducts intelligence activities as an IC member. NIE authority is described in Section 1.7(h) of Executive Order 12333. The Coast Guard Judge Advocate General manages an Intelligence Oversight Program to ensure the NIE conducts intelligence activities in compliance with the law. As part of this program, the Judge Advocate General tasks Coast Guard attorneys to conduct a formal inspection of the Coast Guard NIE every two years. Our Judge Advocates provide direct legal support to intelligence activity by working closely with officers and agents to protect the Coast Guard and the United States from foreign based threats.

CG-LII continues to be an active participant in ensuring Coast Guard implementation of Presidential Policy Directive 28 meets the President’s goals and is consistent with Intelligence Community practice and standards. Attorneys are working closely with the Office of the Director of National Intelligence Office of General Counsel and the Department of Justice National Security Branch to evaluate and update Coast Guard intelligence activities procedures. This process is nearing completion within the Coast Guard, and we anticipate routing our revised procedures for Attorney General Review within the next few months.

CG-LII continues to work in conjunction with attorneys from other CG offices, specifically the Pacific Area legal office (PACAREA) and the Eleventh District legal office in Alameda, California, to create and implement the Digital Evidence Search at Sea (DESS) processes and business rules. This has been an interagency effort, as we ensure evidence collected at sea is shared with the appropriate law enforcement and intelligence community partners to the maximum extent possible, while preserving prosecution capabilities.
**Intelligence and Information Law**

The judge advocate embedded with Coast Guard Counterintelligence Service provides support to national security investigations and counterintelligence operational planning for all CI agents across the Coast Guard. This support includes advising at both the field and the programmatic level, and includes the review of existing policies and the development of new policies to adjust to evolving mission sets such as cyber CI defense and operations. The judge advocate also advises the Insider Threat Working Group and is a member of the National Insider Threat Task Force (NITTF) legal panel. In March 2016, the Coast Guard was the first federal agency to be recognized by the NITTF for achieving Full Operational Capacity, nine months ahead of the executive deadline. In addition to Intelligence Oversight Official responsibilities, the judge advocate regularly conducts training at the Joint Counterintelligence Training Academy on such topics as counterintelligence legal authorities, national security crimes, and courtroom procedures and testimony.

**Cyber.** CG-LII supports the Coast Guard Cyber Command that was commissioned in July of 2013. CG Cyber Command leads cybersecurity responsibilities and responds to U.S. Cyber Command direction to ensure synchronized actions in cyber space are effective to protect and defend Coast Guard cyberspace activities. The Coast Guard Commandant’s Cyber Strategy, issued in June 2015, continues to guide internal organization change that will improve cybersecurity, enable cyberspace operations, and support cybersecurity for maritime critical infrastructure. Our attorneys are engaged with implementing this strategy and directly advising several leadership initiatives driving internal change. Our attorneys have participated in the group writing a new Cyber instruction, which is in routing. These attorneys are also increasing awareness and understanding of cybercrime, insider threats manifested in cyberspace, international legal implications for proposals, domestic law impacts on proposals as well as Congressional reporting and compliance requirements related to cyberspace.

CG-LII continues to support CG Cyber Command’s efforts to build response capabilities, by examining how use of traditional CG authorities can be used in this new domain to protect or respond to threats to national maritime critical infrastructure. Our office is developing and implementing a “cyber literacy” training program under the direction of the Judge Advocate General to increase the baseline proficiency of most Coast Guard attorneys with regards to cyber law.

**Coast Guard Investigative Service.** The judge advocate embedded with CGIS has assisted with critical policy development and investigative service initiatives. Of note, the judge advocate has worked closely on the confidential informant program policy development, which was approved and distributed to the field agents, and consistent with Attorney General Guidelines. The CGIS judge advocate is responsible for providing field guidance in relation to cases involving Special Victim’s Counsel (SVC), drafted procedures on this topic, and coordinated SVC training in conjunction with the SVC Program Manager. The judge advocate also helped to develop seminal procedures encouraging special agent assistance on a broader range of law enforcement issues affecting Coast Guard operations.

The judge advocate has worked diligently to build processes and a common understanding among the judge advocate corps regarding the applicability of Brady-Giglio requirements in instances of agent conduct currently under investigation, or conduct investigated and found to be unsubstantiated. We have involved DOJ in this ongoing discussion regarding the limits of disclosure of conduct that is not potentially impeachment material. Counsel is also assisting the Investigative Service with updating their internal affairs investigations policy.
Member Advocacy and Legal Assistance

The Judge Advocate General is responsible for providing various legal services directly to Coast Guard members and eligible beneficiaries. These services include providing: advice and representation to victims of sexual assaults perpetrated by members of the Coast Guard; advice and representation to members facing separation from the Coast Guard due to physical disabilities; advice and representation to members facing punishment under the Uniform Code of Military Justice or adverse administrative proceedings generated by the Coast Guard; and legal assistance to members and eligible dependents relating to personal civil matters. CG-LMA is divided into three distinct entities: the Member Advocacy Division, the Defense Services Division and Legal Assistance.

Member Advocacy. The Member Advocacy Division is responsible for the Special Victims’ Counsel program and provides representation to Coast Guard members facing separation through the Physical Disability Evaluation System.

Special Victims’ Counsel (SVC). The SVC Program’s structure, personnel, and responsibilities continue to expand and adjust to changes in the law. The office currently consists of a Program Manager, a Senior SVC on both the East and West Coast, and four full-time SVCs. The total number of full-time SVCs is increasing to eight this fall. SVCs have assisted over 436 victims of sexual misconduct in matters ranging from protective orders, weight abeyances, personnel transfers, representation at law enforcement interviews, motions practice, and appearing on their client’s behalf at courts-martial and in subsequent military justice proceedings.

During FY 2016, the Coast Guard Special Victims’ Counsel Program served 255 victims of sexual assault. Of these 255 victims, 98 were new clients/cases that were opened in FY 2016. Of those 98 victims, 68 were service members. The remaining 30 victims were a mix of dependents, CG civilian employees, and other civilians.

This year, Coast Guard SVCs began representing clients at the Appellate level. Significantly, one such representation resulted in an SVC filing a writ of mandamus with the Coast Guard Court of Criminal Appeals (CGCCA) challenging the trial judge’s ruling that certain portions of a victim’s mental health record were subject to discovery. The CGCCA agreed with the SVC’s argument and, in its ruling, defined which portions of a survivor’s mental health records are privileged under Military Rule of Evidence 513. This ruling was appealed to the Court of Appeals for the Armed Forces (CAAF) and, after briefing and argument, CAAF determined they did not have jurisdiction to hear the case.
Member Advocacy and Legal Assistance

**Physical Disability Evaluation System (PDES).** PDES attorneys represented 391 Coast Guard members facing medical separation from the service since the last ABA Report. As a result of their advocacy, PDES attorneys ensured that our most vulnerable shipmates, the seriously ill, injured or wounded, received the appropriate disability benefits required by law. Their efforts resulted in disability benefit increases of tens of millions during this period, not including the value of lifetime Tricare coverage. Unlike DoD members, Coast Guard members do not have VA raters integrated into the disability system. PDES counsel representing individual clients through the process, including formal administrative boards and appeals, provide invaluable legal expertise to non-lawyer run Physical Evaluation Boards evaluating Coast Guardsmen’s disability ratings to help ensure that the Coast Guard complies with applicable federal statutes and Veteran Affairs regulations.

This year, for the first time, the Office of PDES Counsel officially began to offer legal guidance and support during the initial (MEB) phase of PDES. By proactively engaging service members early in the process, LMA attorneys are able to spot and correct legal issues in days or weeks (as opposed to months later on, through time-consuming reconsiderations, and/or formal hearings). The Office also continued to engage with our DoD and VA counterparts at the programmatic and practitioner level to leverage DoD and VA resources when available and maintain uniformity in disability ratings across the Uniformed Services. This included sending counsel to Army and Navy Disability Evaluation System training and VA specific training on how to read and interpret the VA Schedule for Rating Disabilities.

**Defense Services.** The Defense Services Division is responsible for providing defense services across the Coast Guard to members facing courts-martial and other administrative processes. This division oversees the Coast Guard and Navy Memorandum of Understanding on Mutual Support in Military Justice Matters. Currently, the Coast Guard has seven judge advocates embedded in all Navy Defense Service Offices. Through the cross-service agreement, the Coast Guard was able to ensure over 101 Coast Guard members received defense services before courts-martial and at administrative hearings. By the end of 2018, the number of Coast Guard judge advocates embedded in the Navy Defense Service Offices is expected to increase to nine.

Additionally, the Defense Services Division currently has embedded one Coast Guard judge advocate to serve as an appellate defense attorney with the Navy-Marine Corps Appellate Review Activity at the Washington Navy Yard. By the end of 2017, the number of appellate defense attorneys will increase to two. In the last year, this Coast Guard appellate defense counsel represented 27 Coast Guard members before the Coast Guard Court of Criminal Appeals and the Court of Appeals for the Armed Forces (CAAF). Ten petitions for review were filed at CAAF. Of these cases, five petitions were granted and two were argued before CAAF during the current 2016-2017 term. Two additional cases from the previous year were also argued. The remaining three cases will be heard during CAAF’s 2017-2018 term.

**Legal Assistance.** In the past year, fourteen civilian and active duty legal assistance attorneys provided counsel to over 6400 clients, helping them with estate planning, family law, consumer law and numerous other issues. Although these attorneys routinely travel to various bases to improve client access to services, the Coast Guard’s need to station members in small numbers throughout the country challenges our ability to effectively reach them. On the active duty side, the Legal Assistance Division increased support and training of our newest attorneys to ensure they are able to meet the requirement of assisting at least two clients during their first tour.

Attorneys from the Fifth District legal office in Portsmouth, Virginia, expanded their geographic presence and provided legal assistance to multiple geographically distant units throughout their area of responsibility, to include establishing bi-monthly legal assistance visits to one of the largest concentration of Coast Guard aviation members at Base/Air Station Elizabeth City, NC.
Member Advocacy and Legal Assistance

District Seven Legal Assistance Attorneys in Miami, Florida, with the assistance of Legal Service Teams from the Coast Guard Legal Service Command in Norfolk, provided claim and legal support for over 2,500 Coast Guard members and their families who were evacuated from counties in Northern Florida, Georgia, and South Carolina because of Hurricane Matthew. Following the devastating flooding in Baton Rouge, Louisiana in 2016, Legal Assistance attorneys from the Eighth District in New Orleans were able to provide immediate legal relief to impacted Coastguardsmen and their families.

The Thirteenth (Seattle), Fourteenth (Honolulu), and Seventeenth (Juneau) District legal assistance attorneys plan and execute a circuit of unit visits to include the geographically remote parts of their respective areas of responsibility in an effort to provide legal assistance services.

Additional efforts made to expand legal assistance client outreach included the use of networks of Reserve and Auxiliary attorneys to enlarge our geographic scope and routinely communicating with civilian attorneys willing to provide pro bono service to our members, particularly those provided by the ABA Military Pro Bono Project. The firm Hunton & Williams was recognized this year with the USCG Meritorious Public Service Award for its outstanding pro bono contributions by the First District Legal Office. Additionally, Mrs. Kathy Root, an attorney who regularly provides pro bono family law services to members in Oregon was presented with a Coast Guard Public Service Commendation.

Finally, the Legal Assistance governing policy document was updated and published this year.
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 three branches: the Response Law Division, which addresses issues related to law enforcement, living marine resources, search and rescue and defense operations; the Prevention Law Division, which addresses issues concerning vessel safety and security; and the Environmental Law Division, which addresses environmental crimes, environmental compliance, 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. At IMO’s Legal Committee, the U.S. delegation achieved key U.S. objectives regarding fair treatment of seafarers, piracy, and liability and compensation for damage from trans-boundary oil pollution from offshore exploration. The Chief of the Office of Maritime and International Law serves as the Head of the U.S. delegation to the Legal Committee.

**Arctic Developments.** Coast Guard attorneys have been actively engaged in a number of issues involved with expansion of commercial maritime transportation along the Arctic border. Coast Guard attorneys advise Coast Guard leadership, as part of the United States delegation to the Arctic Council, and on Law of the Sea matters concerning emerging shipping areas. Coast Guard attorneys closely worked with State Department counterparts on United States initiatives for the U.S. Chairmanship of the Arctic Council from 2015 to 2017. A Coast Guard attorney participated on the U.S. delegation to the Arctic Council Task Force on Arctic Marine Cooperation. At IMO, Coast Guard attorneys finalized work on the development of a Polar Code, which addresses design, engineering, operational, and environmental standards for ships operating in polar environments. The IMO Polar Code, encompassing the safety-related and environment related requirements, was fully adopted in 2015 and entered into force on January 1, 2017. The Polar Code applies to new ships constructed on or after January 1, 2017. Ships constructed before that date will be required to meet the relevant requirements of the Polar Code by the first intermediate or renewal survey, whichever occurs first, after January 1, 2018. Coast Guard attorneys provided advice and drafting assistance involving papers on Antarctic Treaty System, including CCAMLR initiatives.
Maritime and International Law

Prevention and Environmental law activities:

**Marine Biodiversity.** Coast Guard attorneys participated with interagency counterparts to develop the United States’ position on biodiversity beyond national jurisdiction (BBNJ). A 2-year United Nations Preparatory Committee tasked with developing elements of a draft text of an international legally-binding instrument on the conservation and sustainable use of marine biodiversity of areas BBNJ. A fourth and final session was held in July 2017. Coast Guard attorneys will continue to engage with the interagency as this issue is presented to the United Nations General Assembly for further consideration.

**Vessel safety.** Coast Guard attorneys routinely assist with the development and implementation of vessel safety standards. One specific vessel safety issue in 2016-2017 included development of policy related to newly mandated requirements for towing vessel safety management systems and inspections. Historically, towing vessels were subject to fewer regulations and voluntary examinations; however, the promulgation of 46 C.F.R. Subchapter M created a comprehensive safety system to ensure company and vessel compliance, increase vessel standards, and require routine inspections by the Coast Guard or third-party organizations. Also, Coast Guard attorneys worked to ensure newly developed application based vessel sharing agreements complied with passenger vessel inspection and licensing requirements.

**Outer Continental Shelf Issues.** Coast Guard attorneys continue to support regulatory initiatives governing activities conducted on the U.S. outer continental shelf. We continue to assist a Coast Guard rulemaking team updating 33 C.F.R. Subchapter N to adapt the regulations to developments and advances in the offshore industry. Coast Guard attorneys routinely provide legal support to develop innovative solutions to address the safety challenges caused by quickly evolving technology on the OCS. Coast Guard attorneys researched and drafted a comprehensive analysis of Coast Guard OCS authorities, which will greatly assist field offices in addressing OCS Issues. Further, Coast Guard attorneys provided legal assistance in the Easter Gap negotiations delineating the outer edge of the outer continental shelf between the U.S., Mexico, and Cuba in 2016 and 2017.

**Deepwater Ports.** Coast Guard attorneys lead the interagency team of project management specialists, environmental protection specialists, engineers, and legal advisors in the processing of applications to construct and operate deepwater ports, which are offshore energy terminals used to transport oil or natural gas for import into, or export from, the United States. The Coast Guard coordinates the National Environmental Policy Act review between all Federal and State cooperating agencies to ensure the Final Environmental Impact Statement serves as an umbrella document covering all permitting responsibilities of these agencies (e.g., Clean Air Act and Clean Water Act permits, Endangered Species Act consultation, Coastal Zone Management Act compliance, etc.). The Coast Guard is currently processing the first of its kind deepwater port application proposing to export natural gas from the United States to overseas markets. Coast Guard attorneys have been instrumental in completing the environmental impact review of a deepwater port application to construct and operate an offshore natural gas, liquefaction, and export facility in the Gulf of Mexico. This facility is the first of its type in the United States and the second in the world. The Final Environmental Impact Statement was published in November 2016.
Maritime and International Law

Suspension & Revocation (S&R). There are over 200,000 active holders of Merchant Mariner Credentials (MMCs) issued by the Coast Guard. These individuals are professional mariners who are licensed or documented to serve as officers or crew aboard commercial vessels. When the Coast Guard learns that an MMC holder has committed an offense that would warrant suspension or revocation of his or her MMC, an administrative enforcement proceeding conducted under 46 C.F.R. Part 5 and 33 C.F.R. Part 20 may be initiated. Offenses that prompt the Coast Guard to pursue S&R include drug use, security risks, convictions covered by the National Driver Register Act and other criminal convictions, misconduct, negligence, and professional or medical incompetency. During the investigation of an S&R offense, Coast Guard attorneys advise IOs regarding the collection of evidence, parameters for witness interviews, and communication with attorneys representing parties or witnesses. Enforcement is formally initiated when the Coast Guard files a Complaint to the Administrative Law Judge (ALJ) docket and serves it on the mariner. Approximately 500 S&R Complaints are issued each year, and every Complaint is reviewed by a Coast Guard attorney for legal sufficiency before it is filed. If a mariner that is subject to an S&R proceeding requests to have a hearing before an ALJ, a Coast Guard attorney represents the agency throughout the process, including filing motions, conducting discovery, appearing at conferences and hearings, and on appeal. As the administrative case progresses and becomes more procedurally complex, the role of the Coast Guard attorneys expands to include the development of litigation strategy, filing and opposing motions and other submissions, initiating and responding to communications with the ALJ and other attorneys in the process, conducting direct and cross-examination of witnesses at depositions and hearings, and making oral argument at pre-hearing conferences and during hearings.

Two Coast Guard attorneys assigned to the S&R National Center of Expertise (NCOE), located in Martinsburg, WV, represent the agency for the majority of contested cases around the country. In addition to their primary role as Coast Guard counsel, these attorneys provide S&R legal guidance and support to all field Investigating Officers (IOs). The S&R NCOE attorneys also have the lead role for all appellate matters, which includes appeals or responses to appeals, to the Commandant, the National Transportation Safety Board (NTSB), or in some cases, Federal Court. Additionally, the NCOE attorneys serve as guest instructors at S&R School, held at Training Center Yorktown, Yorktown, VA, which provides field IOs with basic training for conducting S&R investigations and participating in hearings. Since 2016, S&R NCOE attorneys have played a central role in generating and presenting instructional content at S&R Road Shows held at Coast Guard units around the country. They have also partnered with the Office of Investigations and Analysis at Coast Guard Headquarters to offer workshops incorporating both S&R and Drug and Alcohol Program Inspection matters. These Road Shows and workshops are continuing education for field IOs, program staff and Coast Guard attorneys, providing updates on the most recent information relating to the S&R decisions and orders by ALJs and appeal decisions by the Commandant and the NTSB and how those decisions impact strategy for future cases.

Cyber Risk in the Maritime Community. Coast Guard attorneys have worked extensively to support the Coast Guard’s effort to develop policy, standards, and regulations for appropriately addressing cyber risk in the maritime community. These efforts have included legal support for the U.S. delegation to the IMO’s Facilitation Committee and one attorney serving on the U.S. delegation to the IMO’s Maritime Safety Committee. Both IMO bodies have adopted guidance documents for the maritime community encourage assessment and mitigation of cyber risks.

Domestically, Coast Guard attorneys are providing regular guidance to ongoing efforts to develop guidance for the regulated maritime industry on reporting cyber incidents that have a maritime nexus.
**Maritime and International Law**

**Vessel Documentation.** Coast Guard attorneys continue to provide guidance in determining the appropriate federal or state documentation required to operate vessels in certain trades and serve as evidence of vessel nationality. Coast Guard attorneys continue to liaise with State officials to correct for the issue of vessels operating in the Mediterranean with invalid State registration. Additionally, Coast Guard attorneys worked closely with the National Oceanic and Atmospheric Administration (NOAA) to address legal issues associated with the fishing industry. Areas of significant work include proper classification of fishing industry vessels chartered by NOAA to conduct scientific research pursuant to the Magnuson-Stevens Act and addressing congressional inquiries concerning the Hawaiian longline fleet's utilization of non-U.S. citizens when targeting highly migratory species. Coast Guard Attorneys continue to work with NOAA to clarify areas of regular cooperation between the two agencies.

**Marine Casualties & Investigations.** Coast Guard Attorneys regularly provide continuing legal support for accident investigations including working closely with counterparts at NTSB on a number of casualties and initiatives. One Coast Guard attorney continues as a permanent legal representative to the Marine Board of Investigation (MBI) for the tragic El Faro casualty. The MBI is the highest level casualty investigation, convened by the Commandant. Other Coast Guard attorneys provide legal advice, preparation, and counsel to all Coast Guard witnesses testifying before the MBI and a Coast Guard attorney serves as the recorder for the MBI. This year Coast Guard attorneys also participated with NTSB joint hearings for investigations on the sinking of the fishing vessel, Alaska Juris, and the fire aboard the cruise ship, Caribbean Fantasy. At the request of the NTSB the Coast Guard is conducting the findings of fact portion of the investigation into the collision between the container ship ACX CRYSTAL and the USS FITZGERALD. Several Coast Guard attorneys are providing legal support to this investigation.

**Environmental Issues.** Coast Guard attorneys advise on the agency’s own compliance with environmental laws as well as the Coast Guard’s administration and enforcement of environmental laws pertaining to the maritime environment. For example, Coast Guard attorneys are heavily involved in the implementation of regulations governing the management of ballast water discharges and the testing of ballast waters management systems to ascertain compliance. These regulations are intended to protect American waters from the introduction and spread of aquatic nuisance species. Efforts include assistance and review of policy guidance to the maritime industry as well as the interaction between U.S. rules and International Maritime Organization’s Ballast Water Management Convention. Also, our attorneys continue to work with the Environmental Protection Agency (EPA) on implementing and enforcing U.S. treaty obligations for international regulations pertaining to the prevention of air pollution from ships under Annex VI to the International Convention to Prevent Pollution from Ships. This effort includes prescribing federal regulations to carry out U.S. treaty obligations as required by law and working with the EPA to issue administrative civil penalties. Finally, Coast Guard attorneys provide legal assistance for domestic oil and hazardous substance planning and response.
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Environmental International Engagements. Coast Guard attorneys also provide legal assistance for international oil and hazardous substance response efforts. The Coast Guard has five bilateral agreements for pollution response with Norway, Mexico, Canada, Russia, and Cuba. The U.S. and Cuba signed the binding, bilateral pollution preparedness and response agreement in January 2016. This agreement with Cuba requires the countries to create a plan for coordinating when responding to oil spills that could impact the other country’s waters. Coast Guard legal also provides support in a number of multilateral pollution preparedness and response agreements.

Environmental Crimes. As a maritime law enforcement agency, the Coast Guard works hand in hand with the Department of Justice (DOJ) for the prosecution of environmental crimes. These cases often involve the falsification of oil record books to conceal the deliberate discharge of oily wastes and hazardous substances into the sea. Referrals normally average 12 to 15 criminal cases per year, a figure that represents one quarter of one-percent of all Coast Guard port state control inspections. Coast Guard attorneys at both the headquarters and district-level provide real-time advice to Coast Guard inspectors and investigators on evidence gathering, vessel detentions, and referring the case to DOJ prosecutors. Attorneys also assist the DOJ in resultant prosecutions to include designations as Special Assistant U.S. Attorneys.

Coast Guard JAG has a robust relationship with the Environmental Crimes Section at DOJ to include a full-time time detailee who both conducts trial work and augments the DOJ’s subject matter expertise for maritime matters. Of note, Coast Guard attorneys were heavily involved in United States v. Princess Cruise Line, Ltd. in which the defendant pled guilty in the Southern District of Florida to seven felony charges and a $40 million fine, the largest-ever criminal penalty involving deliberate vessel pollution. One Coast attorney distinguished himself as a Special Assistant U.S. Attorney.

Preemption. The U.S. Constitution strikes a deliberate balance among competing national and state interests, as considered by our Founding Fathers when creating our federalist system. The Federal Government has paramount authority over regulating interstate and international commerce, including shipping. While there are some inherently local issues that may be better for local governments to regulate, Federal regulations provide necessary uniformity and certainty in maritime commerce.

The Coast Guard attorneys in the Office of Maritime and International Law at Headquarters are responsible managing preemption issues at the national level and coordinating with interagency partners, especially the Department of Justice. These attorneys also provide support to field Staff Judge Advocates on identifying and preventing potential Federal preemption issues raised by State and local laws and regulations. Often, field attorneys will engage directly with State legislatures and agencies to help them understand potential preemption issues and collaborate on constitutionally acceptable solutions.
Maritime and International Law

Response law activities:

Judge advocates in the Response Law Division (RLD) provide 24x7 support to seven of the Coast Guard’s eleven statutory missions. Additionally, judge advocates at field units also stand rotational duty schedules to provide 24x7 support to Operational Commanders and units throughout their area of responsibility. Duty attorneys provide real time legal advice on Coast Guard authorities, jurisdiction in the complex maritime environment, and develop cases for prosecution. RLD judge advocates serve as Coast Guard representatives to the interagency Maritime Operational Threat Response (MOTR) process and aid in developing a coordinated interagency response to maritime cases. To further support Coast Guard operations, several judge advocates serve as full-time Special Assistant U.S. Attorneys in key areas around the United States. Judge advocates from Areas, Districts, and the Academy also serve as Special Assistant U.S. Attorneys to assist the Department of Justice in a variety of cases with a Coast Guard nexus.

Drug Interdiction. In fiscal year 2016, Coast Guard judge advocates advised on and coordinated interagency actions on more than 190 maritime counterdrug cases. In coordination with the Department of State and Department of Justice, RLD duty attorneys prepare diplomatic correspondence to board vessels under the 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, waivers of jurisdiction to prosecute foreign vessels, and certifications of U.S. jurisdiction under the Maritime Drug Law Enforcement Act. Coast Guard field judge advocates work closely with U.S. Attorneys Offices to support these prosecutions, including researching and assisting in responses to defense challenges. These efforts contributed to the referral of more than 370 suspected smugglers to the United States for prosecution and the removal of over 200 metric tons of cocaine and over 50,000 pounds of marijuana from suspect vessels in 2016.

Alien Migrant Interdiction. The Coast Guard interdicted more than 6,300 migrants at sea in fiscal year 2016. Coast Guard judge advocates advised operational commanders on the authority and jurisdiction for these operations and aided in interagency coordination to repatriate migrants to their country of origin or departure. Judge advocates from the Seventh District in Miami also assisted the Department of Justice in litigation from the interdiction of 24 Cuban migrants on American Shoal Light in Florida, which resulted in the Court affirming the Coast Guard’s decision to repatriate the migrants. RLD judge advocates also assisted in the development of interagency agreements to prepare for and respond to mass migration events and advised on policy developments for processing migrant cases. RLD judge advocates provided support to the U.N. Office of Drugs and Crime on the Mediterranean migration crisis by attending a regional workshop in Malta and providing input for migrant smuggling practice guides.
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Defense Readiness. RLD judge advocates advise headquarters staffs on missions which support the National Military Strategy and DoD operations, including the Coast Guard’s unique status as both an armed force and a law enforcement agency. RLD, LANTAREA, and PACAREA judge advocates also advise on Coast Guard support to DOD Theater Security Cooperation initiatives. In 2016, RLD and LANTAREA judge advocates assisted AFRICOM’s Africa Maritime Law Enforcement Partnership (AMLEP) program by reviewing status of force agreements and international agreements to authorize joint law enforcement operations with partner nations. An RLD judge advocate is scheduled to travel to Cote d’Ivoire to participate in a legal risk assessment for upcoming AMLEP engagements. RLD judge advocates also negotiated a memorandum of understanding with the Royal Navy to embark Coast Guard law enforcement detachments on United Kingdom vessels to support future AMLEP operations.

Additionally, judge advocates from the Fifth District in Portsmouth, Virginia, provide advice on Rules of Engagement and their interplay with our Use of Force policies for the National Capital Region Air Defense Forces.

Living Marine Resources: Coast Guard judge advocates provide legal advice and interagency coordination for enforcement of international fisheries issues, such as incursions of foreign fishing vessels into U.S. waters, conducting of Western and Central Pacific Fisheries Commission inspections, and enforcement of the United Nations global moratorium on High Seas Drift Net Fishing to advance national goals for the conservation, management, and recovery of living marine resources, marine protected species, and conservation areas. Judge advocates also advise on Coast Guard policies to enforce the Magnuson-Stevens Fisheries Conservation and Management Act and Lacey Act, international ocean governance structures, such as United States membership within international Regional Fishery Management Organizations, and national policy. In 2016, judge advocates worked with the Department of State to gain Circular 175 authority to negotiate international agreements for cooperative maritime enforcement of illegal, unreported, and unregulated fishing.
Maritime and International Law

Other Law Enforcement. RLD judge advocates assist the Coast Guard’s Office of Maritime Law Enforcement in developing law enforcement policy and guidance on the Coast Guard’s law enforcement missions. In 2016, RLD judge advocates provided advice on a revision to the Coast Guard’s comprehensive Maritime Law Enforcement Manual and supported new initiatives developing use of force capabilities, biometrics identification operations, and the search and seizure of electronic devices. Judge advocates also advised on the development and use of unmanned aircraft systems as a patrol capability for Coast Guard missions. Field legal offices are often involved in the planning and execution of National Special Security Events.

Ports, Waterways, and Coastal Security. RLD judge advocates advise on program and policy development, Coast Guard authorities, and draft and review proposed legislation and regulations to support the Coast Guard’s homeland security initiative. RLD judge advocates have been working on the legal authority and policies to counter the threat of unmanned aircraft systems that interfere with the safety and security of vessels. RLD duty attorneys also aid in coordinating interagency response efforts to suspected security threats in the maritime environment.

Search and Rescue. RLD judge advocates advise headquarters staff on the policy development and operational execution of the Coast Guard’s domestic and international search and rescue responsibilities. RLD judge advocates assist in the drafting and negotiation of international search and rescue agreements under the 1979 International Convention on Maritime Search and Rescue. In 2016, a RLD judge advocate traveled to Indonesia to negotiate a new SAR agreement. Judge advocates also advise on litigation stemming from Coast Guard response operations and coordinate with the Department of Justice to prosecute persons making false distress calls to the Coast Guard.
All Coast Guard Judge Advocates - like all Coast Guard officers - are line officers. As such, a number of our judge advocates have opportunities outside of legal to serve in other Coast Guard capacities.

Those other opportunities include serving as an operations afloat officer, a Prevention or Response officer, in intelligence, as a logistics officer or in personnel support, in finance and budgeting, and in a range of special assignments.

**CDR Michael Geselle**, above, recently completed a successful Command Afloat tour and assumed the role of Staff Judge Advocate at Joint Interagency Task Force South.

**CGJAG member CDR Stephen Adler** is currently the Commanding Officer of Coast Guard Cutter FORWARD. He and his crew have taken a number of Direct Commission Lawyers underway to familiarize them with Coast Guard operations.

**CGJAG members** serve as Marine Inspectors and Investigations Officers in Sector Honolulu and Sector New Orleans.

**CGJAG members** are in Command Cadre positions and serve as Prevention and Logistics Department Heads at multiple Sectors.
"A few armed vessels, judiciously stationed at the entrances of our ports, might at small expense be made useful sentinels of the laws."

Alexander Hamilton
Federalist Paper #12