

safeguarded to the appropriate designation.

#### *Port Security Provisions*

8. *Port Security Plans and Committees.* The requirements for port plans stem from the development of the new SOLAS amendments and the ISPS Code as well as the MTSA (46 U.S.C. sections 70103, 70104 and 70112). The definition of port facilities is broad and covers all aspects of the interface between a ship and a facility, including anchorages and other areas typically considered by the U.S. as public waterways, as well as other structures located under, in, on, or adjacent to U.S. navigable waters. Thus, in the public meeting notice, we discussed our intention to invoke the alternative provided in ISPS Code, part A, section 16.4, and combine facility plans with a port plan to encompass all waters subject to the jurisdiction of the U.S. The majority of the SOLAS amendments and ISPS Code requirements would be applied to U.S. facilities to ensure a seamless ship-to-facility security interface. However, the port security requirements will be the overarching instrument for implementing security communications and ensuring compliance. These port requirements will be developed through a port area plan (AMS Plan) and the port security committee (AMS Committee). In our notice, we asked for comments on who should be on the port committee and how we could ensure participation.

The comments we received on the committee's membership included a very broad range of suggestions. Some commenters suggested that only law enforcement entities and relevant government agencies participate. In contrast, many commenters requested that the committee's membership be truly inclusive—representing the smallest of recreational boater, to the largest facility; all types of shore-side service providers, labor representatives, and the myriad government agencies on all levels. Many comments stated the COTP should head the committee and a few comments stated that the COTP and the Port Authority should co-chair the committee.

Commenters suggested that COTPs could ensure participation in the committees by widely disseminating notices about committee meetings, have general public meetings, and hold working meetings to develop security plans. Some commenters recommended a small executive decision-making group with a large inclusive group for input. Some commenters felt there should be Port Security Committees in coastal ports only and voluntary

participation with public meetings. Others added that Port Security Committees should be limited to port users and those with security expertise.

Because the AMS Plan is pivotal to the U.S. implementation of the international security requirements and is also key to our MTSA mandates, we have included provisions prescribing the development of AMS Plans, committees, and other port-level security measures in the "Area Maritime Security" (USCG-2003-14733) interim rule found elsewhere in today's **Federal Register**. This part establishes the AMS Committee, under the direction of the COTP, and indicates that membership to the committee is meant for those with certain skills, port operational knowledge, and should represent all aspects of the maritime community.

9. *Port Security Assessments Requirement.* In our notice, we also discussed Port Security Assessments (PSAs), as discussed in ISPS Code (part A, section 15, and part B paragraphs 15.1 through 15.16) as well as the MTSA (46 U.S.C. section 70102). Many assessments of this type have already been performed in ports and should be a good foundation for this requirement. Since the assessment will be integral in the development of the AMS Plan, we requested comments on if the committees would be able to provide the experience and expertise needed to do a security assessment and if assessments had already been conducted.

Several commenters stated that they felt that, with the assistance of the local Coast Guard, there would be adequate expertise within the port area to conduct a port wide assessment. In contrast a few commenters stated that the Coast Guard or a third party should conduct the assessments because the knowledge level within the port is not sufficient. Other commenters stated they did not think certain ports even needed to do an assessment because of the port's location. Several commenters also noted that the Coast Guard, both nationally and locally, has already conducted port security assessments.

Our COTPs have been working with Port Security Committees and Harbor Safety Committees successfully for some time. From this positive and participatory interaction, we strongly believe that the knowledge and expertise to successfully accomplish an AMS assessment currently resides in each port, notably within the membership of the current Port Security Committee. We believe that every port needs to conduct a port security assessment regardless of its location. It is important to remember that the

current regulations and the international code are intended to strengthen marine elements of the national transportation system as well as lay out a baseline for each section of the system to attain. It is not our intent for ports that have already undertaken security assessments to have to reinvent the wheel, rather we encourage AMS Committees to take any assessment that has previously been conducted and use it as a reference document.

10. *Port Security Control of Vessels, Facilities, and Operations.* The requirements for control of vessels are outlined in the SOLAS amendments, Regulation XI-2/9, and the ISPS Code, part B, paragraphs 4.29 through 4.46. In the notice, we discussed our intention to implement control measures as detailed in the SOLAS amendments and ISPS Code requirements. However, these measures are not exhaustive and, where appropriate, COTPs will exercise authority under 50 U.S.C. 191, as implemented at 33 CFR part 6, 33 U.S.C. 1226, 33 CFR parts 160 and 165, and other measures consistent with international law, to ensure maritime security. In addition, we outlined our intent to ask the Port Security Committee (AMS Committee) to review areas within the port, such as fleeting areas, regulated navigation areas, anchorages, and areas near facilities, to assess whether these areas should have security zones or patrol requirements established at certain security levels. We asked for comments on the concept of a set of security zones or requirements set out in this pre-designated fashion with a specific procedure for triggering its implementation through a broadcast notice to mariners or security level communication to the maritime community. We asked if such a pre-designation would assist mariners and if other possible control measures would be recommended.

Many commenters supported the concept of a pre-designated system of waterway and facility restrictions and stated it would be advantageous for planning and preparation. They continued by suggesting that at times of heightened security, we should use existing maritime communications procedures as well as any other means to ensure vessels are advised to hold, or move to designated anchorage outside of port. Other commenters wanted to ensure that the barge and towing industry was consulted on any decisions to restrict the waterway. Some commenters stressed that communication methods of these pre-designations should include the entire maritime community such as recreational boaters and shore-side