

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



Commandant
United States Coast Guard

Washington, D.C. 20593-0001
Staff Symbol:
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STATEMENT OF

REAR ADMIRAL JOSEPH EDWARD VORBACH

CHIEF COUNSEL, UNITED STATES COAST GUARD

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

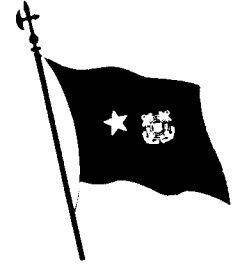
HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

SUBCOMMITTEE ON OCEANOGRAPHY AND GREAT LAKES

21 MARCH 1989



Rear Admiral Joseph Edward Vorbach
Chief Counsel
United States Coast Guard



Rear Admiral Joseph Edward Vorbach became Chief Counsel of the United States Coast Guard, headquartered in Washington, D.C., in June 1986. RADM Vorbach's previous assignment was Commandant of Cadets at the Coast Guard Academy in New London, Conn., from 1983.

He served as Chief, International Affairs Staff for the Coast Guard at Headquarters from 1981 to 1983. Prior Washington, D.C., tours included Special Assistant for Law of the Sea for the Deputy Secretary of the Department of Transportation and Special Assistant for Law of the Sea to the Chief Counsel of the Coast Guard from 1977 to 1980. RADM Vorbach also served in the Office of the Chief Counsel as Assistant Chief, Legislation and Regulations Branch from 1968 to 1969.

RADM Vorbach was assistant professor of law at the Coast Guard Academy from 1969 to 1973. He served as the Legal Officer in the Eleventh Coast Guard District, Long Beach, Calif., from 1973 to 1977 and Chief, Law Enforcement Section, Fifth Coast Guard District Office, Portsmouth, Va. from 1962 to 1964.

His sea tours included service onboard the cutter *ABSECON*, homeported at Norfolk, Va., and on the icebreaker *WESTWIND* out of New York. He was the Commanding Officer of the 95-foot patrol boat *CAPE FAIRWEATHER*, stationed in New London, Conn., and commanded Loran Station Eniwetok in the Marshall Islands, South Pacific.

He received a Bachelor of Science degree from the Coast Guard Academy in 1959 and a Juris Doctor degree with honors from George Washington University, Washington, D.C., in 1968. He is a 1981 graduate of the National War College.

RADM Vorbach is a member of the Bar of the District of Columbia, and the states of New York and Virginia. He is also admitted to practice before the U.S. Court of Military Appeals and is a member of the Federal Bar Association. He has been a member of numerous United States delegations and an alternate representative of the United States to the third United Nations Conference on the Law of the Sea and to the Council of the International Maritime Organization. He has lectured and written articles and papers on the law of the sea and military justice.

RADM Vorbach's military awards include three Meritorious Service Medals, the Coast Guard Commendation Medal, the National Defense Service Medal and the Arctic Service Ribbon.

He is married to the former Alice Patricia Gordon of Jamaica, N.Y. They have four children: Frances Ann, Joseph Edward III, Emily Marie and Justin James.



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MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, I APPRECIATE THE OPPORTUNITY TO SUBMIT THIS STATEMENT CONCERNING THE EFFECT ON THE COAST GUARD OF THE EXTENSION OF THE TERRITORIAL SEA BY PRESIDENTIAL PROCLAMATION.

LAST YEAR I TESTIFIED BEFORE THIS SUBCOMMITTEE CONCERNING H.R. 5069, A BILL TO EXTEND THE TERRITORIAL SEA AND CONTIGUOUS ZONE OF THE UNITED STATES. AT THAT TIME I TESTIFIED THAT THE COAST GUARD SUPPORTED EXTENSION OF THE TERRITORIAL SEA. SUBSEQUENTLY, PRESIDENT REAGAN'S PROCLAMATION OF DECEMBER 27, 1988 EXTENDED THE TERRITORIAL SEA OF THE UNITED STATES FROM 3 TO 12 NAUTICAL MILES. THE UNITED STATES HAS NOW ESTABLISHED A TERRITORIAL SEA TO THE MAXIMUM LIMITS PERMITTED UNDER CUSTOMARY INTERNATIONAL LAW AS REFLECTED IN THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA.

THE PROCLAMATION WAS INTENDED TO EXTEND THE TERRITORIAL SEA ONLY FOR INTERNATIONAL PURPOSES. THE PROCLAMATION DID NOT ALTER EXISTING STATE OR FEDERAL LAW. THUS, THE PROCLAMATION WAS NOT MEANT TO CHANGE THE 3 NAUTICAL MILE LINE, PREVIOUSLY IDENTIFIED

AS THE TERRITORIAL SEA, FOR THE PURPOSES OF DOMESTIC LAW. ACCORDINGLY, NOTHING IN THE PROCLAMATION EXTENDED THE GEOGRAPHIC APPLICATION OF ANY SUCH STATUTES BEYOND 3 NAUTICAL MILES FROM THE BASELINES FROM WHICH THE TERRITORIAL SEA OF THE UNITED STATES IS MEASURED.

THE COAST GUARD IS INVOLVED WITH, AND RESPONSIBLE FOR, A MYRIAD OF OCEAN-RELATED ACTIVITIES WHICH TAKE PLACE IN THE TERRITORIAL SEA. TITLE 14, UNITED STATES CODE, ASSIGNS TO THE COAST GUARD PRIMARY DUTIES ADMINISTERING LAWS AND PROMULGATING AND ENFORCING REGULATIONS IN THE MARITIME ARENA FOR, AMONG OTHERS, MATTERS INVOLVING MARITIME SAFETY AND NAVIGATION, SMUGGLING, AND THE PROTECTION OF THE MARINE ENVIRONMENT.

NUMEROUS JURISDICTIONAL TERMS USED IN DOMESTIC LAW HAVE TRADITIONALLY BEEN APPLIED OUT TO THE LIMIT OF THE TERRITORIAL SEA OF THE UNITED STATES. SINCE MANY OF THESE TERMS ARE NOT SPECIFICALLY DEFINED BY STATUTE, AGENCIES HAVE INTERPRETED THESE TERMS BY REGULATION. SOME OF THE TERMS USED IN STATUTES INCLUDE: "NAVIGABLE WATERS," "TERRITORIAL WATERS," "WATERS SUBJECT TO THE JURISDICTION OF THE UNITED STATES," AND "WATERS OVER WHICH THE UNITED STATES HAS JURISDICTION." THE COAST GUARD HAS GENERALLY DEFINED THE OUTER LIMITS OF THE AREA DESCRIBED BY THESE TERMS AT PART 2 OF TITLE 33 OF THE CODE OF FEDERAL REGULATIONS, TO BE THE SAME AS THE OUTER LIMIT OF THE "TERRITORIAL SEA," HISTORICALLY 3 NAUTICAL MILES FROM THE BASELINES FROM WHICH THE BREADTH OF THE TERRITORIAL SEA IS

MEASURED. IN VIEW OF THE PROCLAMATION'S STATEMENT THAT EXISTING FEDERAL OR STATE LAW WAS NOT EXTENDED OR ALTERED, THE COAST GUARD'S STATUTORY AUTHORITIES HAVE NOT BEEN CHANGED BY THE PROCLAMATION. ACCORDINGLY, THE DEFINITIONS AND APPLICATION OF JURISDICTIONAL TERMS RELIED ON BY THE COAST GUARD TO CARRY OUT ITS MISSIONS, WHICH HAVE TRADITIONALLY BEEN APPLIED TO THE PREVIOUS TERRITORIAL SEA LIMIT OF 3 NAUTICAL MILES, HAVE NOT CHANGED. TO FULLY ENFORCE THESE STATUTES BETWEEN 3 AND 12 NAUTICAL MILES, CONGRESSIONAL ACTION IS NECESSARY TO EXTEND SUCH FEDERAL LAWS BEYOND 3 NAUTICAL MILES.

IT MAY BE IN THE INTEREST OF THE COAST GUARD THAT CERTAIN LAWS BE AMENDED TO CONFORM DOMESTIC LAW TO THE PROCLAMATION. SUCH LEGISLATION COULD HAVE SUBSTANTIAL AND SIGNIFICANT IMPACT ON THE OPERATIONS, REGULATORY AUTHORITY, AND RESOURCES OF THE COAST GUARD DEPENDING ON THE SPECIFIC APPLICATION OF THE LEGISLATION ON EACH OF THE LAWS WHICH THE COAST GUARD ENFORCES. THE COAST GUARD IS IN THE PROCESS OF ANALYZING APPLICABLE LAWS TO DETERMINE WHETHER THE GEOGRAPHIC APPLICATION OF SOME LAWS SHOULD BE EXTENDED AND WHETHER ADDITIONAL RESOURCES, BOTH IN PERSONNEL AND HARDWARE, WOULD BE REQUIRED TO IMPLEMENT AN EXTENSION OF AUTHORITY IN A GIVEN AREA.

TWO EXAMPLES OF POSSIBLE CHANGES ARE: IF OUR WATERWAYS SAFETY REGULATORY AUTHORITY AND OUR REGULATORY AUTHORITY TO DEFINE AND ESTABLISH ANCHORAGE GROUNDS WERE EXTENDED, WE WOULD GENERALLY BE ABLE TO REQUIRE VESSELS TO USE A

TRAFFIC SEPARATION SCHEME, ANCHOR, OR OPERATE IN A SPECIFIC MANNER OUT TO 12 NAUTICAL MILES FROM THE COAST, WHERE WE ARE PRESENTLY LIMITED TO 3 NAUTICAL MILES. IN THE AREA OF OUR SHIPPING LAWS, PENALTIES FOR OPERATING A FOREIGN VESSEL IN A NEGLIGENT MANNER WOULD BE APPLICABLE OUT TO 12 NAUTICAL MILES IF CERTAIN PROVISIONS WERE AMENDED TO CONFORM WITH THE PROCLAMATION.

ONE AREA NEEDING AN AMENDMENT TO CLARIFY THE COAST GUARD'S AUTHORITY IS THE PROTECTION OF UNITED STATES PORTS FROM THREATS TO THE SECURITY OF THE UNITED STATES PURSUANT TO 50 U.S.C. 191. THE PROCLAMATION HAS PROVIDED ENHANCED AUTHORITY FOR UNITED STATES FORCES TO TAKE THE "NECESSARY STEPS" TO RESTRICT FOREIGN SURVEILLANCE AND OTHER ACTIVITIES WHICH ARE PREJUDICIAL TO THE SECURITY OF THE UNITED STATES TO AREAS OUTSIDE 12 NAUTICAL MILES FROM THE UNITED STATES COASTS. THE COAST GUARD, AS THE PRIMARY MARITIME LAW ENFORCEMENT AGENCY AND AS AN ARMED FORCE OF THE UNITED STATES, HAS INSTITUTED APPROPRIATE MEASURES TO TAKE ADVANTAGE OF THIS ENHANCEMENT OF NATIONAL SECURITY. HOWEVER, THE COAST GUARD'S ABILITY TO ENFORCE DOMESTIC LAW TO CONTROL FOREIGN VESSELS BETWEEN 3 AND 12 NAUTICAL MILES WOULD BE ENHANCED IF THE PORT SECURITY ENFORCEMENT AUTHORITY, AND THE APPENDANT SANCTIONS, WERE EXTENDED OUT TO 12 NAUTICAL MILES. THE APPLICABILITY OF 50 U.S.C. 191 WITH REGARD TO FOREIGN-FLAG, AS WELL AS U.S. FLAG VESSELS, IS LIMITED BY DEFINITION TO THE "TERRITORIAL WATERS OF THE UNITED STATES." THE EXTENSION OF THIS AUTHORITY WILL SIGNIFICANTLY ENHANCE THE ABILITY OF THE

COAST GUARD TO PROTECT THE UNITED STATES FROM THREATS TO ITS SECURITY FROM FOREIGN SOURCES.

OF COURSE, ONE OF THE AREAS OF PARAMOUNT IMPORTANCE TO THE COAST GUARD AND THE UNITED STATES IS THE INTERDICTION OF ILLEGAL DRUGS INTO THE UNITED STATES. THERE IS NO INCREASE IN THE COAST GUARD'S JURISDICTION OR ABILITY TO ENFORCE DRUG INTERDICTION LAWS BY EXTENSION OF THE TERRITORIAL SEA EITHER INTERNATIONALLY OR DOMESTICALLY. THIS IS BECAUSE THE GENERAL LAW ENFORCEMENT AUTHORITY OF THE COAST GUARD IS NOT TIED TO STATUTORY DEFINITIONS OF MARITIME LIMITS; INSTEAD OUR AUTHORITY EXTENDS TO WATERS BEYOND THE TERRITORIAL SEAS PURSUANT TO 14 U.S.C. 89. ACCORDINGLY, THE COAST GUARD'S AUTHORITY TO ENFORCE LAWS WILL DEPEND UPON WHETHER A PARTICULAR STATUTE HAS EXTRA-TERRITORIAL EFFECT.

THIS CONCLUDES MY STATEMENT. I APPRECIATE THE OPPORTUNITY TO PRESENT THESE VIEWS FOR YOUR CONSIDERATION AND WILL UNDERTAKE TO ANSWER ANY QUESTIONS YOU MIGHT HAVE.