



REPORT OF THE

Judge Advocate General of the United States Coast Guard to the American Bar Association

2020 ANNUAL MEETING: VIRTUAL





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 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 and civilian counsel are involved in every facet of Coast Guard operations and mission support.

The Coast Guard is the principal Federal agency responsible for maritime safety, security, and environmental stewardship in U.S. ports and waterways. 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. The Coast Guard also exercises broad authorities on the high seas.

The Coast Guard is one of the five Armed Services of the United States, but is 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.

Legal Policy & Program Development

The Program continues its efforts to expand recruiting efforts of direct commission lawyers (DCLs). We rely on the DCL program to provide a majority of the Service's judge advocates; DCLs currently comprise more than 50% of our judge advocates. DCLs are also the primary source of diversity within CGJAG. Over 70% of underrepresented minority members and 65% of female judge advocates are DCLs. Additionally, 84% of underrepresented minority females judge advocates are DCLs. Attorneys with varied backgrounds, interests, thoughts, and experiences improve CGJAG's diversity of thought, which in turn increases our ability to best meet Service needs. CGJAG also has a successful and robust internship program that professionally develops its interns in both legal and operational environments; over 70% of its interns apply to the CGJAG program, with many of those individuals entering the service as its newest DCLs.

CGJAG currently has 22 Reservist judge advocates providing contingency support to its legal operations nationwide. To further supplement this Reserve component, the Program successfully implemented the Reserve Direct Commission Lawyer (SELRES DCL) recruiting initiative this past December. Under this initiative, licensed civilian attorneys may apply to join CGJAG as Reservists, where they will be commissioned as CG reserve judge advocates immediately after completing basic training. The first selection panel for the SELRES DCL program is scheduled for November 2020.

CGJAG also has a competitive advanced education program, where active duty members are selected and funded to attend law school. Currently, there are 22 officers in law school and three officers obtaining their L.L.M. AY2021 represents CGJAG's second year of opening the advanced education program to both active duty officers and enlisted members, which will broaden CGJAG's workforce.

Additionally, the Program has also undertaken efforts to match training to specific billets and mature the professional development program for judge advocates, civilian Coast Guard counsel, paralegals, and legal yeomen to ensure effective and efficient delivery of legal services. AY2021 will mark the first year that CGJAG will offer an advanced education program for high performing yeomen to attend and receive their associate's or bachelor's degree in paralegal studies, further strengthening the quality and nature of the legal support CGJAG enlisted personnel provide to its attorneys and the service at-large.

Last, in February 2020, the Judge Advocate General promulgated 10 CGJAG foundational guiding principles that guide the delivery of legal services to the Coast Guard and commanders. The 2020 principles evolved from earlier principles under which we operated for about 10 years. These principles are espoused below:

PRINCIPLES FOR THE DELIVERY OF LEGAL SERVICES

We serve to support Coast Guard missions and people.

1. Provide every leader with a lawyer, ethical advisor, and counselor.
2. Identify issues and provide risk-based options to achieve mission success while flexibly applying and preserving Coast Guard authorities.
3. Drive to desired and desirable outcomes within the letter and spirit of the law; promote the principles of Coast Guard operations.
4. Be active and not passive: deliver services that are on time, right, and precise and that are anticipatory, innovative, and responsive.

We all share responsibility for the delivery of legal services.

5. We are one team; there is no wrong legal office to call.
6. Services are aligned and consistent, and integrated across subject matter and commands.
7. We work together to ensure justice and fairness; we demand in each other candor, collegiality, ethical conduct, and personal accountability.
8. CGJAG leaders communicate directly with one another regardless of rank or position to protect Coast Guard and public interests.
9. CGJAG applies resources without geographic or organizational limitation to support mission execution.
10. Every counsel will have a senior counsel; we seek review of work product from a superior, peer or subordinate counsel when we can; we will act deliberately and decisively when senior counsel is unavailable.

LEGAL SERVICES PROMOTE THE PRINCIPLES OF COAST GUARD OPERATIONS

Clear Objective
Effective Presence
Unity of Effort

On-Scene Initiative
Managed Risk
Flexibility

Restraint



Rear Admiral Melissa Bert

JUDGE ADVOCATE GENERAL AND CHIEF COUNSEL, U.S. COAST GUARD

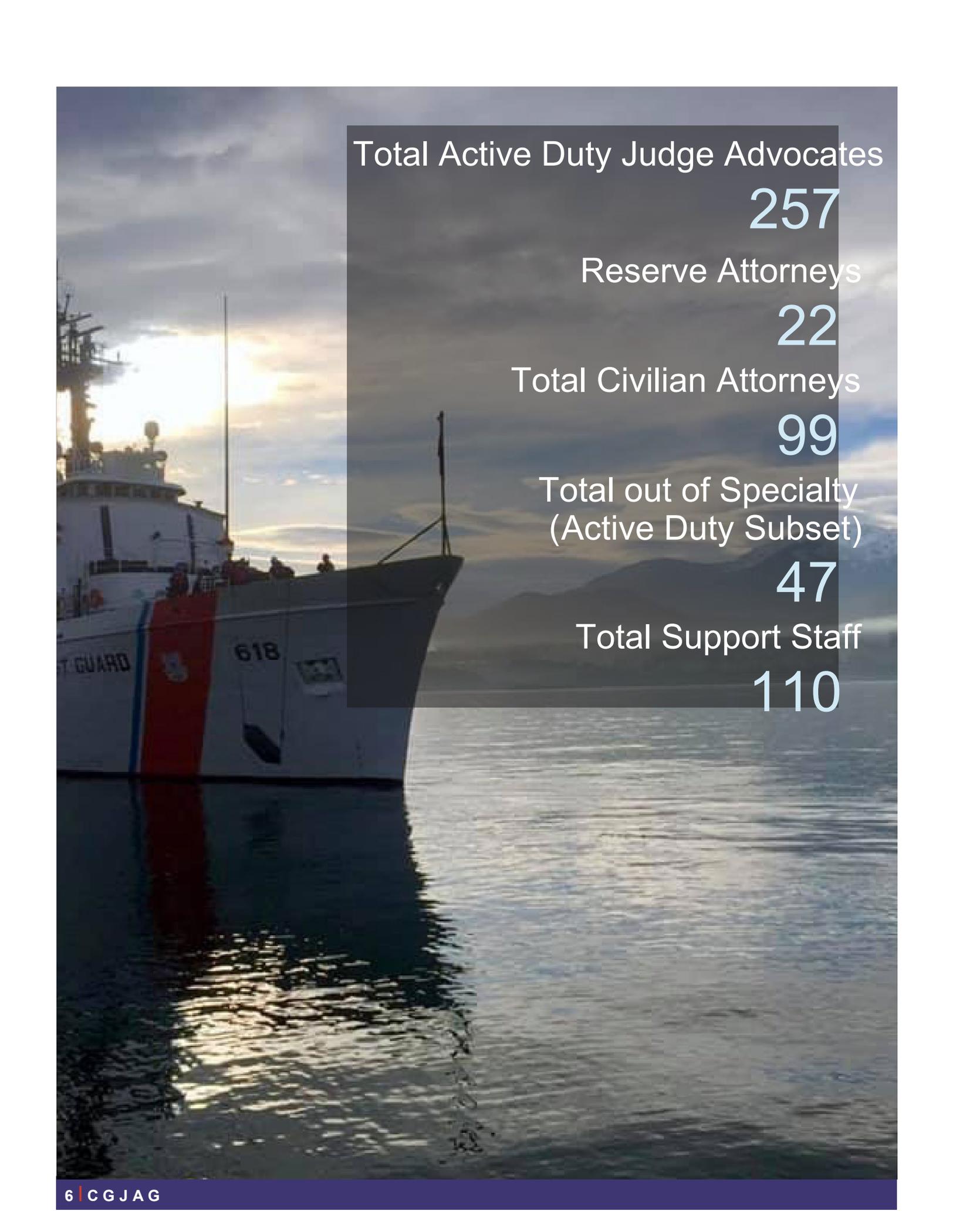
Rear Admiral Melissa Bert assumed duties as the Judge Advocate General and Chief Counsel of the Coast Guard in April 2020. She has the privilege to lead a dedicated group of legal professionals who are responsible for the delivery of all legal services in support of the Coast Guard's missions, its units, and its people.

Her preceding flag assignment was as Director of Governmental and Public Affairs, where she synchronized the service's external engagement with Congress, the media, and strategic partners and stakeholders. Prior to that, she was Deputy Director of Operations for the U.S. Northern Command overseeing homeland defense and defense support for civil authorities for North America, as well as theater security cooperation with Mexico and The Bahamas.

Other rewarding assignments include: Chief of Staff for the Seventh Coast Guard District, Chief of the Coast Guard's Maritime and International Law Office, Deputy Staff Judge Advocate for the Seventh District in Miami, FL, Operations Officer for Coast Guard Sector Los Angeles/Long Beach, and a Military Judge. For her legal expertise she was awarded the Young Military Lawyer of the Year for the Coast Guard by the American Bar Association in 1997 and the Judge Advocates Association Outstanding Career Armed Services Attorney Award in 2006.

RADM Bert began her career serving aboard two cutters, including as Executive Officer of the Cutter Red Birch. She is a graduate of the Coast Guard Academy and George Washington University Law School. She has been a national security fellow at the Harvard Kennedy School and a military fellow with the Council on Foreign Relations (CFR) in New York. She has taught as an adjunct professor at George Washington University and University of Miami Law School.

RADM Bert's honors include the United Way American Values Award, the Joint Superior Service Medal, two Legions of Merit, and three Meritorious Service Medals. She is a life member of the Council on Foreign Relations and a Proctor in Admiralty in the United States Maritime Law Association. She is also the founder of the Women's Leadership Initiative supporting mentoring and professional development for Coast Guard women in uniform and civilians.



Total Active Duty Judge Advocates

257

Reserve Attorneys

22

Total Civilian Attorneys

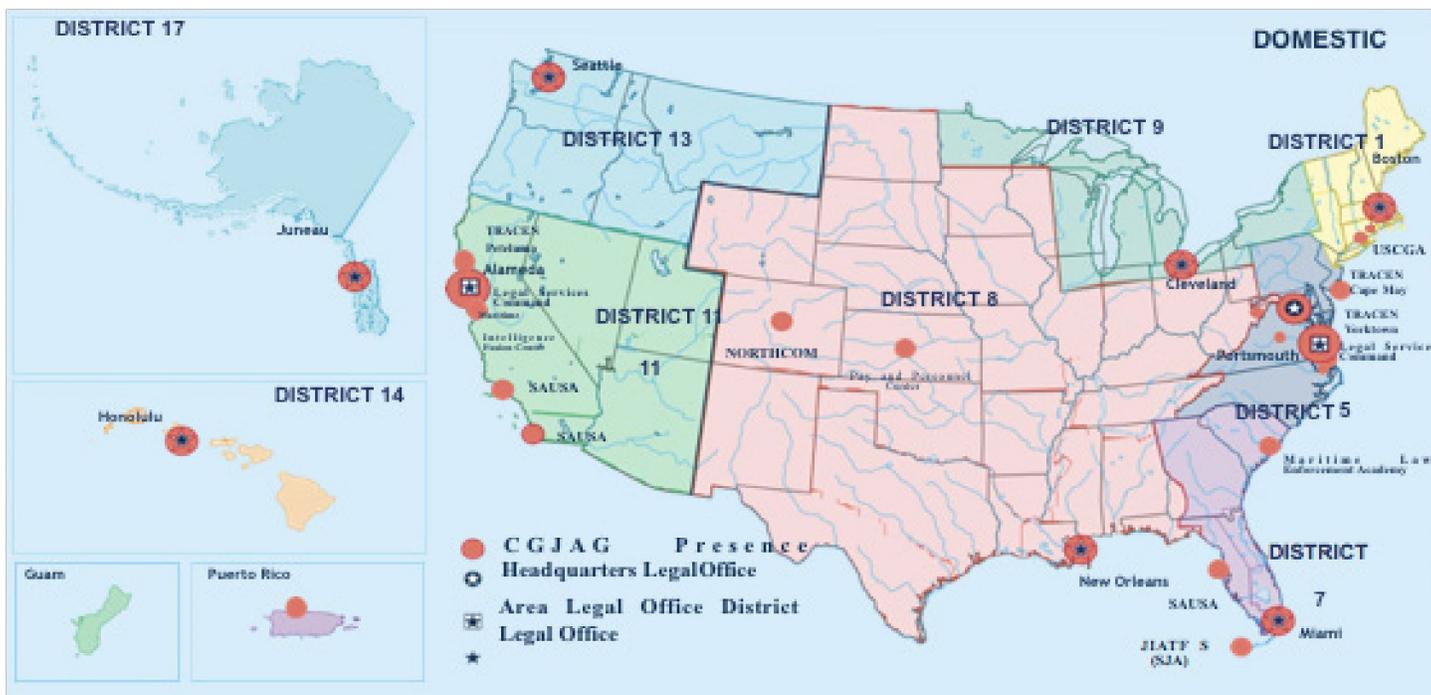
99

Total out of Specialty
(Active Duty Subset)

47

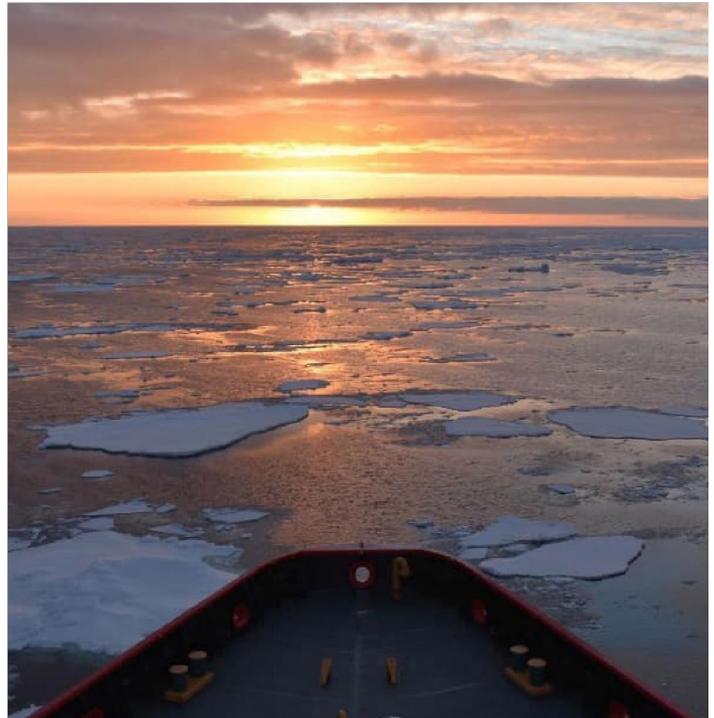
Total Support Staff

110



The Coast Guard has personnel assigned to five DoD Combatant Commands. The Coast Guard has 257 Judge Advocates serving on Active Duty in both legal and non-legal assignments, including a Commanding Officer of a Coast Guard Cutter and a Coast Guard Sector Commander who also serves as Captains of the Port.

Currently six Judge Advocates are Flag Officers: the Judge Advocate General; Atlantic Area Commander; Director for Material Readiness for Deputy Commandant for Mission Support; Deputy Director of Operations for U.S. Northern Command; Director, the Assistant Commandant for Intelligence; and Commander, the Personnel Service Center .



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 redundant or complementary. The result is today's U.S. Coast Guard, 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 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.

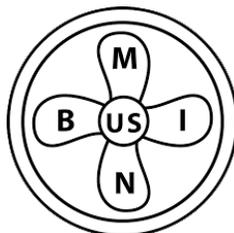


The U.S. Lifesaving Service was established and combined with the Coast Guard in 1915 to form the modern-day Coast Guard: “Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled. That there shall be established in lieu of the existing Revenue-Cutter 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.”



The U.S. Lighthouse Service (or Bureau of Lighthouses) was created in 1910, after it was first established in 1789 as the U.S. Lighthouse Establishment and later reorganized as the Lighthouse Board in 1852. 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 the reorganized in 1936 to become the Bureau of Marine Inspection and Navigation.



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 potential use of 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 (DOJ) attorneys on the feasibility of prosecution, coordinate proper case venue, and liaise with DOJ and Department of State (DOS) officials on cases involving foreign vessels and other sensitive foreign affairs issues. Coast Guard lawyers play a vital role in maintaining global partnerships, and are 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 Customs and Border Protection, Immigration and Customs Enforcement, and Citizenship and Immigration Services, and inter-agency 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 Readiness mission exercises 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 the Department of Defense (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 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.

This past year, Coast Guard judge advocates from Headquarters and Pacific Area (PACAREA) participated in the Department of State's Law of the Sea Bilateral Discussions with the Chinese Coast Guard in La Jolla, California where they championed key U.S. policy objectives, including utilization of the Code for Unplanned Encounters at Sea (CUES) and staunch advocacy for China CG's adoption of the DoD's Rules of Behavior Annex II to improve conduct of maritime operations and reduce operational miscalculations in the South China Sea.

Other Law Enforcement

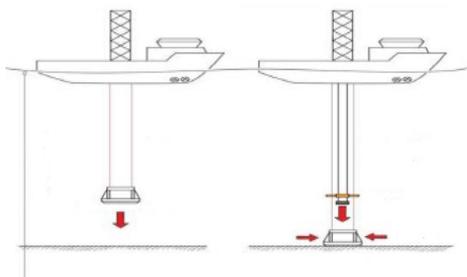
Other Law Enforcement involves the enforcement of marine resource regulations on foreign fishing vessels. This enforcement takes two forms. The first is the deterrence, detection, and interdiction of illegal foreign fishing vessel incursions into the U.S. Exclusive Economic Zone (EEZ), which represent 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 US-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. Activities under PWCS include preparedness planning and exercises, initiatives to enhance the resilience of maritime Critical Infrastructure and Key Resources and the Maritime Transportation System (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 for the maritime ports in the U.S.

Coast Guard lawyers support the PWCS mission at several levels. Lawyers from across the Coast Guard advise commands on protecting the United States MTS, 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.

District Nine judge advocates provided extensive support to Sector Sault Ste. Marie and District prevention on the M/V HIGHLAND EAGLE, a foreign flagged vessel conducting geotechnical sampling operations in a section of the Straits of Mackinac which is covered by a Regulated Navigation Area (RNA). This RNA requires a vessel desiring to anchor within the prescribed area to



receive advanced permission from the Captain of the Port (COTP). The vessel received permission to anchor in the prescribed area, however, because of pilotage requirements, the vessel was incurring \$150k+/month in pilotage fees. Consequently, the vessel attempted to alleviate this requirement by taking the position that because they were authorized to anchor, using dynamic positioning to remain in a fixed location, and were connected to the lakebed by the drilling equipment, that the vessel was not "underway" and did not need to have a pilot on board. The vessel's position was disputed by the local Pilots Association. This

required significant engagement by both the legal and prevention staffs to examine both: 1) whether the ground equipment required for the drilling / sampling operations amounted to and effectively served as an anchor, and 2) whether the vessel's desired operation plan and equipment capabilities allowed the vessel to actually deploy a separate anchor during drilling / sampling operations. Ultimately, the COTP determined that if the vessel actually deployed its anchor to remain in a fixed position and was operating as if they were at anchor then a pilot was not required.

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 an incident or disaster. Coast Guard lawyers 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 lawyers 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 lawyers provide counsel and liaison with the DOJ 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 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 lawyers advise commands on the enforcement of 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 Coast Guard'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 Coast Guard 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 to determine 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, day boards, 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 Coast Guard regulations. Coast Guard lawyers 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, Coast Guard attorneys travel with and advise the U.S. 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 lawyers with ATON and navigation expertise assist with the investigation of significant marine accidents that could involve Coast Guard navigational aids or associated vessel equipment, and also assist the Department of Justice in defending the U.S. 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.



LCDR Salomee Briggs, a District Seven judge advocate, on the side of the M/V GOLDEN RAY during the initial federal response.

In September 2019, the M/V GOLDEN RAY, a 656 ft roll-on/roll-off foreign freight vessel grounded and capsized in St. Simons Sound near Brunswick, Georgia. The effort to remove the vessel and its cargo, as well as associated pollutants and hazardous material is expected to be the largest and most expensive salvage operation in U.S. coastal waters. The response presented unique challenges to the enforcement and field applicability of the CG-approved NonTank Vessel Response Plan (NTVRP) (33 CFR § 155.5010 et seq) and Salvage and Marine Fire Fighting (SMFF) (33 CFR § 155.4010 et seq) regulations. Coast Guard attorneys from District Seven provided legal support to the Coast Guard Incident Commander and Federal On-Scene Coordinator (FOSC) throughout the response.

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. Additionally, 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.

Contingency Response

Hurricane Response

CGJAG was again at the forefront during the 2019 hurricane season as Hurricane Dorian caused significant damage in the Bahamas.

The CGJAG community leveraged our experience from the 2017 hurricane season and implemented a Legal Support Team concept in response to the storm. Over the course of the Coast Guard's response, District Five judge advocates worked with their counterparts in District Seven, District Nine, and LANTAREA to develop and deploy a legal strategy authorizing Coast Guard Search and Rescue to the Bahamas. District Five attorneys liaised with the U.S. Department of State, the Coast Guard Bahamian liaison, Coast Guard headquarters legal staff to receive and act upon a diplomatic request for assistance from the Bahamian government. The late hour planning cut bureaucracy and sped the U.S.-led humanitarian response which featured Coast Guard personnel and assets contributing to the services ability to save 295 lives.

District Seven Coast Guard judge advocates were embedded at the Coast Guard's Bahamas Incident Command Post (ICP), where the Service's unprecedented response was orchestrated. The attorneys provided real-time advice to the Incident Commander on a complex range of issues, including: treaty authority and diplomatic clearance which allowed Coast Guard units to enter The Bahamas; the broad U.S. domestic legal authority which authorizes the Coast Guard to conduct search and rescue in any location; and the limits of Coast Guard authority to conduct humanitarian assistance beyond life-saving rescues without a request from the U.S. Agency of International Development's Office of Foreign Disaster Assistance; as well as the appropriate use of Coast Guard operating funds and other matters. The presence of an attorney in the ICP enable the Incident Commander to rapidly address novel issues with the confidence that his decisions were on a sound legal footing throughout the dynamic a response.

District Eight attorneys served as legal advisors to the LANTAREA Command for three contingency responses this year: Hurricane Barry, Tropical Storm Cristobal, and COVID-19. In each case, a District Eight attorney closely supported the area commander by coordinating legal assistance support for impacted CG members and families, and responding to legal inquiries from field commands. In the case of COVID-19, D8 attorneys provided legal guidance on topics such as quarantine of incoming crewmembers from commercial vessels, and impact of state shelter-in-place orders on CG members. D8 attorneys also augmented the Area Command Situation Unit by providing detailed summaries of the Louisiana Governor's daily status briefs.

COVID-19

Coast Guard judge advocates play a integral role in response to the COVID-19 pandemic. Coast Guard Captains of the Port have unique authority to regulate access to ports around the United States, including the ability to place necessary restrictions on vessels to ensure the safety of the vessel and the port. During the COVID-19 response, attorneys with the Coast Guard Seventh District played a unique role in facilitating the safe movement of cruise vessels and disembarkation of healthy and ailing passengers and crewmembers. When COVID-19 related restrictions began to be implemented, the cruise industry curtailed voyages and returned passengers to port. The Coast Guard facilitated the disembarkation of over 200,000 passengers at Florida ports. However, even after removing passengers, more than 90 cruise ships with over 85,000 crewmembers continued to operate in and around U.S.

waters and to call upon Florida ports. Seventh District attorneys conceived an intricate system of orders and regulated areas through which the Coast Guard could manage cruise ship vessel movement, receive critical information regarding the medical status of those onboard, and facilitate the medical evacuation of ill persons to capable and willing onshore facilities. Such a system provided critical transparency and developed lines of communication made necessary because there were more than double the daily cruise ship movements in Florida ports during the COVID-19 response than during normal operations. A Coast Guard judge advocate at the National Security Council played a pivotal role in the whole-of-government response. A Coast Guard Reserve judge advocate serves today as Chief of Staff to a Coast Guard vice admiral detailed to create and manage a current operations cell at the Department of Health and Human Services.

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 prosecutors, defense counsel, and special victims' counsel 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 (CGCCA), the Court of Appeals for the Armed Forces (CAAF), and the U.S. Supreme Court. Coast Guard attorneys at field offices serve as Staff Judge Advocates (SJAs) providing advice on military criminal matters to field commanders.

COURTS-MARTIAL (BY FISCAL YEAR)							
	2019	2018	2017	2016	2015	2014	2013
General Court-Martial	6	8	13	18	17	23	9
Special Courts-Martial	8	15	21	15	17	22	14
Summary Courts-Martial	19	9	14	22	18	22	20
Total Courts-Martial	33	32	48	55	52	67	43

Trial Judiciary. The Coast Guard trial judiciary consists of three full-time military judges performing general and special courts-martial cases. The Service also has several collateral military judges who perform special courts-martial on an ad-hoc basis. During this past year, judge advocates handled a variety of cases, including homicide, maltreatment, drugs, sexual assault, theft, simple assault, and dereliction of duty to name a few. The above chart portrays the types of trials that were handled throughout the Coast Guard during the course of a year. The Legal Service Command (LSC), with offices in Norfolk, Virginia and Alameda, California, is the only legal office where judge advocates serve full-time as trial counsel. There are nine dedicated trial counsel, including two senior counsel serving as “branch chiefs” that work exclusively on military justice matters. The LSC is responsible for providing counsel for virtually all courts-martial involving serious misconduct and it provides assistance to other field legal offices in need of trial support services. Through an agreement with the U.S. Navy, defense services are provided by the Navy. However, the Coast Guard provides seven judge advocates who are embedded as full-time defense counsel at Navy Defense Service Offices located within the U.S.

Appellate Judiciary. The Coast Guard Court of Criminal Appeals (CGCCA) consists of nine members, including two full time civilian judges. The Court reviews cases on appeal as well as extraordinary writs filed at the trial level. The CGCCA heard oral arguments in one Coast Guard cases in fiscal year 2019.

Judge Advocates. Before a case ever makes it to trial, it has been vetted through a SJA. SJAs provide military justice advice to their Commanders and Officers in Charge on a regular basis. Many times, a case may not warrant a trial but may be resolved at an Article 15 (non-judicial punishment) or by another means. The SJA is instrumental in working with commands to determine the best forum for resolution. These SJAs are located at the Coast Guard’s Pacific Command (PACAREA) and Atlantic Command

(LANTAREA); its nine District Offices; the Service's three Training Centers; and the Coast Guard Academy. 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 the other Services to develop and execute military justice initiatives.

Legal Service Command

- n **Legal Service Command Guiding Principles for Military Justice Support.** As part of the ongoing process to improve military justice practice in the Coast Guard, the Judge Advocate General approved a set of guiding principles for military justice support from the LSC. As noted previously, the LSC has the only full-time trial counsel in the Coast Guard. These principles involve notification to the LSC of all serious misconduct defined as cases likely to result in charges referred to a general court-martial, including all sexual assault allegations, and LSC trial counsel support to such cases. Staff Judge Advocates also have the option to request LSC support for any court-martial.
- n **Command Advice and Military Justice Division (LSC-LMJ).** Sixteen dedicated trial attorneys, eight command services attorneys, and two full-time paralegals provide military justice support and command advice to units throughout the Coast Guard.
- n **Trial Services.** Prosecution of courts-martial in the Coast Guard has traditionally been handled by the Area and District legal offices throughout the Service. This function was performed in addition to their duties supporting the mission focused needs of those District and Area commanders. To allow those judge advocates to better support their operational commander and focus on supporting mission execution, especially given the increasing number and complexity of criminal cases, the LSC military prosecutors recently assumed responsibility for supporting all courts-martial throughout the entire Coast Guard. To fulfill that responsibility, the LSC has established and continues to develop a dedicated staff of full-time professional military trial counsel with the experience, expertise and depth to prosecute all Coast Guard cases.
- n **Command Advice.** LSC command services attorneys provide front-line legal support to all LSC clients, primarily the 180 mission support commands, advising on more than 300 military justice investigations in addition to providing general advice on countless ethics, real property, fiscal law, and civilian employment law matters. LSC-LMJ also initiated a comprehensive review and rewrite of the current version of the Commander's Quick Legal Reference Guide. This Guide serves as a critical repository for Commanders, Commanding Officers, and their staffs, providing the necessary background, references, forms, and quick-action information needed to respond to routine legal issues that may arise at their units. With input from operators throughout the Service and every Coast Guard legal office, the LSC is generating a new guide to incorporate evolutions in law and Coast Guard policy on 83 subjects, including the impending major overhaul of the military justice system.

Area and District Legal. Area and District legal offices continue to provide comprehensive legal advice to Court Martial Convening Authorities and coordinate with LSC on cases. Those offices also continue prosecute or support General Courts-Martial (GCM), Special Courts-Martial (SPCM), and Summary Courts-Martial (SCM).

Federal Prosecution Support

CGJAG judge advocates work closely with the DOJ on various cases. District 13, District 8, and District 11 have provided Special Assistant U.S. Attorney (SAUSA) support to USCG-led criminal investigations,

On 9 April 2019, the CGC ALERT interdicted the S/V MANDALAY approximately 223 nautical miles west of Newport, Oregon. Based on conflicting indicators of nationality, DCO-SNO was granted to conduct ROV to ascertain the nationality of the vessel. Ultimately, the vessel was determined to be without nationality rendering the vessel subject to U.S. jurisdiction. A search of the vessel (at sea by CG and dockside by HSI/CGIS) yielded 28 seven-gallon jugs of liquid methamphetamine and a substantial quantity of pentobarbital. District 13 judge advocates worked closely with the U.S. Attorney's Office for the District of Oregon in support of the prosecution of the master, a Canadian national, resulting in a guilty plea to one count of possession with intent to distribute methamphetamine under the MDLEA. U.S. attorneys recommended the individual be sentenced to 87 months confinement.



Criminal investigators examining suspected liquid methamphetamine and pentobarbital aboard the S/V MANDALAY

The District Eight legal office continues to support the U.S. Attorney's Office for the Western District of Missouri in prosecution of the operator of the STRETCH DUCK 07, the duck boat that sank on Table Rock Lake, Missouri in July 2018 resulting in the death of 17 people. District Eight judge advocates have provided substantial research on the navigability of Table Rock Lake to assist DOJ with contesting the defendant's jurisdictional challenges. Trial is currently scheduled for late 2020.

In October 2019, James Wells was convicted of the 2012 murders of two Coast Guard personnel in a second trial after a 2014 conviction was reversed. A judge advocate prosecuted the case with two Department of Justice attorneys. In January 2020, the defendant was sentenced to four consecutive life sentences.

In January 2020, a chief warrant officer was sentenced by the United States District Court for the District of Maryland to 160 months in prison for unlawful possession of weapons and controlled substances. Underlying the sentence was evidence of threats to public figures. Judge advocates at the Personnel Service Center and Legal Service Command played a significant role supporting the prosecution and administrative actions, including reduction of the officer from lieutenant, and dropping him from the rolls on the same day as the sentencing.

Ongoing SAUSA support and assistance has ensured timely notification to witnesses and their respective commands, recurring status updates to senior leadership with high level interest in the outcome of the trial, investigative support to the prosecution team, and legal review and research into new procedural and evidentiary issues anticipated to arise. In the Southern District of California in San Diego, LCDR Nicole Bredariol has continued the tradition of achieving outstanding results. She and two other AUSA's secured the conviction of three defendants interdicted by the Coast Guard in the Eastern Pacific Ocean with 734 kg of cocaine, worth nearly \$17 million. The jury trial lasted for 10 days, and required the testimony of nine Coast Guard witnesses. Additionally, LCDR Bredariol has participated in eight narco-smuggling cases that have yielded 20 convictions, with three of these cases tied to interdictions in 2020 and still pending prosecution. For one of these 2020 cases LCDR Bredariol spearheaded adding DTVIA charges to the indictment for a LPV, a first in SDCA. As a participating attorney LCDR Bredariol has played an essential role in three multinational/interagency investigations resulting in the seizure of 7,000 KG of cocaine (\$183 million in drug proceeds) plus sentencing of 10 TCO leaders.

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.

International Activities

International Maritime Organization (IMO). The IMO is a United Nations specialized agency that is headquartered in London, England, and is responsible for the safety and security of shipping and the prevention of marine and atmospheric pollution by ships. Coast Guard attorneys from all three Divisions serve as advisors or representatives of the United States at meetings of various IMO committees such as: the Maritime Safety Committee, the Marine Environment Protection Committee, the Legal Committee, the Subcommittee on Implementation of IMO Instruments, the Subcommittee on Pollution Prevention and Response, the Subcommittee on Human Element, Training and Watchkeeping, the Subcommittee on Navigation, Communications and Search and Rescue, the Subcommittee on Ship Design and Construction and the Meeting of Contracting Parties to the London Convention and London Protocol.

IMO Legal Committee. The Chief of the Office of Maritime and International Law serves as the Head of the U.S. delegation to the Legal Committee. In advance of the 2020 Legal Committee Meeting, the Office of Maritime and International Law developed the U.S. position and role on several key issues. Specifically, the Office coordinated the Legal Committee's Working Group on the fraudulent registration of ships, and developed the U.S. stance on the regulatory effect of autonomous technology on certain treaties under the purview of the Legal Committee, including the U.S. report regarding the technology's effect on the four Suppression of Unlawful Acts Against Maritime Navigation conventions.

Support to Foreign Nations. The U.S. Coast Guard supports the development of the legal framework of other countries through Model Maritime Service Code engagements and other training events. Coast Guard attorneys provided support to several nations including Ukraine, Kenya, Costa Rica, and Indonesia, among others, in the development of legal authorities for their maritime law enforcement agencies. During these engagements, Coast Guard attorneys identify gaps in existing authorities and provide assistance in drafting legislation, regulations and policy needed to execute their desired missions. Coast Guard attorneys have also developed and led training events for foreign Coast Guard officers regarding maritime domain awareness, implementation of whole of government communications, and the implementation of IMO instruments designed to mitigate cyber risk to facilities and vessels. Coast Guard attorneys also assist other nations' prosecutions by facilitating the testimony of Coast Guard law enforcement officers during criminal trials.

The PACAREA legal office also developed a close partnership with Defense Institute of International Legal Studies (DIILS) to utilize their already established program and network to achieve common goals of building Partner Nation capacity throughout Oceania. With a greater demand for CG and maritime law enforcement from Partner Nations, the CG/DIILS relationship has enabled more effective, efficient and coordinated approach to building legal capacity in the region. PACAREA lawyers co-presented with DIILS and Australian and New Zealand JAGs at the Australian Defense Force's Asia-Pacific Center for Maritime Law (APCML) conference to 12 Oceania nations on maritime law enforcement, bilateral agreements, and countering Illegal, Unreported and Unregulated (IUU) fishing. Attendance furthered peer relationships with JAG counterparts from Australia and New Zealand, and developed greater working relationships with Oceania partner nations.



PACAREA judge advocates with DIILS and Australian and New Zealand JAGs at the APCML conference.

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. As part of the United States delegation to the Arctic Council, Coast Guard attorneys advise Coast Guard leadership on Law of the Sea matters concerning emerging shipping areas, as well as the Arctic Council's Protection of the Arctic Marine Environment (PAME) Working Group initiatives, including implementation of the Arctic Marine Shipping Assessment and review/advice for the Arctic Ocean Review and the Emergency Prevention Preparedness and Response (EPPR) Working Group initiatives, and the EPPR Field Guide for Oil Spill Response in the Arctic. In December 2019, the EPPR Working Group held a workshop to identify legal issues related to the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic (MOSPA) and response actions within the Arctic. Cost reimbursement process and legal liability issues that could arise between the response participants, especially when one state calls on another to assist in Arctic response actions, were identified and will be incorporated into future Arctic response exercise scenarios, resulting in more realistic training events.



Ms. Margaret Howard, Environmental Law Division with the U.S. Delegation to EPPR Working Group. Reykjavik, Iceland. December 2019.

The Coast Guard also participated in a dialogue with China on the Law of the Sea and polar issues. The dialogue covered Arctic fisheries agreements, icebreaking operations, and other matters. Additionally, Coast Guard attorneys analyzed Arctic maritime disputes with Russia and Canada regarding the Northern Sea Route and Northwest Passage, respectively.

Prevention Law

Vessel safety. Coast Guard attorneys routinely assist with the development and implementation of vessel safety standards. Coast Guard attorneys are instrumental in advising the Coast Guard's Assistant Commandant for Prevention Policy, Office of Commercial Vessel Compliance, which is dedicated to reviewing and revising existing policy, as well as developing new oversight procedures to ensure vessels inspected by the Coast Guard and by recognized organizations are meeting inspection standards. Greater effectiveness and efficiencies are achieved by new national policies that permit Coast Guard inspectors to use portable digital technology and electronic signatures, harmonize decisions between Coast Guard inspection zones, institute uniform standards for vessels being temporarily "laid up" and taken out of service by their owners, and implement a stronger quality control process over recognized organizations and third-party organizations that inspect vessels on behalf of the Coast Guard.

With the arrival in the marketplace of different remote and autonomous technologies aboard vessels ranging from discrete remote navigation packages to completely autonomous vessels, the Coast Guard has initiated a Request for Information to solicit input from the public on the impact autonomous systems will have on domestic laws and regulations to include collision avoidance regulations, engineering and navigation system requirements, and safe manning requirements. Coast Guard attorneys are involved in policy develop to ensure these rapidly evolving technological innovations meet navigation and safety requirements.

Ensuring vessels comply with towing vessel safety and manning requirements is also a top priority. Coast Guard attorneys formulated policy to clarify what types of vessel operations, such as oil spill response within D 17 in Juneau, Alaska are categorized as towing. Furthermore, with respect to passenger vessel inspection and licensing requirements, many legal offices, particularly District 7 in Miami, Florida, District 9 in Cleveland, Ohio, and District 11 in Alameda, California work closely with Coast Guard Investigative Service (CGIS), State Departments of Natural Resources, and United States Attorney's Offices to hold individuals and entities accountable for conducting illegal passenger charters. Illegal charters pose a significant safety hazard to the public and have an adverse economic impact on legitimate commercial passenger vessel owners. The number of vessels operating illegally has increased dramatically in the last several years due to the advent of online booking companies.

Outer Continental Shelf Safety Issues. Coast Guard attorneys routinely provide legal support to develop innovative solutions to address the safety challenges caused by quickly evolving technology on the Outer Continental Shelf (OCS). The Coast Guard reviews and revises policies and inter-agency Memoranda of Agreements to more efficiently coordinate with regulatory partner agencies, such as the Department of Interior's Bureau of Safety and Environmental Enforcement. The Coast Guard advises on proposed legislation involving citizenship and manning requirements for individuals employed in the offshore industry. Legal advice is regularly provided to the Coast Guard's Office of Design and Engineering and Operating and Environmental Standards to aid the regulatory evaluation of new and novel designs for offshore units and equipment.

Mariner Credentialing and Manning Issues. There are over 200,000 active holders of Merchant Mariner Credentials (MMCs) issued by the Coast Guard. Coast Guard attorneys are active in assisting numerous program elements in establishing and modifying the arrangements at testing facilities and maritime academies, and the standards required of those serving aboard U.S. documented vessels. This includes drafting of legislation, regulations and interpretive rules, providing comments and drafting assistance to Congressional legislative proposals. Attorneys are also active in providing responses to queries from Congress, industry and the public regarding interpretation, and application of existing law and regulations.

Suspension & Revocation (S&R). 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 incompetence. 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.

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, or in some cases, federal court. The NCOE attorneys serve as guest instructors at the S&R Course, convened four times a year at Training Center Yorktown, Yorktown, VA, to provide IOs with the classroom and simulated hearing experience necessary to obtain advanced qualifications. Since 2017, the use of “temporary suspension” authority has been on the upswing due to safety risks posed by mariners with unresolved substance abuse issues. A temporary suspension proceeding occurs when the Coast Guard immediately confiscates a mariner’s MMC for a serious offense and must conduct a hearing before an ALJ within 30 days. The process further requires an ALJ to issue a decision and order in the case within 45 days of taking the MMC into custody. Generally all cases during this surge of activity resulted in prompt settlement or surrender of the MMC prior to hearing, however 2018 marked the first expedited hearing held by the Coast Guard in approximately 10 years and several more expedited proceedings occurred in 2019. In cases that did not result in settlement or surrender of the MMC, the Coast Guard proved key allegations and prompted the ALJs adjudicating the cases to revoke the MMC of subject mariners. Coast Guard S&R attorneys provided “real time” operational legal advice during field investigations, guided pre-hearing efforts, and led the trial team at hearings, reestablishing this authority as a vital tool for ensuring compliance with safety standards.



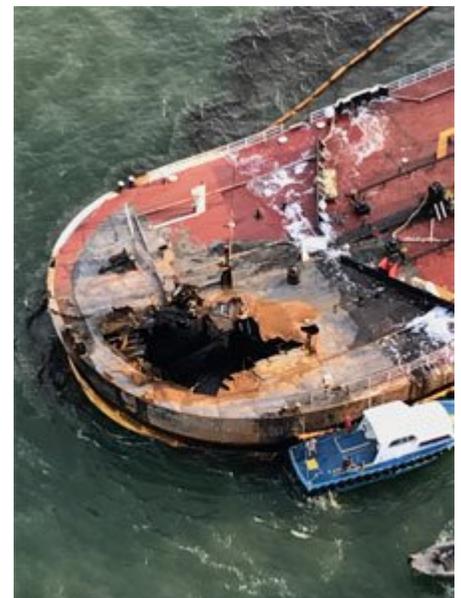
LT Nathaniel Eichler presenting at the 2019 Summer Maritime Law Association meeting in Arizona

S&R Historical and Predicted Enforcement Activity			
CALENDAR YEAR	DOCKETED CASES	HEARINGS	APEALS
2009	541	13	4
2010	600	14	7
2011	593	17	5
2012	558	12	5
2013	489	24	1
2014	480	17	1
2015	392	14	3
2016	399	10	4
2017	397	10	3
2018	470	15	4
2019	531	17	5
Average	496	15	4

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. Coast Guard attorneys provide support to ongoing efforts to develop guidance on reporting cyber incidents that have a maritime nexus. The Coast Guard has developed guidance to maritime facilities to assist in the implementation of cyber security measures that will meet existing facility security plan requirements and is in the process of developing similar guidance for vessels. Additionally Coast Guard attorneys participated in multiple interagency cyber incident response exercises assisting in the development of whole of government approaches and exercises that brought state and federal agencies together to discuss local responses to cyber incidents.

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. The Coast Guard is responsible for issuing coastwise and fishery endorsements to commercial vessels seeking to engage in coastwise trade and Coast Guard attorneys liaise with State officials to correct the issue of vessels operating overseas 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. Coast Guard Attorneys continue to work with NOAA to draft Memorandums of Understanding 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 National Transportation Safety Board (NTSB) on a number of casualties and initiatives. The Marine Board of Investigation (MBI) is the highest level casualty investigation, convened by the Commandant. Several Coast Guard attorneys have provided legal support to the MBI for the tragic fire onboard the small passenger vessel CONCEPTION off the coast of California, which tragically took the lives of 34 people.



Additionally, attorneys at Coast Guard headquarters advise the Commandant, and the Assistant Commandant of Prevention Policy regarding legal concerns surrounding explosion of tank barge No. 255 that killed two crewmembers off the coast of Texas and other related issues.

Environmental Law

Environmental Compliance and Enforcement. Coast Guard attorneys advise on the agency's own compliance with environmental planning, restoration and media laws such as the analyses of environmental impacts of deep water port permits, bridge permits, the acquisition and homeporting of vessels (e.g., Polar Security Cutters and Offshore Patrol Cutters), the transfer of historic lighthouses, the regulation of waterway traffic and the management and cleanup of federal property. Coast Guard attorneys advise on Comprehensive Environmental Response Compensation and Liability Act (CERCLA) cases and minimize future liability related to transactions involving potentially contaminated property.

Coast Guard attorneys provide daily legal support for the Coast Guard's role in processing applications for deep water port licenses, including advice on compliance and Environmental Impact Statement issues. Currently, there are three pending oil port applications and one pending liquefied natural gas port application in house, all for projects in the Gulf of Mexico.

As a regulator, the Coast Guard is also responsible for the administration and enforcement of environmental laws pertaining to the maritime environment. For example, Coast Guard attorneys are heavily involved in the implementation of the Vessel Incidental Discharge Act (VIDA) and providing advice on regulations governing the management of ballast water discharges. VIDA is a new law passed in December 2018 as an amendment to the Clean Water Act, to further protect U.S. waters from the introduction and spread of aquatic nuisance species and other harmful discharges from vessels. Coast Guard attorneys are working with the Environmental Protection Agency (EPA) on the implementation of an enforcement regime for the VIDA standards and the issuance of new policy guidance to the maritime industry.

Coast Guard attorneys also provide operational legal advice on the conduct of domestic oil and hazardous substance responses such as when and how to clean, remove, or destroy an abandoned vessel, or by providing advice on Federal On Scene Coordinator (FOSC) authorities, the National Contingency Plan, and the Oil Pollution Act of 1990. For example, Headquarters and the Eighth District continue to advise the FOSC on the Taylor Energy/MC-20 spill, which began in 2004 when Hurricane Ivan created an undersea mudslide which toppled a production platform in "Mississippi Canyon Block 20," an undersea mineral lease location approximately 11 miles off of Louisiana. Coast Guard attorneys work closely with the Bureau of Safety and Environmental Enforcement, National Oceanographic and Atmospheric Administration, and other agencies to protect governmental interests as the FOSC, a Coast Guard operational commander, works to minimize the environmental impact of the spill. Coast Guard attorneys also support the administration of response planning requirements applicable to the private sector, such as the requirement to generate Vessel Response Plans to facilitate the response to oil spills from ships.

MARPOL violations in the Coast Guard's Fourteenth District keep its legal staff engaged with Sector Prevention and Response staffs, CGIS, and DOJ attorneys to enforce environmental laws in the pristine waters of Hawaii, American Samoa, and Guam. In the summer of 2019, District Fourteen attorneys investigated illegal discharges from the M/V TOPAZ EXPRESS out to sea. The DOJ ECS accepted the case for criminal prosecution. Ultimately, the Chief Engineer and the Second Engineer pled guilty for their involvement in the discharges. The parent company, Bernhard Schulte Shipmanagement (Singapore) PTE LLP, also pled guilty on 10 Feb 20 and was ordered to pay a record fine within the District of Hawaii of \$1.75M, 4 years of probation, was ordered to implement an ECP, and a \$400 special assessment.



M/V TOPAZ EXPRESS

International Environmental Engagement. In addition to the IMO work mentioned above, Coast Guard attorneys 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. Coast Guard legal also provides support in a number of multilateral pollution preparedness and response agreements. Our attorneys continue to work with the EPA on implementing and enforcing U.S. treaty obligations codified as international regulations pertaining to the prevention of air pollution from ships under Annex VI to the International Convention to Prevent Pollution from Ships (MARPOL). This effort includes prescribing federal regulations to carry out U.S. treaty obligations as required by law and working with the EPA on the interpretation and enforcement of Annex VI.

Since January 1, 2020, the Coast Guard has been enforcing a new 0.50% global cap on the sulfur concentration on diesel fuel worldwide. In the North American and US Caribbean Sea Emission Control Areas, the existing 0.10% sulfur limit continues in force. Since March 1, 2020, a ban on the carriage of non-compliant fuel oil also went into effect.

Working with the Department of State (DOS) and other federal agencies, Coast Guard attorneys continue to be involved in the negotiation and drafting of an agreement under the United Nations Convention on the Law of the Sea regarding the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. The third session of the Intergovernmental Conference was held at the U.N. in New York City in August 2019, but the planned fourth and final session, originally scheduled for March 2020, has been postponed due to COVID-19.

Maritime Environmental Criminal and Civil Enforcement. As a maritime law enforcement agency, the Coast Guard works hand in hand with the Department of Justice (DOJ) on the prosecution of environmental crimes. These cases frequently involve the falsification of oil record books to conceal the deliberate discharge of oily wastes and hazardous substances into the sea, but may also involve violations of garbage and air emissions regulations. Referrals normally average 12 criminal cases per year, a figure that represents one quarter of one-percent of all Coast Guard port state control inspections. In addition to these criminal referrals, the Coast Guard submits investigations of environmental noncompliance to DOJ for judicial civil penalty enforcement. Coast Guard lawyers at both the headquarters and district-level provide real-time advice to Coast Guard inspectors and investigators on evidence gathering, vessel detentions, and on referring cases to DOJ.

August 2019 saw the entry of judgment and sentencing of the first prosecution for violations of new air pollution requirements under Annex VI of MARPOL. The case was referred to DOJ after Coast Guard inspectors identified that the MT OCEAN PRINCESS, a Panamanian-flagged product tanker, was using non-compliant fuel in the Caribbean Emissions Control Area. The owner, operator, master, chief officer, and chief engineer of the vessel were convicted of violating the Act to Prevent Pollution from Ships, submitting false records, and obstruction of justice. The corporate defendants were sentenced to \$3 million in fines and four years' probation subject to an environmental compliance plan.

Response Law

Judge advocates in the Response Law Division (RLD) provide around the clock support to seven of the eleven Coast Guard missions. 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 Maritime Operational Threat Response Plan 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. Additionally judge advocates at field units also stand rotational duty schedules to provide around the clock support to Operational Commanders and units throughout their area of responsibility. This year, CGJAG released the Third Editions of the Guide to the Law of Boarding Operations and the Guide to the Law of Maritime Law Enforcement, companion references for both Coast Guard attorneys and maritime law enforcement personnel. Together, they provide operators and their legal advisors with the legal foundation necessary for professional, competent, and lawful boarding operations in service of the Coast Guard's maritime law enforcement missions. They address the international and domestic legal framework that governs



Mr. Dale Murad, Environmental Law Division at the Sixth Annual Sulphur Experts' Meeting, Korsor, Denmark, September 2019.

Coast Guard maritime law enforcement operations, including drug interdiction, migrant interdiction, and fisheries law enforcement.

Drug Interdiction. In fiscal year 2019, RLD judge advocates advised on and coordinated interagency actions on nearly 236 maritime counterdrug cases. In coordination with the DOS and DOJ, 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. In 2019, RLD judge advocates coordinated the referral of 423 suspected smugglers to the United States for criminal prosecution, and worked closely with U.S. Attorneys Offices to support these prosecutions, including researching and assisting in responses to defense challenges. These efforts contributed to the removal of nearly 208 metric tons of cocaine and 63,282 pounds of marijuana from suspect vessels in fiscal year 2019.

RLD judge advocates work with interagency partners to resolve complex counterdrug cases, balancing operational, diplomatic, legal, and other concerns. In early 2019, the United States cut diplomatic ties with the Maduro government in Venezuela. In response, RLD judge advocates worked with DOS to implement a legal framework with the recognized government of Venezuela for boarding Venezuela-flagged vessels suspected of drug-trafficking. RLD attorneys also coordinated the interagency response to the interdiction of a Cameroonian-flagged freighter carrying over two tons of cocaine. After numerous diplomatic exchanges, RLD judge advocates helped the DOJ gain jurisdiction over the seven crewmembers and refer the case for criminal prosecution in the United States.

Alien Migrant Interdiction. The Coast Guard interdicted more than 2,441 migrants at sea in fiscal year 2019. RLD and field judge advocates, particularly in the Seventh Coast Guard District, 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. RLD judge advocates provided support to operational commanders on mass migration concerns following Hurricane DORIAN's devastation of The Bahamas.

Defense Readiness. RLD judge advocates advise headquarters staffs on missions which support the National Military Strategy and Department of Defense (DOD) operations, including the Coast Guard's unique status as both an armed force and a law enforcement agency. Because of the Coast Guard's unique role as a Title 14 force, RLD judge advocates play a key role in advising on the Coast Guard's defense readiness capabilities and authorities in relation to the DOD. In 2019, RLD judge advocates helped update a memorandum of agreement between the Coast Guard and the Navy on the Maritime Force Protection Unit program. RLD judge advocates also provided guidance on command and control relationships for Law Enforcement Detachments (LEDETs) when operating in the USAFRICOM area of responsibility.

Living Marine Resources. RLD 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 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.

The Coast Guard worked with NOAA and other law enforcement partners to combat illegal fishing incursions into the U.S. Exclusive Economic Zone (EEZ) by Mexican lanchas. RLD judge advocates support these efforts by coordinating the law enforcement action and disposition of these cases, and provided legal guidance on donating catch seized from these lanchas.

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. As our nation's focus on Oceania grows, Coast Guard lawyers in PACAREA and District Fourteen (D14) advise on legal regimes to counter IUU fishing. As a party to the North



CDR Mark Zlomek, CDR Bryan Pape, and LCDR Grace Oh are welcomed to Mombasa, Kenya, as part of a Model Maritime Service Code engagement.

Pacific Fisheries Commission (NPFC) and Western Central Pacific Fisheries Commission (WCPFC), the Coast Guard conducts boardings under these conventions' High Seas Boarding and Inspection (HSBI) regimes. Last year, with CGJAG support, the CGC MUNRO deployed to Oceania in support of the WCPFC, and reported the results of their boardings to our partners within the Commission. These boardings were a critical part of the Coast Guard's broader strategy in the Indo-Pacific region, where the U.S. is encouraging relationships respecting the sovereignty, fair and reciprocal trade, and the rule of law in an open and free Oceania.

Ports, Waterways, and Coastal Security. RLD judge advocates played a key role in analyzing new counter-unmanned aircraft system (C-UAS) technologies and implementing these technologies in the field. Attorneys drafted guidance to units and participated in planning the use of Coast Guard C-UAS capabilities in support of special security events, including the United Nations General Assembly and the New York City Marathon.

Search and Rescue (SAR). RLD judge advocates worked with international partners to strengthen Search and Rescue capacity worldwide. In 2019, RLD judge advocates coordinated SAR engagements with Panama and participated in negotiations with Peru and Mexico to develop agreements and operational procedures for responding to SAR. RLD judge advocates also produced guidance on the interaction between Coast Guard SAR and Maritime Law Enforcement authorities.



Mr. Brian Wilson and LCDR Jeff Janaro, along with the Indonesian Coast Guard Deputy Director of International Cooperation, as part of a capacity building engagement with the Indonesian Coast Guard.

Intelligence and Information Law

The Office of Intelligence and Information Law (CG-LII) delivers legal services to the Coast Guard Intelligence program, the Command, Control, Communications, Computer, Cyber and Information Technology (C5IT) program, the Office of Cyberspaces Forces, and Coast Guard Cyber Command (in coordination with the Cyber Command's Staff Judge Advocate). The Coast Guard Intelligence program represents the largest portion of the portfolio and includes the Coast Guard National Intelligence Element (NIE), which collects, analyzes, and disseminates foreign intelligence and counterintelligence information. This organization enables enhanced direct reporting to TJAG for privacy, civil liberties, transparency, and intelligence oversight matters. The Office is centrally located at Coast Guard Headquarters, but individual attorneys are co-located with clients at intelligence command locations in the national capital region, in Alameda, California, and Norfolk, Virginia. Additionally, the office provides headquarters-level legal support to the Coast Guard Investigative Service (CGIS), which is the Coast Guard's criminal investigation entity. The Information Law division provides subject matter expertise for all of CGJAG, as well as Coast Guard programs, on all aspects of information law.

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 whether in bulk as data transfers or under other arrangements. Our 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 radio frequency spectrum management and allocation, and the potential addition of approved maritime satellite telephone services. The office provided legal counsel for the development of international information sharing initiatives with Canada and Australia, enabling the implementation of a non-binding agreement in principle of intent.

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 (LEIE) plans, directs, collects, reports, processes, exploits, analyzes, produces, and disseminates information pursuant to Coast Guard law enforcement authorities to enable mission execution. The National Intelligence Element (NIE) conducts intelligence activities as an IC member. The Coast Guard 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 formal inspections of the Coast Guard NIE units, provide quarterly oversight reports, and conduct oversight training for intelligence personnel. 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. Attorneys are working closely with the Office of the Director of National Intelligence Office of General Counsel and the Department of Justice National Security Division to evaluate and update Coast Guard intelligence activities procedures. CG-LII continues to work in conjunction with attorneys from other CG offices to implement and evaluate the Digital Evidence Search at Sea processes and business rules.

The judge advocate embedded with Coast Guard Counterintelligence (CI) 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, and advising CI agents during joint investigatory activities with CI elements in the Intelligence Community. 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. Recognizing the different equities and authorities between Counterintelligence Service and the Coast Guard Insider Threat Working Group, this year CG-LII made an organizational changes to provide legal advice to Insider Threat Working Group through a different Judge Advocate within CG-LII, which provides clearer oversight responsibilities. .

The LANTAREA Staff Judge Advocate's office serves as the Intelligence Oversight Advisor to the LANTAREA/MIFC LANT intelligence program. This attorney trains members of the NIE; assists in conducting biannual intelligence oversight inspections and in drafting quarterly intelligence oversight reports to Congress; and drafts and reviews LANT-2/MIFC LANT policy documents, collection efforts and reporting/disclosures to ensure they are in compliance with federal law and policy. In addition, this attorney has been a key member of the team working to integrate social media into Coast Guard operations.

Cyberspace. The Office of Information and Intelligence Law supports the Coast Guard Office of Cyberspace Forces, which stood up in 2017, to man, equip, and train Coast Guard cyber space forces and develop appropriate policy and doctrine for Coast Guard Cyber Command and the Service overall. Coast Guard Cyber Command, commissioned in July 2013, 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. In 2018, The Judge Advocate General established a Staff Judge Advocate position in Coast Guard Cyber Command. Working with CG-LII, the Coast Guard Cyber SJA directly advises the Coast Guard Cyber Commander on authorities supporting Cyber Command's cyberspace operations in support of the Commandant's Cyber Strategy. The Coast Guard Cyber Command's SJA and CG-LII attorneys are engaged with implementing this strategy and directly advising several leadership initiatives driving internal change and helping senior leaders understand the international and domestic law implications of proposals as well as Congressional reporting and compliance requirements related to cyberspace. In 2019 at the request of U.S. Cyber Command, the Judge Advocate General assigned a Coast Guard judge advocate to support the U.S. Cyber Command's Office of the Staff Judge Advocate, where they will provide direct legal support to Cyber Command operations while serving as a liaison between the DoD and Coast Guard cyber law communities. In 2020, The Judge Advocate General established two new positions related to cyberspace operations, a judge advocate position within CG-LII to support the Coast Guard Office of Cyberspace Forces and Deputy SJA position within Coast Guard Cyber. These positions with help with the growing breadth, scope, and complexity of Coast Guard operations in cyberspace.

Coast Guard Investigative Service (CGIS). 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 recently approved and distributed to the field agents, and consistent with Attorney General Guidelines. The CGIS judge advocate provides legal advice across a spectrum of policy and operational initiatives and national-level criminal

investigations, and is responsible for providing field guidance in relation to cases involving victims represented by Special Victim's Counsel (SVC), drafting procedures on this topic, and coordinating SVC training in conjunction with the SVC Program Manager.

Legislation

The House passed the fiscal year 2021 National Defense Authorization Act (NDAA) (HR 6395) on 21 July 2020. The Coast Guard Authorization Act was included in the bill as an amendment. The Senate passed their version of the NDAA (S.4049) on 23 July 2020. Both versions of the bill include several Service wide priorities that will improve the Service's ability to meet its core missions as a military service, law enforcement organization, and steward of the environment. Such priorities include provisions that will: (1) authorize the Commandant to promote military members with critical skills into positions where their skills will support the goals of the Service; (2) prohibit the lasing of certain vessels so as to protect against maritime casualties; and (3) increase the efficiency with which the National Pollution Fund Center can reconcile claims submitted to the fund.

General Law

Fiscal Law. This past year, fiscal attorneys were essential in providing substantive advice, research and legislative drafting assistance during the Service's response to the COVID-19 pandemic. The fiscal law practice group provided real time advice to clients on issues such as whether appropriated funds could be used to pay non-appropriated funds employees and the manner and extent to which the Coast Guard could pay for testing of non-Coast Guard members when doing so was essential to mission success. The fiscal law practice group continued to provide critical legal support to the Comptroller of the Coast Guard on investigations into proper use of appropriated funds and financial management internal controls policy.

Employment Law. The Coast Guard employment and labor law attorneys handled over 75 Equal Employment Opportunity Commission (EEOC) and Merit Systems Protection Board (MSPB) cases. Attorneys provided de novo review of military physical disability evaluation board cases and military administrative separation boards. In addition, Coast Guard employment and labor law attorneys provided advice to Coast Guard leadership regarding over 300 employment related matters. Lastly, the attorneys provided advice to clients on issues related to civilian personnel during the COVID-19 pandemic, including the use of Weather and Safety Leave for high-risk employees and the scope of the Reasonable Accommodation doctrine.

Ethics. The Ethics attorney provided all advice on matters of misuse of position, lobbying, gifts, conflicts of interest, outside employment/activities, and fundraising. This included advising the Coast Guard on the myriad of gift acceptance issues and advice on the rights and limitations of employees and military members with respect to political activities in an election year. The Ethics attorneys also managed the decentralized Confidential Financial Disclosure Report program as well as the Coast Guard's Public Financial Disclosure Report program, ensured 100% compliance.

Real Property. Real property attorneys provided legal advice and services a multitude of real property matters. This included tackling numerous issues related to the establishment of a national Coast Guard museum, working with staff from the Coast Guard National Museum Association, a non-profit, non-federal organization, and the State of Connecticut to secure various licenses and memoranda of agreement to move the project closer to completion. Real property attorneys also advised on the transfer of the Cape Flattery lighthouse to the Makah Tribe in Washington State and a three-way transfer of property at the Federal Law Enforcement Training Center in Glynco, Georgia.



Boston Light, America's Oldest Lighthouse, operations on Little Brewster Island off the coast of Massachusetts dates back to 1716.

District One judge advocates provided guidance to Sector Boston and the D1 command in coordinating the potential divestiture and transfer of Boston Light, the Oldest Lighthouse in the United States, to the National Park Service, pursuant to the 1989 National Historic Lighthouse Preservation Act. D1 Legal facilitated the communications with CG-4, CG-LMI-E, CG-LGL, and LANTAREA to evaluate legal authorities, to include discussions regarding numerous Commandant Decision memos and internal legal opinions. D1 Legal also coordinated with D1 External Affairs to manage messaging for the transfer of this historically and locally significant piece of Coast Guard property. Ultimately, the District Commander approved the request to initiate the divestiture of the lighthouse, and coordinated with CG-4 to conduct the environmental analysis necessary to conduct the process.

Administrative Law. General Law attorneys were instrumental in handling the myriad of issues related to the COVID-19 pandemic; attorneys were assigned as legal advisors to all 12 working groups within the Coast Guard COVID Crisis Action Team, including medical issues, travel and leave policies, quarantine requirements, and testing procedures.

General law attorneys spearheaded the Commandant's prohibition on display of the Confederate battle flag, supplementing a policy change published in 2019 in which the Coast Guard was the first armed service to characterize Confederate flags and symbols as a potential hate incident.

This group submitted over 225 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, amounting to over 920 reviews.

Field Attorneys supervise Major Incident Investigations, review inter-agency agreements, and provide general law and command advice to the commands within their area of responsibility. This included a joint investigation conducted by the Coast Guard and Navy into the circumstances surrounding the collision between a Coast Guard vessel and a Navy vessel in the waters off Kodiak, Alaska, which resulted in serious injury to several crewmembers.

Regulations and Administrative Law

The Coast Guard is charged with developing and enforcing regulations to ensure the safety of marine navigation, protect the environment, conduct search and rescue, enforce laws and treaties, and maintain marine security. Coast Guard attorneys draft new regulations, including deregulatory actions, 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 rulemaking-related recommendations and complaints 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. Since last year's report, the Coast Guard published three proposed rules, four final rules, and five notices (such as a notice of intent, availability, or withdrawal). Additionally, Coast Guard field units, including Sectors and Districts, draft field regulations or non-controversial rules that affect only localized areas. Since last year's report, the Coast Guard published 193 field regulations.

Regulatory Reform Pursuant to Executive Orders 13771, 13777, and 13783. The Coast Guard continues to engage in an extensive review of its regulations, guidance documents, and collections of information. In 2017, the President 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, public comments and FACA committee input, the Coast Guard has given greater emphasis to deregulatory projects. The Coast Guard has published several deregulatory documents in the past year including the following:

Lifejacket Approval Harmonization (Policy Letter and Notice of Availability; November 15, 2019)

The Coast Guard finalized the policy harmonizing personal flotation device (PFD) standards between the United States and Canada by accepting a new standard for approval of PFDs. As a result, PFD manufacturers can meet a single North American standard instead of separate standards for the United States and Canada. The standard is outlined in a policy letter with a supporting deregulatory savings analysis. This policy letter does not affect existing PFD approvals and does not require any action on the part of boaters or mariners who have approved PFDs on board.

Person in Charge of Fuel Transfers (Notice of Proposed Rulemaking; August 14, 2019)

The Coast Guard proposed to amend the requirements regulating personnel permitted to serve as a person in charge (PIC) of fuel oil transfers on an inspected vessel by adding the option of using a letter of designation (LOD) in lieu of a Merchant Mariner Credential (MMC) with a Tankerman-PIC endorsement. Thousands of towing vessels are currently transitioning from being uninspected vessels to becoming inspected vessels. This proposal would allow a PIC currently

using the LOD option on one of those uninspected vessels to continue to use that option to perform the same fuel oil transfers once the vessel receives its initial Certificate of Inspection. Under this proposal, obtaining a MMC with a Tankerman-PIC endorsement would become optional for PICs of fuel oil transfers on inspected vessels.

Crediting Recent Sea Service of Personnel Serving on Vessels of the Uniformed Services (Notice of Proposed Rulemaking; September 17, 2019)

The Coast Guard proposed to increase from three years to seven years the period within which qualifying sea service aboard vessels of the uniformed services can be used to satisfy the requirement for recent sea service to qualify for a Merchant Mariner Credential with a national officer endorsement. This notice of proposed rulemaking would implement into Coast Guard regulations legislation that has been codified in statute, and may potentially increase the number of merchant mariners available for employment on commercial vessels.

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. These functions are centralized in the office of Member Advocacy and Defense Services (CG-LMA).

Member Advocacy Division. The CG-LMA-A Member Advocacy Division is responsible for the Special Victims' Counsel (SVC) program and also provides representation to Coast Guard members facing separation through the Disability Evaluation System (DES).

Special Victims' Counsel (SVC). With approximately 200 active cases, the SVC Program continues to provide legal advice and represent active duty members, reservists, dependents and civilian victims of sexual assault. SVCs assist victims of sexual misconduct in matters such as seeking protective orders or expedited transfers to different work locations as well as representing clients at interviews, filing motions, and appearing on their behalf at courts-martial and in post-trial and appellate proceedings.

SVCs also serve an important educational role by providing a high volume of formal and informal trainings to Coast Guard members and stakeholders on victims' legal rights, the role of SVCs, the military justice process and Sexual Assault Prevention, Response, and Recovery (SAPRR) policy. Additionally, SVCs were frequently requested to provide statements to Congressional oversight bodies on how Coast Guard policies impact sexual assault victims as well as providing suggestions for policy and statutory improvements. SVCs also attended several military and civilian victims' rights conferences and trainings to become better versed in advocating on behalf of adults and children. This included participating in the Crimes Against Women, Crimes Against Children, End Violence Against Women International, the National Crimes Against Children, and the National Crime Victim Law conferences.

The Coast Guard currently has 11 full-time SVCs located in Washington, DC, the Coast Guard Academy, Alameda, CA and Cleveland, OH, with plans to create an office in Seattle, WA, in late-2020.

Disability Evaluation System (DES) Counsel. Member Advocacy Division attorneys assist ill and injured members throughout every stage of the Coast Guard disability evaluation process, representing the individual (rather than the military) as they either separate or return to duty.

This year, six DES Counsel assisted 376 disabled shipmates as their careers and future benefits were adjudicated by the Coast Guard. These efforts resulted in millions of dollars of increased disability and medical benefits for disabled veterans, including guaranteed Tricare coverage (in most cases) for life. Just as importantly, 24 members whose careers would otherwise have ended were able to return to duty with the benefit of DES Counsel representation.

Since 2008, the process of disability evaluation has been different for ill and injured Coast Guard members as compared to their DoD brethren. When a Soldier, Sailor, Airman or Marine's career ends for medical reasons, the member's VA claim is filed

automatically as part of the disability evaluation process. Coast Guard members, on the other hand, have been left to navigate the VA claims process on their own after the military disability evaluation process concludes.

Starting in 2020, this will no longer be the case. The Coast Guard has recently announced its transition to the Integrated Disability Evaluation System (IDES), a partnership with the VA in which each member knows what medical and financial benefits to expect months before leaving the service. Member Advocacy Division attorneys will continue to assist their shipmates through this new system, ensuring that those whose medical conditions end their military careers are able to hit the ground running as veterans.

Defense Services. The Defense Services Division is responsible for providing defense services across the Coast Guard to members facing courts-martial and adverse 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 eight judge advocates embedded in six Navy Defense Service Offices. Through the cross-service agreement, from July 2019 through March 2020, the Coast Guard was able to ensure over 67 Coast Guard members received defense services before courts-martial and at administrative hearings.

Additionally, the Defense Services Division currently has two Coast Guard judge advocates serving as appellate defense counsel, who are co-located with the Navy-Marine Corps Appellate Review Activity at the Washington Navy Yard. From July 2019 to March 2020, the Coast Guard appellate defense represented 13 Coast Guard members before the Coast Guard Court of Criminal Appeals and the Court of Appeals for the Armed Forces (CAAF).

Legal Assistance. In the past year, 14 civilian and active duty legal assistance attorneys provided counsel to over 5,000 clients, helping them with estate planning, family law, consumer law, and numerous other issues. Productivity was negatively affected by the furlough and significant billet gaps, but steps were taken to ensure client interests did not suffer.

Given the variety of legal matters covered by legal assistance, the daily work of an attorney can vary considerably. Over a yearly schedule, however, a familiar pattern tends to form in terms of how many estate planning, family law, consumer cases, etc. we see. In 2019, changes in the law caused us to focus on how our practice will change in 2020 and beyond. Congress has placed a new emphasis on assisting victims of domestic violence and individuals who have difficulties with providers of base housing. Both of these issues may involve significant training and learning new skill sets, but our attorneys look forward to the challenge.

Procurement Law

National Security Cutter (NSC). The NSC is the largest and most advanced class of cutter in the Coast Guard. The Coast Guard took delivery of the eighth NSC, USCGC MIDGETT, in 2019. Currently NSCs #9 - #11 are at varying stages of production at Huntington Ingalls Industries shipyard in Pascagoula, MS, with delivery of NSC #9 anticipated in 2020.

Unmanned Airborne Systems (UAS). The Coast Guard uses UAS to augment its manned aircraft fleet and to enlarge the surveillance range of its fleet of cutters. The Coast Guard has installed and operates small UASs from the deck of five NSCs under a contract with Insitu, Inc. to operate the ScanEagle UAS.



Offshore Patrol Cutter (OPC). The Offshore Patrol Cutter (OPC) procurement is the USCG's largest single class cutter acquisition. In 2018, the USCG exercised an option with Eastern Shipbuilding Group, Inc. (ESG) to begin construction for the first OPC. On October 10, 2018, Category 5 Hurricane Michael struck shore near Panama City, significantly impacting ESG's production capacity. The Assistant Judge Advocate General for Acquisition and Litigation played a leading role in setting the conditions leading to ESG filing a request for relief under P.L. 85-804, resulting the Acting Secretary of Homeland Security grant of extraordinary relief to ESG in October 2019, but limiting its contract to four hulls. As ESG continues with construction of up to the four hulls, the Office of Procurement Law is playing a significant role in the Coast Guard's intent to hold a competition for production of 21 more OPCs.

Fast Response Cutter (FRC). The Coast Guard has taken delivery of 38 of the Sentinel-class FRC, a 154' multi-mission cutter under production contracts with Bollinger Shipyards. In 2020, the Coast Guard continues preparation for deployment of FRCs to patrol the Persian Gulf in Southwest Asia.

Waterway Commerce Cutter (WCC). The Coast Guard's current inland tender fleet consists of 35 tenders that support the service's aids to navigation (ATON) mission in federal inland waterways. They play a vital role in directing the traffic of the nation's Marine Transportation System (MTS) and supporting the U.S. economy by enabling the efficient flow of goods nationwide. The fleet is responsible for maintaining more than 28,200 marine aids throughout 12,000 miles of inland waterways, which move 630 million tons of cargo annually. These cutters were commissioned between 1960 -1991. The Coast Guard established the Waterways Commerce Cutter (WCC) program to replace the capability provided by the inland tender fleet. The WCC program is working under an accelerated program schedule to reach initial operational capability by 2025. Full operational capability, which will be achieved when the capability has been fully fielded, is planned for 2030.

Polar Star Service Life Extension Program (SLEP). The service life extension project for Coast Guard Cutter Polar Star will occur in a five-year phased production between 2021 and 2025. Polar Star is a 399-foot cutter, the service's only active heavy polar icebreaker, which was commissioned in 1977. When completed, the SLEP effort will recapitalize a number of major systems and extend the service life of the cutter until a second polar security cutter is operational. A Request for Proposals was released to industry on January 31, 2020.

Polar Security Cutter. In conjunction with the U.S. Navy, the Coast Guard has procured the design and production of the Polar Security Cutter by V.T. Halter, Inc. The performance is still in the detailed design phase, but the Coast Guard is funding long lead-time materials and expects to take delivery of the first new hull in 2024. Program attorneys are currently working with the Human Systems Integration office in planning for the procurement of training modules to be deployed to the first PSC crews.

Fixed-Winged Missionization. The Coast Guard is completing the integration of the Navy's Minotaur mission system architecture across the Coast Guard's HC-130J (12 completed), HC-144B (7 completed), and C-27J (first 4 at various stages of work) fixed-wing aircraft fleets. The Minotaur system provides an intuitive operator-machine interface with automated track management and a common fixed-wing mission system architecture that will create operational and maintenance efficiencies. The Coast Guard partnership with the Navy and Customs and Border Patrol (CBP) Minotaur programs enables long-term capability management and supports DHS Unity of Effort joint operational requirements development to drive down costs. The Coast Guard entered a partnership with the U.S. Army aimed at modernizing the C-27 cockpit through the original equipment manufacturer of the C-27, Leonardo,S.p.A.

Rotary Wing Aircraft. The Coast Guard operates two rotary wing aircraft, the iconic H-65, with its bright orange paintjob, and the MH-60T, a medium-range workhorse. The H-65 helicopters are currently undergoing depot maintenance where the airframes receive a suite of upgrades to the cockpit and wiring systems as each receives scheduled depot maintenance. Procurement attorneys work with the contracting personnel and program to ensure the needed parts and service-providers are on-contract and providing what is needed. The MH-60 program is entering a significant Service Life Extension Program (SLEP) to ensure that the fleet is available to conduct all needed mission areas. In order to perform the SLEP, Coast Guard personnel, working with program attorneys, have selected the best means of adding service hours to each aircraft and are in the process of procuring the necessary equipment and labor to conduct the SLEP.

Claims and Bid Protests. Procurement attorneys assist in the defense of contract actions in the event they are challenged before the Government Accountability Office. Attorneys routinely work with programs and contracting personnel to avoid or deter bid protests. Procurement attorneys also handle litigation of contract appeals before the Civilian Board of Contract Appeals and assist the Department of Justice in litigation before the Court of Federal Claims.

Procurement Fraud Remedies Coordination. The Coast Guard does not have independent authority to suspend or debar contractors or vendors found to be non-responsible; however, a procurement attorney serves as the Procurement Fraud Remedies Coordinator (PFRC) to work with DHS counterparts on such matters. The PFRC works closely with contracting personnel and the Coast Guard Investigative Service (CGIS) to investigate claims of procurement fraud. The PFRC then coordinates any proposed suspension or debarment action with the DHS Suspension & Debarment Official. Finally, the PFRC represents the Coast Guard in this role on inter-agency working groups and interacts with the U.S. Department of Justice, as needed.

Acquisition and Procurement Law Services. The Acquisition and Procurement Law Division (LSC-APL), consisting of the Supervisory Attorney/Division Chief, eight Contract Law Attorneys and one Administrative Specialist, supports the procurement law and litigation needs of the Coast Guard's asset sustainment community, including the Logistics Centers for Aviation, Surface Forces and Shore Infrastructure, from offices in Baltimore, MD, Elizabeth City, NC, Norfolk, VA, and Alameda, CA. LSC-APL

complements the services provided to the Coast Guard Acquisition Directorate and Information Technology Service Center by the Office of Acquisition and Procurement Law at Coast Guard Headquarters and, together, we form the Coast Guard Acquisition and Procurement Community of Practice (ACOP). In 2020, the LSC-APL's practice continued refining and developing its flexible organizational model to fit varying client demand cycles and to provide optimal organizational alignment with geographically dispersed clients. Initiatives in 2020 include: integration of more focused support for the Information Technology Service Center, as it transitions to a more modernized and fully capable Information Technology and Cyber Security Service Center; additional refinement of the Integrated Project/Product Team business model for providing legal support in procurement actions; participating in contract planning conferences and annual contract reviews; and further enhancing the Contract and Legal Review Board process, which streamlines and integrates legal and higher level review processes for procurements exceeding \$10 million.

Civil Advocacy, Claims and Litigation

Coast Guard attorneys actively manage an extensive claims program under several federal statutes. This involves 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. A judge advocate assigned to the Department of Justice's Aviation and Admiralty section provides valuable Coast Guard experience to Department of Justice (DOJ) attorneys and brings valuable civil litigation experience back to the Coast Guard. In 2019, the Office of Claims and Litigation, in support of its partners from DOJ 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 11 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 follow.

Donjon-SMIT, LLC v. Schultz, et. al. 20-cv-011, (S.D. Georgia)

On September 8, 2019, the Golden Ray, a 200-meter car-carrier vessel, capsized in St. Simons Sound while carrying approximately 4,200 automobiles. This incident represents the largest shipwreck in the United States since the Exxon Valdez. Pursuant to the Clean Water Act and the Oil Pollution Act, the vessel's owner activated its Non-Tank Vessel Response Plan (NTVRP), and the Coast Guard oversaw the response pursuant to the Oil Pollution Act. After over 300,000 gallons of bunkers were removed, a dispute arose between the vessel owner and the salvor regarding the best method to remove the wreck. The owner requested a deviation from its NTVRP to add a new salvor which was granted by the Federal On-Scene Coordinator (FOSC). A couple of months later, the original salvor sued four Coast Guard officers in both their official and individual capacities alleging they violated the Administrative Procedure Act and the original salvor's due process rights. Because the FOSC's decision was well documented at the time it was made based on on-scene operational legal advice, the Department of Justice with Coast Guard legal support successfully argued the Court had no subject matter jurisdiction and the case was dismissed.

CITGO Asphalt Refining Co., et al. v. Frescati Shipping Co., LTD., et al. 18-565, (Supreme Court)

In 2004, the M/T ATHOS I allided with a nine-ton anchor on the bed of the Delaware River as it approached its berth at the refinery (CARCO) resulting in the discharge of 264,000 gallons of heavy crude oil—at the time the largest oil spill since the EXXON VALDEZ. After the response was complete, the National Pollution Fund Center paid \$88 million to Frescati and became subordinated to its rights under its charter party with CARCO. After sixteen years of litigation, the Supreme Court determined that the safe-berth clause contained in the charter party is a warranty of safety, imposing liability for an unsafe berth regardless of CARCO's diligence in selecting the berth resulting in the Oil Spill Liability Trust Fund being reimbursed for the money it paid Frescati. Coast Guard judge advocates assisted attorneys from the Office of the Solicitor General with briefing and arguing the case.

Legal Service Command (LSC) Claims Division. Attorneys and paralegals adjudicated more than 450 wrongful death, personal injury and property damage cases totaling more than \$150 million in claimed damages and negotiated settlements of approximately \$590,000. The LSC collected approximately \$1 million in claims, processing more than 1,400 unpaid civil fines and penalties issued as part of the Coast Guard's regulatory mission. The LSC also recovered more than \$430,000 owed to the United States for damages to Federal property. Area and District legal offices work closely

with the LSC and CG-LCL to advise operational clients regarding evidence collection, preservation, and the appropriate level, type, and format of investigations resulting from property damage, personnel injuries/casualties, and contractual liability.

Legal Services Provided to USCG Training Centers and the Coast Guard Academy

The Coast Guard Training Centers present unique legal challenges and opportunities, and mid-grade Coast Guard attorneys serve as the Staff Judge Advocate for our Training Centers in Cape May, Yorktown, Petaluma, as well as the Maritime Law Enforcement Academy.

These attorneys not only advise their commanders on the full range of legal issues, but also serve as expert legal instructors, ensuring Coast Guard operations comply with the letter and the spirit of federal law. For example, during the 2019 government shutdown and the recent coronavirus response, the TRACEN SJAs helped the Coast Guard maintain its operational readiness by ensuring their graduates could travel safely to their new units.

The Coast Guard Academy Staff Judge Advocate Office is responsible for the provision of legal advice to the Superintendent and approximately 2000 members of the Coast Guard Academy - including CGC EAGLE and the Coast Guard Band - regarding courts-martial, non-judicial punishments, cadet misconduct, appropriated and non-appropriated fund expenditures, administrative investigations, and ethics. Additionally, the SJA Office advises cadets, faculty, and staff about unique, higher education legal issues due to CGA's status as institution of higher learning such as copyright law; intellectual property; patent law; academic hiring, firing, and tenure; and NCAA compliance.



YN1 Rusalova, assigned to TRACEN Cape May, presents an introduction to the Uniform Code of Military to new USCG recruits.





OFFICE OF THE JUDGE ADVOCATE GENERAL

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