

Calendar No. 688

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 114-384

NATIONAL OCEANIC AND ATMOSPHERIC AD-
MINISTRATION SEXUAL HARASSMENT AND
ASSAULT PREVENTION ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2206



NOVEMBER 28, 2016.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

69-010

WASHINGTON : 2016

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

JOHN THUNE, South Dakota, *Chairman*

ROGER F. WICKER, Mississippi	BILL NELSON, Florida
ROY BLUNT, Missouri	MARIA CANTWELL, Washington
MARCO RUBIO, Florida	CLAIRE MCCASKILL, Missouri
KELLY AYOTTE, New Hampshire	AMY KLOBUCHAR, Minnesota
TED CRUZ, Texas	RICHARD BLUMENTHAL, Connecticut
DEB FISCHER, Nebraska	BRIAN SCHATZ, Hawaii
JERRY MORAN, Kansas	ED MARKEY, Massachusetts
DAN SULLIVAN, Alaska	CORY BOOKER, New Jersey
RON JOHNSON, Wisconsin	TOM UDALL, New Mexico
DEAN HELLER, Nevada	JOE MANCHIN, West Virginia
CORY GARDNER, Colorado	GARY PETERS, Michigan
STEVE DAINES, Montana	

NICK ROSSI, *Staff Director*

ADRIAN ARNAKIS, *Deputy Staff Director*

REBECCA SEIDEL, *General Counsel*

KIM LIPSKY, *Democratic Staff Director*

CHRISTOPHER DAY, *Democratic Deputy Staff Director*

CLINT ODOM, *Democratic General Counsel*

Calendar No. 688

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 114-384

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION SEXUAL HARASSMENT AND ASSAULT PREVENTION ACT

NOVEMBER 28, 2016.—Ordered to be printed

Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 2206]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2206) to reduce the incidence of sexual harassment and assault at the National Oceanic and Atmospheric Administration, to reauthorize the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002, and to reauthorize the Hydrographic Services Improvement Act of 1998, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 2206, the National Oceanic and Atmospheric Administration Sexual Harassment and Assault Prevention Act, is to reduce the incidence of sexual harassment and assault at the National Oceanic and Atmospheric Administration (NOAA), to reauthorize the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3001 et seq.), to reauthorize the Hydrographic Services Improvements Act of 1998 (33 U.S.C. 892 et seq.), and to make a number of improvements, clarifications, and refinements to the statutory authorities of NOAA.

BACKGROUND AND NEEDS

Sexual Harassment and Assault Prevention

In November 2014, the Committee received whistleblower allegations of sexual harassment and assault involving individuals conducting work on behalf of NOAA. Upon further investigation of NOAA's practices and policies, it became apparent that NOAA lacked the necessary framework to effectively address these concerns. The unique makeup of individuals working on the NOAA assets (officers, wage mariners, volunteers, scientists, interns, etc.) and the difficulty that individuals deployed on ships and aircraft face in accessing the conventional support structure, warrant uniform and clear procedures to respond to, and protect individuals from, sexual harassment and assault.

The NOAA Civil Rights Office provides integration and execution of NOAA's Equal Employment Opportunity (EEO)¹ functions. Within the EEO program, victims of discrimination and/or harassment may file a formal complaint with an EEO counselor. The EEO counselor is not an advocate for either the aggrieved person or NOAA but acts strictly as a neutral party in the EEO process. The NOAA Civil Rights Office and EEO counselors deal with civil rights, diversity, and equal employment matters. Many of these issues is unrelated to sexual harassment, and none are likely related to the crime of sexual assault.

The current structure that funnels sexual harassment issues through the EEO process leaves many gaps. For example, all of the EEO counselors are co-located on the East Coast,² creating challenges for personnel in Hawaii or Alaska, common locations for NOAA vessels. Further, the current operating structure does not provide for advocacy and/or support to the victims. In fact, upon an initial web-based inquiry into NOAA's policy, the relevant website was found to be "under construction" with no content or information to assist someone in need. After this concern was raised with NOAA, an individual is now directed to the Department of Commerce and that department's Administrative Order that provides guidance for managers and supervisors in taking action on allegations of harassment. This information still leaves gaps for a victim looking for support, information, or next steps. In addition, NOAA lacks a specific policy that addresses sexual assault. The gaps in support for an individual dealing with this situation and the lack of specific procedures make it a priority for Congress to require NOAA to establish uniform and clear procedures to prevent and respond to sexual harassment and assault.

NOAA Commissioned Officer Corps

The NOAA Commissioned Officer Corps (NOAA Corps) is one of the seven uniformed services of the United States.³ The 321 officers of the NOAA Corps make up only about 3 percent of NOAA's personnel, but as the operators of NOAA's ship and aircraft fleet, they are critical to NOAA's mission. Their combination of scientific

¹NOAA, Office of the Chief Administrative Office, Civil Rights Office: <http://www.eeo.noaa.gov/>.

²NOAA, Civil Rights Office Diversity Program Managers: <http://www.eeo.noaa.gov/eo-managers-and-counselors.html>.

³The United States has seven uniformed services, of which five are 'armed services' (Army, Navy, Air Force, Marines and the Coast Guard) and two which are not armed (the US Public Health Service and the NOAA Corps).

and operational expertise, coupled with a high degree of flexibility and deployability, allow them to serve throughout NOAA's line and staff offices and support nearly all of NOAA's programs and missions.

Like other uniformed services, NOAA Corps officers often spend much of their careers away from family and friends, operating NOAA ships and aircraft that are frequently deployed up to nine months a year. NOAA Corps officers also regularly work with other uniformed services, commanding Navy underwater unmanned vehicle platoons, training with Navy scientific aircraft squadrons, and deploying on U.S. Coast Guard (USCG) cutters. The NOAA Corps and the USCG now have joint Officer Candidate School classes.

Hydrographic Services

The National Ocean Service (NOS) is one of six line offices within NOAA. There are multiple programs within NOS, but the main areas of focus are: navigation; observations and positioning; coastal science and assessment; and ocean and coastal management services. The navigation, observations, and positioning sector of NOS is tasked with geodetic and hydrographic surveys, shoreline mapping, and building and maintaining the Nation's nautical charts. The hydrographic survey data are used to support a variety of maritime functions, including safe navigation, port and harbor maintenance, coastal engineering, offshore resource development, managing sensitive marine habitats, selecting alternative energy sites, identifying geological hazards, and supporting inundation studies to understand the risks of coastal erosion, hurricanes, and tsunamis.

Some of the hydrographic survey data collection is done by the hydrographic survey vessels within NOAA's fleet. However, NOS also procures and oversees hydrographic surveying and related support services from the private sector.

Congress enacted the Hydrographic Services Improvement Act of 1998 to establish a framework for NOAA to implement new state-of-the-art technologies to modernize the United States' hydrographic services program. The law also encouraged NOAA to use outside contractors for certain hydrographic services. The law has been amended twice. In the most recent amendment,⁴ the program was reauthorized and deadlines were set for NOAA to establish a quality assurance program for privately produced hydrographic products. NOAA now produces NOS Hydrographic Surveys Specifications and Deliverables that detail the requirements for hydrographic surveys undertaken either by NOAA field units or by organizations under contract to the Director, Office of Coast Survey.⁵ In addition, Senators Thune and Sullivan have submitted a request to the Government Accountability Office to conduct a study comparing the unit costs of survey data collected by NOAA and the unit costs of procuring such data in the private sector. The study will also examine the establishment of a plan to increase private sector involvement and the quality assurance program to oversee these acquisitions.

⁴P.L. 107-372.

⁵NOS Hydrographic Surveys Specifications and Deliverables. May 2015. http://www.nauticalcharts.noaa.gov/hsd/specs/Specs_2015.pdf.

Based on the continuous pressure of hydrographic survey needs, particularly in the Arctic, there is concern with NOAA's ability to meet current, let alone, increasing demands.

SUMMARY OF PROVISIONS

S. 2206, the National Oceanic and Atmospheric Administration Sexual Harassment and Assault Prevention Act, would address prevention and response to sexual assault and harassment within NOAA. This bill extends protection to all employees of NOAA and those individuals who work with, or conduct business on behalf of, NOAA. The proposed changes largely track what the Department of Defense (DOD) and the Department of Homeland Security have done, with modifications to adjust for the size of NOAA and differences in enforcement (i.e., DOD is subject to the Uniform Code of Military Justice, while civilians, including the NOAA Corps, are not).

This bill would require the following:

- The establishment of a policy to address sexual harassment, and direct the Secretary of Commerce, acting through the Under Secretary for Oceans and Atmosphere, to place EEO personnel in all regions of operation to include the marine and aviation centers. Additionally, the Director of the Civil Rights Office would be required to submit quarterly reports to the Under Secretary that describe the number of harassment cases and any trends or region-specific issues.
- The Secretary of Commerce, acting through the Under Secretary for Oceans and Atmosphere, to establish a policy to address sexual assault, modeled after the Sexual Assault Response and Prevention Program created by the USCG. The policy would require the establishment of:
 - A victim advocate program.
 - A 24-hour hotline for reporting.
 - A list of support resources an individual may use in the occurrence of sexual assault.
 - A prohibition and consequences for retaliatory actions against someone who reports a sexual assault.
 - Clear rights of the victim to be protected from the accused.
 - A process for a request of unit transfer for a victim of sexual assault.
- An annual report from NOAA on the number of sexual assaults; a synopsis of each case and any disciplinary actions; and the policies, procedures, and processes implemented.

Many provisions from previously Senate-passed NOAA Corps re-authorizations are also included in S. 2206, such as those that would do the following:

- Give the NOAA Corps new tools to improve recruiting and retention to improve diversity in the NOAA Corps and allow for retention of highly-skilled NOAA Corps officers, especially female officers, including:

- A pre-commissioning educational assistance program for students who agree to serve in the NOAA Corps (similar to a USCG pre-commissioning program).
- Authority for an education loan repayment program for students with critical skills.
- An education loan interest repayment program for officers in the first three years of active duty.
- Authorization for a “sabbatical” program modeled on a successful USCG program to allow officers to leave the service (and receive no pay or benefits) for a few years for personal reasons, such as starting a family.
- More closely align the NOAA Corps with other uniformed services, improving the ability to both support NOAA missions and be a useful national asset, including the following:
 - Creation of a new “Officer Candidate” rank for officers entering duty for a period of initial training.
 - A requirement for officers to meet USCG physical fitness standards.
 - The authority to require a period of obligated service after initial training.

LEGISLATIVE HISTORY

S. 2206 was introduced by Senator Sullivan on October 26, 2015, with Senators Cantwell, Grassley, Nelson, Schatz, and Thune as cosponsors. Senators Ayotte, Murkowski, and Wicker have also been added as cosponsors. On November 18, 2015, the Committee met in open Executive Session and, by a voice vote, ordered S. 2206 to be reported favorably with an amendment in the nature of a substitute. Changes made in the substitute amendment incorporated technical feedback received from victims’ advocacy organizations.

Bills reauthorizing the NOAA Corps and aligning both the officers’ obligations and benefits with officers in other uniformed services have been passed by the Senate in both the 112th and 113th Congresses. Specifically, the NOAA Corps Amendments Act of 2012 passed the Senate by unanimous consent in the 112th Congress (S. 2388) and the NOAA Corps Amendments Act of 2013 (S. 1068) passed the Senate by unanimous consent in the 113th Congress.

The Hydrographic Services Improvement Act of 2015 (H.R. 2743) was introduced in the House of Representatives on June 11, 2015, and was referred to the Subcommittee on Water, Power and Oceans of the Committee on Natural Resources of the House of Representatives.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 2206—National Oceanic and Atmospheric Administration Sexual Harassment and Assault Prevention Act

Summary: S. 2206 would authorize the appropriation of \$183 million a year through 2020 for the National Oceanic and Atmospheric Administration (NOAA) to conduct certain hydrographic activities (the measurement and description of features that affect maritime navigation). The bill also would require NOAA to take actions aimed at reducing sexual harassment within the agency. Finally, the bill would modify personnel policies for the agency’s commissioned officer corps.

Based on information provided by NOAA and assuming appropriation of the authorized and necessary amounts, CBO estimates that implementing S. 2206 would cost \$728 million over the 2017–2021 period and \$32 million after 2021.

Because enacting the legislation would affect direct spending and revenues, pay-as-you-go procedures apply, however, CBO estimates that any such effects would be insignificant. CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

The bill would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the aggregate cost of complying with the mandates would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$77 million and \$154 million in 2016, respectively, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary effect of S. 2206 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2017	2018	2019	2020	2021	2017–2021
INCREASES IN SPENDING SUBJECT TO APPROPRIATION						
Hydrographic Activities:						
Authorization Level	183	183	183	183	0	732
Estimated Outlays	119	156	178	183	64	700
Personnel Policies:						
Estimated Authorization Level	6	6	6	6	6	30
Estimated Outlays	4	6	6	6	6	28
Total Increases:						
Authorization Level	189	189	189	189	6	762
Estimated Outlays	123	162	184	189	70	728

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted in 2016 and that the authorized and necessary amounts will be appropriated for each fiscal year.

Spending subject to appropriation

CBO estimates that implementing S. 2206 would cost \$728 million over the 2017–2021 period, assuming appropriation of the authorized and necessary amounts, mostly for hydrographic activities authorized under the bill.

Hydrographic Activities. Title III would authorize the appropriation of \$183 million a year over the 2017–2021 period to carry

out hydrographic activities, including nautical mapping and charting, collecting hydrographic data, maintaining a geodetic reference system, and measuring tides and currents. In 2015, NOAA allocated \$183 million to carry out similar activities. Assuming appropriation of the authorized amounts, CBO estimates that implementing title III would cost \$700 million over the 2017–2021 period.

Personnel Policies. Implementing the personnel policies in the bill would increase discretionary costs by a little less than \$30 million over the 2017–2021 period, CBO estimates.

Sexual Harassment Policy. Title I would require NOAA to develop a policy to prevent and respond to sexual harassment within the agency, and would require NOAA to designate people in 11 locations throughout the country to handle matters related to equal employment opportunities and sexual harassment. The bill also would require the agency to place victims’ advocates at each of those locations. CBO expects that the agency would fill up to 44 positions through a combination of training existing staff and hiring new employees. Based on information from NOAA about the level of expertise required and incorporating the related overhead costs, CBO estimates that each new hire for this work would cost about \$160,000 a year. Finally, the bill would require NOAA to staff a 24-hour hotline for victims of sexual assault, which CBO expects would require eight new employees. Based on information provided by NOAA regarding salary and training costs, CBO estimates that implementing title I would cost about \$25 million over the 2017–2021 period.

Recruiting. Title II would authorize NOAA to spend appropriated funds to recruit members for the commissioned officer corps. On average, the corps admits about 30 new members each year. Based on the cost of recruiting for the other uniformed services, CBO estimates that implementing this provision would cost less than \$500,000 a year.

Title II also would authorize NOAA to pay certain expenses related to higher education for people serving in the commissioned officer corps or those who commit to serve in the corps after completing a college degree. Based on information provided by the agency about the number of officers who would receive such assistance, CBO estimates that implementing this provision would cost less than \$200,000 a year.

Direct spending and revenues

Title II would establish service requirements for people enlisting in NOAA’s commissioned officer corps. Under the bill, any officer who fails to meet those requirements would be obligated to repay NOAA an amount equal to the costs incurred to train that officer. Based on information provided by NOAA regarding the cost of such training, CBO estimates that the total amount of payments to NOAA from officers who fail to meet their service obligations would be insignificant (such payments would be offsetting receipts, which are credits against direct spending).

Title II also would make it illegal for anyone to wear the uniform of NOAA’s commissioned officer corps without proper authorization. Violators would be subject to criminal penalties, which are treated as revenues; however, CBO estimates that any amounts collected

would be insignificant. Furthermore, those revenues would be available to be spent under current law so that the net effect on the deficit would be negligible.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. CBO estimates that enacting S. 2206 would increase revenues by an insignificant amount and would have an insignificant effect on direct spending.

Increase in long-term direct spending and deficits: CBO estimates that enacting S. 2206 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

Intergovernmental and private-sector impact: The bill would impose intergovernmental and private-sector mandates as defined in UMRA, but CBO estimates that the aggregate cost of complying with the mandates would fall below the annual thresholds established in UMRA (\$77 million and \$154 million in 2016, respectively, adjusted annually for inflation).

Mandates that apply to public and private entities

The bill could increase the costs of complying with existing mandates by making personnel in the NOAA commissioned officer corps eligible for protections under the Uniformed Services Employment and Reemployment Rights Act (USERRA). Protections under that act require public and private employers to grant various allowances to members of the uniformed services. Because the increase in the number of servicemembers covered by USERRA would be so small (fewer than 400), CBO expects that the incremental cost of compliance also would be small.

Mandates that apply to public entities only

The bill would exempt NOAA officers from an obligation to serve on juries if the service unreasonably conflicts with official duties or would adversely affect the readiness of a unit, command, or activity. By expanding this exemption to NOAA officers, the bill would preempt some state and local laws governing jury duty; however, that preemption would impose no duty on state or local governments that would result in additional spending or a loss of revenues.

Mandates that apply to private entities only

The bill would prohibit individuals from wearing the uniform of the NOAA commissioned officer corps without authorization. CBO expects that the prohibition would affect few individuals. Consequently, the cost of the mandate would be minimal.

Estimate prepared by: Federal costs: Jeff LaFave; Impact on state, local, and tribal governments: Jon Sperl; Impact on the private sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The reported bill would require the Secretary of Commerce, acting through the Under Secretary for Oceans and Atmosphere, to develop policies on the prevention of and response to sexual harassment and assault. These policies would be applicable to employees of NOAA, members of the NOAA Corps, and individuals who work with or conduct business on behalf of NOAA. In addition, the reported bill would require that contracts into which the Under Secretary enters for the use of a vessel by NOAA include, as a condition of the contract, a provision that subjects the crew of such vessel to the sexual harassment and assault prevention policies developed by NOAA.

The reported bill also would require the Secretary of Commerce, acting through the Under Secretary for Oceans and Atmosphere, to develop and implement a charter vessel safety policy applicable to the acquisition by NOAA of charter vessel services.

ECONOMIC IMPACT

S. 2206 would reauthorize the Hydrographic Services Improvement Act of 1998 and authorize appropriations of \$183 million for the program for each of the fiscal years 2016 through 2020. These appropriations would be used for the functions of nautical mapping and charting, contracting for hydrographic surveys, operating hydrographic survey vessels, and conducting geodetic, tide, and current measurements, all of which may aid commerce and support economic activity. The components of this legislation are not expected to have any significant adverse impacts on the Nation's economy.

PRIVACY

S. 2206 would not impact the personal privacy of individuals.

PAPERWORK

The reported bill would not increase paperwork requirements for the private sector. The bill would require a number of reports and policies from the Federal Government. No later than one year after the date of enactment, it would require the Secretary of Commerce, acting through the Under Secretary for Oceans and Atmosphere, to develop a policy on the prevention of and response to sexual harassment. Additionally, no later than one year after the date of enactment, the Secretary of Commerce, acting through the Under Secretary for Oceans and Atmosphere, should develop a policy on the prevention of and response to sexual assault. No later than January 15th of each year, the Secretary of Commerce would submit a report to Congress on the sexual assaults involving employees of NOAA, members of the NOAA Corps, and individuals who work with or conduct business on behalf of NOAA, with respect to the previous calendar year. The bill would require, not later than one year after the date of enactment, the development and implementation of a charter vessel safety policy applicable to the acquisition of charter vessel services by NOAA.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section would designate the short title of this bill as the “National Oceanic and Atmospheric Administration Sexual Harassment and Assault Prevention Act.”

TITLE I—SEXUAL HARASSMENT AND ASSAULT PREVENTION

Section 101. Actions to address sexual harassment at National Oceanic and Atmospheric Administration.

This section would require the Secretary of Commerce, within one year of enactment, to develop a policy on the prevention of and response to sexual harassment involving NOAA employees, NOAA Corps members, and all individuals who work with, or conduct business on behalf of, NOAA (wage mariners, scientists, students, interns, volunteers, etc.). The policy should include clear procedures an individual should follow, a program to promote awareness, a process for after-hours reporting, and ensure that EEO personnel are distributed in each region of operations and at the marine and aviation centers. In developing the policy, consultation and assistance may be received from such State, local, and national organization and subject matter experts as the Secretary considers appropriate.

Not less frequently than four times each year, the Director of the Civil Rights Office of NOAA would be required to submit to the Under Secretary a report on sexual harassment in NOAA.

Section 102. Actions to address sexual assault at National Oceanic and Atmospheric Administration.

This section would require the Secretary of Commerce, within one year of enactment, to develop a comprehensive policy on the prevention of and response to sexual assault involving NOAA employees, NOAA Corps members, and all individuals who work with or conduct business on behalf of NOAA (wage mariners, scientists, students, interns, volunteers, etc.). In developing the policy, consultation and assistance may be received from such State, local, and national organization and subject matter experts as the Secretary considers appropriate.

The Secretary of Commerce would be required to establish victim advocates trained in matters relating to sexual assault who would act on behalf of the victim, helping to navigate the investigative, medical, and recovery processes. A victim advocate would be located in each region NOAA conducts operations and at each marine and aviation center, and NOAA would be required to create a process for 24-hour reporting.

These requirements would be closely aligned with the DOD policy and procedure on prevention and response to sexual assault within the armed forces.

Section 103. Rights of the victim of sexual assault.

This section would provide the victim of a sexual assault the right to be reasonably protected from the accused.

Section 104. Change of station.

This section would require timely consideration of a unit transfer or work location change to accommodate the victim of a sexual assault. The Secretary of Commerce also would need to develop a policy for the unit transfer or work location change of the alleged perpetrator in lieu of the victim. This policy would include due process for the victim and alleged perpetrator. When practicable, the Secretary of Commerce would be required to establish regulations consistent with similar regulations promulgated by the Secretary of Defense.

Section 105. Applicability of policies to crews of vessels secured by National Oceanic and Atmospheric Administration under contract.

The section would require any contract into which NOAA enters for use of a vessel (ship, small boat, aircraft) to include a clause requiring that personnel attached to the vessel be subject to the policies developed under sections 101(a) and 102(a).

Section 106. Annual report on sexual assault in the National Oceanic and Atmospheric Administration.

The Secretary of Commerce would be required to submit a report to Congress, no later than January 15th of each year, which includes the number of sexual assaults, a synopsis of each case, and the disciplinary actions taken.

Section 107. Definition.

The term “sexual assault” would have the definition in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)).

TITLE II—COMMISSIONED OFFICER CORPS OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Section 201. References to the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002.

References for amendments or repeal would be considered to be made to a section or other provision of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (Act of 2002; 33 U.S.C. 3001 et seq.).

SUBTITLE A—GENERAL PROVISIONS

Section 211. Strength and distribution in grade.

This section would amend section 214 of the Act of 2002 (33 U.S.C. 3004) to establish the commissioned grades for officers in the NOAA Corps, and authorize the Secretary of Commerce to determine the proportion of officers assigned to each rank. The amendment made by this section would require the Secretary of Commerce to annually determine the number of officers authorized for service in each grade, but would protect officers from demotion,

pay cuts, or separation from the service as a result of the Secretary of Commerce's determination.

Section 212. Recalled officers.

Occasionally, the NOAA Corps needs to recall officers from retired status for temporary duty such as for disaster response (e.g., Hurricane Katrina, Deepwater Horizon) or to serve on personnel boards. It cannot do so if it is at authorized strength, reducing its ability to have a "surge" capacity.

This section would amend section 215 of the Act of 2002 (33 U.S.C. 3005) to require that, in determining the number of officers in each grade, officers serving in positions of importance and responsibility (33 U.S.C. 3028) and officers recalled from retirement for temporary duty (for example, during a disaster response) would not be counted in, or against, the total number of authorized officers in the NOAA Corps.

Section 213. Obligated service requirement.

The NOAA Corps currently does not have any legislatively conferred authority to bind officers to service by contract or obligation. Theoretically, an officer could receive training (costing up to \$100,000, depending on type of training) and resign from the NOAA Corps shortly thereafter. The armed services require an obligated service for appointment, training, promotion, etc. of officers to ensure they receive an adequate return on investment in these categories.

This section would amend the Act of 2002 to authorize the Secretary of Commerce to bind NOAA Corps officers to an obligation of service. It would also authorize the Secretary of Commerce to seek reimbursement from officers who do not meet their obligated service requirements, and would characterize that as a debt owed to the United States. The amendment made by this section would allow the Secretary of Commerce to waive an obligation of service requirement for an officer that is not qualified for service.

Section 214. Training and physical fitness.

This section would amend the Act of 2002 to authorize the Secretary of Commerce to carry out training programs and to require officers to maintain a state of physical fitness substantially equivalent to that required for officers in the USCG.

Section 215. Recruiting materials.

This section would amend the Act of 2002 to authorize the Secretary of Commerce the use of products created as recruiting and advertising materials (such as videos or pamphlets).

Section 216. Charter vessel safety policy.

This section would require the Secretary of Commerce to develop and implement a charter vessel safety policy within one year of the date of enactment. The policy would need to address vessel safety, operational safety, and basic personnel safety requirements applicable to the vessel size, type, and intended use. The policy would not exceed the vessel safety requirements promulgated by the USCG.

Section 217. Technical correction.

This section would amend section 101(21)(C) of title 38, United States Code, to correct a definition of active-duty NOAA Corps officers.

SUBTITLE B—PARITY AND RECRUITMENT

Section 221. Education loans.

The NOAA Corps does not have the same educational loan repayment recruiting incentives as the other uniformed services. This is particularly an issue when trying to increase NOAA Corps diversity; many other organizations use these types of incentives to recruit minority students with science and engineering backgrounds.

This section would amend the Act of 2002 to authorize the Secretary of Commerce to create an educational loan repayment program for certain qualified NOAA Corps officers.

Section 222. Interest payments.

This section would amend the Act of 2002 to authorize the Secretary of Commerce to create an interest payment program for student loans of certain active-duty NOAA Corps officers.

Section 223. Student pre-commissioning program.

This section would amend the Act of 2002 to authorize the Secretary of Commerce to provide financial assistance to support tuition and other education-related costs of a currently-enrolled student if the student agrees to serve for a certain number of years as a NOAA Corps officer upon completion of his or her educational program.

Section 224. Limitation on educational assistance.

This section would limit the total amount expended by the Secretary of Commerce for educational assistance programs under sections 267, 268, and 269 of the Act of 2002, as added by this Act, for NOAA Corps officers to the amount saved by the creation of the Officer Candidate rank under 203(f)(1) of title 37, United States Code.

Section 225. Applicability of certain provisions of title 10, United States Code, and extension of certain authorities applicable to members of the armed forces to commissioned officer corps.

This section would amend section 261 of the Act of 2002 (33 U.S.C. 3071) to extend the following additional authorities under title 10, United States Code, to the NOAA Corps: prohibition on unauthorized wearing of a uniform; rules regarding wearing religious apparel in uniform; exemption for serving on certain juries; administration of the oath; benefits and services for separated members; family programs; notary service; and educational assistance.

It would also allow the Secretary of Commerce to accept certain voluntary services, such as the implementation of an Ombudsman program. Ombudsman programs are intended to improve communication between the command and the family members of service members within the command.

Section 226. Applicability of certain provisions of title 37, United States Code.

This section would amend the Act of 2002 to extend the following additional authorities under title 37, United States Code, to the NOAA Corps: accession bonuses for officers with critical skills; housing allowances while on field or sea duty and housing allowances for dependents of deceased members; personal spending allowances; recruiting expenses; and funeral honors duty allowances.

Section 227. Legion of merit award.

This section would amend section 1121 of title 10, United States Code, to allow the officers of the NOAA Corps to receive the Legion of Merit Award.

Section 228. Prohibition of retaliatory personnel actions.

This section would amend section 261 of the Act of 2002 (33 U.S.C. 3071) so that section 1034 of title 10, United States Code, relating to protected communications and prohibition of retaliatory personnel actions also applies to NOAA Corps officers.

Section 229. Penalties for wearing uniform without authority.

This section would amend section 702 of title 18, United States Code, to include NOAA Corps officers in a provision that makes it criminal to wear a uniform without authority.

Section 230. Application of certain provisions of competitive service law.

This section would amend section 3304(f) of title 5, United States Code, to allow former NOAA Corps officers to be eligible for consideration to competitive service positions.

Section 231. Employment and reemployment rights.

This section would amend section 4303(16) of title 38, United States Code, to extend the definition of uniformed services to include NOAA Corps officers for the purposes of employment and reemployment rights granted by chapter 43 of title 38, United States Code.

Section 232. Treatment of commission in commissioned officer corps for purposes of certain hiring decisions.

This section would amend the Act of 2002 to define that an officer who has served in the commissioned officer corps for at least three years be deemed in a career or career-conditional position. An officer will therefore be qualified to apply for positions limited to individuals currently employed within NOAA.

Section 233. Direct hire authority.

This section would allow for the direct hire of a NOAA Corps officer, up to five years after leaving the service, into the Federal workforce. To be considered, the officer would have had to meet the service obligation defined in section 216 of the Act of 2002 and have been discharged under conditions other than from disciplinary action.

SUBTITLE C—APPOINTMENTS AND PROMOTION OF OFFICERS

Section 241. Appointments.

The NOAA Corps would like to implement a new retention tool to allow officers to temporarily separate and pursue personal goals (like starting a family) or other opportunities outside the service, while providing a mechanism for their return to active duty. This section would amend the Act of 2002 to allow for officers to be reappointed at the same grade they held when they separated from the NOAA Corps.

The amendment made by this section would authorize officers to be commissioned from the following sources: officer training school; military service academies; and licensed officers of the merchant marine with at least two years of service on a U.S. vessel.

Finally, the amendment made by this section would require the Secretary of Commerce to coordinate with the Secretary of Defense and the Secretary of the department in which the Coast Guard is operating to promote inter-service transfers of officers and would give preference to inter-service transfers in recruiting new NOAA Corps officers, as appropriate.

Section 242. Personnel boards.

This section would amend section 222 of the Act of 2002 (33 U.S.C. 3022) to specify that the membership of personnel boards may include officers serving in or above the grade of the officers under consideration by the board, and may include recalled, retired officers.

The current law does not allow retired or active officers below the pay grade of commander to serve on personnel boards, and makes it very difficult to form personnel boards, due to the NOAA Corps' inherent small size. This would help to ensure the diversity of the boards.

Section 243. Delegation of authority.

This section would amend section 226 of the Act of 2002 (33 U.S.C. 3026) to require the President to delegate authority for appointments and promotions to the Deputy Secretary of Commerce or NOAA Administrator for periods when the position of Secretary of Commerce is vacant.

Section 244. Assistant Administrator of the office of the marine and aviation operations.

This section would amend section 228 of the Act of 2002 (33 U.S.C. 3028) to modify that the position of the Director for the Office of Marine and Aviation Operations shall carry the title of Assistant Administrator to be consistent with the other NOAA line offices. The Office of Marine and Aviation Operations is responsible for the oversight of the vessel and aircraft fleets and for the administration of the commissioned officer corps.

Section 245. Temporary appointments.

This section would amend section 229 of the Act of 2002 (33 U.S.C. 3029) to establish a mechanism for junior officers to be temporarily appointed by the President alone.

Section 246. Officer candidates.

This section would amend the Act of 2002 to authorize the Secretary of Commerce to create an officer candidate rank for individuals who are in training before receiving their commission.

Currently, officers entering the NOAA Corps for initial training are directly commissioned as officers (Ensigns) on their first day. All armed services have a period where the individual is an “officer candidate” before receiving a commission. The amendment made by this section would give NOAA the authority to create an “officer candidate” rank, with reduced pay. This would result in savings of approximately \$115,000 annually, which could be used to pay for officer precommissioning and education programs established elsewhere in this bill.

Section 247. Procurement of personnel.

This section would amend the Act of 2002 to authorize the Secretary of Commerce to make expenditures in order to recruit NOAA Corps officers.

SUBTITLE D—SEPARATION AND RETIREMENT OF OFFICERS

Section 251. Involuntary retirement or separation.

This section would amend section 241 of the Act of 2002 (33 U.S.C. 3041) to enable deferral of involuntary retirement or separation due to medical conditions for officers of any rank. Currently, the NOAA Corps can defer involuntary separation of lieutenant commanders and below but it cannot for commanders and captains.

Section 252. Separation pay.

This section would amend section 242 of the Act of 2002 (33 U.S.C. 3042) to clarify that separation pay may not be paid to an officer discharged after two missed promotion opportunities if he or she is not genuinely seeking a promotion.

TITLE III—HYDROGRAPHIC SERVICES

Section 301. Reauthorization of hydrographic services improvement Act of 1998.

The amendment made by this section would reauthorize the Hydrographic Services Improvement Act of 1998 through fiscal year 2020. The bill would specify \$5 million and \$2 million of the authorized appropriations be used for Arctic hydrographic surveys and continental shelf delineation, respectively. It would limit administrative expenses associated with contract management to not more than five percent.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES

PART III. EMPLOYEES

SUBPART B. EMPLOYMENT AND RETENTION

CHAPTER 33. EXAMINATION, SELECTION, AND PLACEMENT

SUBCHAPTER I. EXAMINATION, CERTIFICATION, AND APPOINTMENT

§ 3304. Competitive service; examinations

* * * * *

(f)(1) Preference eligibles or veterans who have been separated from the armed forces *and members of the commissioned officer corps of the National Oceanic and Atmospheric Administration (or its predecessor organization the Coast and Geodetic Survey) separated from such uniformed service* under honorable conditions after 3 years or more of active service may not be denied the opportunity to compete for vacant positions for which the agency making the announcement will accept applications from individuals outside its own workforce under merit promotion procedures.

(2) If selected, a preference eligible [or veteran], *veteran, or member* described in paragraph (1) shall receive a career or career-conditional appointment, as appropriate.

(3) This subsection shall not be construed to confer an entitlement to veterans' preference that is not otherwise required by law.

(4) The area of consideration for all merit promotion announcements which include consideration of individuals of the Federal workforce shall indicate that preference eligibles and veterans who have been separated from the armed forces *and members of the commissioned officer corps of the National Oceanic and Atmospheric Administration (or its predecessor organization the Coast and Geodetic Survey) separated from such uniformed service* under honorable conditions after 3 years or more of active service are eligible to apply. The announcements shall be publicized in accordance with section 3327.

(5) The Office of Personnel Management shall prescribe regulations necessary for the administration of this subsection. The regulations shall ensure that an individual who has completed an initial tour of active duty is not excluded from the application of this subsection because of having been released from such tour of duty shortly before completing 3 years of active service, having been honorably released from such duty.

TITLE 10. ARMED FORCES

SUBTITLE A. GENERAL MILITARY LAW

PART II. PERSONNEL

CHAPTER 53. MISCELLANEOUS RIGHTS AND BENEFITS

§ 1044a. Authority to act as notary

(a) The persons named in subsection (b) have the general powers of a notary public and of a consul of the United States in the performance of all notarial acts to be executed by any of the following:

(1) Members of any of the [armed forces] *uniformed services*.

(2) Other persons eligible for legal assistance under the provisions of section 1044 of this title or regulations of the Department of Defense.

(3) Persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(4) Other persons subject to the Uniform Code of Military Justice (chapter 47 of this title) outside the United States.

(b) Persons with the powers described in subsection (a) are the following:

(1) All judge advocates, including reserve judge advocates when not in a duty status.

(2) All civilian attorneys serving as legal assistance attorneys.

(3) All adjutants, assistant adjutants, and personnel adjutants, including reserve members when not in a duty status.

(4) All other members of the [armed forces] *uniformed services*, including reserve members when not in a duty status, who are designated by regulations of the [armed forces] *uniformed services* or by statute to have those powers.

(5) For the performance of notarial acts at locations outside the United States, all employees of a military department or the Coast Guard who are designated by regulations of the Secretary concerned or by statute to have those powers for exercise outside the United States.

(c) No fee may be paid to or received by any person for the performance of a notarial act authorized in this section.

(d) The signature of any such person acting as notary, together with the title of that person's office, is prima facie evidence that the signature is genuine, that the person holds the designated title, and that the person is authorized to perform a notarial act.

§ 1121. Legion of Merit: award

The President, under regulations to be prescribed by him, may award a decoration called the "Legion of Merit", having suitable appurtenances and devices and not more than four degrees, to any member of the [armed forces] *uniformed services* of the United States or of any friendly foreign nation who, after September 8, 1939, has distinguished himself by exceptionally meritorious conduct in performing outstanding services.

§ 1588. Authority to accept certain voluntary services

(a) **AUTHORITY TO ACCEPT SERVICES.**— Subject to subsection (b) and notwithstanding section 1342 of title 31, the Secretary concerned may accept from any person the following services:

(1) Voluntary medical services, dental services, nursing services, or other health-care related services.

(2) Voluntary services to be provided for a museum or a natural resources program.

(3) Voluntary services to be provided for programs providing services to members of the [armed forces] *uniformed services* and the families of such members, including the following programs:

(A) Family support programs.

(B) Child development and youth services programs.

- (C) Library and education programs.
- (D) Religious programs.
- (E) Housing referral programs.
- (F) Programs providing employment assistance to spouses of such members.
- (G) Morale, welfare, and recreation programs, to the extent not covered by another subparagraph of this paragraph.
- (4) Voluntary services as a member of a funeral honors detail under section 1491 of this title.
- (5) Legal services voluntarily provided as legal assistance under section 1044 of this title.
- (6) Voluntary services as a proctor for administration to secondary school students of the test known as the "Armed Services Vocational Aptitude Battery".
- (7) Voluntary translation or interpretation services offered with respect to a foreign language by a person (A) who is registered for such foreign language on the National Foreign Language Skills Registry under section 1596b of this title, or (B) who otherwise is approved to provide voluntary translation or interpretation services for national security purposes, as determined by the Secretary of Defense.
- (8) Voluntary services to support programs of a committee of the Employer Support of the Guard and Reserve as authorized by the Secretary of Defense.
- (9) Voluntary services to facilitate accounting for missing persons.
- (10) Voluntary legal support services provided by law students through internship and externship programs approved by the Secretary concerned.

* * * * *

(g) SECRETARY CONCERNED FOR ACCEPTANCE OF SERVICES FOR PROGRAMS SERVING MEMBERS OF NOAA AND THEIR FAMILIES.—For purposes of the acceptance of services described in subsection (a)(3), the term "Secretary concerned" in subsection (a) shall include the Secretary of Commerce with respect to members of the National Oceanic and Atmospheric Administration.

§ 2153. Capstone course: newly selected general and flag officers

(a) REQUIREMENT.—Each officer selected for promotion to the grade of brigadier general or, in the case of the Navy or the commissioned corps of the National Oceanic and Atmospheric Administration, rear admiral (lower half) shall be required, after such selection, to attend a military education course designed specifically to prepare new general and flag officers to work with the [other armed forces] other uniformed services.

(b) WAIVER AUTHORITY.—

(1) Subject to paragraph (2), the Secretary of Defense or the Secretary of Commerce, as applicable, may waive subsection

(a)—

- (A) in the case of an officer whose immediately previous assignment was in a joint duty assignment and who is thoroughly familiar with joint matters;
- (B) when necessary for the good of the service;

(C) in the case of an officer whose proposed selection for promotion is based primarily upon scientific and technical qualifications for which joint requirements do not exist (as determined under regulations prescribed under section 619(e)(4) of this title); and

(D) in the case of a medical officer, dental officer, veterinary officer, medical service officer, nurse, biomedical science officer, or chaplain.

(2) The authority of the Secretary of Defense to grant a waiver under paragraph (1) may only be delegated to the Deputy Secretary of Defense, an Under Secretary of Defense, or an Assistant Secretary of Defense. Such a waiver may be granted only on a case-by-case basis in the case of an individual officer.

TITLE 18. CRIMES AND CRIMINAL PROCEDURE

PART I. CRIMES

CHAPTER 33. EMBLEMS, INSIGNIA, AND NAMES

§ 702. Uniform of armed forces and Public Health Service

Whoever, in any place within the jurisdiction of the United States or in the Canal Zone, without authority, wears the uniform or a distinctive part thereof or anything similar to a distinctive part of the uniform of any of the armed forces of the United States, Public Health **Service or any Service, the commissioned officer corps of the National Oceanic and Atmospheric Administration, or any auxiliary of such,** shall be fined under this title or imprisoned not more than six months, or both.

TITLE 37. PAY AND ALLOWANCES OF THE UNIFORMED SERVICES CHAPTER 3. BASIC PAY

§ 203. Rates

(a)(1) The rates of monthly basic pay for members of the uniformed services within each pay grade are those prescribed in accordance with section 1009 of this title or as otherwise prescribed by law.

(2) Notwithstanding the rates of basic pay in effect at any time as provided by law, the rates of basic pay payable for commissioned officers in pay grades O-7 through O-10 may not exceed the monthly equivalent of the rate of pay for level II of the Executive Schedule, and the rates of basic pay payable for all other officers and for enlisted members may not exceed the monthly equivalent of the rate of pay for level V of the Executive Schedule.

(b) While serving as a permanent professor at the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy or as a member of the permanent commissioned teaching staff at the United States Coast Guard Academy, an officer who has over 36 years of service computed under section 205 of this title is, in addition to the pay and allowances to which he is otherwise entitled under this title, entitled to additional pay in the amount of \$250 a month. This additional pay may not be used in the computation of retired pay.

(c) A cadet at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, or a midshipman at the United States Naval Academy, is entitled to monthly cadet pay, or midshipman pay, at the monthly rate equal to 35 percent of the basic pay of a commissioned officer in the pay grade O-1 with less than two years of service.

(d)(1) The basic pay of a commissioned officer who is in pay grade O-1, O-2, or O-3 and who is credited with a total of over four years' service described in paragraph (2) shall be computed in the same manner as the basic pay of a commissioned officer in the same pay grade who has been credited with over four years' active service as an enlisted member.

(2) Service to be taken into account for purposes of computing basic pay under paragraph (1) is as follows:

(A) Active service as a warrant officer or as a warrant officer and an enlisted member.

(B) Service as a warrant officer, as an enlisted member, or as a warrant officer and an enlisted member, for which at least 1,460 points have been credited to the officer for the purposes of section 12732(a)(2) of title 10.

(e)(1) A student at the United States Military Academy Preparatory School, the United States Naval Academy Preparatory School, or the United States Air Force Academy Preparatory School who was selected to attend the preparatory school from civilian life is entitled to monthly student pay at the same rate as provided for cadets and midshipmen under subsection (c).

(2) A student at a preparatory school referred to in paragraph (1) who, at the time of the student's selection to attend the preparatory school, was an enlisted member of the uniformed services shall receive monthly basic pay at the rate prescribed for the student's pay grade and years of service as an enlisted member or at the rate provided for cadets and midshipmen under subsection (c), whichever is greater.

(3) The monthly student pay of a student described in paragraph (1) shall be treated for purposes of the accrual charge for the Department of Defense Military Retirement Fund established under section 1461 of title 10 in the same manner as monthly cadet pay or midshipman pay under subsection (c).

(f)(1) An officer candidate enrolled in the basic officer training program of the commissioned officer corps of the National Oceanic and Atmospheric Administration is entitled, while participating in such program, to monthly officer candidate pay at monthly rate equal to the basic pay of an enlisted member in the pay grade E-5 with less than 2 years service.

(2) An individual who graduates from such program shall receive credit for the time spent participating in such program as if such time were time served while on active duty as a commissioned officer. If the individual does not graduate from such program, such time shall not be considered creditable for active duty or pay.

TITLE 38. VETERANS' BENEFITS

PART I. GENERAL PROVISIONS

CHAPTER 1. GENERAL

§ 101. Definitions

For the purposes of this title—

- * * * * *
- (21) The term “active duty” means—
 - (A) full-time duty in the Armed Forces, other than active duty for training;
 - (B) full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to “full military benefits” or (iii) at any time, for the purposes of chapter 13 of this title;
 - (C) full-time duty as a commissioned officer *in the commissioned officer corps* of the National Oceanic and Atmospheric Administration or its predecessor organization the Coast and Geodetic Survey (i) on or after July 29, 1945, or (ii) before that date (I) while on transfer to one of the Armed Forces, or (II) while, in time of war or national emergency declared by the President, assigned to duty on a project for one of the Armed Forces in an area determined by the Secretary of Defense to be of immediate military hazard, or (III) in the Philippine Islands on December 7, 1941, and continuously in such islands thereafter, or (iii) at any time, for the purposes of chapter 13 of this title;
 - (D) service as a cadet at the United States Military, Air Force, or Coast Guard Academy, or as a midshipman at the United States Naval Academy; and
 - (E) authorized travel to or from such duty or service.
- * * *

§ 4303. Definitions

For the purpose of this chapter—

- * * * * *
- (16) The term “uniformed services” means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, *the commissioned officer corps of the National Oceanic and Atmospheric Administration*, and any other category of persons designated by the President in time of war or national emergency.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
COMMISSIONED OFFICER CORPS ACT OF 2002

[33 U.S.C. 3001 et seq.]

SEC. 212. DEFINITIONS.

[33 U.S.C. 3002]

(a) **APPLICABILITY OF DEFINITIONS IN TITLE 10, UNITED STATES CODE.**—Except as provided in subsection (b), the definitions provided in section 101 of title 10, United States Code, apply to the provisions of this title.

(b) **ADDITIONAL DEFINITIONS.**—In this title:

(1) **ACTIVE DUTY.**—The term “active duty” means full-time duty in the active service of a uniformed service.

(2) **GRADE.**—The term “grade” means a step or degree, in a graduated scale of office or rank, that is established and designated as a grade by law or regulation.

(3) **OFFICER.**—The term “officer” means an officer of the commissioned corps.

(4) **OFFICER CANDIDATE.**—*The term “officer candidate” means an individual who is enrolled in the basic officer training program of the Administration and is under consideration for appointment as an officer under section 221(a)(2)(A).*

[(4)](5) **FLAG OFFICER.**—The term “flag officer” means an officer serving in, or having the grade of, vice admiral, rear admiral, or rear admiral (lower half).

[(5)](6) **SECRETARY.**—The term “Secretary” means the Secretary of Commerce.

[(6)](7) **ADMINISTRATION.**—The term “Administration” means the National Oceanic and Atmospheric Administration.

[SEC. 214. STRENGTH AND DISTRIBUTION IN GRADE.

[33 U.S.C. 3004]

[(a)] **RELATIVE RANK; PROPORTION.**—Of the total authorized number of officers on the lineal list of the commissioned corps, there are authorized numbers in permanent grade, in relative rank with officers of the Navy, in proportions as follows:

[(1)] 8 in the grade of captain.

[(2)] 14 in the grade of commander.

[(3)] 19 in the grade of lieutenant commander.

[(4)] 23 in the grade of lieutenant.

[(5)] 18 in the grade of lieutenant (junior grade).

[(6)] 18 in the grade of ensign.

[(b)] **COMPUTATION OF NUMBER IN GRADE.**—

[(1)] **IN GENERAL.**—Subject to paragraph (2), whenever a final fraction occurs in computing the authorized number of officers in a grade, the nearest whole number shall be taken, and if the fraction is one-half the next higher whole number shall be taken.

[(2)] **LIMITATION ON INCREASE IN TOTAL NUMBER.**—The total number of officers on the lineal list authorized by law may not be increased as the result of the computations prescribed in this section, and if necessary the number of officers in the lowest grade shall be reduced accordingly.

[(c)] **PRESERVATION OF GRADE AND PAY, ETC.**—No officer may be reduced in grade or pay or separated from the commissioned corps

as the result of a computation made to determine the authorized number of officers in the various grades.

[(d) FILLING OF VACANCIES; ADDITIONAL NUMBERS.—Nothing in this section may be construed as requiring the filling of any vacancy or as prohibiting additional numbers in any grade to compensate for vacancies existing in higher grades.]

[(e) TEMPORARY INCREASE IN NUMBERS.—The total number of officers authorized by law to be on the lineal list during a fiscal year may be temporarily exceeded so long as the average number on that list during that fiscal year does not exceed the authorized number.]

SEC. 214. STRENGTH AND DISTRIBUTION IN GRADE.

(a) GRADES.—*The commissioned grades in the commissioned officer corps of the Administration are the following, in relative rank with officers of the Navy:*

- (1) *Vice admiral.*
- (2) *Rear admiral.*
- (3) *Rear admiral (lower half).*
- (4) *Captain.*
- (5) *Commander.*
- (6) *Lieutenant commander.*
- (7) *Lieutenant.*
- (8) *Lieutenant (junior grade).*
- (9) *Ensign.*

(b) GRADE DISTRIBUTION.—*The Secretary shall prescribe, with respect to the distribution on the lineal list in grade, the percentages applicable to the grades set forth in subsection (a).*

(c) ANNUAL COMPUTATION OF NUMBER IN GRADE.—

(1) IN GENERAL.—*Not less frequently than once each year, the Secretary shall make a computation to determine the number of officers on the lineal list authorized to be serving in each grade.*

(2) METHOD OF COMPUTATION.—*The number in each grade shall be computed by applying the applicable percentage to the total number of such officers serving on active duty on the date the computation is made.*

(3) FRACTIONS.—*If a final fraction occurs in computing the authorized number of officers in a grade, the nearest whole number shall be taken. If the fraction is $\frac{1}{2}$, the next higher whole number shall be taken.*

(d) TEMPORARY INCREASE IN NUMBERS.—*The total number of officers authorized by law to be on the lineal list during a fiscal year may be temporarily exceeded if the average number on that list during that fiscal year does not exceed the authorized number.*

(e) POSITIONS OF IMPORTANCE AND RESPONSIBILITY.—*Officers serving in positions designated under section 228(a) and officers recalled from retired status shall not be counted when computing authorized strengths under subsection (c) and shall not count against those strengths.*

(f) PRESERVATION OF GRADE AND PAY.—*No officer may be reduced in grade or pay or separated from the commissioned officer corps of the Administration as the result of a computation made to determine the authorized number of officers in the various grades.*

SEC. 215. NUMBER OF AUTHORIZED COMMISSIONED OFFICERS.

[33 U.S.C. 3005]

[Effective]

(a) *IN GENERAL.*—Effective October 1, 2009, the total number of authorized commissioned officers on the lineal list of the commissioned corps of the National Oceanic and Atmospheric Administration shall be increased from 321 to 379 if—

(1) the Secretary has submitted to the Congress—

(A) the Administration’s ship recapitalization plan for fiscal years 2010 through 2024;

(B) the Administration’s aircraft modernization plan; and

(C) supporting workforce management plans;

(2) appropriated funding is available; and

(3) the Secretary has justified organizational needs for the commissioned corps for each such fiscal year.

(b) *POSITIONS OF IMPORTANCE AND RESPONSIBILITY.*—Officers serving in positions designated under section 228 and officers recalled from retired status—

(1) may not be counted in determining the total number of authorized officers on the lineal list under this section; and

(2) may not count against such number.

SEC. 216. OBLIGATED SERVICE REQUIREMENT.

(a) *IN GENERAL.*—

(1) *RULEMAKING.*—The Secretary shall prescribe the obligated service requirements for appointments, training, promotions, separations, continuations, and retirement of officers not otherwise covered by law.

(2) *WRITTEN AGREEMENTS.*—The Secretary and officers shall enter into written agreements that describe the officers’ obligated service requirements prescribed under paragraph (1) in return for such appointments, training, promotions, separations, and retirements as the Secretary considers appropriate.

(b) *REPAYMENT FOR FAILURE TO SATISFY REQUIREMENTS.*—

(1) *IN GENERAL.*—The Secretary may require an officer who fails to meet the service requirements prescribed under subsection (a)(1) to reimburse the Secretary in an amount that bears the same ratio to the total costs of the training provided to that officer by the Secretary as the unserved portion of active duty bears to the total period of active duty the officer agreed to serve.

(2) *OBLIGATION AS DEBT TO UNITED STATES.*—An obligation to reimburse the Secretary under paragraph (1) shall be considered for all purposes as a debt owed to the United States.

(3) *DISCHARGE IN BANKRUPTCY.*—A discharge in bankruptcy under title 11 that is entered less than 5 years after the termination of a written agreement entered into under subsection (a)(2) does not discharge the individual signing the agreement from a debt arising under such agreement.

(c) *WAIVER OR SUSPENSION OF COMPLIANCE.*—The Secretary may waive the service obligation of an officer who—

(1) becomes unqualified to serve on active duty in the commissioned officer corps of the Administration because of a circumstance not within the control of that officer; or

(2) is—

(A) not physically qualified for appointment; and
 (B) determined to be unqualified for service in the commissioned officer corps of the Administration because of a physical or medical condition that was not the result of the officer's own misconduct or grossly negligent conduct.

SEC. 217. TRAINING AND PHYSICAL FITNESS.

(a) TRAINING.—The Secretary may take such measures as may be necessary to ensure that officers are prepared to carry out their duties in the commissioned officer corps of the Administration and proficient in the skills necessary to carry out such duties. Such measures may include the following:

(1) Carrying out training programs and correspondence courses, including establishing and operating a basic officer training program to provide initial indoctrination and maritime vocational training for officer candidates as well as refresher training, mid-career training, aviation training, and such other training as the Secretary considers necessary for officer development and proficiency.

(2) Providing officers and officer candidates with books and school supplies.

(3) Acquiring such equipment as may be necessary for training and instructional purposes.

(b) PHYSICAL FITNESS.—The Secretary shall ensure that officers maintain a high physical state of readiness by establishing standards of physical fitness for officers that are substantially equivalent to those prescribed for officers in the Coast Guard.

SEC. 218. USE OF RECRUITING MATERIALS FOR PUBLIC RELATIONS.

The Secretary may use for public relations purposes of the Department of Commerce any advertising materials developed for use for recruitment and retention of personnel for the commissioned officer corps of the Administration. Any such use shall be under such conditions and subject to such restrictions as the Secretary shall prescribe.

SEC. 221. ORIGINAL APPOINTMENTS.

[33 U.S.C. 3021]

[(a) IN GENERAL.—

[(1) GRADES.—Original appointments may be made in the grades of ensign, lieutenant (junior grade), and lieutenant.

[(2) QUALIFICATIONS.—Under regulations prescribed by the Secretary, such an appointment may be given only to a person who—

[(A) meets the qualification requirements specified in paragraphs (1) through (4) of section 532(a) of title 10, United States Code; and

[(B) has such other special qualifications as the Secretary may prescribe by regulation.

[(3) EXAMINATION.—A person may be given such an appointment only after passage of a mental and physical examination given in accordance with regulations prescribed by the Secretary.

[(4) REVOCATION OF COMMISSION OF OFFICERS FOUND NOT QUALIFIED.—The President may revoke the commission of any officer appointed under this section during the officer's first three years of service if the officer is found not qualified for the

service. Any such revocation shall be made under regulations prescribed by the President.

[(b) LINEAL LIST.—Each person appointed under this section shall be placed on the lineal list in a position commensurate with that person's age, education, and experience, in accordance with regulations prescribed by the Secretary.

[(c) SERVICE CREDIT UPON ORIGINAL APPOINTMENT IN GRADE ABOVE ENSIGN.—

[(1) IN GENERAL.—For the purposes of basic pay, a person appointed under this section in the grade of lieutenant shall be credited as having, on the date of that appointment, three years of service, and a person appointed under this section in the grade of lieutenant (junior grade) shall be credited as having, as of the date of that appointment, 1 1/2 years of service.

[(2) HIGHER CREDIT UNDER OTHER LAW.—If a person appointed under this section is entitled to credit for the purpose of basic pay under any other provision of law that would exceed the amount of credit authorized by paragraph (1), that person shall be credited with that amount of service in lieu of the credit authorized by paragraph (1).]

SEC. 221. ORIGINAL APPOINTMENTS AND REAPPOINTMENTS.

(a) ORIGINAL APPOINTMENTS.—

(1) GRADES.—

(A) IN GENERAL.—*Except as provided in subparagraph (B), an original appointment of an officer may be made in such grades as may be appropriate for—*

(i) the qualification, experience, and length of service of the appointee; and

(ii) the commissioned officer corps of the Administration.

(B) APPOINTMENT OF OFFICER CANDIDATES.—

(i) LIMITATION ON GRADE.—An original appointment of an officer candidate, upon graduation from the basic officer training program of the commissioned officer corps of the Administration, may not be made in any other grade than ensign.

(ii) RANK.—Officer candidates receiving appointments as ensigns upon graduation from basic officer training program shall take rank according to their proficiency as shown by the order of their merit at date of graduation.

(2) SOURCE OF APPOINTMENTS.—*An original appointment may be made from among the following:*

(A) Graduates of the basic officer training program of the commissioned officer corps of the Administration.

(B) Graduates of the military service academies of the United States who otherwise meet the academic standards for enrollment in the training program described in subparagraph (A).

(C) Graduates of the maritime academies of the States who—

(i) otherwise meet the academic standards for enrollment in the training program described in subparagraph (A);

(ii) completed at least 3 years of regimented training while at a maritime academy of a State; and

(iii) obtained an unlimited tonnage or unlimited horsepower Merchant Mariner Credential from the United States Coast Guard.

(D) Licensed officers of the United States merchant marine who have served 2 or more years aboard a vessel of the United States in the capacity of a licensed officer, who otherwise meet the academic standards for enrollment in the training program described in subparagraph (A).

(3) DEFINITIONS.—In this subsection:

(A) MARITIME ACADEMIES OF THE STATES.—The term “maritime academies of the States” means the following:

(i) California Maritime Academy, Vallejo, California.

(ii) Great Lakes Maritime Academy, Traverse City, Michigan.

(iii) Maine Maritime Academy, Castine, Maine.

(iv) Massachusetts Maritime Academy, Buzzards Bay, Massachusetts.

(v) State University of New York Maritime College, Fort Schuyler, New York.

(vi) Texas A&M Maritime Academy, Galveston, Texas.

(B) MILITARY SERVICE ACADEMIES OF THE UNITED STATES.—The term “military service academies of the United States” means the following:

(i) The United States Military Academy, West Point, New York.

(ii) The United States Naval Academy, Annapolis, Maryland.

(iii) The United States Air Force Academy, Colorado Springs, Colorado.

(iv) The United States Coast Guard Academy, New London, Connecticut.

(v) The United States Merchant Marine Academy, Kings Point, New York.

(b) REAPPOINTMENT.—

(1) IN GENERAL.—Except as provided in paragraph (2), an individual who previously served in the commissioned officer corps of the Administration may be appointed by the Secretary to the grade the individual held prior to separation.

(2) REAPPOINTMENTS TO HIGHER GRADES.—An appointment under paragraph (1) to a position of importance and responsibility designated under section 228 may only be made by the President.

(c) QUALIFICATIONS.—An appointment under subsection (a) or (b) may not be given to an individual until the individual’s mental, moral, physical, and professional fitness to perform the duties of an officer has been established under such regulations as the Secretary shall prescribe.

(d) PRECEDENCE OF APPOINTEES.—Appointees under this section shall take precedence in the grade to which appointed in accordance with the dates of their commissions as commissioned officers in such grade. Appointees whose dates of commission are the same

shall take precedence with each other as the Secretary shall determine.

(e) *INTER-SERVICE TRANSFERS.*—For inter-service transfers (as described in the Department of Defense Directive 1300.4 (dated December 27, 2006)) the Secretary shall—

(1) coordinate with the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating to promote and streamline inter-service transfers;

(2) give preference to such inter-service transfers for recruitment purposes as determined appropriate by the Secretary; and

(3) reappoint such inter-service transfers to the equivalent grade in the commissioned officer corps.

[SEC. 222. PERSONNEL BOARDS.

[33 U.S.C. 3022]

[(a) *CONVENING.*—At least once a year and at such other times as the Secretary determines necessary, the Secretary shall convene a personnel board. A personnel board shall consist of not less than five officers on the lineal list in the permanent grade of commander or above.

[(b) *DUTIES.*—Each personnel board shall—

[(1) recommend to the Secretary such changes in the lineal list as the board may determine; and

[(2) make selections and recommendations to the Secretary and President for the appointment, promotion, separation, continuation, and retirement of officers as prescribed in this subtitle and subtitle C.

[(c) *ACTION ON RECOMMENDATIONS NOT ACCEPTABLE.*—In a case in which any recommendation by a board convened under subsection (a) is not accepted by the Secretary or the President, the board shall make such further recommendations as are acceptable.]

SEC. 222. PERSONNEL BOARDS.

(a) *CONVENING.*—Not less frequently than once each year and at such other times as the Secretary determines necessary, the Secretary shall convene a personnel board.

(b) *MEMBERSHIP.*—

(1) *IN GENERAL.*—A board convened under subsection (a) shall consist of 5 or more officers who are serving in or above the permanent grade of the officers under consideration by the board.

(2) *RETIRED OFFICERS.*—Officers on the retired list may be recalled to serve on such personnel boards as the Secretary considers necessary.

(3) *NO MEMBERSHIP ON 2 SUCCESSIVE BOARDS.*—No officer may be a member of 2 successive personnel boards convened to consider officers of the same grade for promotion or separation.

(c) *DUTIES.*—Each personnel board shall—

(1) recommend to the Secretary such changes as may be necessary to correct any erroneous position on the lineal list that was caused by administrative error; and

(2) make selections and recommendations to the Secretary and the President for the appointment, promotion, involuntary separation, continuation, and involuntary retirement of officers

in the commissioned officer corps of the Administration as prescribed in this title.

(d) *ACTION ON RECOMMENDATIONS NOT ACCEPTABLE.*—If any recommendation by a board convened under subsection (a) is not accepted by the Secretary or the President, the board shall make such further recommendations as the Secretary or the President considers appropriate.

SEC. 226. APPOINTMENTS AND PROMOTIONS TO PERMANENT GRADES.

[33 U.S.C. 3026]

[Appointments]

(a) *IN GENERAL.*—Appointments in and promotions to all permanent grades shall be made by the President.

(b) *DELEGATION OF APPOINTMENT AUTHORITY.*—If the President delegates authority to the Secretary to make appointments under this section, the President shall, during a period in which the position of the Secretary is vacant, delegate such authority to the Deputy Secretary of Commerce or the Under Secretary for Oceans and Atmosphere during such period.

SEC. 228. POSITIONS OF IMPORTANCE AND RESPONSIBILITY.

[33 U.S.C. 3028]

* * * * *

(c) *DIRECTOR OF NOAA CORPS AND ASSISTANT ADMINISTRATOR OF THE OFFICE OF MARINE AND AVIATION OPERATIONS.*—The Secretary shall designate one position under this section as responsible for oversight of the vessel and aircraft fleets and for the administration of the commissioned officer corps. That position shall be filled by an officer on the lineal list serving in or above the grade of rear admiral (lower half). For the specific purpose of administering the commissioned officer corps, that position shall carry the title of Director of the National Oceanic and Atmospheric Administration Commissioned Officer Corps. For the specific purpose of administering the vessel and aircraft fleets, that position shall carry the title of **[Director]** *Assistant Administrator* of the Office of Marine and Aviation Operations.

* * * * *

[SEC. 229. TEMPORARY APPOINTMENTS AND PROMOTIONS GENERALLY.

[33 U.S.C. 3029]

[(a) ENSIGN.—Temporary appointments in the grade of ensign may be made by the President. Each such temporary appointment terminates at the close of the next regular session of the Congress.

[(b) LIEUTENANT (JUNIOR GRADE).—Officers in the permanent grade of ensign may be temporarily promoted to and appointed in the grade of lieutenant (junior grade) by the President whenever vacancies exist in higher grades.

[(c) ANY ONE GRADE.—When determined by the Secretary to be in the best interest of the service, officers in any permanent grade may be temporarily promoted one grade by the President. Any such temporary promotion terminates upon the transfer of the officer to a new assignment.]

SEC. 229. TEMPORAR APPOINTMENTS.

(a) *APPOINTMENTS BY PRESIDENT.*—Temporary appointments in the grade of ensign, lieutenant junior grade, or lieutenant may be made by the President.

(b) *TERMINATION.*—A temporary appointment to a position under subsection (a) shall terminate upon approval of a permanent appointment for such position made by the President.

(c) *ORDER OF PRECEDENCE.*—Appointees under subsection (a) shall take precedence in the grade to which appointed in accordance with the dates of their appointments as officers in such grade. The order of precedence of appointees who are appointed on the same date shall be determined by the Secretary.

(d) *ANY ONE GRADE.*—When determined by the Secretary to be in the best interest of the commissioned officer corps, officers in any permanent grade may be temporarily promoted one grade by the President. Any such temporary promotion terminates upon the transfer of the officer to a new assignment.

(e) *DELEGATION OF APPOINTMENT AUTHORITY.*—If the President delegates authority to the Secretary to make appointments under this section, the President shall, during a period in which the position of the Secretary is vacant, delegate such authority to the Deputy Secretary of Commerce or the Under Secretary for Oceans and Atmosphere during such period.

SEC. 234. OFFICER CANDIDATES.

(a) *DETERMINATION OF NUMBER.*—The Secretary shall determine the number of appointments of officer candidates.

(b) *APPOINTMENT.*—Appointment of officer candidates shall be made under regulations which the Secretary shall prescribe, including regulations with respect to determining age limits, methods of selection of officer candidates, term of service as an officer candidate before graduation from the program, and all other matters affecting such appointment.

(c) *DISMISSAL.*—The Secretary may dismiss from the basic officer training program of the Administration any officer candidate who, during the officer candidate's term as an officer candidate, the Secretary considers unsatisfactory in either academics or conduct, or not adapted for a career in the commissioned officer corps of the Administration. Officer candidates shall be subject to rules governing discipline prescribed by the Director of the National Oceanic and Atmospheric Administration Commissioned Officer Corps.

(d) *AGREEMENT.*—

(1) *IN GENERAL.*—Each officer candidate shall sign an agreement with the Secretary in accordance with section 216(a)(2) regarding the officer candidate's term of service in the commissioned officer corps of the Administration.

(2) *ELEMENTS.*—An agreement signed by an officer candidate under paragraph (1) shall provide that the officer candidate agrees to the following:

(A) That the officer candidate will complete the course of instruction at the basic officer training program of the Administration.

(B) That upon graduation from the such program, the officer candidate—

(i) will accept an appointment, if tendered, as an officer; and

(ii) will serve on active duty for at least 4 years immediately after such appointment.

(e) **REGULATIONS.**—The Secretary shall prescribe regulations to carry out this section. Such regulations shall include—

- (1) standards for determining what constitutes a breach of an agreement signed under such subsection (d)(1); and
- (2) procedures for determining whether such a breach has occurred.

(f) **REPAYMENT.**—An officer candidate or former officer candidate who does not fulfill the terms of the obligation to serve as specified under section (d) shall be subject to the repayment provisions of section 216(b).

SEC. 235. PROCUREMENT OF PERSONNEL.

The Secretary may make such expenditures as the Secretary considers necessary in order to obtain recruits for the commissioned officer corps of the Administration, including advertising.

SEC. 241. INVOLUNTARY RETIREMENT OR SEPARATION.

[33 U.S.C. 3041]

(a) **TRANSFER OF OFFICERS TO RETIRED LIST; SEPARATION FROM SERVICE.**—As recommended by a personnel board convened under section 222—

- (1) an officer in the permanent grade of captain or commander may be transferred to the retired list; and
- (2) an officer in the permanent grade of lieutenant commander, lieutenant, or lieutenant (junior grade) who is not qualified for retirement may be separated from the service.

(b) **COMPUTATIONS.**—In any fiscal year, the total number of officers selected for retirement or separation under subsection (a) plus the number of officers retired for age may not exceed the whole number nearest 4 percent of the total number of officers authorized to be on the active list, except as otherwise provided by law.

(c) **EFFECTIVE DATE OF RETIREMENTS AND SEPARATIONS.**—A retirement or separation under subsection (a) shall take effect on the first day of the sixth month beginning after the date on which the Secretary approves the retirement or separation, except that if the officer concerned requests an earlier retirement or separation date, the date shall be as determined by the Secretary.

(d) **DEFERMENT OF RETIREMENT OR SEPARATION FOR MEDICAL REASONS.**—

(1) **IN GENERAL.**—If the Secretary determines that the evaluation of the medical condition of an officer requires hospitalization or medical observation that cannot be completed with confidence in a manner consistent with the officer's well being before the date on which the officer would otherwise be required to retire or be separated under this section, the Secretary may defer the retirement or separation of the officer.

(2) **CONSENT REQUIRED.**—A deferment may only be made with the written consent of the officer involved. If the officer does not provide written consent to the deferment, the officer shall be retired or separated as scheduled.

(3) **LIMITATION.**—A deferral of retirement or separation under this subsection may not extend for more than 30 days after completion of the evaluation requiring hospitalization or medical observation.

SEC. 242. SEPARATION PAY.

[33 U.S.C. 3042]

(a) **AUTHORIZATION OF PAYMENT.**—An officer who is separated under section 241(a)(2) and who has completed more than three years of continuous active service immediately before that separation is entitled to separation pay computed under subsection (b) unless the Secretary determines that the conditions under which the officer is separated do not warrant payment of that pay.

(b) **AMOUNT OF SEPARATION PAY.**—

(1) **SIX OR MORE YEARS.**—In the case of an officer who has completed six or more years of continuous active service immediately before that separation, the amount of separation pay to be paid to the officer under this section is 10 percent of the product of—

(A) the years of active service creditable to the officer; and

(B) 12 times the monthly basic pay to which the officer was entitled at the time of separation.

(2) **THREE TO SIX YEARS.**—In the case of an officer who has completed three or more but fewer than six years of continuous active service immediately before that separation, the amount of separation pay to be paid to the officer under this section is one-half of the amount computed under paragraph (1).

(c) **OTHER CONDITIONS, REQUIREMENTS, AND ADMINISTRATIVE PROVISIONS.**—The provisions of subsections (f), (g), and (h) of section 1174 of title 10, United States Code, shall apply to separation pay under this section in the same manner as such provisions apply to separation pay under that section.

(d) **EXCEPTION.**—*An officer discharged for twice failing selection for promotion to the next higher grade is not entitled to separation pay under this section if the officer—*

(1) *expresses a desire not to be selected for promotion; or*

(2) *requests removal from the list of selectees.*

SEC. 261. APPLICABILITY OF CERTAIN PROVISIONS OF TITLE 10, UNITED STATES CODE.

[33 U.S.C. 3071]

(a) **PROVISIONS MADE APPLICABLE TO THE CORPS.**—The rules of law that apply to the Armed Forces under the following provisions of title 10, United States Code, as those provisions are in effect from time to time, apply also to the commissioned officer corps of the Administration:

(1) Chapter 40, relating to leave.

(2) Section 533(b), relating to constructive service.

(3) Section 716, relating to transfers between the armed forces and to and from National Oceanic and Atmospheric Administration.

(4) *Section 771, relating to unauthorized wearing of uniforms.*

(5) *Section 774, relating to wearing religious apparel while in uniform.*

(6) *Section 982, relating to service on State and local juries.*

(7) *Section 1031, relating to administration of oaths.*

(8) *Section 1034, relating to protected communications and prohibition of retaliatory personnel actions.*

[(4)](9) Section 1035, relating to deposits of savings.

~~[(5)](10)~~ Section 1036, relating to transportation and travel allowances for escorts for dependents of members.

~~[(6)](11)~~ Section 1052, relating to reimbursement for adoption expenses.

(12) Chapter 58, relating to the Benefits and Services for members being separated or recently separated.

~~[(7)](13)~~ Section 1174a, relating to special separation benefits (except that benefits under subsection (b)(2)(B) of such section are subject to the availability of appropriations for such purpose and are provided at the discretion of the Secretary of Commerce).

~~[(8)](14)~~ Chapter 61, relating to retirement or separation for physical disability.

~~[(9)](15)~~ Chapter 69, relating to retired grade, except sections 1370, 1375, and 1376.

~~[(10)](16)~~ Chapter 71, relating to computation of retired pay.

~~[(11)](17)~~ Chapter 73, relating to annuities based on retired or retainer pay.

~~[(12)](18)~~ Subchapter II of chapter 75, relating to death benefits.

(19) Subchapter I of chapter 88, relating to Military Family Programs.

(20) Section 2005, relating to advanced education assistance, active duty agreements, and reimbursement requirements.

~~[(13)](21)~~ Section 2634, relating to transportation of motor vehicles for members on permanent change of station.

~~[(14)](22)~~ Sections 2731 and 2735, relating to property loss incident to service.

~~[(15)](23)~~ Section 2771, relating to final settlement of accounts of deceased members.

~~[(16)](24)~~ Such other provisions of subtitle A of that title as may be adopted for applicability to the commissioned officer corps of the National Oceanic and Atmospheric Administration by any other provision of law.

(b) REFERENCES.—The authority vested by title 10, United States Code, in the “military departments”, “the Secretary concerned”, or “the Secretary of Defense” with respect to the provisions of law referred to in subsection (a) shall be exercised, with respect to the commissioned officer corps of the Administration, by the Secretary of Commerce or the Secretary’s designee. *For purposes of paragraph (8) of subsection (a), the term “Inspector General” in section 1034 of such title 10 shall mean the Inspector General of the Department of Commerce.*

(c) REGULATIONS REGARDING PROTECTED COMMUNICATIONS AND PROHIBITION OF RETALIATORY PERSONNEL ACTIONS.—The Secretary may promulgate regulations to carry out the application of section 1034 of title 10, United States Code, to the commissioned officer corps of the Administration, including by promulgating such administrative procedures for investigation and appeal within the commissioned officer corps as the Secretary considers appropriate.

SEC. 261A. APPLICABILITY OF CERTAIN PROVISIONS OF TITLE 37, UNITED STATES CODE.

(a) PROVISIONS MADE APPLICABLE TO COMMISSIONED OFFICER CORPS.—The provisions of law applicable to the Armed Forces

under the following provisions of title 37, United States Code, shall apply to the commissioned officer corps of the Administration:

(1) Section 324, relating to accession bonuses for new officers in critical skills.

(2) Section 403(f)(3), relating to prescribing regulations defining the terms “field duty” and “sea duty”.

(3) Section 403(l), relating to temporary continuation of housing allowance for dependents of members dying on active duty.

(4) Section 414(a)(2), relating to personal money allowance while serving as Director of the National Oceanic and Atmospheric Administration Commissioned Officer Corps.

(5) Section 488, relating to allowances for recruiting expenses.

(6) Section 495, relating to allowances for funeral honors duty.

(b) **REFERENCES.**—The authority vested by title 37, United States Code, in the “military departments”, “the Secretary concerned”, or “the Secretary of Defense” with respect to the provisions of law referred to in subsection (a) shall be exercised, with respect to the commissioned officer corps of the Administration, by the Secretary of Commerce or the Secretary’s designee.

SEC. 267. EDUCATION LOAN REPAYMENT PROGRAM.

(a) **AUTHORITY TO REPAY EDUCATION LOANS.**—For the purpose of maintaining adequate numbers of officers of the commissioned officer corps of the Administration on active duty who have skills required by the commissioned officer corps, the Secretary may repay, in the case of a person described in subsection (b), a loan that—

(1) was used by the person to finance education; and

(2) was obtained from a governmental entity, private financial institution, educational institution, or other authorized entity.

(b) **ELIGIBLE PERSONS.**—To be eligible to obtain a loan repayment under this section, a person must—

(1) satisfy 1 of the requirements specified in subsection (c);

(2) be fully qualified for, or hold, an appointment as a commissioned officer in the commissioned officer corps of the Administration; and

(3) sign a written agreement to serve on active duty, or, if on active duty, to remain on active duty for a period in addition to any other incurred active duty obligation.

(c) **ACADEMIC AND PROFESSIONAL REQUIREMENTS.**—One of the following academic requirements must be satisfied for purposes of determining the eligibility of an individual for a loan repayment under this section:

(1) The person is fully qualified in a profession that the Secretary has determined to be necessary to meet identified skill shortages in the commissioned officer corps.

(2) The person is enrolled as a full-time student in the final year of a course of study at an accredited educational institution (as determined by the Secretary of Education) leading to a degree in a profession that will meet identified skill shortages in the commissioned officer corps.

(d) **LOAN REPAYMENTS.**—

(1) **IN GENERAL.**—Subject to the limits established under paragraph (2), a loan repayment under this section may consist

of the payment of the principal, interest, and related expenses of a loan obtained by a person described in subsection (b).

(2) *LIMITATION ON AMOUNT.*—For each year of obligated service that a person agrees to serve in an agreement described in subsection (b)(3), the Secretary may pay not more than the amount specified in section 2173(e)(2) of title 10, United States Code.

(e) *ACTIVE DUTY SERVICE OBLIGATION.*—

(1) *IN GENERAL.*—A person entering into an agreement described in subsection (b)(3) incurs an active duty service obligation.

(2) *LENGTH OF OBLIGATION DETERMINED UNDER REGULATIONS.*—

(A) *IN GENERAL.*—Except as provided in subparagraph (B), the length of the obligation under paragraph (1) shall be determined under regulations prescribed by the Secretary.

(B) *MINIMUM OBLIGATION.*—The regulations prescribed under subparagraph (A) may not provide for a period of obligation of less than 1 year for each maximum annual amount, or portion thereof, paid on behalf of the person for qualified loans.

(3) *PERSONS ON ACTIVE DUTY BEFORE ENTERING INTO AGREEMENT.*—The active duty service obligation of persons on active duty before entering into the agreement shall be served after the conclusion of any other obligation incurred under the agreement.

(f) *EFFECT OF FAILURE TO COMPLETE OBLIGATION.*—

(1) *ALTERNATIVE OBLIGATIONS.*—An officer who is relieved of the officer's active duty obligation under this section before the completion of that obligation may be given any alternative obligation, at the discretion of the Secretary.

(2) *REPAYMENT.*—An officer who does not complete the period of active duty specified in the agreement entered into under subsection (b)(3), or the alternative obligation imposed under paragraph (1), shall be subject to the repayment provisions under section 216.

(g) *RULEMAKING.*—The Secretary shall prescribe regulations to carry out this section, including—

- (1) standards for qualified loans and authorized payees; and
- (2) other terms and conditions for the making of loan repayments.

SEC. 268. INTEREST PA YMENT PROGRAM.

(a) *AUTHORITY.*—The Secretary may pay the interest and any special allowances that accrue on 1 or more student loans of an eligible officer, in accordance with this section.

(b) *ELIGIBLE OFFICERS.*—An officer is eligible for the benefit described in subsection (a) while the officer—

- (1) is serving on active duty;
- (2) has not completed more than 3 years of service on active duty;
- (3) is the debtor on 1 or more unpaid loans described in subsection (c); and
- (4) is not in default on any such loan.

(c) *STUDENT LOANS.*—The authority to make payments under subsection (a) may be exercised with respect to the following loans:

(1) A loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.).

(2) A loan made under part D of such title (20 U.S.C. 1087a et seq.).

(3) A loan made under part E of such title (20 U.S.C. 1087aa et seq.).

(d) *MAXIMUM BENEFIT.*—Interest and any special allowance may be paid on behalf of an officer under this section for any of the 36 consecutive months during which the officer is eligible under subsection (b).

(e) *FUNDS FOR PAYMENTS.*—The Secretary may use amounts appropriated for the pay and allowances of personnel of the commissioned officer corps of the Administration for payments under this section.

(f) *COORDINATION WITH SECRETARY OF EDUCATION.*—

(1) *IN GENERAL.*—The Secretary shall consult with the Secretary of Education regarding the administration of this section.

(2) *TRANSFER OF FUNDS.*—The Secretary shall transfer to the Secretary of Education the funds necessary—

(A) to pay interest and special allowances on student loans under this section (in accordance with sections 428(o), 455(l), and 464(j) of the Higher Education Act of 1965 (20 U.S.C. 1078(o), 1087e(l), and 1087dd(j)); and

(B) to reimburse the Secretary of Education for any reasonable administrative costs incurred by the Secretary in coordinating the program under this section with the administration of the student loan programs under parts B, D, and E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq., 1087a et seq., 1087aa et seq.).

(g) *SPECIAL ALLOWANCE DEFINED.*—In this section, the term “special allowance” means a special allowance that is payable under section 438 of the Higher Education Act of 1965 (20 U.S.C. 1087–1).

SEC. 269. STUDENT PRE-COMMISSIONING EDUCATION ASSISTANCE PROGRAM.

(a) *AUTHORITY TO PROVIDE FINANCIAL ASSISTANCE.*—For the purpose of maintaining adequate numbers of officers of the commissioned officer corps of the Administration on active duty, the Secretary may provide financial assistance to a person described in subsection (b) for expenses of the person while the person is pursuing on a full-time basis at an accredited educational institution (as determined by the Secretary of Education) a program of education approved by the Secretary that leads to—

(1) a baccalaureate degree in not more than 5 academic years;

or

(2) a postbaccalaureate degree.

(b) *ELIGIBLE PERSONS.*—

(1) *IN GENERAL.*—A person is eligible to obtain financial assistance under subsection (a) if the person—

(A) is enrolled on a full-time basis in a program of education referred to in subsection (a) at any educational institution described in such subsection;

(B) meets all of the requirements for acceptance into the commissioned officer corps of the Administration except for the completion of a baccalaureate degree; and

(C) enters into a written agreement with the Secretary described in paragraph (2).

(2) AGREEMENT.—A written agreement referred to in paragraph (1)(C) is an agreement between the person and the Secretary in which the person agrees—

(A) to accept an appointment as an officer, if tendered; and

(B) upon completion of the person's educational program, agrees to serve on active duty, immediately after appointment, for—

(i) up to 3 years if the person received less than 3 years of assistance; and

(ii) up to 5 years if the person received at least 3 years of assistance.

(c) QUALIFYING EXPENSES.—Expenses for which financial assistance may be provided under subsection (a) are the following:

(1) Tuition and fees charged by the educational institution involved.

(2) The cost of books.

(3) In the case of a program of education leading to a baccalaureate degree, laboratory expenses.

(4) Such other expenses as the Secretary considers appropriate.

(d) LIMITATION ON AMOUNT.—The Secretary shall prescribe the amount of financial assistance provided to a person under subsection (a), which may not exceed the amount specified in section 2173(e)(2) of title 10, United States Code, for each year of obligated service that a person agrees to serve in an agreement described in subsection (b)(2).

(e) DURATION OF ASSISTANCE.—Financial assistance may be provided to a person under subsection (a) for not more than 5 consecutive academic years.

(f) SUBSISTENCE ALLOWANCE.—

(1) IN GENERAL.—A person who receives financial assistance under subsection (a) shall be entitled to a monthly subsistence allowance at a rate prescribed under paragraph (2) for the duration of the period for which the person receives such financial assistance.

(2) DETERMINATION OF AMOUNT.—The Secretary shall prescribe monthly rates for subsistence allowance provided under paragraph (1), which shall be equal to the amount specified in section 2144(a) of title 10, United States Code.

(g) INITIAL CLOTHING ALLOWANCE.—

(1) TRAINING.—The Secretary may prescribe a sum which shall be credited to each person who receives financial assistance under subsection (a) to cover the cost of the person's initial clothing and equipment issue.

(2) APPOINTMENT.—Upon completion of the program of education for which a person receives financial assistance under subsection (a) and acceptance of appointment in the commissioned officer corps of the Administration, the person may be

issued a subsequent clothing allowance equivalent to that normally provided to a newly appointed officer.

(h) **TERMINATION OF FINANCIAL ASSISTANCE.**—

(1) **IN GENERAL.**—The Secretary shall terminate the assistance provided to a person under this section if—

(A) the Secretary accepts a request by the person to be released from an agreement described in subsection (b)(2);

(B) the misconduct of the person results in a failure to complete the period of active duty required under the agreement; or

(C) the person fails to fulfill any term or condition of the agreement.

(2) **REIMBURSEMENT.**—The Secretary may require a person who receives assistance described in subsection (c), (f), or (g) under an agreement entered into under subsection (b)(1)(C) to reimburse the Secretary in an amount that bears the same ratio to the total costs of the assistance provided to that person as the unserved portion of active duty bears to the total period of active duty the officer agreed to serve under the agreement.

(3) **WAIVER.**—The Secretary may waive the service obligation of a person through an agreement entered into under subsection (b)(1)(C) if the person—

(A) becomes unqualified to serve on active duty in the commissioned officer corps of the Administration because of a circumstance not within the control of that person; or

(B) is—

(i) not physically qualified for appointment; and

(ii) determined to be unqualified for service in the commissioned officer corps of the Administration because of a physical or medical condition that was not the result of the person's own misconduct or grossly negligent conduct.

(4) **OBLIGATION AS DEBT TO UNITED STATES.**—An obligation to reimburse the Secretary imposed under paragraph (2) is, for all purposes, a debt owed to the United States.

(5) **DISCHARGE IN BANKRUPTCY.**—A discharge in bankruptcy under title 11, United States Code, that is entered less than 5 years after the termination of a written agreement entered into under subsection (b)(1)(C) does not discharge the person signing the agreement from a debt arising under such agreement or under paragraph (2).

(i) **REGULATIONS.**—The Secretary may promulgate such regulations and orders as the Secretary considers appropriate to carry out this section.

SEC. 269A. TREATMENT OF COMMISSION IN COMMISSIONED OFFICER CORPS AS EMPLOYMENT IN ADMINISTRATION FOR PURPOSES OF CERTAIN HIRING DECISIONS.

(a) **IN GENERAL.**—In any case in which the Secretary accepts an application for a position of employment with the Administration and limits consideration of applications for such position to applications submitted by individuals serving in a career or career-conditional position in the competitive service within the Administration, the Secretary shall deem an officer who has served as an officer in the commissioned officer corps for at least 3 years to be serving in

a career or career-conditional position in the competitive service within the Administration for purposes of such limitation.

(b) CAREER APPOINTMENTS.—If the Secretary selects an application submitted by an officer described in subsection (a) for a position described in such subsection, the Secretary shall give such officer a career or career-conditional appointment in the competitive service, as appropriate.

(c) COMPETITIVE SERVICE DEFINED.—In this section, the term “competitive service” has the meaning given the term in section 2102 of title 5, United States Code.

HIGHER EDUCATION ACT OF 1965

[20 U.S.C. 1001 et seq.; 42 U.S.C. 2751 et seq.]

SEC. 428. FEDERAL PAYMENTS TO REDUCE STUDENT INTEREST COSTS.

[20 U.S.C. 1078]

* * * * *

(o) [ARMED FORCES STUDENT LOAN INTEREST PAYMENT PROGRAM] ARMED FORCES AND NOAA COMMISSIONED OFFICER CORPS STUDENT LOAN INTEREST PAYMENT PROGRAMS.—

(1) AUTHORITY.—Using funds received by transfer to the Secretary under section 2174 of title 10, United States Code, or section 264 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 for the payment of interest and any special allowance on a loan to a member of the Armed Forces or an officer in the commissioned officer corps of the National Oceanic and Atmospheric Administration that is made, insured, or guaranteed under this part, the Secretary shall pay the interest and special allowance on such loan as due for a period not in excess of 36 consecutive months. The Secretary may not pay interest or any special allowance on such a loan out of any funds other than funds that have been so transferred.

(2) FORBEARANCE.—During the period in which the Secretary is making payments on a loan under paragraph (1), the lender shall grant the borrower forbearance in accordance with the guaranty agreement under subsection (c)(3)(A)(i)(IV).

(3) SPECIAL ALLOWANCE DEFINED.—For the purposes of this subsection, the term “special allowance”, means a special allowance that is payable with respect to a loan under section 438.

SEC. 455. TERMS AND CONDITIONS OF LOANS.

[20 U.S.C. 1087e]

* * * * *

(1) [ARMED FORCES STUDENT LOAN INTEREST PAYMENT PROGRAM] ARMED FORCES AND NOAA COMMISSIONED OFFICER CORPS STUDENT LOAN INTEREST PAYMENT PROGRAMS.—

(1) AUTHORITY.—Using funds received by transfer to the Secretary under section 2174 of title 10, United States Code, or section 264 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 for the payment of interest on a loan made under this part to a member of the Armed Forces or an officer in the commissioned officer

corps of the National Oceanic and Atmospheric Administration, the Secretary shall pay the interest on the loan as due for a period not in excess of 36 consecutive months. The Secretary may not pay interest on such a loan out of any funds other than funds that have been so transferred.

(2) FORBEARANCE.—During the period in which the Secretary is making payments on a loan under paragraph (1), the Secretary shall grant the borrower forbearance, in the form of a temporary cessation of all payments on the loan other than the payments of interest on the loan that are made under that paragraph.

* * * * *

SEC. 464. TERMS OF LOANS.

[20 U.S.C. 1087dd]

* * * * *

(j) **[ARMED FORCES STUDENT LOAN INTEREST PAYMENT PROGRAM] ARMED FORCES AND NOAA COMMISSIONED OFFICER CORPS STUDENT LOAN INTEREST PAYMENT PROGRAMS.—**

(1) AUTHORITY.—Using funds received by transfer to the Secretary under section 2174 of title 10, United States Code, or section 264 of the *National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002* for the payment of interest on a loan made under this part to a member of the *Armed Forces or an officer in the commissioned officer corps of the National Oceanic and Atmospheric Administration*, the Secretary shall pay the interest on the loan as due for a period not in excess of 36 consecutive months. The Secretary may not pay interest on such a loan out of any funds other than funds that have been so transferred.

(2) FORBEARANCE.—During the period in which the Secretary is making payments on a loan under paragraph (1), the institution of higher education shall grant the borrower forbearance in accordance with subsection (e)(1)(C).

(k) The Secretary may develop such additional safeguards as the Secretary determines necessary to prevent fraud and abuse in the cancellation of liability under subsection (c)(1)(F). Notwithstanding subsection (c)(1)(F), the Secretary may promulgate regulations to resume collection on loans cancelled under subsection (c)(1)(F) in any case in which—

(1) a borrower received a cancellation of liability under subsection (c)(1)(F) and after the cancellation the borrower—

(A) receives a loan made, insured, or guaranteed under this title; or

(B) has earned income in excess of the poverty line; or

(2) the Secretary determines necessary.

HYDROELECTRIC SERVICES IMPROVEMENT ACT OF 1998

[Public Law 105–384; 112 Stat. 3457]

SEC. 306. AUTHORIZATION OF APPROPRIATIONS.

[33 U.S.C. 892d]

[There are]

(a) *IN GENERAL.—There are* authorized to be appropriated to the Administrator the following:

(1) To carry out nautical mapping and charting functions under sections 304 and 305, except for conducting hydrographic [surveys—]

- [(A) \$55,000,000 for fiscal year 2009;
- [(B) \$56,000,000 for fiscal year 2010;
- [(C) \$57,000,000 for fiscal year 2011; and
- [(D) \$58,000,000 for fiscal year 2012.]

surveys, \$70,814,000 for each of fiscal years 2016 through 2020.

(2) To contract for hydrographic surveys under section 304(b)(1), including the leasing or time chartering of [vessels—]

- [(A) \$32,130,000 for fiscal year 2009;
- [(B) \$32,760,000 for fiscal year 2010;
- [(C) \$33,390,000 for fiscal year 2011; and
- [(D) \$34,020,000 for fiscal year 2012.]

vessels, \$25,000,000 for each of fiscal years 2016 through 2020.

(3) To operate hydrographic survey vessels owned by the United States and operated by the [Administration—]

- [(A) \$25,900,000 for fiscal year 2009;
- [(B) \$26,400,000 for fiscal year 2010;
- [(C) \$26,900,000 for fiscal year 2011; and
- [(D) \$27,400,000 for fiscal year 2012.]

Administration, \$29,932,000 for each of fiscal years 2016 through 2020.

(4) To carry out geodetic functions under this [title—]

- [(A) \$32,640,000 for fiscal year 2009;
- [(B) \$33,280,000 for fiscal year 2010;
- [(C) \$33,920,000 for fiscal year 2011; and
- [(D) \$34,560,000 for fiscal year 2012.]

title, \$26,800,000 for each of fiscal years 2016 through 2020.

(5) To carry out tide and current measurement functions under this [title—]

- [(A) \$27,000,000 for fiscal year 2009;
- [(B) \$27,500,000 for fiscal year 2010;
- [(C) \$28,000,000 for fiscal year 2011; and
- [(D) \$28,500,000 for fiscal year 2012.]

title, \$30,564,000 for each of fiscal years 2016 through 2020.

(6) To acquire a replacement hydrographic survey vessel capable of staying at sea continuously for at least 30 days \$75,000,000.

(b) *ARCTIC PROGRAMS.—Of the amount authorized by this section for each fiscal year—*

(1) *\$10,000,000 is authorized for use—*

- (A) *to acquire hydrographic data;*
- (B) *to provide hydrographic services;*
- (C) *to conduct coastal change analyses necessary to ensure safe navigation;*
- (D) *to improve the management of coastal change in the Arctic; and*

(E) to reduce risks of harm to Alaska Native subsistence and coastal communities associated with increased international maritime traffic; and

(2) \$2,000,000 is authorized for use to acquire hydrographic data and provide hydrographic services in the Arctic necessary to delineate the United States extended Continental Shelf.

(c) LIMITATION ON ADMINISTRATIVE EXPENSES FOR SURVEYS.—Of amounts authorized by this section for each fiscal year for contract hydrographic surveys, not more than 5 percent is authorized for administrative costs associated with contract management.

