

U.S. Department  
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**United States  
Coast Guard**



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DEPARTMENT OF TRANSPORTATION

U.S. COAST GUARD

STATEMENT OF CAPTAIN MICHAEL J. SCHIRO

ON THE VESSEL MODIFICATION ACT OF 1989

UNITED STATES HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON MERCHANT MARINE

COMMITTEE ON MERCHANT MARINE AND FISHERIES

3 AUGUST 1989

CAPTAIN  
MICHAEL SCHIRO  
U. S. COAST GUARD

Captain Michael Schiro is the Deputy Chief of the Coast Guard's Office of Marine Safety, Security and Environmental Protection.

Captain Schiro, a native of Florida, is a graduate of the U. S. Coast Guard Academy, New London, Connecticut, where he earned his Bachelor of Science Degree in 1962.

He served in deck assignments on board the Coast Guard Cutters YAKUTAT and OWASCO before assuming command of Loran Station Matratin, Libya. After a three year tour of duty as a Marine Inspector at Marine Inspection Office at Port Arthur, Texas, he was assigned as Executive Officer on the Coast Guard Cutter LAMAR homeported in Monterey, California. Captain Schiro's other assignments in the Marine Safety field included MIO/COTP Tampa, Florida; MIO/MSO Portland OR; XO, MSO Charleston, SC; Chief of the Marine Environmental Projection Branch, Fifth Coast Guard District, Portsmouth, VA; and Commanding Officer, MSO Charleston, SC. After a three year assignment as Chief of the Planning Staff in the Office of Marine Safety, Security and Environmental Protection he assumed his present position in July of 1988.

Captain Schiro's decorations include two Coast Guard Commendation Medals, The Achievement Medal, The Meritorious Unit Citation, The Commandant's Letter of Commendation, and the Unit Commendation.

He is married to the former Marlana Aldrich of Tampa, Florida. They have two children: Jeffrey and Melanie.

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GOOD MORNING, MR. CHAIRMAN.

I AM CAPTAIN MICHAEL J. SCHIRO, DEPUTY CHIEF OF THE OFFICE OF MARINE SAFETY, SECURITY AND ENVIRONMENTAL PROTECTION. ACCOMPANYING ME IS LIEUTENANT COMMANDER ROBERT BRUCE, STAFF ATTORNEY OF OUR VESSEL DOCUMENTATION BRANCH.

I AM PLEASED TO BE ABLE TO COMMENT ON YOUR DRAFT LEGISLATIVE PROPOSAL, THE VESSEL MODIFICATION ACT OF 1989. THIS PROPOSAL WOULD AMEND THE SECOND PROVISOR OF SECTION 27 OF THE MERCHANT MARINE ACT, 1920 (46 U.S.C. APP. 883), FURTHER LIMITING THE FOREIGN WORK THAT CAN BE DONE ON A COASTWISE QUALIFIED VESSEL WITHOUT LOSS OF COASTWISE PRIVILEGES.

THE STATUTE TO BE AMENDED IS OFTEN REFERRED TO AS THE "JONES ACT" AND THE SECOND PROVISOR CALLS FOR A LOSS OF COASTWISE PRIVILEGES IF A COASTWISE QUALIFIED VESSEL IS REBUILT, UNLESS THE REBUILDING IS DONE ENTIRELY IN THE UNITED STATES. THE COAST GUARD MAKES REBUILDING DETERMINATIONS IN CONNECTION WITH THE ISSUANCE OF CERTIFICATES OF DOCUMENTATION AND ENDORSEMENTS FOR THE COASTWISE AND FISHERIES TRADES.

THE COAST GUARD MAKES REBUILDING DETERMINATIONS IN CONNECTION WITH THE ISSUANCE OF FISHERIES ENDORSEMENTS BECAUSE IN 1988 THE COMMERCIAL FISHING INDUSTRY ANTI-REFLAGGING ACT EXTENDED THE LIMITATION ON FOREIGN REBUILDING TO VESSELS QUALIFIED FOR THE FISHERIES TRADE. IT AMENDED 46 U.S.C. 12108 SO THAT TO QUALIFY FOR A FISHERIES ENDORSEMENT, A VESSEL THAT IS REBUILT MUST BE REBUILT IN THE UNITED STATES. THE ANTI-REFLAGGING ACT ALSO AMENDED 46 U.S.C. 12101 TO PROVIDE THAT REBUILDING FOR PURPOSES OF 46 U.S.C. CHAPTER 121 HAS THE SAME MEANING AS IN THE SECOND PROVISIO OF THE JONES ACT. AS A RESULT, A CHANGE TO THE SECOND PROVISIO OF THE JONES ACT IS LIKELY TO AFFECT VESSELS THAT ARE QUALIFIED FOR THE FISHERIES TRADE AS MUCH AS IT DOES COASTWISE QUALIFIED VESSELS.

THE TERM "REBUILT" HAS NOT BEEN FURTHER DEFINED BY STATUTE, EXCEPT FOR AN AMENDMENT IN 1960 WHICH MADE IT CLEAR THAT REBUILDING INCLUDES CONSTRUCTION OF MAJOR COMPONENTS OF THE HULL OR SUPERSTRUCTURE. THE COAST GUARD IMPLEMENTING REGULATION, 46 C.F.R. 67.27-3, DEFINES A VESSEL AS REBUILT "WHEN ANY CONSIDER- ABLE PART OF ITS HULL OR SUPERSTRUCTURE IS BUILT UPON OR IS SUBSTANTIALLY ALTERED." THIS DEFINITION REFLECTS THE LONG- STANDING AGENCY INTERPRETATION OF THE REBUILD PROVISION. UNDER THIS INTERPRETATION FOREIGN WORK CAN BE PERFORMED ON A VESSEL WITHOUT A LOSS OF COASTWISE AND FISHERIES PRIVILEGES AS LONG AS THE WORK DOES NOT INVOLVE BUILDING UPON OR ALTERING THE HULL OR SUPERSTRUCTURE. IF THE WORK DOES INVOLVE BUILDING UPON OR ALTERING THE HULL OR SUPERSTRUCTURE, THERE WILL BE A LOSS OF PRIVILEGES ONLY IF SUCH

WORK IS CONSIDERABLE OR SUBSTANTIAL COMPARED WITH THE HULL AND SUPERSTRUCTURE OF THE VESSEL AS A WHOLE.

THE VESSEL MODIFICATION ACT OF 1989 WOULD ELIMINATE THE TERM "REBUILT" AND THE YEARS OF ADMINISTRATIVE PRACTICE THAT GO WITH IT. THE REBUILDING STANDARD WOULD BE REPLACED WITH A STANDARD EXPRESSED IN TERMS OF VESSEL MODIFICATIONS OR REPAIRS, WHICH WOULD PLACE A GREATER LIMITATION ON FOREIGN WORK.

THIS WOULD CAST SERIOUS DOUBT ON THE MEANING OF REBUILDING AS THE TERM IS USED IN 46 U.S.C. CHAPTER 121, SINCE IT IS DEFINED BY REFERENCE TO THE SECOND PROVISOR OF THE JONES ACT. ONCE THAT TERM IS ELIMINATED FROM THE SECOND PROVISOR, CONTINUED REFERENCE TO IT WOULD CREATE CONFUSION ABOUT THE INTENDED LIMITATION ON FOREIGN WORK ON FISHING VESSELS. IF THE TERM "REBUILT" IS REPLACED IN THE SECOND PROVISOR, IT SHOULD PROBABLY ALSO BE REPLACED IN 46 U.S.C. CHAPTER 121.

AFTER YEARS OF APPLYING THE REBUILD STANDARD, THE COAST GUARD HAS DEVELOPED HELPFUL PRECEDENTS AND ADMINISTRATIVE PRACTICES FOR MAKING REBUILD DETERMINATIONS. THESE PRECEDENTS AND PRACTICES WILL NO LONGER BE USEFUL IF THE REBUILDING STANDARD IS REPLACED. THE COAST GUARD WILL LIKELY NEED A PERIOD OF FAMILIARIZATION WITH THE NEW STANDARDS AND SOME EXPERIENCE IN APPLYING THEM BEFORE IT CAN FULLY APPRECIATE ALL OF THE RAMIFICATIONS.

WE UNDERSTAND THAT THE PROPOSED STANDARDS ARE INTENDED TO SIGNIFICANTLY CURTAIL THE FOREIGN WORK THAT CAN BE PERFORMED ON A VESSEL WITHOUT A LOSS OF COASTWISE AND FISHERIES PRIVILEGES. IT APPEARS TO US THAT THE PROPOSED LANGUAGE SHOULD HAVE THIS INTENDED EFFECT, BUT THE EXTENT OF THE LIMITATION WILL ONLY

BECOME CLEAR AS THE NEW STANDARD IS APPLIED. VESSEL OWNERS HAVE TESTED AND PROBED THE LIMITS OF THE REBUILD STANDARD, AND THEY ARE JUST AS LIKELY TO TEST THE LIMITS OF THE MODIFICATION STANDARD AND TO SEE HOW FAR THEY CAN GO IN CHARACTERIZING REPAIRS AS EMERGENCY REPAIRS NECESSARY FOR VESSEL SAFETY.

UNDER THE PROPOSED STANDARDS, DETERMINING IF FOREIGN WORK ON A VESSEL REQUIRES LOSS OF COASTWISE AND FISHERIES PRIVILEGES WILL INVOLVE ISSUES THAT ARE NOT SIGNIFICANTLY DIFFERENT IN KIND FROM THOSE WE ARE REQUIRED TO ADDRESS UNDER THE REBUILDING STANDARD. WE WILL STILL HAVE TO MAKE TECHNICAL JUDGMENTS ABOUT FOREIGN WORK IF IT IS ARGUABLY AN EMERGENCY REPAIR OR IS ARGUABLY NOT A MODIFICATION. SUCH ISSUES WOULD NOT BE SIGNIFICANTLY MORE OR LESS DIFFICULT FOR THE COAST GUARD TO RESOLVE THAN THOSE WE ARE PRESENTLY ADDRESSING.

MR. CHAIRMAN, THIS CONCLUDES MY STATEMENT. I WILL BE GLAD TO ANSWER ANY QUESTIONS THAT YOU OR THE OTHER MEMBERS OF THE SUBCOMMITTEE MAY HAVE.