

Calendar No. 295

109TH CONGRESS }
1st Session }

SENATE

{ REPORT
109-183

MARITIME ADMINISTRATION
ENHANCEMENT ACT OF 2005

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2029



NOVEMBER 17, 2005.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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MARITIME ADMINISTRATION ENHANCEMENT ACT OF 2005

NOVEMBER 17, 2005.—Ordered to be printed

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

R E P O R T

[To accompany S. 2029]

The Committee on Commerce, Science, and Transportation reports favorably an original bill (S. 2029) to amend and enhance certain maritime programs of the Department of Transportation, and for other purposes, and recommends that the bill do pass.

PURPOSE OF THE BILL

The Maritime Administration Enhancement Act would streamline the process of covering the costs of vessel maintenance, repairs, and replacements; enhance the requirements for cadets entering the Merchant Marine Academy; authorize the Secretary of Transportation to permit training upon certain vessels; and grant the Maritime Administration (MARAD) greater flexibility in disposing of obsolete vessels from the National Defense Reserve Fleet (NDRF).

In addition, the bill would grant MARAD the authority to retain certain deepwater port license application fees as well as funds collected through its Coastwise administrative waiver process. It would permit greater promotion of the merchant marine through the utilization of the U.S. Maritime Service at maritime-related functions beyond that of training and education, and authorize the Secretary to award, free of charge, medals for commendable achievements in the U.S. Merchant Marine. Furthermore, the bill would authorize duty-free treatment of emergency war materials imported for use by MARAD.

The bill includes provisions designed to clarify Congressional reforms to the MARAD Title XI maritime loan guarantee program. The bill also designates MARAD as the lead Federal agency to ad-

minister Federal funds for port and intermodal improvements in the State of Hawaii. Finally, the legislation would authorize a maritime training and shipyard capital grant program administered by MARAD.

BACKGROUND AND NEEDS

The mission of MARAD is to promote the development and maintenance of an adequate, well-balanced United States merchant marine, sufficient to carry the Nation's domestic waterborne commerce and a substantial portion of its waterborne foreign commerce, and capable of serving as a naval and military auxiliary in time of war or national emergency. MARAD also seeks to ensure that the United States enjoys adequate shipbuilding and repair service, efficient ports, effective intermodal water and land transportation systems, and reserve shipping capacity in times of national emergency.

To meet its mission, MARAD administers various U.S. merchant marine support programs within the Department of Transportation (DOT). These programs include the Maritime Security Program (MSP), Title XI maritime loan guarantee program, various cargo preference programs, maintenance of the Ready Reserve Force (RRF), often used in domestic disaster relief efforts, and the National Defense Reserve Force (NDRF), and operation of the U.S. Merchant Marine Academy (USMMA) at Kings Point, NY. MARAD has approximately 825 employees, including RRF and USMMA staff.

The MSP funds operating agreements to the privately owned, United States-flag, and United States-crewed liner fleet in international trade. This fleet also is available to support the Department of Defense (DOD) sustainment in a contingency. Currently, MSP is authorized through fiscal year 2015 and subject to a separate annual appropriation.

The purpose of the Title XI ship loan guarantee program is to promote the growth and modernization of the U.S. merchant marine and U.S. shipyards. The program enables owners of eligible vessels and eligible shipyards to obtain long-term financing with attractive terms backed by the full faith and credit of the United States government to guarantee commercial loans.

In November of 2003, Congress enacted reforms to the program under P.L.108-136, the National Defense Authorization Act of 2003, which authorized the Secretary to require an independent analysis to be conducted by third party experts if the Secretary determines that risk factors associated with markets, technology, financial structures, or other factors need such analysis prior to making a determination on a loan guarantee application. The Secretary's authority to conduct an independent risk analysis of projects was not intended to be used in routine cases nor where MARAD already has sufficient expertise to fully assess the risk of approving a loan guarantee application. The Committee is concerned the department is not administering the program consistent with P.L. 108-136 and is instead subjecting routine financial transactions to duplicative bureaucratic reviews by both MARAD and the newly established DOT Credit Council. In addition, the Committee is concerned with the proposed regulations issued June 8,

2005, Docket No. 2005–21380, as they appear to be contradictory to the sustainability of the program.

The Committee is concerned the financial analysis and market assessment functions, key MARAD roles, are being taken away by DOT, thereby eroding MARAD's fundamental expertise in the intricacies of shipbuilding and shipyard modernization. The Committee expects that the Title XI program remain exclusively within MARAD to streamline the application process and avoid the needless duplication of assessing, evaluating and determining the financial solvency and potential market performance of project applications.

MARAD's operations and training account funds the administration and staffing of MARAD programs (other than the Title XI guaranteed loan program and RRF costs), the USMMA, State maritime school costs associated with Federal training ships, training courses for merchant mariners, various operating programs, and research and development. The USMMA educates young men and women to become officers in the American merchant marine.

The Global Maritime and Transportation School (GMATS) is a private, tuition-funded graduate school housed at the USMMA, which offers advanced mariner training and logistics and supply chain management courses. The primary mission of the USMMA GMATS is to offer leading edge education and training programs that will benefit maritime and transportation professionals from government agencies, the military, and private industry. Funds to operate GMATS are generated through tuition, meal, and lodging fees. It is not an appropriated instrumentality of the DOT. The current process through which some applicants are accepted is cumbersome and this legislation reduces that burden and clarifies GMATS's role.

SUMMARY OF PROVISIONS

The bill would allow MARAD to use a portion of the hire paid for the operation of the National Defense Reserve Fleet (NDRF) and proceeds recovered from vessel accident litigation and arbitration to be placed in a reserve fund to cover the costs of vessel maintenance, repairs, and replacements. The bill would authorize MARAD to retain fees from administrative waivers and deepwater port license applications up to a specific amount to pay for administrative costs.

The legislation would require students entering the Merchant Marine Academy to meet the physical and mental standards required by the Department of Defense (DOD). MARAD has reported that some students fail to meet current standards set by MARAD, thereby avoiding certain commitments upon graduation, including entering Reserve units of the Armed Forces. In addition, the bill would allow the Armed Services to certify annually graduates' mandatory military service commitment and permits Academy cadets to train on foreign flag vessels when in the interest of national security. Subject to appropriations, the bill increases the authorized payments for cadets enrolled in State Regional Maritime Academies to \$500,000 dollars by fiscal year 2008 and increases the amount State Maritime Academies may receive for reimbursement of ship fuel costs.

This bill would grant MARAD the ability to purchase emergency war materials for RRF repairs without being subject to ad valorem duties while under operational authority DOD. MARAD is granted the flexibility to decide on the timing of ship and title transfers to U.S. territories and States. Finally, the bill would establish a grant program to assist small shipyard capital improvements and establish technical training programs for small communities largely served by the maritime industry. Payments for State and Regional Maritime Academies

The measure also would clarify the roles of the Maritime Administrator and DOD in the loan guarantee process overseen by MARAD, and streamlines the cumbersome application review process. The bill would require an independent analysis of each loan guarantee be conducted by private sector maritime finance or operations experts. In addition, it requires adequate staffing and expertise to properly manage the program.

LEGISLATIVE HISTORY

The original committee bill was ordered reported to the Senate by voice vote on July 21, 2005 in the presence of a quorum.

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:

NOVEMBER 15, 2005.

Hon. TED STEVENS,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the Maritime Administration Enhancement Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

Maritime Administration Enhancement Act of 2005

Summary: The Maritime Administration Enhancement Act would amend various laws governing the activities of the Maritime Administration (MARAD), authorize appropriations for a new program to assist small shipyards and maritime communities, and increase support for state maritime academies. Assuming appropriation of the authorized or necessary amounts, implementing the bill would result in discretionary spending totaling \$104 million over the 2006–2010 period, CBO estimates.

In addition, several provisions of the bill would allow MARAD to spend, without further appropriation action, certain collections from regulatory fees and legal damages. CBO estimates that enacting these provisions would increase direct spending by about \$5

million over the 2006–2010 period and by \$10 million over the 2006–2015 period.

Finally, the bill would exempt MARAD from paying ad valorem taxes on certain materials and repairs for vessels operated as part of the National Defense Reserve Fleet (NDRF) under wartime conditions, thereby reducing federal revenues by an estimated \$1 million over the 2006–2010 period and by \$2 million over the 2006–2015 period. (The costs of NDRF operations would be reduced by similar amounts, assuming a corresponding reduction in future appropriations.)

The legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA); any costs to state and local governments would be incurred voluntarily.

Estimated cost to the Federal Government: The estimated budgetary effects of the legislation are summarized in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—				
	2006	2007	2008	2009	2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Additional MARAD Spending for State Maritime Academies:					
Estimated Authorization Level	1	2	4	4	4
Estimated Outlays	1	2	4	4	4
Small Shipyard and Maritime Community Grants:					
Authorization Level	30	30	30	30	30
Estimated Outlays	3	12	20	25	30
Reduced Spending for Ad Valorem Duties on Foreign Materials and Repairs:					
Estimated Authorization Level	*	*	*	*	*
Estimated Outlays	*	*	*	*	*
Total Additional MARAD Spending:					
Estimated Authorization Level	31	32	34	34	34
Estimated Outlays	4	14	24	29	34
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority	1	1	1	1	1
Estimated Outlays	1	1	1	1	1
CHANGES IN REVENUES ¹					
Estimated Revenues from Ad Valorem Duties	*	*	*	*	*

¹ Enacting the bill would also change the classification of about \$1 million a year in revenues by directing that those collections be recorded in the budget as an offset to spending. Following scorekeeping rule 13, such reclassifications in legislation are not counted for purposes of Congressional scorekeeping.

Note.—* = between –\$500,000 and \$500,000.

Basis of estimate

Spending subject to appropriation

For this estimate, CBO assumes that the amounts authorized or estimated to be necessary will be appropriated for each year. Estimated outlays are based on historical spending patterns for existing or similar programs.

Section 112 would expand financial assistance to state maritime academies, subject to the availability of appropriations. Specifically, this section would increase annual direct payments to the six academies from the existing statutory level of \$200,000 each to \$300,000 in 2006, \$400,000 in 2007, and \$500,000 for each year thereafter. This section also would direct MARAD to pay up to \$100,000 in 2006, \$200,000 in 2007, and \$300,000 a year thereafter

for the costs of fuel to operate state training vessels. CBO estimates that providing the higher annual payments to state academies and reimbursing them for fuel costs would require additional appropriations that would grow to \$4 million annually by 2008. (MARAD received \$1.2 million for direct payments to state maritime academies in fiscal year 2005. No amounts were appropriated for that year for fuel reimbursements. MARAD's full-year appropriation for 2006 has not yet been enacted.)

Section 114 would authorize the appropriation of \$30 million for each of fiscal years 2006–2010 for a new program to support small shipyards and maritime communities. Under this program, MARAD would pay state and local governments to make grants, loans, and loan guarantees to small shipyards for capital improvements and to establish maritime training programs in communities whose economies are linked to the maritime industry. Assuming appropriation of the authorized amounts, CBO estimates that implementing this program would cost MARAD about \$3 million in 2006 and \$90 million over the 2006–2010 period. We estimate that the remaining \$60 million authorized by the bill would be spent after 2010.

Other provisions of the bill would have no significant effect on the federal budget.

Direct spending

The legislation would provide about \$1 million of new budget authority for MARAD each year by allowing the agency to spend without further appropriation certain amounts that are currently deposited in the U.S. Treasury as revenues. Section 109 would allow MARAD to spend payments for damages received for accidents that involve vessels that it owns or manages. Based on recent judgments and settlements for damages collected as a result of such incidents, CBO estimates that this new authority would increase direct spending by an average of \$500,000 a year. Also, sections 107 and 108 would authorize the agency to spend up to a total of \$500,000 a year from certain administrative and regulatory fees, thereby increasing annual direct spending by a like amount.

The bill also would change the budgetary classification of those administrative and regulatory fees. Such collections are currently considered revenues but under the legislation would become offsetting receipts (an offset to direct spending). The resulting decrease in revenues and corresponding decrease in outlays are not counted for purposes of Congressional consideration, however, pursuant to scorekeeping rule 13, which states that reclassifications are not counted for purposes of enforcing the budget resolution (see House Report 105–217, the conference report on the Balanced Budget Act of 1997, page 1011).

Revenues

Section 106 would exempt MARAD from paying ad valorem duties on certain materials imported from foreign countries and on repairs made in foreign ports for vessels operated as part of the NDRF during wartime. CBO estimates that this provision would reduce revenues by less than \$500,000 in 2006, by \$1 million over the 2006–2010 period, and by \$2 million through 2015. This provision also would result in like reductions in discretionary spending,

assuming that MARAD's annual appropriations would be adjusted to reflect the savings in NDRF operating costs.

By changing the budgetary classification of certain administrative and regulatory fees from revenues to offsetting receipts, enacting the bill would reduce revenues by about \$500,000 a year over the 2006–2015 period. But, as noted above, such reclassifications are not counted for Congressional scorekeeping purposes.

Intergovernmental and private-sector impact: The legislation contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would increase the authorization of appropriations for maritime academies in six states and establish a new grant program to assist state and local governments in supporting small shipyards and maritime communities within their states. Any costs to state and local governments for participating in those programs would be incurred voluntarily.

Estimate prepared by: Federal Spending: Deborah Reis. Federal Revenue: Emily Schlect. Impact on State, Local, and Tribal Governments: Sarah Puro. Impact on the Private Sector: Craig Cammarata.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

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

This program would not affect the number of people subject to regulation.

ECONOMIC IMPACT

The bill would authorize the establishment of a \$25 million grant program designed to assist small shipyards with capital improvement needs, and a \$5 million grant program to provide maritime training. The grants in the program are designed to have a positive economic impact on United States maritime industry by subsidizing the needed capital improvements in communities largely served by that industry and by provided much needed training.

PRIVACY

This program would not impact privacy issues.

PAPERWORK

This program would not create new mandatory paperwork or reporting requirements.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 states the short title of the legislation, the "Maritime Administration Enhancement Act of 2005".

Section 101. United States Maritime Service

This section would permit the Commandant of the United States Maritime Service (USMS) or the Maritime Administrator to utilize the USMS for maritime related functions beyond that of training and education that are determined to be necessary for the promotion of the U.S. merchant marine. For instance, the amendment would permit the use of members of the USMS to further the visibility and understanding of the U.S. merchant marine, and allow members of the USMS to serve as liaisons within the DOT and to the public.

Section 102. War risk insurance

This is a technical correction to section 3502(b) of P.L. 108–375, the National Defense Authorization Act for Fiscal Year 2005.

Section 103. Maritime education and training

This section would require students entering the Merchant Marine Academy to meet the same physical and mental standards required by the DOD. Any cadet not meeting such standards could be expelled. This change is necessary to ensure that students admitted to the Academy are capable of fulfilling the requirements of their commitment agreements upon graduation. If students do not meet these DOD standards, they are not eligible to obtain a Merchant Marine license or to accept an appointment in a reserve unit of the armed forces of the United States, two key commitment agreement service requirements.

Current law requires Academy graduates to become commissioned officers on active duty in an armed force of the United States or to become commissioned officers in the reserves of the armed forces for at least 6 years following graduation. The Privacy Act currently prevents MARAD from readily verifying with the DOD that graduates are serving their commitment to the armed forces. This section would require the DOD, the U.S. Coast Guard, and the National Oceanic and Atmospheric Administration (NOAA) to certify annually to MARAD that Academy graduates have remained on active duty or in ready reserve status, thus confirming the fulfillment of a graduates service commitment agreement. This provision would provide a mechanism for MARAD to recover tuition from graduates who fail to perform their duties and that are found in noncompliance with their commitment agreement and enable MARAD

In addition, this section would authorize Academy cadets to train on foreign flag vessels if it is in the interest of national security. For example, cadets would be permitted to train on vessels involved in unique trades that involve sensitive security interests of the United States such as Liquefied Natural Gas (LNG) vessels that are not documented in the United States. This is not intended to authorize the training of cadets on foreign flag vessels that do not pose a significant security interest to the nation.

Further, this section would clarify the role of the Global Maritime and Transportation School (GMATS) located on the campus of Kings Point as a non-appropriated fund instrumentality (NAFI) operating under the jurisdiction of the Department of Transportation.

Section 104. Authority to dispose of obsolete government vessels

Public Law 108–136 authorized the Secretary to convey to U.S. territories and foreign governments obsolete vessels for use as artificial reefs; however, it did not provide MARAD with the discretion to decide when to transfer the ship and title(s) fleetside at the NDRF. This section would provide MARAD the flexibility to make vessel and title transfer decisions that not only encourage States to request the ships for use as reefs, but also that are in the best interests of the government.

Section 105. Awards and medals

This section would provide the Administrator the discretion to award medals at no cost to the recipient. Currently, MARAD may only provide such medals and decorations at cost, or authorize for the manufacture and sale at reasonable prices by private persons.

Section 106. Elimination of tariffs on certain national defense activities

This measure would grant MARAD the ability to purchase emergency war materials for RRF repairs without being subject to ad valorem duties while under operational authority of the Department of Defense in a war zone. MARAD provides support for the deployment of military forces worldwide using the NDRF and RRF, which is part of the NDRF, and is a key element of the Navy's Strategic Sealift Program. Currently, there are 59 RRF vessels in a high state of readiness, and the availability of these ships is essential to the deployment of DOD forces and equipment, as part of the Navy's Military Sealift Command (MSC). The RRF fleet has been activated to support the current efforts in Afghanistan and the Persian Gulf.

Currently, 24 of the vessels are foreign constructed and another 35, while not foreign built, are equipped with foreign-made items. To maintain the vessels in a constant state of readiness, MARAD must regularly import foreign-made spare parts, repair parts, equipment and supplies. The imports necessary to maintain the fleet incur customs duties. Since MARAD vessels are maintained for the operational control of MSC, and are required for rapid deployment during national emergencies, the supplies and equipment needed to maintain the vessels should be accorded the same type of duty-free exemption for emergency war materials that is extended to DOD.

These vessels are U.S.-documented, thus any repairs or repair parts received abroad are subject to an ad valorem tax of 50 percent of the cost of the repairs received abroad. Although the ad valorem tax is intended to serve as an incentive for vessel operators to repair their vessels in United States shipyards, unintended consequences arise when applied to government owned vessels that are deployed overseas for extended periods of time and are engaged in national security functions. Therefore, streamlining this process in this instance is appropriate and necessary, providing DOD maximum flexibility for vessels under its control operating in a war zone to obtain ship repairs.

Section 107. Availability of funds from application fees for deep-water ports

This section would allow MARAD to retain fees assessed pursuant to applications for licenses for ownership, construction, and operation of deepwater ports, up to \$450,000 per fiscal year.

Section 108. Availability of funds from administrative waivers of coastwise trade laws for eligible vessels

This section would authorize MARAD to retain funds routinely collected through the agency's program for the Administrative Waiver of Coastwise Trade Laws for Eligible Vessels, up to \$50,000 per fiscal year.

Section 109. Amendments to the Vessel Operations Revolving Fund (VORF)

The VORF was created in 1951 to carry out vessel operating functions under the jurisdiction of Secretary of Transportation, including the charter, operation, maintenance, repair, reconditioning and betterment of merchant vessels. At present, such functions come at the expense of the operating repairs and maintenance budgeted for other NDRF vessels. In addition, all recoveries from litigation are deposited into the Treasury after payment to the Department of Justice for the costs of litigation. This section would allow MARAD to use a portion of the hire paid for the operation of the NDRF vessels and proceeds recovered from vessel accident litigation and arbitration. Funds would be placed in a reserve fund to cover the costs of vessel maintenance, repairs, and replacements.

Section 110. Right to use Maritime Administration decoration

This section would authorize the Secretary to sanction the use, manufacture, sale, possession, or display of a decoration or medal, such as the merchant marine seal. Currently no such authority exists, thus the use of the merchant seal is severely limited. This provision would permit the Secretary, through the Maritime Administrator, to authorize the use of maritime emblems for purposes and events he deems meritorious, such as commemorative ceremonies or events.

Section 111. Hawaii port infrastructure expansion program

This section would designate MARAD as the lead Federal agency to administer Federal funds for port and intermodal improvements in Hawaii.

Section 112. Payments for State and regional maritime academies

This section would increase the amount of assistance provided to the 6 State maritime academies which are located in Maine, Massachusetts, New York, Michigan, Texas, and California. These 6 schools currently receive limited Federal support, yet a substantial number of their graduates hold Federal licenses and support our increasing mariner requirements in both the commercial and military sectors. Current law provides for a payment from MARAD of \$200,000 dollars annually for cadet training and facilities support. That amount has not been raised since 1989. This section would increase the authorization level of Federal support to \$300,000 dollars for fiscal year 2006, \$400,000 dollars in fiscal year 2007, and

\$500,000 in fiscal year 2008, and for each fiscal year thereafter, subject to the availability of appropriations. This section would also require MARAD to provide modest payments to the aforementioned State maritime academies for the increasing cost of fuel used for the operation of the academies' training ships.

Section 113. Reduction of report burden

This section would eliminate a report required every 6 months pertaining to the progress of ship scrapping.

Section 114. Assistance for small shipyards and maritime communities

This provision would establish a grant program to assist small shipyards to make capital improvements and improve maritime training programs for small communities largely served by the maritime industry.

Section 201. Redesignation of duplicate numbered sections

This is a technical correction designed to correct duplicative section numbers.

Section 202. Transfer of authority to MARAD

This section would clarify the roles of the Maritime Administrator and the Department of Defense in the loan guarantee process overseen by MARAD and streamline the cumbersome application process. It would require independent analyses of the loan guarantees be conducted by private sector maritime finance or operations experts based on the determination of the Maritime Administrator that a particular set of circumstances relating to risk exists. Further, the provision would require MARAD to maintain adequate staffing and expertise in the agency to properly manage the program.

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):

FLOYD D. SPENCE NATIONAL DEFENSE AUTHORIZATION
ACT OF FISCAL YEAR 2001

SEC. 3502. SCRAPPING OF NATIONAL DEFENSE RESERVE FLEET VESSELS.

[Pub. L. 106-398 App.; 114 Stat. 1654A-492]

(a) EXTENSION OF SCRAPPING AUTHORITY UNDER NATIONAL MARITIME HERITAGE ACT OF 1994.—Section 6(c)(1) of the National Maritime Heritage Act of 1994 (16 U.S.C. 5405(c)(1)) is amended—

(1) in subparagraph (A) by striking “2001” and inserting “2006”; and

(2) by striking subparagraph (B) and inserting the following:
“(B) in the manner that provides the best value to the Government, except in any case in which obtaining the

best value would require towing a vessel and such towing poses a serious threat to the environment; and”.

(b) **SELECTION OF SCRAPPING FACILITIES.**—The Secretary of Transportation may scrap obsolete vessels pursuant to section 6(c)(1) of the National Maritime Heritage Act of 1994 (16 U.S.C. 5405(c)(1)) through qualified scrapping facilities, using the most expeditious scrapping methodology and location practicable. Scrapping facilities shall be selected under that section on a best value basis consistent with the Federal Acquisition Regulation, as in effect on the date of the enactment of this Act, without any predisposition toward foreign or domestic facilities taking into consideration, among other things, the ability of facilities to scrap vessels—

- (1) at least cost to the Government;
- (2) in a timely manner;
- (3) giving consideration to worker safety and the environment; and
- (4) in a manner that minimizes the geographic distance that a vessel must be towed when towing a vessel poses a serious threat to the environment.

[(c) **LIMITATION ON SCRAPPING BEFORE PROGRAM.**—

[(1) **IN GENERAL.**—Until the report required by subsection (d)(1) is transmitted to the congressional committees referred to in that subsection, the Secretary may not proceed with the scrapping of any vessel in the National Defense Reserve Fleet except the following:

- [(A) **DONNER.**
- [(B) **EXPORT COMMERCE.**
- [(C) **BUILDER.**
- [(D) **ALBERT E. WATTS.**
- [(E) **WAYNE VICTORY.**
- [(F) **MORMACDAWN.**
- [(G) **MORMACMOON.**
- [(H) **SANTA ELENA.**
- [(I) **SANTA ISABEL.**
- [(J) **SANTA CRUZ.**
- [(K) **PROTECTOR.**
- [(L) **LAUDERDALE.**
- [(N) **PVT. FRED C. MURPHY.**
- [(M) **BEAUJOLAIS.**
- [(O) **MEACHAM.**
- [(P) **NEACO.**
- [(Q) **WABASH.**
- [(R) **NEMASKET.**
- [(S) **MIRFAK.**
- [(T) **GEN. ALEX M. PATCH.**
- [(U) **ARTHUR M. HUDDALL.**
- [(V) **WASHINGTON.**
- [(W) **SUFFOLK COUNTY.**
- [(X) **CRANDALL.**
- [(Y) **CRILLEY.**
- [(Z) **RIGEL.**
- [(AA) **VEGA.**
- [(BB) **COMPASS ISLAND.**
- [(CC) **EXPORT CHALLENGER.**

[(DD) PRESERVER.
 [(EE) MARINE FIDDLER.
 [(FF) WOOD COUNTY.
 [(GG) CATAWBA VICTORY.
 [(HH) GEN. NELSON M. WALKER.
 [(II) LORAIN COUNTY.
 [(JJ) LYNCH.
 [(KK) MISSION SANTA YNEZ.
 [(LL) CALOOSAHATCHEE.
 [(MM) CANISTEO.

[(2) PRIORITIZATION.—The Secretary shall exercise discretion to prioritize for scrapping those vessels identified in paragraph (1) that pose the most immediate threat to the environment.

[(d)] (c) SCRAPPING PROGRAM FOR OBSOLETE NATIONAL DEFENSE RESERVE FLEET VESSELS.—

(1) DEVELOPMENT OF PROGRAM; REPORT.—The Secretary of Transportation, in consultation with the Secretary of the Navy and the Administrator of the Environmental Protection Agency, shall within 6 months after the date of the enactment of this Act—

(A) develop a program for the scrapping of obsolete National Defense Reserve Fleet vessels; and

(B) submit a report on the program to the Committee on Transportation and Infrastructure and the Committee on Resources of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committees on Armed Services of the House of Representatives and the Senate.

(2) CONTENTS OF REPORT.—The report shall include information concerning the initial determination of scrapping capacity, both domestically and abroad, appropriate proposed regulations to implement the program, funding and staffing requirements, milestone dates for the disposal of each obsolete vessel, and longterm cost estimates for the program.

(3) ALTERNATIVES.—In developing the program, the Secretary of Transportation, in consultation with the Secretary of the Navy and the Administrator of the Environmental Protection Agency, shall consider all alternatives and available information, including—

(A) alternative scrapping sites;

(B) vessel donations;

(C) sinking of vessels in deep water;

(D) sinking vessels for development of artificial reefs;

(E) sales of vessels before they become obsolete;

(F) results from the Navy Ship Disposal Program under section 8124 of the Department of Defense Appropriations Act, 1999; and

(G) the Report of the Department of Defense's Interagency Panel on Ship Scrapping issued in April 1998.

[(e) REPORT.—Not later than 1 year after the date of the enactment of this Act, and every 6 months thereafter, the Secretary of Transportation, in coordination with the Secretary of the Navy, shall report to the Committee on Transportation and Infrastructure and the Committee on Resources of the House of Representatives, the Committee on Commerce, Science, and Transportation of the

Senate, and the Committees on Armed Services of the House of Representatives and the Senate on the progress of the vessel scrapping program developed under subsection (d)(1) and on the progress of any other scrapping of obsolete Government-owned vessels.】

【(f)】 *(d)* PRESIDENTIAL RECOMMENDATION.—The President shall transmit with the report required by 【subsection (d)(1)】 *subsection (c)(1)* a recommendation on—

(1) whether it is necessary to amend the Toxic Substances Control Act (15 U.S.C. 2601 et seq.) or any other environmental statute or regulatory requirements relevant to the disposal of vessels described in section 6(c)(2) of the National Maritime Heritage Act of 1994 (16 U.S.C. 5405(c)(2)) by September 30, 2006; and

(2) any proposed changes to those requirements to carry out such disposals.

PUBLIC LAW 92–402

SEC. 4. TRANSFER OF TITLE; TERMS AND CONDITIONS.

[16 U.S.C. 1220a]

If, after consideration of such comments and views as are received pursuant to section 3(c), the Secretary finds that the use of obsolete ships proposed by a State will not violate any Federal law, contribute to degradation of the marine environment, create undue interference with commercial fishing or navigation, and is not frivolous, he may transfer without consideration to the State all right, title, and interest of the United States in and to any obsolete ships which are available for transfer under this Act if—

(1) the State gives to the Secretary such assurances as he deems necessary that such ships will be utilized and maintained only for the purposes stated in the application and, when sunk, will be charted and marked as a hazard to navigation;

(2) the State agrees to secure any licenses or permits which may be required under the provisions of any other applicable Federal law;

(3) the State agrees to such other terms and conditions as the Secretary shall require in order to protect the marine environment and other interests of the United States; and

【(4) the transfer would be at no cost to the Government (except for any financial assistance provided under section 7) with the State taking delivery of such obsolete ships at fleetside of the National Defense Reserve Fleet in an “as is—where is” condition.】

(4) the transfer would be at no cost to the government (except for any financial assistance provided under section 1220(c)(1) of this title) with the State taking delivery of such obsolete ships and titles in an “as-is—where-is” condition at such place and time designated as may be determined by the Secretary of Transportation.

TARIFF ACT OF 1930

SEC. 466. EQUIPMENT AND REPAIRS OF VESSELS.

[19 U.S.C. 1466]

(a) VESSELS SUBJECT TO DUTY; PENALTIES.—The equipments, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum on the cost thereof in such foreign country. If the owner or master willfully or knowingly neglects or fails to report, make entry, and pay duties as herein required, or if he makes any false statement in respect of such purchases or repairs without reasonable cause to believe the truth of such statements, or aids or procures the making of any false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, such vessel, or a monetary amount up to the value thereof as determined by the Secretary, to be recovered from the owner, shall be subject to seizure and forfeiture[.] For the purposes of this section, compensation paid to members of the regular crew of such vessel in connection with the installation of any such equipments or any part thereof, or the making of repairs, in a foreign country, shall not be included in the cost of such equipment or part thereof, or of such repairs.

(b) NOTICE.—If the appropriate customs officer has reasonable cause to believe a violation has occurred and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intention to issue a penalty claim. Such notice shall—

- (1) describe the circumstances of the alleged violation;
- (2) specify all laws and regulations allegedly violated;
- (3) disclose all the material facts which establish the alleged violation;
- (4) state the estimated loss of lawful duties, if any, and taking into account all of the circumstances, the amount of the proposed penalty; and
- (5) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued.

(c) VIOLATION.—After considering representations, if any, made by the person concerned pursuant to the notice issued under subsection (b), the appropriate customs officer shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If such officer determines that there was no violation, he shall promptly notify, in writing, the person to whom the notice was sent. If such officer determines that there was a violation, he shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under paragraphs (1) through (4) of subsection (b).

(d) REMISSION FOR NECESSARY REPAIRS.—If the owner or master of such vessel furnishes good and sufficient evidence that—

(1) such vessel, while in the regular course of her voyage, was compelled, by stress of weather or other casualty, to put into such foreign port and purchase such equipments, or make such repairs, to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination;

(2) such equipments or parts thereof or repair parts or materials, were manufactured or produced in the United States, and the labor necessary to install such equipments or to make such repairs was performed by residents of the United States, or by members of the regular crew of such vessel; or

(3) such equipments, or parts thereof, or materials, or labor, were used as dunnage for cargo, or for the packing or shoring thereof, or in the erection of temporary bulkheads or other similar devices for the control of bulk cargo, or in the preparation (without permanent repair or alteration) of tanks for the carriage of liquid cargo; then the Secretary of the Treasury is authorized to remit or refund such duties, and such vessel shall not be liable to forfeiture, and no license or enrollment and license, or renewal of either, shall hereafter be issued to any such vessel until the collector to whom application is made for the same shall be satisfied, from the oath of the owner or master, that all such equipments or parts thereof or materials and repairs made within the year immediately preceding such application have been duly accounted for under the provisions of this section, and the duties accruing thereon duly paid; and if such owner or master shall refuse to take such oath, or take it falsely, the vessel shall be seized and forfeited.

(e) VESSELS USED PRIMARILY FOR PURPOSES OTHER THAN TRANSPORTING PASSENGERS OR PROPERTY.—

(1) In the case of any vessel referred to in subsection (a) that arrives in a port of the United States two years or more after its last departure from a port in the United States, the duties imposed by this section shall apply only with respect to—

(A) fish nets and netting, and

(B) other equipments and parts thereof, repair parts and materials purchased, or repairs made, during the first six months after the last departure of such vessel from a port of the United States.

(2) If such vessel is designed and used primarily for transporting passengers or property, paragraph (1) shall not apply if the vessel departed from the United States for the sole purpose of obtaining such equipments, parts, materials, or repairs.

(f) CIVIL AIRCRAFT EXCEPTION.—The duty imposed under subsection (a) shall not apply to the cost of equipments, or any part thereof, purchased, of repair parts or materials used, or of repairs made in a foreign country with respect to a United States civil aircraft, within the meaning of general note 3(c)(iv) of the Harmonized Tariff Schedule of the United States.

(g) NATIONAL DEFENSE RESERVE FLEET EXCEPTION.—

(1) IN GENERAL.—*The duty imposed under subsection (a) shall not apply to the cost of equipment, or any part thereof purchased, of repair parts or materials used, or expenses of repairs made in a foreign country for any vessel operated as part of the National Defense Reserve Fleet when the vessel is under the jurisdictional control of the Department of Defense if equiv-*

alent equipment, parts, repair parts, or materials made in the United States, or repairs made in the United States were determined by the Secretary of Transportation not to be reasonably available.

(2) *REPORT ON DETERMINATIONS.—The Secretary of Transportation shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Armed Services setting forth the circumstances under which any such determination was made by the Secretary.*

[(g)] *(h) FISH NET AND NETTING PURCHASES AND REPAIRS.—The duty imposed by subsection (a) shall not apply to entries on and after October 1, 1979, and before January 1, 1982, of—*

(1) tuna purse seine nets and netting which are equipments or parts thereof,

(2) repair parts for such nets and netting, or materials used in repairing such nets and netting, or

(3) the expenses of repairs of such nets and netting, for any United States documented tuna purse seine vessel of greater than 500 tons carrying capacity or any United States tuna purse seine vessel required to carry a certificate of inclusion under the general permit issued to the American Tunaboat Association pursuant to section 104 of the Marine Mammal Protection Act of 1972.

[(h)] *(i) FOREIGN REPAIR OF VESSELS.—The duty imposed by subsection (a) of this section shall not apply to—*

(1) the cost of any equipment, or any part of equipment, purchased for, or the repair parts or materials to be used, or the expense of repairs made in a foreign country with respect to, LASH (Lighter Aboard Ship) barges documented under the laws of the United States and utilized as cargo containers;

(2) the cost of spare repair parts or materials (other than nets or nettings) which the owner or master of the vessel certifies are intended for use aboard a cargo vessel, documented under the laws of the United States and engaged in the foreign or coasting trade, for installation or use on such vessel, as needed, in the United States, at sea, or in a foreign country, but only if duty is paid under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States upon first entry into the United States of each such spare part purchased in, or imported from, a foreign country;

(3) the cost of spare parts necessarily installed before the first entry into the United States, but only if duty is paid under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States upon first entry into the United States of each such spare part purchased in, or imported from, a foreign country; or

(4) the cost of equipment, repair parts, and materials that are installed on a vessel documented under the laws of the United States and engaged in the foreign or coasting trade, if the installation is done by members of the regular crew of such vessel while the vessel is on the high seas. Declaration and entry shall not be required with respect to the installation, equipment, parts, and materials described in paragraph (4).

* * * * *

[Insert A, attached as page —A]

MERCHANT MARINE ACT, 1936

TITLE XI—FEDERAL SHIP FINANCING GUARANTEE PROGRAM

SEC. 1101. DEFINITIONS.

[46 U.S.C. App. 1271]

As used in this title—

(a) The term “mortgage” includes—

(1) a preferred mortgage as defined in section 31301 of title 46, United States Code; and

(2) a mortgage on a vessel that will become a preferred mortgage when filed or recorded under chapter 313 of title 46, United States Code.

(b) The term “vessel” includes all types, whether in existence or under construction, of passenger cargo and combination passenger cargo carrying vessels, tankers, tugs, towboats, barges, dredges and ocean thermal energy conversion facilities or plantships which are or will be documented under the laws of the United States, fishing vessels whose ownership will meet the citizenship requirements for documenting vessels in the coastwise trade within the meaning of section 2 of the Shipping Act, 1916, as amended, floating drydocks which have a capacity of thirty-five thousand or more lifting tons and a beam of one hundred and twenty-five feet or more between the wing walls and oceanographic research or instruction or pollution treatment, abatement or control vessels;

(c) The term “obligation” shall mean any note, bond, debenture, or other evidence of indebtedness (exclusive of notes or other obligations issued by the **[Secretary]** *Secretary or Administrator* pursuant to subsection (d) of section 1105 of this title and obligations eligible for investment of funds under section 1102 and subsection (d) of section 1108 of this title), issued for one of the purposes specified in subsection (a) of section 1104 of this title;

(d) The term “obligor” shall mean any party primarily liable for payment of the principal of or interest on any obligation;

(e) The term “obligee” shall mean the holder of an obligation;

(f) **ACTUAL COST DEFINED.**—The term “actual cost” means the sum of—

(1) all amounts paid by or for the account of the obligor as of the date on which a determination is made under section 1108(g)(1); and

(2) all amounts that the **[Secretary]** *Secretary or Administrator* reasonably estimates that the obligor will become obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning of the vessel, including guarantee fees that will become payable under section 1104A(e) in connection with all obligations issued for construction, reconstruction, or reconditioning of the vessel or equipment to be delivered, and all obligations issued for the delivered vessel or equipment.(g) The term “depreciated actual cost” of a vessel means the actual cost of the vessel depreciated on a straightline basis over the useful life of the vessel as determined by the **[Secretary]** *Secretary or Administrator*, not to exceed twenty-five years from the date the

vessel was delivered by the shipbuilder, or, if the vessel has been reconstructed or reconditioned, the actual cost of the vessel depreciated on a straightline basis from the date the vessel was delivered by the shipbuilder to the date of such reconstruction or reconditioning on the basis of the original useful life of the vessel and from the date of such reconstruction or reconditioning on a straightline basis and on the basis of a useful life of the vessel determined by the [Secretary] *Secretary or Administrator*, plus all amounts paid or obligated to be paid for the reconstruction or reconditioning depreciated on a straightline basis on the basis of a useful life of the vessel determined by the [Secretary] *Secretary or Administrator*;

(h) The terms “construction”, “reconstruction”, or “reconditioning” shall include, but shall not be limited to, designing, inspecting, outfitting, and equipping;

(i) The term “ocean thermal energy conversion facility or plantship” means any at-sea facility or vessel, whether mobile, floating unmoored, moored, or standing on the seabed, which uses temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such facility or vessel to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any cable or pipeline used to deliver such electricity, freshwater, or product to shore, and all other associated equipment and appurtenances of such facility or vessel, to the extent they are located seaward of the highwater mark;

(j) The term “citizen of the Northern Mariana Islands” means—

(1) an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the Constitution of the Northern Mariana Islands; or

(2) a corporation, partnership, association, or other entity formed under the laws of the Northern Mariana Islands, not less than 75 percent of the interest in which is owned by individuals referred to in paragraph (1) or citizens or nationals of the United States, in cases in which “owned” is used in the same sense as in section 2 of the Shipping Act, 1916 (46 U.S.C. 802);

(k) The term “fishery facility” means—

(1) for operations on land—

(A) any structure or appurtenance thereto designed for the unloading and receiving from vessels, the processing, the holding pending processing, the distribution after processing, or the holding pending distribution, of fish from one or more fisheries,

(B) the land necessary for any such structure or appurtenance described in subparagraph (A), and

(C) equipment which is for use in connection with any such structure or appurtenance and which is necessary for the performance of any function referred to in subparagraph (A);

(2) for operations other than on land, any vessel built in the United States used for, equipped to be used for, or of a type which is normally used for, the processing of fish; or

(3) for aquaculture, including operations on land or elsewhere—

(A) any structure or appurtenance thereto designed for aquaculture;

(B) the land necessary for any such structure or appurtenance described in subparagraph (A);

(C) equipment which is for use in connection with any such structure or appurtenance and which is necessary for the performance of any function referred to in subparagraph (A); and

(D) any vessel built in the United States used for, equipped to be used for, or of a type which is normally used for aquaculture; but only if such structure, appurtenance, land, equipment, or vessel is owned by an individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands or by a corporation, partnership, association, or other entity that is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916 (46 U.S.C. 802), and for purposes of applying such section 2 with respect to this section—

(i) the term “State” as used therein includes any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other Commonwealth, territory, or possession of the United States; and

(ii) citizens of the United States must own not less than 75 percent of the interest in the entity and nationals of the United States or citizens of the Northern Mariana Islands shall be treated as citizens of the United States in meeting such ownership requirement;

(l) The term “fishing vessel” has the meaning given such term by section 3(11) of the Magnuson-Stevens Fishery Conservation and Management Act of 1976 (16 U.S.C. 1802(11)); and any reference in this title to a vessel designed principally for commercial use in the fishing trade or industry shall be treated as a reference to a fishing vessel;

(m) The term “United States” when used in a geographical context with respect to fishing vessels or fishery facilities includes all States referred to in subsection (k)(i).

(n) The term “Secretary” means the Secretary of Commerce with respect to fishing vessels and fishing facilities as provided by this title, and the Secretary of Transportation with respect to all other vessels and general shipyard facilities (as defined in section 1112(d)(3)). *title.*

(o) The term “eligible export vessel” means a vessel constructed, reconstructed, or reconditioned in the United States for use in world-wide trade which will, upon delivery or redelivery, be placed under or continued to be documented under the laws of a country other than the United States.

(p) *The term “Administrator” means the Administrator of the Maritime Administration.*

SEC. 1102. FEDERAL SHIP FINANCING FUND.

[46 U.S.C. App. 1272]

There is hereby created a Federal Ship Financing Fund (hereinafter referred to as the Fund) which shall be used by the [Secretary] *Secretary or Administrator* as a revolving fund for the purpose of carrying out the provisions of this title, and there shall be allocated to such Fund the sum of \$1,000,000 out of funds made available to the [Secretary] *Secretary or Administrator* under the appropriation authorized by Section 1107 (46 U.S.C.). Moneys in the Fund shall be deposited in the Treasury of the United States to the credit of the Fund or invested in bonds or other obligations of, or guaranteed as to principal and interest by, the United States.

SEC. 1103. AUTHORIZATION OF SECRETARY TO GUARANTEE OBLIGATIONS.

[46 U.S.C. App. 1273].

(a) PRINCIPAL AND INTEREST.—The [Secretary] *Secretary or Administrator* is authorized to guarantee, and to enter into commitments to guarantee, the payment of the interest on, and the unpaid balance of the principal of, any obligation which is eligible to be guaranteed under this title. A guarantee, or commitment to guarantee, made by the [Secretary] *Secretary or Administrator* under this title shall cover 100 percent of the amount of the principal and interest of the obligation.

(b) SECURITY INTEREST.—No obligation shall be guaranteed under this title unless the obligor conveys or agrees to convey to the [Secretary] *Secretary or Administrator* such security interest, which may include a mortgage or mortgages on a vessel or vessels, as the [Secretary] *Secretary or Administrator* may reasonably require to protect the interests of the United States.

(c) AMOUNT OF GUARANTEE; PERCENTAGE LIMITATION; DETERMINATION OF ACTUAL COST OF VESSEL.—The [Secretary] *Secretary or Administrator* shall not guarantee the principal of obligations in an amount in excess of 75 per centum, or 87 ½ per centum, whichever is applicable under section 1104 of this title, of the amount, as determined by the [Secretary] *Secretary or Administrator* which determination shall be conclusive, paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of a vessel or vessels with respect to which a security interest has been conveyed to the [Secretary] *Secretary or Administrator*, unless the obligor creates an escrow fund as authorized by section 1108 of this title, in which case the [Secretary] *Secretary or Administrator* may guarantee 75 per centum or 87½ per centum, whichever is applicable under section 1104 of this title, of the actual cost of such vessel or vessels.

(d) PLEDGE OF UNITED STATES.—The full faith and credit of the United States is pledged to the payment of all guarantees made under this title with respect to both principal and interest, including interest, as may be provided for in the guarantee, accruing between the date of default under a guaranteed obligation and the payment in full of the guarantee.

(e) PROOF OF OBLIGATIONS.—Any guarantee, or commitment to guarantee, made by the [Secretary] *Secretary or Administrator* under this title shall be conclusive evidence of the eligibility of the obligations for such guarantee, and the validity of any guarantee, or commitment to guarantee, so made shall be incontestable. Not-

withstanding an assumption of an obligation by the **Secretary** *Secretary or Administrator* under section 1105(a) or (b) of this Act, the validity of the guarantee of an obligation made by the **Secretary** *Secretary or Administrator* under this title is unaffected and the guarantee remains in full force and effect.

(f) **LIMITATION ON OUTSTANDING AMOUNT.**—The aggregate unpaid principal amount of the obligations guaranteed under this section and outstanding at any one time shall not exceed \$12,000,000,000, of which (1) \$850,000,000 shall be limited to obligations pertaining to guarantees of obligations for fishing vessels and fishery facilities made under this title, and (2) \$3,000,000,000 shall be limited to obligations pertaining to guarantees of obligations for eligible export vessels. No additional limitations may be imposed on new commitments to guarantee loans for any fiscal year, except in such amounts as established in advance in annual authorization Acts. No vessel eligible for guarantees under this title shall be denied eligibility because of its type.

(g) **LOAN GUARANTEES FOR EXPORT VESSELS; FINDING REQUIRED; TERMINATION OF AUTHORITY.**—

(1) The **Secretary** *Secretary or Administrator* may not issue a commitment to guarantee obligations for an eligible export vessel unless, after considering—

(A) the status of pending applications for commitments to guarantee obligations for vessels documented under the laws of the United States and operating or to be operated in the domestic or foreign commerce of the United States,

(B) the economic soundness of the applications referred to in subparagraph (A), and

(C) the amount of guarantee authority available, the **Secretary** *Secretary or Administrator* determines, in the sole discretion of the **Secretary** *Secretary or Administrator*, that the issuance of a commitment to guarantee obligations for an eligible export vessel will not result in the denial of an economically sound application to issue a commitment to guarantee obligations for vessels documented under the laws of the United States operating in the domestic or foreign commerce of the United States.

(2) The **Secretary** *Secretary or Administrator* may not issue commitments to guarantee obligations for eligible export vessels under this section after the later of—

(A) the 5th anniversary of the date on which the **Secretary** *Secretary or Administrator* publishes final regulations setting forth the application procedures for the issuance of commitments to guarantee obligations for eligible export vessels,

(B) the last day of any 5-year period in which funding and guarantee authority for obligations for eligible export vessels have been continuously available, or

(C) the last date on which those commitments may be issued under any treaty or convention entered into after the date of the enactment of the National Shipbuilding and Shipyard Conversion Act of 1993 that prohibits guarantee of those obligations.

(h)(1) The **Secretary** *Secretary or Administrator* shall—

(A) establish in accordance with this subsection, and update annually, a system of risk categories for obligations guaranteed under this title, that categorizes the relative risk of guarantees made under this title with respect to the risk factors set forth in paragraph (3);

(B) annually determine for each of the risk categories a subsidy rate equivalent to the cost of obligations in the category, expressed as a percentage of the amount guaranteed under this title for obligations in the category; and

(C) ensure that each risk category is comprised of loans that are relatively homogeneous in cost and share characteristics predictive of defaults and other costs, given the facts known at the time of obligation or commitment, using a risk category system that is based on historical analysis of program data and statistical evidence concerning the likely costs of defaults or other costs that expected to be associated with the loans in the category.

(2)(A) Before making a guarantee under this section for an obligation, and annually for projects subject to a guarantee, the **【Secretary】** *Secretary or Administrator* shall apply the risk factors set forth in paragraph (3) to place the obligation in a risk category established under paragraph (1)(A).

(B) The **【Secretary】** *Secretary or Administrator* shall consider the aggregate amount available to the **【Secretary】** *Secretary or Administrator* for making guarantees under this title to be reduced by the amount determined by multiplying—

(i) the amount guaranteed under this title for an obligation, by

(ii) the subsidy rate for the category in which the obligation is placed under subparagraph (A) of this paragraph.

(C) The estimated cost to the Government of a guarantee made by the **【Secretary】** *Secretary or Administrator* under this title for an obligation is deemed to be the amount determined under subparagraph (B) for the obligation.

(D) The **【Secretary】** *Secretary or Administrator* may not guarantee obligations under this title after the aggregate amount available to the **【Secretary】** *Secretary or Administrator* under appropriations Acts for the cost of loan guarantees is required by subparagraph (B) to be considered reduced to zero.

(3) The risk factors referred to in paragraphs (1) and (2) are the following:

(A) If applicable, the country risk for each eligible export vessel financed or to be financed by an obligation.

(B) The period for which an obligation is guaranteed or to be guaranteed.

(C) The amount of an obligation, which is guaranteed or to be guaranteed, in relation to the total cost of the project financed or to be financed by the obligation.

(D) The financial condition of an obligor or applicant for a guarantee.

(E) If applicable, any guarantee related to the project, other than the guarantee under this title for which the risk factor is applied.

(F) If applicable, the projected employment of each vessel or equipment to be financed with an obligation.

(G) If applicable, the projected market that will be served by each vessel or equipment to be financed with an obligation.

(H) The collateral provided for a guarantee for an obligation.

(I) The management and operating experience of an obligor or applicant for a guarantee.

(J) Whether a guarantee under this title is or will be in effect during the construction period of the project.

(K) A risk factor for concentration risk reflecting the risk presented by an unduly large percentage of loans outstanding by any 1 borrower or group of affiliated borrowers.

(4) In this subsection, the term “cost” has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(i) PRIORITY FOR NATIONAL DEFENSE TANK VESSELS.—In guaranteeing and entering commitments to guarantee under this section, the [Secretary] *Administrator* shall give priority to guarantees and commitments for vessels that are otherwise eligible for a guarantee under this section and that are constructed with assistance under subtitle D of the Maritime Security Act of 2003.

(j) PRIORITY FOR OTHER VESSELS SUITABLE FOR SERVICE AS A NAVAL AUXILIARY.—[In guaranteeing and entering commitments to guarantee under this section,] *If the Secretary or Administrator seeks a priority for a commitment to guarantee under this section,* the [Secretary] *Administrator* shall, after applying subsection (i), give priority to a guarantee or commitment for a vessel that is otherwise eligible for a guarantee under this section and that the Secretary of Defense determines—

(1) is suitable for service as a naval auxiliary in time of war or national emergency; and

(2) meets a shortfall in sealift capacity or capability.

SEC. 1104A. ELIGIBILITY FOR GUARANTEE.

[46 U.S.C. App. 1274]

(a) PURPOSE OF OBLIGATIONS.—Pursuant to the authority granted under section 1103(a), the [Secretary] *Secretary or Administrator* upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in—

(1) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a vessel (including an eligible export vessel), which is designed principally for research, or for commercial use (A) in the coastwise or intercoastal trade; (B) on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States; (C) in foreign trade as defined in section 905 of this Act for purposes of title V of this Act; or (D) as an ocean thermal energy conversion facility or plantship; (E) with respect to floating drydocks in the construction, reconstruction, reconditioning, or repair of vessels; or (F) with respect to an eligible export vessel, in world-wide trade; Provided, however, That no guarantee shall be entered into pursuant to this paragraph (a)(1) later than one year after delivery, or redelivery in the case of reconstruction or reconditioning of any such vessel unless the proceeds of the obligation are used to finance the construction, reconstruction, or reconditioning of a vessel or

vessels, or facilities or equipment pertaining to marine operations;

(2) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, reconditioning, or purchase of a vessel or vessels owned by citizens or nationals of the United States or citizens of the Northern Mariana Islands which are designed principally for research, or for commercial use in the fishing trade or industry;

(3) financing the purchase, reconstruction, or reconditioning of vessels or fishery facilities for which obligations were guaranteed under this title that, under the provisions of section 1105:

(A) are vessels or fishery facilities for which obligations were accelerated and paid;

(B) were acquired by the Fund; or

(C) were sold at foreclosure instituted by the **【Secretary】** *Secretary or Administrator*;

(4) financing, in whole or in part, the repayment to the United States of any amount of construction-differential subsidy paid with respect to a vessel pursuant to title V of this Act, as amended;

(5) refinancing existing obligations issued for one of the purposes specified in (1), (2), (3), or (4) whether or not guaranteed under this title, including, but not limited to, short-term obligations incurred for the purpose of obtaining temporary funds with the view to refinancing from time to time;

(6) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made for, the construction, reconstruction, reconditioning, or purchase of fishery facilities; or

(7) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made, for the purchase of individual fishing quotas in accordance with section 303(d)(4) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853(d)(4)).

Any obligation guaranteed under paragraphs (6) and (7) shall be treated, for purposes of this title, in the same manner and to the same extent as an obligation guaranteed under this title which aids in the construction, reconstruction, reconditioning, or purchase of a vessel; except with respect to provisions of this title that by their nature can only be applied to vessels.

(b) CONTENTS OF OBLIGATIONS.—Obligations guaranteed under this title—

(1) shall have an obligor approved by the **【Secretary】** *Secretary or Administrator* as responsible and possessing the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the vessel or vessels which serve as security for the guarantee of the **【Secretary】** *Secretary or Administrator*;

(2) subject to the provisions of subsection (c)(1) and subsection (i), shall be in an aggregate principal amount which does not exceed 75 per centum of the actual cost or depreciated actual cost, as determined by the **【Secretary】** *Secretary or Administrator*, of the vessel which is used as security for the guarantee of the **【Secretary】** *Secretary or Administrator*: Pro-

vided, however, That in the case of a vessel, the size and speed of which are approved by the **【Secretary】** *Secretary or Administrator*, and which is or would have been eligible for mortgage aid for construction under section 509 of this Act (or would have been eligible for mortgage aid under section 509 of this Act except that the vessel was built with the aid of construction-differential subsidy and said subsidy has been repaid) and in respect of which the minimum downpayment by the mortgagor required by that section would be or would have been 12½ per centum of the cost of such vessel, such obligations may be in an amount which does not exceed 87½ per centum of such actual cost or depreciated actual cost: Provided, further, That the obligations which relate to a barge which is constructed without the aid of construction-differential subsidy, or, if so subsidized, on which said subsidy has been repaid, may be in an aggregate principal amount which does not exceed 87½ per centum of the actual cost or depreciated actual cost thereof: Provided further, That in the case of a fishing vessel or fishery facility, the obligation shall be in an aggregate principal amount not to exceed 80 percent of the actual cost or depreciated actual cost of the fishing vessel or fishery facility, except that no debt may be placed under this proviso through the Federal Financing Bank: Provided further, That in the case of an ocean thermal energy conversion facility or plantship which is constructed without the aid of construction-differential subsidy, such obligations may be in an aggregate principal amount which does not exceed 87½ percent of the actual cost or depreciated actual cost of the facility or plantship: Provided further, That in the case of an eligible export vessel, such obligations may be in an aggregate principal amount which does not exceed 87½ of the actual cost or depreciated actual cost of the eligible export vessel;

(3) shall have maturity dates satisfactory to the **【Secretary】** *Secretary or Administrator* but, subject to the provisions of paragraph (2) of subsection (c) of this section, not to exceed twenty-five years from the date of the delivery of the vessel which serves as security for the guarantee of the **【Secretary】** *Secretary or Administrator* or, if the vessel has been reconstructed or reconditioned, not to exceed the later of (i) twenty-five years from the date of delivery of the vessel and (ii) the remaining years of the useful life of the vessel as determined by the **【Secretary】** *Secretary or Administrator*;

(4) shall provide for payments by the obligor satisfactory to the **【Secretary】** *Secretary or Administrator*;

(5) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such per centum per annum on the unpaid principal as the **【Secretary】** *Secretary or Administrator* determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the **【Secretary】** *Secretary or Administrator*;

(6) shall provide, or a related agreement shall provide, that if the vessel used as security for the guarantee of the **【Secretary】** *Secretary or Administrator* is a delivered vessel, the vessel shall be in class A-1, American Bureau of Shipping, or

shall meet such other standards as may be acceptable to the **【Secretary】** *Secretary or Administrator*, with all required certificates, including but not limited to, marine inspection certificates of the United States Coast Guard or, in the case of an eligible export vessel, of the appropriate national flag authorities under a treaty, convention, or other international agreement to which the United States is a party, with all outstanding requirements and recommendations necessary for re-entitlement of class accomplished, unless the **【Secretary】** *Secretary or Administrator* permits a deferment of such repairs, and shall be tight, staunch, strong, and well and sufficiently tacked, appareled, furnished, and equipped, and in every respect seaworthy and in good running condition and repair, and in all respects fit for service; and

(7) may provide, or a related agreement may provide, if the vessel used as security for the guarantee of the **【Secretary】** *Administrator* is a passenger vessel having the tonnage, speed, passenger accommodations and other characteristics set forth in title V of this Act, as amended, and if the Secretary approves, that the sole recourse against the obligor by the United States for any payments under the guarantee shall be limited to repossession of the vessel and the assignment of insurance claims and that the liability of the obligor for any payments of principal and interest under the guarantee shall be satisfied and discharged by the surrender of the vessel and all right, title, and interest therein to the United States: Provided, That the vessel upon surrender shall be (i) free and clear of all liens and encumbrances whatsoever except the security interest conveyed to the **【Secretary】** *Administrator* under this title, (ii) in class, and (iii) in as good order and condition, ordinary wear and tear excepted, as when acquired by the obligor, except that any deficiencies with respect to freedom from encumbrances, condition and class may, to the extent covered by valid policies of insurance, be satisfied by the assignment to the **【Secretary】** *Administrator* of claims of the obligor under such policies.

The Secretary may not establish, as a condition of eligibility for guarantee under this title, a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility. For purposes of this title, the reconstruction or reconditioning of a fishing vessel or fishery facility does not include the routine minor repair or maintenance of the vessel or facility.

(c) SECURITY.—(1) The security for the guarantee of an obligation by the **【Secretary】** *Secretary or Administrator* under this title may relate to more than one vessel and may consist of any combination of types of security. The aggregate principal amount of obligations which have more than one vessel as security for the guarantee of the **【Secretary】** *Secretary or Administrator* under this title may equal, but not exceed, the sum of the principal amount of obligations permissible with respect to each vessel.

(2) If the security for the guarantee of an obligation by the **【Secretary】** *Secretary or Administrator* under this title relates to more than one vessel, such obligation may have the latest maturity date permissible under subsection (b) of this section with respect to any of such vessels: Provided, That the **【Secretary】** *Secretary or Ad-*

ministrator may require such payments of principal, prior to maturity, with respect to all related obligations as he deems necessary in order to maintain adequate security for his guarantee.

(d) RESTRICTIONS.—(1)(A) No commitment to guarantee, or guarantee of, an obligation shall be made by the **【Secretary of Transportation】** *Administrator* unless the **【Secretary】** *Administrator* finds that the property or project with respect to which the obligation will be executed will be economically sound. In making that determination, the **【Secretary】** *Administrator* shall consider—

(i) the need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this title is in effect;

(ii) the market potential for the employment of the vessel over the life of the guarantee;

(iii) projected revenues and expenses associated with employment of the vessel;

(iv) any charters, contracts of affreightment, transportation agreements, or similar agreements or undertakings relevant to the employment of the vessel;

(v) other relevant criteria; and

(vi) for inland waterways, the need for technical improvements, including but not limited to increased fuel efficiency, or improved safety.

(B) No commitment to guarantee, or guarantee of, and obligation shall be made by the Secretary of Commerce unless the Secretary finds, at or prior to the time such commitment is made or guarantee becomes effective, that the property or project with respect to which the obligation will be executed will be, in the Secretary's opinion, economically sound and in the case of fishing vessels, that the purpose of the financing or refinancing is consistent with the wise use of the fisheries resources and with the development, advancement, management, conservation, and protection of the fisheries resources, or with the need for technical improvements including but not limited to increased fuel efficiency or improved safety.

(2) No commitment to guarantee, or guarantee of an obligation may be made by the Secretary under this title for the purchase of a used fishing vessel or used fishery facility unless—

(A) the vessel or facility will be reconstructed or reconditioned in the United States and will contribute to the development of the United States fishing industry; or

(B) the vessel or facility will be used in the harvesting of fish from, or for a purpose described in section 1101(k) with respect to, an underutilized fishery.

(3) No commitment to guarantee, or guarantee of an obligation may be made by the **【Secretary】** *Administrator* under this title for the construction, reconstruction, or reconditioning of an eligible export vessel unless—

(A) the **【Secretary】** *Administrator* finds that the construction, reconstruction, or reconditioning of that vessel will aid in the transition of United States shipyards to commercial activities or will preserve shipbuilding assets that would be essential in time of war or national emergency, and

(B) the owner of the vessel agrees with the **【Secretary of Transportation】** *Administrator* that the vessel shall not be transferred to any country designated by the Secretary of Defense as a country whose interests are hostile to the interests of the United States.

(4) The Secretary shall promulgate regulations concerning circumstances under which waivers of or exceptions to otherwise applicable regulatory requirements concerning financial condition can be made. The regulations shall require that—

(A) the economic soundness requirements set forth in paragraph (1)(A) of this subsection are met after the waiver of the financial condition requirement; and

(B) **【the waiver】** *if deemed necessary by the Secretary or Administrator, the waiver* shall provide for the imposition of other requirements on the obligor designed to compensate for **【the increased】** *any significant increase in risk* associated with the obligor's failure to meet regulatory requirements applicable to financial condition.

(e) GUARANTEE FEES.—(1) Except as otherwise provided in this subsection, the **【Secretary】** *Secretary or Administrator* shall prescribe regulations to assess in accordance with this subsection a fee for the guarantee of an obligation under this title.

(2)(A) The amount of a fee under this subsection for a guarantee is equal to the sum determined by adding the amounts determined under subparagraph (B) for the years in which the guarantee is in effect.

(B) The amount referred to in subparagraph (A) for a year is the present value (determined by applying the discount rate determined under subparagraph (F)) of the amount determined by multiplying—

(i) the estimated average unpaid principal amount of the obligation that will be outstanding during the year (determined in accordance with subparagraph (E)), by

(ii) the fee rate established under subparagraph (C) for the obligation for each year.

(C) The fee rate referred to in subparagraph (B)(ii) for an obligation shall be—

(i) in the case of an obligation for a delivered vessel or equipment, not less than one-half of 1 percent and not more than 1 percent, determined by the **【Secretary】** *Secretary or Administrator* for the obligation under the formula established under subparagraph (D); or

(ii) in the case of an obligation for a vessel to be constructed, reconstructed, or reconditioned, or of equipment to be delivered, not less than one-quarter of 1 percent and not more than one-half of 1 percent, determined by the **【Secretary】** *Secretary or Administrator* for the obligation under the formula established under subparagraph (D).

(D) The **【Secretary】** *Secretary or Administrator* shall establish a formula for determining the fee rate for an obligation for purposes of subparagraph (C), that—

(i) is a sliding scale based on the creditworthiness of the obligor;

(ii) takes into account the security provided for a guarantee under this title for the obligation; and

(iii) uses—

(I) in the case of the most creditworthy obligors, the lowest rate authorized under subparagraph (C)(i) or (ii), as applicable; and

(II) in the case of the least creditworthy obligors, the highest rate authorized under subparagraph (C)(i) or (ii), as applicable.

(E) For purposes of subparagraph (B)(i), the estimated average unpaid principal amount does not include the average amount (except interest) on deposit in a year in the escrow fund under section 1108.

(F) For purposes of determining present value under subparagraph (B) for an obligation, the **【Secretary】** *Secretary or Administrator* shall apply a discount rate determined by the Secretary of the Treasury taking into consideration current market yields on outstanding obligations of the United States having periods to maturity comparable to the period to maturity for the obligation with respect to which the determination of present value is made.

(3) A fee under this subsection shall be assessed and collected not later than the date on which amounts are first paid under an obligation with respect to which the fee is assessed.

(4) A fee paid under this subsection is not refundable. However, an obligor shall receive credit for the amount paid for the remaining term of the guaranteed obligation if the obligation is refinanced and guaranteed under this title after such refinancing.

(5) A fee paid under subsection (e) shall be included in the amount of the actual cost of the obligation guaranteed under this title and is eligible to be financed under this title.

(f) INVESTIGATION OF APPLICATIONS.—(1) The **【Secretary】** *Secretary or Administrator* shall charge and collect from the obligor such amounts as he may deem reasonable for the investigation of applications for a guarantee, for the appraisal of properties offered as security for a guarantee, for the issuance of commitments, for services in connection with the escrow fund authorized by section 1108 and for the inspection of such properties during construction, reconstruction, or reconditioning: Provided, That such charges shall not aggregate more than one-half of 1 per centum of the original principal amount of the obligations to be guaranteed.

(2) The **【Secretary】** *Secretary or Administrator* may make a determination that aspects of an application under this title require independent analysis to be conducted by third party experts due to risk factors associated with markets, technology, **【financial structures, or other risk factors identified by the Secretary】** or *financial structures*. Any independent analysis conducted pursuant to this provision shall be performed by a party chosen by the **【Secretary】** *Secretary or Administrator*. *The Secretary or Administrator shall not establish by rule, regulation, or procedure any requirement for independent analysis that is, or is intended to be, applied uniformly to loan guarantee applications without regard to such risk factors.*

(3) Notwithstanding any other provision of this title, the **【Secretary】** *Secretary or Administrator* may make a determination that an application under this title requires additional equity because of increased risk factors associated with markets, technology, **【financial structures, or other risk factors identified by the Secretary.】** or *financial structures*.

(4) The **【Secretary】** *Secretary or Administrator* may charge and collect fees to cover the costs of independent analysis under paragraph (2). Notwithstanding section 3302 of title 31, United States Code, any fee collected under this paragraph shall—

(A) be credit as an offsetting collection to the account that finances the administration of the loan guarantee program;

(B) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

(C) shall remain available until expended.

(5) *A third party independent analysis conducted under paragraph (2) shall be performed by a private sector expert in assessing such risk factors who is selected by the Administrator. No Federal funds shall be expended to conduct any review of any application under this title, or any modification of an existing loan guarantee, by any party that is not an expert in maritime finance or operations.*

(g) DISPOSITION OF MONEYS.—All moneys received by the **【Secretary】** *Secretary or Administrator* under the provisions of sections 1101–1107 of this title shall be deposited in the Fund.

(h) ADDITIONAL REQUIREMENTS.—Obligations guaranteed under this title and agreements relating thereto shall contain such other provisions with respect to the protection of the security interests of the United States (including acceleration, assumptions, and subrogation provisions and the issuance of notes by the obligor to the **【Secretary】** *Secretary or Administrator*), liens and releases of liens, payments of taxes, and such other matters as the **【Secretary】** *Secretary or Administrator* may, in his discretion, prescribe.

(i) LIMITATION ON ESTABLISHMENT OF PERCENTAGE.—The **【Secretary】** *Secretary or Administrator* may not, with respect to—

(1) the general 75 percent or less limitation in subsection (b)(2);

(2) the 87½ percent or less limitation in the 1st, 2nd, 4th, or 5th proviso to subsection (b)(2) or section 1112(b); or

(3) the 80 percent or less limitation in the 3rd proviso to such subsection; establish by rule, regulation, or procedure any percentage within any such limitation that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section that are subject to the limitation.

(j) PROCEDURE UPON RECEIVING LOAN GUARANTEE APPLICATION.—(1) Upon receiving an application for a loan guarantee for an eligible export vessel, the **【Secretary】** *Administrator* shall promptly provide to the Secretary of Defense notice of the receipt of the application. During the 30-day period beginning on the date on which the Secretary of Defense receives such notice, the Secretary of Defense may disapprove the loan guarantee based on the assessment of the **【Secretary】** *Administrator* of the potential use of the vessel in a manner that may cause harm to United States national security interests. The Secretary of Defense may not disapprove a loan guarantee under this section solely on the basis of the type of vessel to be constructed with the loan guarantee. The authority of the **【Secretary】** *Administrator* to disapprove a loan guarantee under this section may not be delegated to any official other than a civilian officer of the Department of Defense appointed by the President, by and with the advice and consent of the Senate.

(2) **[The Secretary of Transportation]** *The Administrator* may not make a loan guarantee disapproved by the Secretary of Defense under paragraph (1).

(k) **MONITORING.**—The **[Secretary]** *Secretary or Administrator* shall monitor the financial conditions and operations of the obligor on a regular basis during the term of the guarantee. The **[Secretary]** *Secretary or Administrator* shall document the results of the monitoring on an annual or quarterly basis depending upon the condition of the obligor. If the **[Secretary]** *Secretary or Administrator* determines that the financial condition of the obligor warrants additional protections to the **[Secretary]** *Secretary or Administrator*, then the **[Secretary]** *Secretary or Administrator* shall take appropriate action under subsection (m) of this section. If the **[Secretary]** *Secretary or Administrator* determines that the financial condition of the obligor jeopardizes its continued ability to perform its responsibilities in connection with the guarantee of obligations by the **[Secretary]** *Secretary or Administrator*, the **[Secretary]** *Secretary or Administrator* shall make an immediate determination whether default should take place and whether further measures described in subsection (m) should be taken to protect the interests of the **[Secretary]** *Secretary or Administrator* while insuring that program objectives are met.

(l) **REVIEW OF APPLICATIONS.**—No commitment to guarantee, or guarantee of, an obligation shall be made by the **[Secretary]** *Secretary or Administrator* unless the **[Secretary]** *Secretary or Administrator* certifies that a full and fair consideration of all the regulatory requirements, including economic soundness and financial requirements applicable to obligors and related parties, and a thorough assessment of the technical, economic, and financial aspects of the loan application has been made. *The Administrator shall retain in the Maritime Administration adequate resources with sufficient expertise to perform the functions prescribed by this title so that no assistance from the Department of Transportation or any other Federal agency is required to carry out this title.*

(m) **AGREEMENT WITH OBLIGOR.**—The **[Secretary]** *Secretary or Administrator* shall include provisions in loan agreements with obligors that provide additional authority to the **[Secretary]** *Secretary or Administrator* to take action to limit potential losses in connection with defaulted loans or loans that are in jeopardy due to the deteriorating financial condition of obligors. **[Provisions that the Secretary shall include in loan agreements include requirements for additional collateral or greater equity contributions that are effective upon the occurrence of verifiable conditions relating to the obligors financial condition or the status of the vessel or shipyard project.]** *If the Secretary or Administrator has waived a requirement under section 1104A(d), the loan agreement shall include requirements for additional payments, collateral, or equity contributions to meet such waived requirement upon the occurrence of verifiable conditions indicating that the obligor's financial condition enables the obligor to meet the waived requirement.*

(n) **DECISION PERIOD.**—(1) **IN GENERAL.**—**[The Secretary of Transportation]** *The Administrator* shall approve or deny an application for a loan guarantee under this title within 270 days after the date on which the signed application is received by the **[Secretary]** *Administrator*.

(2) EXTENSION.—Upon request by an applicant, the Secretary may extend the 270-day period in paragraph (1) to a date not later than 2 years after the date on which the signed application for the loan guarantee was received by the Secretary.

SEC. 1104B. FINANCING CONTRACT FOR CONSTRUCTION OR RECONSTRUCTION OF COMMERCIAL VESSEL; VESSEL REPLACEMENT GUARANTEE FUND.

[46 U.S.C. App. 1274a]

(a) Notwithstanding the provisions of this title, except as provided in subsection (d) of this section, the **Secretary** *Secretary or Administrator*, upon the terms the **Secretary** *Secretary or Administrator* may prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in financing and refinancing, including reimbursement to an obligor for expenditures previously made, of a contract for construction or reconstruction of a vessel or vessels which are designed and to be employed for commercial use in the coastwise or intercoastal trade or in foreign trade as defined in section 905 of this Act if—

(1) the construction or reconstruction by an applicant is made necessary to replace vessels the continued operation of which is denied by virtue of the imposition of a statutorily mandated change in standards for the operation of vessels, and where, as a matter of law, the applicant would otherwise be denied the right to continue operating vessels in the trades in which the applicant operated prior to the taking effect of the statutory or regulatory change;

(2) the applicant is presently engaged in transporting cargoes in vessels of the type and class that will be constructed or reconstructed under this section, and agrees to employ vessels constructed or reconstructed under this section as replacements only for vessels made obsolete by changes in operating standards imposed by statute;

(3) the capacity of the vessels to be constructed or reconstructed under this title will not increase the cargo carrying capacity of the vessels being replaced;

(4) the **Secretary** *Secretary or Administrator* has not made a determination that the market demand for the vessel over its useful life will diminish so as to make the granting of the guarantee fiducially imprudent; and

(5) the **Secretary** *Secretary or Administrator* has considered the provisions of section 1104A(d)(1)(A)(iii), (iv), and (v) of this title.

(b) For the purposes of this section—

(1) the maximum term for obligations guaranteed under this program may not exceed 25 years;

(2) obligations guaranteed may not exceed 87½ percent of the actual cost or depreciated actual cost to the applicant for the construction or reconstruction of the vessel; and

(3) reconstruction cost obligations may not be guaranteed unless the vessel after reconstruction will have a useful life of at least 15 years. The **Secretary** *Secretary or Administrator* may not by rule, regulation, or procedure establish any percentage within the 87½ percent or less limitation in paragraph

- (2) that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section.
- (c)(1) The **【Secretary】** *Secretary or Administrator* shall by rule require that the applicant provide adequate security against default. The **【Secretary】** *Secretary or Administrator* may, in addition to any fees assessed under section 1104A(e), establish a Vessel Replacement Guarantee Fund into which shall be paid by obligors under this section—
- (A) annual fees which may be an additional amount on the loan guarantee fee in section 1104A(e) not to exceed an additional 1 percent; or
- (B) fees based on the amount of the obligation versus the percentage of the obligor's fleet being replaced by vessels constructed or reconstructed under this section.
- (2) The Vessel Replacement Guarantee Fund shall be a sub-account in the Federal Ship Financing Fund, and shall—
- (A) be the depository for all moneys received by the **【Secretary】** *Secretary or Administrator* under sections 1101 through 1107 of this title with respect to guarantee or commitments to guarantee made under this section;
- (B) not include investigation fees payable under section 1104A(f) which shall be paid to the Federal Ship Financing Fund; and
- (C) be the depository, whenever there shall be outstanding any notes or obligations issued by the **【Secretary】** *Secretary or Administrator* under section 1105(d) with respect to the Vessel Replacement Guarantee Fund, for all moneys received by the **【Secretary】** *Secretary or Administrator* under sections 1101 through 1107 from applicants under this section.
- (d) The program created by this section shall, in addition to the requirements of this section, be subject to the provisions of sections 1101 through 1103; 1104A(b)(1), (4), (5), (6); 1104A(e); 1104A(f); 1104A(h); and 1105 through 1107; except that the Federal Ship Financing Fund is not liable for any guarantees or commitments to guarantee issued under this section.

SEC. 1105. DEFAULTS.

[46 U.S.C. App. 1275]

(a) **RIGHTS OF OBLIGEE.**—In the event of a default, which has continued for thirty days, in any payment by the obligor of principal or interest due under an obligation guaranteed under this title, the obligee or his agent shall have the right to demand (unless the **【Secretary】** *Secretary or Administrator* shall, upon such terms as may be provided in the obligation or related agreements, prior to that demand, have assumed the obligor's rights and duties under the obligation and agreements and shall have made any payments in default) at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than ninety days from the date of such default, payment by the **【Secretary】** *Secretary or Administrator* of the unpaid principal amount of said obligation and of the unpaid interest thereon to the date of payment. Within such period as may be specified in the guarantee or related agreements, but not later than thirty days from the date of such demand, the **【Secretary】** *Secretary or Administrator* shall promptly pay to the obligee or his agent the unpaid principal amount of said obligation and unpaid interest thereon to

the date of payment: Provided, That the **【Secretary】** *Secretary or Administrator* shall not be required to make such payment if prior to the expiration of said period he shall find that there was no default by the obligor in the payment of principal or interest or that such default has been remedied prior to any such demand.

(b) NOTICE OF DEFAULT.—In the event of a default under a mortgage, loan agreement, or other security agreement between the obligor and the **【Secretary】** *Secretary or Administrator*, the **【Secretary】** *Secretary or Administrator* may upon such terms as may be provided in the obligation or related agreement, either:

(1) assume the obligor's rights and duties under the agreement, make any payment in default, and notify the obligee or the obligee's agent of the default and the assumption by the **【Secretary】** *Secretary or Administrator*; or

(2) notify the obligee or the obligee's agent of the default, and the obligee or the obligee's agent shall have the right to demand at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than 60 days from the date of such notice, payment by the **【Secretary】** *Secretary or Administrator* of the unpaid principal amount of said obligation and of the unpaid interest thereon. Within such period as may be specified in the guarantee or related agreements, but not later than 30 days from the date of such demand, the **【Secretary】** *Secretary or Administrator* shall promptly pay to the obligee or the obligee's agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment.

(c) **【SECRETARY】** *SECRETARY OR ADMINISTRATOR TO COMPLETE, SELL OR OPERATE PROPERTY*.—In the event of any payment or assumption by the **【Secretary】** *Secretary or Administrator* under subsection (a) or (b) of this section, the **【Secretary】** *Secretary or Administrator* shall have all rights in any security held by him relating to his guarantee of such obligations as are conferred upon him under any security agreement with the obligor. Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the **【Secretary】** *Secretary or Administrator* shall have the right, in his discretion, to complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, or sell any property acquired by him pursuant to a security agreement with the obligor or may place a vessel in the national defense reserve. The terms of the sale shall be as approved by the **【Secretary】** *Secretary or Administrator*.

(d) CASH PAYMENTS; ISSUANCE OF NOTES OF OBLIGATIONS.—Any amount required to be paid by the **【Secretary】** *Secretary or Administrator* pursuant to subsection (a) or (b) of this section, shall be paid in cash. If at any time the moneys in the Fund authorized by section 1102 of this Act are not sufficient to pay any amount the **【Secretary】** *Secretary or Administrator* is required to pay by subsection (a) or (b) of this section, the **【Secretary】** *Secretary or Administrator* is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the **【Secretary】** *Secretary or Administrator*, with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the

Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations to be issued hereunder and for such purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Funds borrowed under this section shall be deposited in the Fund and redemptions of such notes and obligations shall be made by the **【Secretary】** *Secretary or Administrator* from such Fund.

(e) ACTIONS AGAINST OBLIGOR.—In the event of a default under any guaranteed obligation or any related agreement, the **【Secretary】** *Secretary or Administrator* shall take such action against the obligor or any other parties liable thereunder that, in his discretion, may be required to protect the interests of the United States. Any suit may be brought in the name of the United States or in the name of the obligee and the obligee shall make available to the United States all records and evidence necessary to prosecute any such suit. The **【Secretary】** *Secretary or Administrator* shall have the right, in his discretion, to accept a conveyance of title to and possession of property from the obligor or other parties liable to the **【Secretary】** *Secretary or Administrator*, and may purchase the property for an amount not greater than the unpaid principal amount of such obligation and interest thereon. In the event that the **【Secretary】** *Secretary or Administrator* shall receive through the sale of property an amount of cash in excess of the unpaid principal amount of the obligation and unpaid interest on the obligation and the expenses of collection of those amounts, the **【Secretary】** *Secretary or Administrator* shall pay the excess to the obligor.

(f) DEFAULT RESPONSE.—In the event of default on an obligation, the Secretary shall conduct operations under this title in a manner which—

- (1) maximizes the net present value return from the sale or disposition of assets associated with the obligation, including prompt referral to the Attorney General for collection as appropriate;
- (2) minimizes the amount of any loss realized in the resolution of the guarantee;
- (3) ensures adequate competition and fair and consistent treatment of offerors; and
- (4) requires appraisal of assets by an independent appraiser.

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SEC. 1108. ESCROW FUND.

[46 U.S.C. App. 1279a]

(a) CREATION.—If the proceeds of an obligation guaranteed under this title are to be used to finance the construction, reconstruction, or reconditioning of a vessel or vessels which will serve as security for the guarantee of the, the **【Secretary】** *Secretary or Administrator* is authorized to accept and hold, in escrow under an escrow agreement with the obligor, a portion of the proceeds of all obligations guaranteed under this title whose proceeds are to be so used which is equal to:

(i) the excess of the principal amount of all obligations whose proceeds are to be so used over 75 per centum, or 87½ per centum, whichever is applicable under section 1104 of this title, paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of the vessel or vessels;

(ii) with such interest thereon, if any, as the **【Secretary】** *Secretary or Administrator* may require: Provided, That in the event the security for the guarantee of an obligation by the **【Secretary】** *Secretary or Administrator* relates both to a vessel or vessels to be constructed, reconstructed or reconditioned and to a delivered vessel or vessels, the principal amount of such obligation shall be prorated for purposes of this subsection (a) under regulations prescribed by the **【Secretary】** *Secretary or Administrator*.

(b) DISBURSEMENT PRIOR TO TERMINATION OF ESCROW AGREEMENT.—The **【Secretary】** *Secretary or Administrator* shall, as specified in the escrow agreement, disburse the escrow fund to pay amounts the obligor is obligated to pay as interest on such obligations or for the construction, reconstruction, or reconditioning of the vessel or vessels used as security for the guarantee of the **【Secretary】** *Secretary or Administrator* under this title, to redeem such obligations in connection with a refinancing under paragraph (4) of subsection (a) of section 1104 or to pay to the obligor at such times as may be provided for in the escrow agreement any excess interest deposits, except that if payments become due under the guarantee prior to the termination of the escrow agreement, all amounts in the escrow fund at the time such payments become due (including realized income which has not yet been paid to the obligor) shall be paid into the Fund and (i) be credited against any amounts due or to become due to the **【Secretary】** *Secretary or Administrator* from the obligor with respect to the guaranteed obligations and (ii) to the extent not so required, be paid to the obligor.

(c) DISBURSEMENT UPON TERMINATION OF ESCROW AGREEMENT.—If payments under the guarantee have not become due prior to the termination of the escrow agreement, any balance of the escrow fund at the time of such termination shall be disbursed to prepay the excess of the principal of all obligations whose proceeds are to be used to finance the construction, reconstruction, or reconditioning of the vessel or vessels which serve or will serve as security for such guarantee over 75 per centum or 87½ per centum, whichever is applicable under section 1104 of this title, of the actual cost of such vessel or vessels to the extent paid, and to pay interest on such prepaid amount of principal, and the remainder of such balance of the escrow fund shall be paid to the obligor.

(d) INVESTMENT OF FUND.—The **【Secretary】** *Secretary or Administrator* may invest and reinvest all or any part of the escrow fund in obligations of the United States with such maturities that the escrow fund will be available as required for purposes of the escrow agreement.

(e) PAYMENT OF INCOME.—Any income realized on the escrow fund shall, upon receipt, be paid to the obligor.

(f) TERMS OF ESCROW AGREEMENT.—The escrow agreement shall contain such other terms as the **【Secretary】** *Secretary or Administrator* may consider necessary to protect fully the interests of the United States.

(g) PAYMENTS REQUIRED BEFORE DISBURSEMENT.—(1) IN GENERAL.—No disbursement shall be made under subsection (b) to any person until the total amount paid by or for the account of the obligor from sources other than the proceeds of the obligation equals at least 25 percent or 12½ percent, whichever is applicable under section 1104A, of the aggregate actual cost of the vessel, as previously approved by the **【Secretary】** *Secretary or Administrator*. If the aggregate actual cost of the vessel has increased since the **【Secretary's】** *Secretary's or Administrator's* initial approval or if it increases after the first disbursement is permitted under this subsection, then no further disbursements shall be made under subsection (b) until the total amount paid by or for the account of the obligor from sources other than the proceeds of the obligation equals at least 25 percent or 12½ percent, as applicable, of the increase, as determined by the **【Secretary】** *Secretary or Administrator*, in the aggregate actual cost of the vessel. Nothing in this paragraph shall require the **【Secretary】** *Secretary or Administrator* to consent to finance any increase in actual cost unless the **【Secretary】** *Secretary or Administrator* determines that such an increase in the obligation meets all the terms and conditions of this title or other applicable law.

(2) DOCUMENTED PROOF OF PROGRESS REQUIREMENT.—The **【Secretary】** *Secretary or Administrator* shall, by regulation, establish a transparent, independent, and risk-based process for verifying and documenting the progress of projects under construction before disbursing guaranteed loan funds. At a minimum, the process shall require documented proof of progress in connection with the construction, reconstruction, or reconditioning of a vessel or vessels before disbursements are made from the escrow fund. The **【Secretary】** *Secretary or Administrator* may require that the obligor provide a certificate from an independent party certifying that the requisite progress in construction, reconstruction, or reconditioning has taken place.

SEC. 1109. DEPOSIT FUND.

[46 U.S.C. App. 1279b.]

(a) ESTABLISHMENT OF DEPOSIT FUND.—There is established in the Treasury a deposit fund for purposes of this section. The **【Secretary】** *Secretary or Administrator* may, in accordance with an agreement under subsection (b), deposit into and hold in the deposit fund cash belonging to an obligor to serve as collateral for a guarantee under this title made with respect to the obligor.

(b) AGREEMENT.—(1) IN GENERAL.—The **【Secretary】** *Secretary or Administrator* and an obligor shall enter into a reserve fund or other collateral account agreement to govern the deposit, with-

drawal, retention, use, and reinvestment of cash of the obligor held in the deposit fund established by subsection (a).

(2) TERMS.—The agreement shall contain such terms and conditions as are required under this section and such additional terms as are considered by the [Secretary] *Secretary or Administrator* to be necessary to protect fully the interests of the United States.

(3) SECURITY INTEREST OF UNITED STATES.—The agreement shall include terms that grant to the United States a security interest in all amounts deposited into the deposit fund.

(c) INVESTMENT.—The may invest and reinvest any part of the amounts in the deposit fund established by subsection (a) in obligations of the United States with such maturities as ensure that amounts in the deposit fund will be available as required for purposes of agreements under subsection (b). Cash balances of the deposit fund in excess of current requirements shall be maintained in a form of uninvested funds and the Secretary of the Treasury shall pay interest on these funds.

(d) WITHDRAWALS.—(1) IN GENERAL.—The cash deposited into the deposit fund established by subsection (a) may not be withdrawn without the consent of the [Secretary] *Secretary or Administrator*.

(2) USE OF INCOME.—Subject to paragraph (3), the [Secretary] *Secretary or Administrator* may pay any income earned on cash of an obligor deposited into the deposit fund in accordance with the terms of the agreement with the obligor under subsection (b).

(3) RETENTION AGAINST DEFAULT.—The [Secretary] *Secretary or Administrator* may retain and offset any or all of the cash of an obligor in the deposit fund, and any income realized thereon, as part of the [Secretary's] *Secretary's or Administrator's* recovery against the obligor in case of a default by the obligor on an obligation.

SEC. 1110. OCEAN THERMAL ENERGY CONVERSION DEMONSTRATION FACILITIES AND PLANTSHIPS.

[46 U.S.C. App. 1279c]

(a) FINANCING OF CONSTRUCTION, RECONSTRUCTION, OR RECONDITIONING.—Pursuant to the authority granted under section 1103(a) of this title, the [Secretary] *Administrator*, upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a commercial demonstration ocean thermal energy conversion facility or plantship. Guarantees or commitments to guarantee under this subsection shall be subject to all the provisos, requirements, regulations, and procedures which apply to guarantees or commitments to guarantee made pursuant to section 1104(a)(1) of this title, except that—

(1) no guarantees or commitments to guarantee may be made by the [Secretary] *Administrator* under this subsection before October 1, 1981;

(2) the provisions of subsection (d) of section 1104 of this title shall apply to guarantees or commitments to guarantee for that portion of a commercial demonstration ocean thermal energy conversion facility or plantship not to be supported with appropriated Federal funds;

(3) guarantees or commitments to guarantee made pursuant to this section may be in an aggregate principal amount which does not exceed 87½ percent of the actual cost or depreciated actual cost of the commercial demonstration ocean thermal energy conversion facility or plantship: Provided, That, if the commercial demonstration ocean thermal energy conversion facility or plantship is supported with appropriated Federal funds, such guarantees or commitments to guarantee may not exceed 87½ percent of the aggregate principal amount of that portion of the actual cost or depreciated actual cost for which the obligor has an obligation to secure financing in accordance with the terms of the agreement between the obligor and the Department of Energy or other Federal agency; and

(4) the provisions of this section may be used to guarantee obligations for a total of not more than 5 separate commercial demonstration ocean thermal energy conversion facilities and plantships or a demonstrated 400 megawatt capacity, whichever comes first.

(b) CERTIFICATION OF REASONABLENESS OF RISK.—A guarantee or commitment to guarantee shall not be made under this section unless the Secretary of Energy, in consultation with the [Secretary] *Administrator*, certifies to the [Secretary] *Administrator* that, for the ocean thermal energy conversion facility or plantship for which the guarantee or commitment to guarantee is sought, there is sufficient guarantee of performance and payment to lower the risk to the Federal Government to a level which is reasonable. The Secretary of Energy must base his considerations on the following:

(1) the successful demonstration of the technology to be used in such facility at a scale sufficient to establish the likelihood of technical and economic viability in the proposed market; and

(2) the need of the United States to develop new and renewable sources of energy and the benefits to be realized from the construction and successful operation of such facility or plantship.

(c) OTEC DEMONSTRATION FUND.—A special subaccount in the Federal Ship Financing Fund, to be known as the OTEC Demonstration Fund, shall be established on October 1, 1981. The OTEC Demonstration Fund shall be used for obligation guarantees authorized under this section which do not qualify under other sections of this title. Except as specified otherwise in this section, the operation of the OTEC Demonstration Fund shall be identical with that of the parent Federal Ship Financing Fund: except that, notwithstanding the provisions of section 1104(g), (1) all moneys received by the [Secretary] *Administrator* pursuant to sections 1101 through 1107 of this title with respect to guarantees or commitments to guarantee made pursuant to this section shall be deposited only in the OTEC Demonstration Fund, and (2) whenever there shall be outstanding any notes or other obligations issued by the [Secretary] *Administrator* pursuant to section 1105(d) of this title with respect to the OTEC Demonstration Fund, all moneys received by the [Secretary] *Administrator* pursuant to sections 1101 through 1107 of this title with respect to ocean thermal energy conversion facilities or plantships shall be deposited in the OTEC Demonstration Fund. Assets in the OTEC Demonstration Fund may at any time be transferred to the parent fund whenever and

to the extent that the balance thereof exceeds the total guarantees or commitments to guarantee made pursuant to this section then outstanding, plus any notes or other obligations issued by the [Secretary] *Administrator* pursuant to section 1105(d) of this title with respect to the OTEC Demonstration Fund. The Federal Ship Financing Fund shall not be liable for any guarantees or commitments to guarantee issued pursuant to this section. The aggregate unpaid principal amount of the obligations guaranteed with the backing of the OTEC Demonstration Fund and outstanding at any one time shall not exceed \$1,650,000,000.

(d) NOTES AND OBLIGATIONS.—The provisions of section 1105(d) of this title shall apply specifically to the OTEC Demonstration Fund as well as to the Fund: Provided, however, That any notes or obligations issued by the [Secretary] *Administrator* pursuant to section 1105(d) of this title with respect to the OTEC Demonstration Fund shall be payable solely from proceeds realized by the OTEC Demonstration Fund.

(e) TAXABILITY OF INTEREST.—The interest on any obligation guaranteed under this section shall be included in gross income for purposes of chapter 1 of the Internal Revenue Code of 1954.

SEC. 1111. AUTHORITY FOR [SECRETARY OF TRANSPORTATION] ADMINISTRATOR TO MAKE LOAN GUARANTEES.

[46 U.S.C. App. 1279d]

(a) AUTHORITY TO GUARANTEE OBLIGATIONS FOR ELIGIBLE EXPORT VESSELS.—The [Secretary] *Administrator* may guarantee obligations for eligible export vessels—

(1) in accordance with the terms and conditions of this title applicable to loan guarantees in the case of vessels documented under the laws of the United States; or

(2) in accordance with such other terms as the [Secretary] *Administrator* determines to be more favorable than the terms otherwise provided in this title and to be compatible with export credit terms offered by foreign governments for the sale of vessels built in foreign shipyards.

(b) INTERAGENCY COUNCIL.—(1) ESTABLISHMENT; COMPOSITION.—There is hereby established an interagency council for the purposes of this section. The council shall be composed of the [Secretary of Transportation] *Administrator*, who shall be chairman of the Council, the Secretary of the Treasury, the Secretary of State, the Assistant to the President for Economic Policy, the United States Trade Representative, and the President and Chairman of the United States Export-Import Bank, or their designees.

(2) PURPOSE OF THE COUNCIL.—The council shall—

(A) obtain information on shipbuilding loan guarantees, on direct and indirect subsidies, and on other favorable treatment of shipyards provided by foreign governments to shipyards in competition with United States shipyards; and

(B) provide guidance to the [Secretary] *Administrator* in establishing terms for loan guarantees for eligible export vessels under subsection (a)(2).

(3) CONSULTATION WITH U.S. SHIPBUILDERS.—The council shall consult regularly with United States shipbuilders to obtain the essential information concerning international shipbuilding competition on which to set terms and conditions for loan guarantees under subsection (a)(2).

(4) ANNUAL REPORT.—Not later than January 31 of each year (beginning in 1995), the **【Secretary of Transportation】 Administrator** shall submit to Congress a report on the activities of the **【Secretary】 Administrator** under this section during the preceding year. Each report shall include documentation of sources of information on assistance provided by the governments of other nations to shipyards in those nations and a summary of recommendations made to the **【Secretary】 Administrator** during the preceding year regarding applications submitted to the **【Secretary】 Administrator** during that year for loan guarantees under this title for construction of eligible export vessels.

SEC. 1112. LOAN GUARANTEES FOR SHIPYARD MODERNIZATION AND IMPROVEMENT.

[46 U.S.C. App. 1279e]

(a) The Secretary, under section 1103(a) and subject to the terms the Secretary shall prescribe, may guarantee or make a commitment to guarantee the payment of the principal of, and the interest on, an obligation for advanced shipbuilding technology and modern shipbuilding technology of a general shipyard facility located in the United States.

(b) Guarantees or commitments to guarantee under this section are subject to the extent applicable to all the laws, requirements, regulations, and procedures that apply to guarantees or commitments to guarantee made under this title, except that guarantees or commitments to guarantee made under this section may be in the aggregate principal amount that does not exceed 87½ percent of the actual cost of the advanced shipbuilding technology or modern shipbuilding technology.

(c) The Secretary may accept the transfer of funds from any other department, agency, or instrumentality of the United States Government and may use those funds to cover the cost (as defined in section 502 of the Federal Credit Reform Act of 1990) of making guarantees or commitments to guarantee loans entered into under this section.

(d) For purposes of this section:

(1) The term “advanced shipbuilding technology” includes—

(A) numerically controlled machine tools, robots, automated process control equipment, computerized flexible manufacturing systems, associated computer software, and other technology for improving shipbuilding and related industrial production which advance the state-of-the-art; and

(B) novel techniques and processes designed to improve shipbuilding quality, productivity, and practice, and to promote sustainable development, including engineering design, quality assurance, concurrent engineering, continuous process production technology, energy efficiency, waste minimization, design for recyclability or parts reuse, inventory management, upgraded worker skills, and communications with customers and suppliers.

(2) The term “modern shipbuilding technology” means the best available proven technology, techniques, and processes appropriate to enhancing the productivity of shipyards.

(3) The term “general shipyard facility” means—

(A) for operations on land—

(i) any structure or appurtenance thereto designed for the construction, repair, rehabilitation, refurbishment or rebuilding of any vessel (as defined in title 1, United States Code) and including graving docks, building ways, ship lifts, wharves, and pier cranes;

(ii) the land necessary for any structure or appurtenance described in clause (i); and

(iii) equipment that is for the use in connection with any structure or appurtenance and that is necessary for the performance of any function referred to in subparagraph (A);

(B) for operations other than on land, any vessel, floating drydock or barge built in the United States and used for, equipped to be used for, or of a type that is normally used for activities referred to in subparagraph (A)(i) of this paragraph.

SEC. [1111.] 1113. DEBT OBLIGATIONS GUARANTEED BY SECRETARY; FISHING CAPACITY REDUCTION FUND.

[46 U.S.C. 1279f]

(a) The **[Secretary]** *Secretary or Administrator* is authorized to guarantee the repayment of debt obligations issued by entities under this section. Debt obligations to be guaranteed may be issued by any entity that has been approved by the **[Secretary]** *Secretary or Administrator* and has agreed with the **[Secretary]** *Secretary or Administrator* to such conditions as the **[Secretary]** *Secretary or Administrator* deems necessary for this section to achieve the objective of the program and to protect the interest of the United States.

(b) Any debt obligation guaranteed under this section shall—

(1) be treated in the same manner and to the same extent as other obligations guaranteed under this title, except with respect to provisions of this title that by their nature cannot be applied to obligations guaranteed under this section;

(2) have the fishing fees established under the program paid into a separate subaccount of the fishing capacity reduction fund established under this section;

(3) not exceed \$100,000,000 in an unpaid principal amount outstanding at any one time for a program;

(4) have such maturity (not to exceed 20 years), take such form, and contain such conditions as the **[Secretary]** *Secretary or Administrator* determines necessary for the program to which they relate;

(5) have as the exclusive source of repayment (subject to the proviso in subsection (c)(2)) and as the exclusive payment security, the fishing fees established under the program; and

(6) at the discretion of the **[Secretary]** *Secretary or Administrator* be issued in the public market or sold to the Federal Financing Bank.

(c)(1) There is established in the Treasury of the United States a separate account which shall be known as the fishing capacity reduction fund (referred to in this section as the “fund”). Within the fund, at least one subaccount shall be established for each program into which shall be paid all fishing fees established under the program and other amounts authorized for the program.

(2) Amounts in the fund shall be available, without appropriation or fiscal year limitation, to the **[Secretary]** *Secretary or Adminis-*

trator to pay the cost of the program, including payments to financial institutions to pay debt obligations incurred by entities under this section: Provided, That funds available for this purpose from other amounts available for the program may also be used to pay such debt obligations.

(3) Sums in the fund that are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of the United States.

(d) The **【Secretary】** *Secretary or Administrator* is authorized and directed to issue such regulations as the **【Secretary】** *Secretary or Administrator* deems necessary to carry out this section.

(e) For the purposes of this section, the term “program” means a fishing capacity reduction program established under section 312 of the Magnuson-Stevens Fishery Conservation and Management Act.

SEC. [1112.] 1114. DIRECT LOAN OBLIGATIONS; ANNUAL RATE OF INTEREST.

[46 U.S.C. 1279g]

(a) Notwithstanding any other provision of this title, all obligations involving any fishing vessel, fishery facility, aquaculture facility, individual fishing quota, or fishing capacity reduction program issued under this title after the date of enactment of the Sustainable Fisheries Act shall be direct loan obligations, for which the Secretary shall be the obligee, rather than obligations issued to obligees other than the Secretary and guaranteed by the Secretary. All direct loan obligations under this section shall be treated in the same manner and to the same extent as obligations guaranteed under this title except with respect to provisions of this title which by their nature can only be applied to obligations guaranteed under this title.

(b) Notwithstanding any other provisions of this title, the annual rate of interest which obligors shall pay on direct loan obligations under this section shall be fixed at two percent of the principal amount of such obligations outstanding plus such additional percent as the Secretary shall be obligated to pay as the interest cost of borrowing from the United States Treasury the funds with which to make such direct loans.

MERCHANT MARINE ACT, 1936

TITLE XII—WAR RISK INSURANCE

* * * * *

SEC. 1208. INSURANCE FUND; INVESTMENTS; APPROPRIATIONS.

[46 U.S.C. 1288]

(a) The Secretary shall create an insurance fund in the Treasury to enable him to carry out the provisions of this title. Moneys appropriated by Congress to carry out the provisions of this title and all moneys received from premiums, salvage, or other recoveries and all receipts in connection with this title shall be deposited in the Treasury to the credit of such fund. The Secretary of Transportation may request the Secretary of the Treasury to invest such portion of the Fund as is not, in the judgment of the Secretary of Transportation, required to meet the current needs of the fund. Such investments shall be made by the Secretary of the Treasury

in public debt securities of the United States, with maturities suitable to the needs of the fund, and bearing interest rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity. [Upon the request of the Secretary of Transportation, the Secretary of the Treasury may invest or reinvest all or any part of the fund in securities of the United States or in securities guaranteed as to principal and interest by the United States.] *The Secretary of Transportation may request the Secretary of the Treasury to invest such portion of the fund as is not, in the judgment of the Secretary of Transportation, required to meet the current needs of the fund. Such investments shall be made by the Secretary of the Treasury in public debt securities of the United States, with maturities suitable to the need of the fund, and bearing interest rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.* The interest and benefits accruing from such securities shall be deposited to the credit of the fund.

(b) Such sums as shall be necessary to carry out the provisions of this title are authorized to be appropriated to such fund.

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SEC. 1295. CONGRESSIONAL DECLARATION OF POLICY.

[46 U.S.C. App. 1295]

It is the policy of the United States that merchant marine vessels of the United States should be operated by highly trained and efficient citizens of the United States and that the United States Navy and the merchant marine of the United States should work closely together to promote the maximum integration of the total seapower forces of the United States. In furtherance of this policy—

(1) the Secretary of Transportation is authorized to take the steps necessary to provide for the education and training of citizens of the United States who are capable of providing for the safe and efficient operation of the merchant marine of the United States at all times and as a naval and military auxiliary in time of war or national emergency; and

(2) the Secretary of Navy, in cooperation with the Maritime Administrator and the head of each State maritime academy, shall assure that the training of future merchant marine officers at the United States Merchant Marine Academy and at the State maritime academies includes programs for naval science training in the operation of merchant marine vessels as a naval and military auxiliary and that naval officer training programs for the training of future officers, insofar as possible, be maintained at designated maritime academies consistent with United States Navy standards and needs.

MERCHANT MARINE ACT, 1936

SEC. 1303. MAINTENANCE OF ACADEMY.

[46 U.S.C. App. 1295b]

(a) **DUTY OF SECRETARY.**—The Secretary shall maintain the Academy for providing instruction to individuals to prepare them for service in the merchant marine of the United States.

(b) NOMINATION AND APPOINTMENT OF CADETS; DESIGNATION AND LICENSING OF INDIVIDUALS FROM THE TRUST TERRITORY OF THE PACIFIC ISLANDS, WESTERN HEMISPHERE NATIONS AND NATIONS OTHER THAN THE UNITED STATES.—

(1) Each Senator and Member of the House of Representatives, the Panama Canal Commission, the Governor of the Northern Mariana Islands, and the Delegate from American Samoa, may nominate for appointment as a cadet at the Academy any individual who is—

(A) a citizen of the United States or a national of the United States; and

(B) a resident of the State represented by such Senator if the individual is nominated by a Senator, a resident of the State in which the congressional district represented by such Member of the House of Representatives is located if the individual is nominated by a Member of the House of Representatives (or a resident of Guam, the Virgin Islands, the District of Columbia, the Commonwealth of Puerto Rico, or American Samoa if the individual is nominated by a Member of the House of Representatives representing such area), a resident of the area or installation described in paragraph (3)(A)(ii), or a son or daughter of the personnel described in such paragraph, if the individual is nominated by the Panama Canal Commission, or a resident of the Northern Mariana Islands if the individual is nominated by the Governor of the Northern Mariana Islands.

(2)(A) The Secretary shall establish minimum requirements for the individuals nominated pursuant to paragraph (1) and shall establish a system of competition for the selection of individuals qualified for appointment as cadets at the Academy.

(B) Such system of competition shall determine the relative merit of appointing each such individual to the Academy through the use of competitive examinations, an assessment of the academic background of the individual, and such other factors as are considered effective indicators of motivation and the probability of successful completion of training at the Academy.

(C) *Notwithstanding any other provision of law, an individual appointed as a cadet may not be admitted to the Academy as a student, unless at the time of the taking of the official oath upon entry into the Merchant Marine Academy, that individual satisfies the physical and mental requirements of the Department of Defense to be appointed or enlisted as a Midshipman, United States Naval Reserve. Following admission to the Academy, notwithstanding any other provision of law, such individual may continue as a student only if that individual continues to satisfy the physical and mental standards set forth in this subparagraph unless the Secretary of Transportation waives the standards.*

(3)(A) Qualified individuals nominated pursuant to paragraph (1) shall be selected each year for appointment as cadets at the Academy to fill positions allocated as follows:

(i) Positions shall be allocated each year for individuals who are residents of each State and are nominated by the

Members of the Congress from such State in proportion to the representation in Congress from that State.

(ii) Two positions shall be allocated each year for individuals nominated by the Panama Canal Commission who are sons or daughters of residents of any area or installation located in the Republic of Panama which is made available to the United States pursuant to the Panama Canal Treaty of 1977, the agreements relating to and implementing that Treaty, signed September 7, 1977, and the Agreement Between the United States of America and the Republic of Panama Concerning Air Traffic Control and Related Services, concluded January 8, 1979, and sons or daughters of personnel of the United States Government and the Panama Canal Commission residing in the Republic of Panama, nominated by the Panama Canal Commission.

(iii) One position shall be allocated each year for an individual who is a resident of Guam and is nominated by the Delegate to the House of Representatives from Guam.

(iv) One position shall be allocated each year for an individual who is a resident of the Virgin Islands and is nominated by the Delegate to the House of Representatives from the Virgin Islands.

(v) One position shall be allocated each year for an individual who is a resident of the Northern Mariana Islands and is nominated by the Governor of the Northern Mariana Islands.

(vi) One position shall be allocated each year for an individual who is a resident of American Samoa and is nominated by the Delegate to the House of Representatives from American Samoa.

(vii) Four positions shall be allocated each year for individuals who are residents of the District of Columbia and are nominated by the Delegate to the House of Representatives from the District of Columbia.

(viii) One position shall be allocated each year for an individual who is a resident of the Commonwealth of Puerto Rico and is nominated by the Resident Commissioner to the United States from Puerto Rico.

(B) The Secretary shall make appointments of qualified individuals to fill the positions allocated pursuant to subparagraph (A) (from among the individuals nominated pursuant to paragraph (1) in the order of merit determined pursuant to paragraph (2)(B) among residents of each State, Guam, the Virgin Islands, the Northern Mariana Islands, American Samoa, the District of Columbia, and the Commonwealth of Puerto Rico and among individuals nominated by the Panama Canal Commission.

(C) If positions are not filled after the appointments are made pursuant to subparagraph (B), the Secretary shall make appointments of qualified individuals to fill such positions from among all individuals nominated pursuant to paragraph (1) in the order of merit determined pursuant to paragraph (2)(B) among all such individuals.

(D) In addition, the Secretary may each year appoint without competition as cadets at the Academy not more than 40 quali-

fied individuals possessing qualities deemed to be of special value to the Academy. In making such appointments the Secretary shall attempt to achieve a national demographic balance at the Academy.

(E) No preference shall be granted in selecting individuals for appointment as cadets at the Academy because one or more members of the immediate family of any such individual are alumni of the Academy.

(F) Any citizen of the United States selected for appointment pursuant to this paragraph must agree to apply for midshipman status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve) before being appointed as a cadet at the Academy.

(G) For purposes of this paragraph, the term "State" means the several States.

(4)(A) In addition to paragraph (3), the Secretary may permit, upon designation by the Secretary of the Interior, individuals from the Trust Territory of the Pacific Islands to receive instruction at the Academy.

(B) Not more than 4 individuals may receive instruction under this paragraph at any one time.

(C) Any individual receiving instruction under the authority of this paragraph shall receive the same allowances and shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States, subject to such exceptions as shall be jointly agreed upon by the Secretary and the Secretary of the Interior.

(5)(A) In addition to paragraphs (3) and (4), the President may designate individuals from nations located in the Western Hemisphere other than the United States to receive instruction at the Academy.

(B) Not more than 12 individuals may receive instruction under this paragraph at any one time, and not more than 2 individuals receiving instruction under this paragraph at any one time may be from the same nation.

(C) Any individual receiving instruction under this subparagraph is entitled to the same allowances and shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States.

(6)(A) In addition to paragraphs (3), (4), and (5), the Secretary may permit, upon approval of the Secretary of State, individuals from nations other than the United States to receive instruction at the Academy.

(B) Not more than 30 individuals may receive instruction under this paragraph at any one time.

(C) The Secretary shall insure that each nation from which an individual comes to receive instruction under this paragraph shall reimburse the Secretary for the cost of such instruction (including the same allowances as received by cadets at the Academy appointed from the United States) as determined by the Secretary.

(D) Any individual receiving instruction at the Academy under this paragraph shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States.

(7)(A) The Secretary may permit, upon approval of the Secretary of State, additional individuals from the Republic of Panama to receive instruction at the Academy, in addition to those individuals appointed under paragraphs (3), (4), (5), and (6) of this subsection.

(B) The Secretary shall be reimbursed for the cost of that instruction (including the same allowances as received by cadets at the Academy appointed from the United States) as determined by the Secretary.

(C) An individual receiving instructions at the Academy under this paragraph shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States.

(8) An individual appointed as a cadet under paragraph (3), or receiving instruction under paragraph (4), (5), (6), or (7) of this subsection is not entitled to hold a license authorizing service on a merchant marine vessel of the United States solely by reason of graduation from the Academy.

(c) APPOINTMENT OF CADET AS MIDSHIPMAN IN THE UNITED STATES NAVAL RESERVE.—

(1) Any citizen of the United States who is appointed as a cadet at the Academy shall be appointed by the Secretary of the Navy as a midshipman in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve).

(2) The Secretary of the Navy shall provide for cadets of the Academy who are midshipmen in the United States Naval Reserve to be issued an identification card (referred to as a “military ID card”) and to be entitled to all rights and privileges in accordance with the same eligibility criteria as apply to other members of the Ready Reserve of the reserve components of the Armed Forces.

(3) The Secretary of the Navy shall carry out paragraphs (1) and (2) in coordination with the Secretary.

(d) UNIFORMS, TEXTBOOKS, AND TRANSPORTATION ALLOWANCES.— The Secretary shall provide to any cadet at the Academy all required uniforms and textbooks and allowances for transportation (including reimbursement of traveling expenses) while traveling under orders as a cadet of the Academy.

(e) COMMITMENT AGREEMENTS.—

(1) Each individual appointed as a cadet at the Academy after the date occurring 6 months after the effective date of the Maritime Education and Training Act of 1980, who is a citizen of the United States, shall as a condition of appointment to the Academy sign an agreement committing such individual—

(A) to complete the course of instruction at the Academy;

(B) to fulfill the requirements for a license as an officer in the merchant marine of the United States on or before

the date of graduation from the Academy of such individual;

(C) to maintain a valid license as an officer in the merchant marine of the United States for at least 6 years following the date of graduation from the Academy of such individual, accompanied by the appropriate national and international endorsements and certification as required by the United States Coast Guard for service aboard vessels on domestic and international voyages;

[(D) to apply for an appointment as, to accept if tendered an appointment as, and to serve as a commissioned officer in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve), the United States Coast Guard Reserve, or any other Reserve unit of an armed force of the United States, for at least 6 years following the date of graduation from the Academy of such individual;]

(D) to apply for an appointment as, to accept if tendered an appointment as, and to serve and perform all required duties and comply with all requirements as, a commissioned officer in Ready Reserve status in the United States Naval Reserve (including the Merchant Marine Reserve and the United States Naval Reserve), any other Reserve component of an armed force of the United States, or any other equivalent, as determined by the Secretary;

(E) to serve the foreign and domestic commerce and the national defense of the United States for at least 5 years following the date of graduation from the Academy—

(i) as a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or territory of the United States;

(ii) as an employee in a United States maritime-related industry, profession, or marine science (as determined by the Secretary), if the Secretary determines that service under clause (i) is not available to such individual;

(iii) as a commissioned officer on active duty in an armed force of the United States, as a commissioned officer in the National Oceanic and Atmospheric Administration, or other maritime-related employment with the Federal Government which serves the national security interests of the United States, as determined by the Secretary; or

(iv) by combining the services specified in clauses (i), (ii), and (iii); and (F) to report to the Secretary on the compliance by the individual to this paragraph.

(2)(A) If the Secretary determines that any individual who has attended the Academy for not less than 2 years has failed to fulfill the part of the agreement required by paragraph (1)(A), such individual may be ordered by the Secretary of Defense to active duty in one of the armed forces of the United States to serve for a period of time not to exceed 2 years. In cases of hardship as determined by the Secretary, the Secretary may waive this provision in whole or in part.

(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under subparagraph (A), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary may recover from the individual the cost of education provided by the Federal Government.

(3)(A) If the Secretary determines that an individual has failed to fulfill any part of the agreement required by paragraph (1), as described in paragraph (1)(B), (C), (D), (E), or (F), such individual may be ordered to active duty to serve a period of time not less than 3 years and not more than the unexpired portion, as determined by the Secretary, of the service required by paragraph (1)(E). The Secretary, in consultation with the Secretary of Defense, shall determine in which service the individual shall be ordered to active duty to serve such period of time. In cases of hardship, as determined by the Secretary, the Secretary may waive this provision in whole or in part.

(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under subparagraph (A), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary may recover from the individual the cost of education provided and may reduce the amount to be recovered from such individual to reflect partial performance of service obligations and such other factors as the Secretary determines merit such a reduction.

(4) To aid in the recovery of the cost of education provided by the Federal Government pursuant to a commitment agreement under this section, the Secretary may request the Attorney General to begin court proceedings, and the Secretary may make use of the Federal debt collection procedures in chapter 176 of title 28, United States Code, or other applicable administrative remedies.

(5) The Secretary may defer the service commitment of any individual pursuant to subparagraph (E) of paragraph (1) (as specified in the agreement required by such paragraph) for a period of not more than 2 years if such individual is engaged in a graduate course of study approved by the Secretary, except that any deferment of service as a commissioned officer pursuant to paragraph (1)(E) must be approved by the Secretary of the military department (including the Secretary of Commerce with respect to the National Oceanic and Atmospheric Administration) which has jurisdiction over such service.

(6)(A) In order to meet the requirements of paragraph (1)(D), a graduate of the Academy shall perform all directed training and obey all orders and directions required by the relevant Reserve Component and remain qualified in Ready Reserve classification for a period of not less than 6 years, as required by the regulations of the applicable armed service unless such compliance is waived by the Secretary of Defense or the Secretary of the Department in which the United States Coast Guard is operating.

(B) Notwithstanding section 552a of title 5, United States Code, the Secretary of Defense or the Secretary of the Department in which

the Coast Guard is operating, and the Administrator of the National Oceanic and Atmospheric Administration—

(i) shall report the status of obligated service of an individual graduate upon request of the Maritime Administration; and

(ii) may, in their discretion, notify the Maritime Administration of the default in performance of an graduate in the performance of the graduate's duties, either on active duty or in the Ready Reserve Component of their respective service, or as a commissioned officer of the National Oceanic and Atmospheric Administration.

(C) A report or notice under subparagraph (B) shall identify the graduate determined to have been defaulted and provide all required information as to why such graduate has been defaulted. Upon receipt of such a report or notice, such graduate may be considered to be in default of the graduate's service obligations by the Maritime Administration, and be subject to all remedies the Maritime Administration may have with respect to such a default.

(6) An individual who serves as a commissioned officer on active duty in an armed force of the United States or in the National Oceanic and Atmospheric Administration for the 5 years immediately following graduation from the Academy shall be excused from the requirements of subparagraphs (1)(C), (1)(D), and (1)(E).

(7) The Secretary may modify or waive any of the terms and conditions set forth in paragraph (1) through the imposition of alternative service requirements.

(f) PLACES OF TRAINING.—The Secretary may provide for the training of cadets at the Academy—

(1) on vessels owned or subsidized by the United States;

(2) on other vessels documented under the laws of the United States if the owner of any such vessel cooperates in such use; **[and]**

(3) in shipyards or plants and with any industrial or educational **[organizations.] organizations; and**

(4) on such other vessels as the Secretary determines to be valuable for the education of cadets at the Academy or in the interest of national security.

(g) DEGREES AWARDED.—

(1) **BACHELOR'S DEGREE.**—The Superintendent of the Academy may confer the degree of bachelor of science upon any individual who has met the conditions prescribed by the Secretary and who, if a citizen of the United States, has passed the examination for a merchant marine officer's license. No individual may be denied a degree under this subsection because the individual is not permitted to take such examination solely because of physical disqualification.

(2) **MASTER'S DEGREE.**—The Superintendent of the Academy may confer a master's degree upon any individual who has met the conditions prescribed by the Secretary. Any master's degree program may be funded through non-appropriated funds. In order to maintain the appropriate academic standards, the program shall be accredited by the appropriate accreditation body. The Secretary may make regulations necessary to administer such a program.

(h) BOARD OF VISITORS.—

(1) A Board of Visitors to the Academy shall be established, for a term of two years commencing at the beginning of each Congress, to visit the Academy annually on a date determined by the Secretary and to make recommendations on the operation of the Academy.

(2) The Board shall be composed of—

(A) 2 Senators appointed by the chairman of the Commerce, Science, and Transportation Committee of the Senate;

(B) 3 Members of the House of Representatives appointed by the chairman of the Merchant Marine and Fisheries Committee of the House of Representatives;

(C) 1 Senator appointed by the Vice President;

(D) 2 Members of the House of Representatives appointed by the Speaker of the House of Representatives; and

(E) the chairman of the Commerce, Science, and Transportation Committee of the Senate and the chairman of the Merchant Marine and Fisheries Committee of the House of Representatives, as ex officio members.

(3) Whenever a member of the Board is unable to attend the annual meeting provided in paragraph (1), another individual may be appointed in the manner provided by paragraph (2) as a substitute for such member.

(4) The chairmen of the Commerce, Science, and Transportation Committee of the Senate and the Merchant Marine and Fisheries Committee of the House of Representatives may designate staff members of such committees to serve without reimbursement as staff for the Board.

(5) While away from their homes or regular places of business in the performance of services for the Board, members of the Board and any staff members designated under paragraph (4) shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(i) ADVISORY BOARD.—

(1) An Advisory Board to the Academy shall be established to visit the Academy at least once during each academic year, for the purpose of examining the course of instruction and management of the Academy and advising the Maritime Administrator and the Superintendent of the Academy.

(2) The Advisory Board shall be composed of not more than 7 persons of distinction in education and other fields relating to the Academy who shall be appointed by the Secretary for terms not to exceed 3 years and may be reappointed.

(3) The Secretary shall appoint a chairman from among the members of the Advisory Board.

(4) While away from their homes or regular places of business in the performance of service for the Advisory Board, members of the Advisory Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(5) The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply to the Advisory Board established pursuant to this subsection.

(j) **LIMITATION ON CHARGES AND FEES FOR ATTENDANCE.—**

(1) Except as provided in paragraph (2), no charge or fee for tuition, room, or board for attendance at the Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.

(2) The prohibition specified in paragraph (1) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994. The Secretary of Transportation shall notify Congress of any change made by the Academy in the amount of a charge or fee authorized under this paragraph.

TITLE XIII—MARITIME EDUCATION AND TRAINING

* * * * *

SEC. 1304. STATE MARITIME ACADEMIES.

[46 U.S.C. App. 1295c]

(a) **COOPERATION AND ASSISTANCE.—**The Secretary shall cooperate with and assist any State maritime academy in providing instruction to individuals to prepare them for service in the merchant marine of the United States.

(b) **REGIONAL MARITIME ACADEMIES.—**The Governors of all States or territories of the United States, or both, cooperating to sponsor a regional maritime academy shall designate in writing one State or territory of the United States, from among the sponsoring States or territories, or both, to conduct the affairs of such regional maritime academy. Any regional maritime academy shall be eligible for assistance from the Federal Government on the same basis as any State maritime academy sponsored by a single State or territory of the United States.

(c) **TRAINING VESSELS.—**

(1)(A) The Secretary may furnish for training purposes any suitable vessel under the control of the Secretary or provided under subparagraph (B), or construct and furnish a suitable vessel if such a vessel is not available, to any State maritime academy meeting the requirements of subsection (f)(1). Any such vessel—

(i) shall be repaired, reconditioned, and equipped (including supplying all apparel, charts, books, and instruments of navigation) as necessary for use as a training ship;

(ii) shall be furnished to such State maritime academy only after application for such vessel is made in writing by the Governor of the State or territory sponsoring such State maritime academy or, with respect to a regional maritime academy the Governor of the State or territory designated pursuant to subsection (b);

(iii) shall be furnished to such State maritime academy only if a suitable port for the safe mooring of such vessel is available while it is being used by such academy;

(iv) shall be maintained in good repair by the Secretary; and

(v) shall remain the property of the United States.

(B) Any department or agency of the United States may provide to the Secretary to be furnished to any State maritime academy any vessel (including equipment) which is suitable for the purposes of this paragraph and which can be provided without detriment to the service to which such vessel is assigned.

(2) **【The Secretary may pay to any State maritime academy】**

(A) *The Secretary shall, subject to the availability of appropriations, pay to each State maritime academy the amount of the costs of all fuel consumed by any vessel furnished under paragraph (1) while such vessel is being used for training purposes by such academy.*

(B) *The amount of the payment to a State maritime academy under this paragraph shall not exceed—*

(i) *\$100,000 for fiscal year 2006;*

(ii) *\$200,000 for fiscal year 2007; and*

(iii) *\$300,000 for fiscal year 2008 and each fiscal year thereafter.*

(3)(A) The Secretary may provide for the training of individuals attending a State maritime academy—

(i) on vessels owned or subsidized by the United States;

(ii) on other vessels documented under the laws of the United States if the owner of any such vessel cooperates in such use; and

(iii) in shipyards or plants and with any industrial or educational organizations.

(B) While traveling under orders for purposes of receiving training under this paragraph, any individual who is attending a State maritime academy shall receive from the Secretary allowances for transportation (including reimbursement of traveling expenses) in accordance with any regulations promulgated by the Secretary.

(d) ANNUAL PAYMENTS.—

(1)(A) The Secretary may enter into an agreement, which shall be effective for not more than 4 years, with one State maritime academy (not including regional maritime academies) located in each State or territory of the United States which meets the requirements of subsection (f)(1), and with each regional maritime academy which meets the requirements of subsection (f)(1), to make annual payments to each such academy for the maintenance and support of such academy.

(B) Subject to subparagraph (C), the annual payment to such State maritime academy shall be at least equal to the amount given to the academy for its maintenance and support by the State in which it is located, and to such regional maritime academy shall be at least equal to the amount given the academy by all States and territories cooperating to sponsor the academy.

(C) The amount under subparagraph (B) may not be more than \$25,000, except that the amount shall be—

(i) \$100,000 to such State maritime academy if the academy meets the condition set forth in subsection (f)(2); or

(ii) **【\$200,000】** *subject to the availability of appropriations, \$300,000 for fiscal year 2006, \$400,000 for fiscal year*

2007, and \$500,000 for fiscal year 2008 and each fiscal year thereafter to such regional maritime academy if the academy meets the condition set forth in subsection (f)(2).

(2) The Secretary shall provide to each State maritime academy guidance and assistance in developing courses on the operation and maintenance of new vessels, on equipment, and on innovations being introduced to the merchant marine of the United States.

(e) **DETAILING OF PERSONNEL.**—Upon the request of the Governor of any State or territory, the President may detail, without reimbursement, any of the personnel of the United States Navy, the United States Coast Guard, or the United States Maritime Service to any State maritime academy to serve as superintendents, professors, lecturers, or instructors at such academy.

(f) **CONDITIONS TO RECEIVING PAYMENTS OR USE OF VESSELS.**—

(1) As a condition to receiving any payment or the use of any vessel under this section, any State maritime academy shall—

(A) provide courses of instruction on navigation, marine engineering (including steam and diesel propulsion), the operation and maintenance of new vessels and equipment, and innovations being introduced to the merchant marine of the United States;

(B) agree in writing to conform to such standards for courses, training facilities, admissions, and instruction as are established by the Secretary after consultation with the superintendents of the State maritime academies; and

(C) agree in writing to require, as a condition for graduation, that each individual who is a citizen of the United States and who is attending the academy in a merchant marine officer preparation program shall pass the examination administered by the Coast Guard required for issuance of a license under section 7101 of title 46, United States Code.

(2) As a condition to receiving an annual payment of any amount in excess of \$25,000 under subsection (d), a State maritime academy shall agree to admit to such academy each year a number of individuals who meet the admission requirements of such academy and who are citizens of the United States residing in States and territories of the United States other than the States or territories, or both, supporting such academy. The Secretary shall determine the number of individuals under this paragraph for each State maritime academy so that such number does not exceed one-third of the total number of individuals attending such academy at any time.

(g) **STUDENT INCENTIVE PAYMENT AGREEMENTS.**—

(1) The Secretary may enter into an agreement, which shall be effective for not more than 4 academic years, with any individual, who is a citizen of the United States and is attending a State maritime academy which entered into an agreement with the Secretary under subsection (d)(1), to make student incentive payments to such individual, which payments shall be in amounts equaling \$4,000 for each academic year and which payments shall be—

(A) allocated among the various State maritime academies in a fair and equitable manner;

(B) used to assist the individual in paying the cost of uniforms, books, and subsistence; and

(C) paid by the Secretary as the Secretary shall prescribe while the individual is attending the academy.

(2) Each agreement entered into under paragraph (1) shall require the individual to accept midshipman and enlisted reserve status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve) before receiving any student incentive payments under this subsection.

(3) Each agreement entered into under paragraph (1) shall obligate the individual receiving student incentive payments under the agreement—

(A) to complete the course of instruction at the State maritime academy which the individual is attending;

(B) to take the examination for a license as an officer in the merchant marine of the United States on or before the date of graduation from such State maritime academy of such individual and to fulfill the requirements for such license not later than 3 months after such graduation date;

(C) to maintain a valid license as an officer in the merchant marine of the United States for at least 6 years following the date of graduation from such State maritime academy of such individual, accompanied by the appropriate national and international endorsements and certification as required by the United States Coast Guard for service aboard vessels on domestic and international voyages;

(D) to accept if tendered an appointment as, and to serve as a commissioned officer in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve), the United States Coast Guard Reserve, or any other reserve unit of an armed force of the United States, for at least 6 years following the date of graduation from such State maritime academy of such individual;

(E) to serve the foreign and domestic commerce and the national defense of the United States for at least 3 years following the date of graduation from the Academy—

(i) as a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or territory of the United States;

(ii) as an employee in a United States maritime-related industry, profession, or marine science (as determined by the Secretary), if the Secretary determines that service under clause (i) is not available to such individual;

(iii) as a commissioned officer on active duty in an armed force of the United States, as a commissioned officer in the National Oceanic and Atmospheric Administration, or in other maritime-related employment with the Federal Government which serves the national security interests of the United States, as determined by the Secretary; or

(iv) by combining the services specified in clauses (i), (ii), and (iii); and

(F) to report to the Secretary on the compliance by the individual to this paragraph.

(4)(A) If the Secretary determines that an individual who has accepted the payment described in paragraph (1) for a minimum of 2 academic years has failed to fulfill the part of the agreement required by paragraph (1) and described in paragraph (3)(A), such individual may be ordered by the Secretary of Defense to active duty in the Armed Forces of the United States to serve for a period of time not to exceed 2 years. In cases of hardship, as determined by the Secretary, the Secretary may waive this provision in whole or in part.

(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under subparagraph (A), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary—

(i) subject to clause (ii), may recover from the individual the amount of student incentive payments, plus interest and attorneys fees; and

(ii) may reduce the amount to be recovered from such individual to reflect partial performance of service obligations and such other factors as the Secretary determines merit such reduction.

(5)(A) If the Secretary determines that an individual has failed to fulfill any part of the agreement required by paragraph (1), as described in paragraph (3)(B), (C), (D), (E), or (F), such individual may be ordered to active duty to serve a period of time not less than 2 years and not more than the unexpired portion, as determined by the Secretary, of the service required by paragraph (3)(E). The Secretary, in consultation with the Secretary of Defense, shall determine in which service the individual shall be ordered to active duty to serve such period of time. In cases of hardship, as determined by the Secretary, the Secretary may waive this provision in whole or in part.

(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under subparagraph (A), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary—

(i) subject to clause (ii), may recover from the individual the amount of student incentive payments, plus interest and attorneys fees; and

(ii) may reduce the amount to be recovered from such individual to reflect partial performance of service obligations and such other factors as the Secretary determines merit such reduction.

(6) To aid in the recovery of student incentive payments plus interest and attorneys fees the Secretary may request the Attorney General to begin court proceedings, and the Secretary may make use of the Federal debt collection procedures in chapter 176 of title 28, United States Code, and other applicable administrative remedies.

(7) The Secretary may defer the service commitment of any individual pursuant to subparagraph (E) of paragraph (3) (as specified in the agreement required by such paragraph) for a period of not more than 2 years if such individual is engaged in a graduate course of study approved by the Secretary, except that any deferment of service as a commissioned officer pursuant to subparagraph (E) of such paragraph must be approved by the Secretary of the military department (including the Secretary of Commerce with respect to the National Oceanic and Atmospheric Administration) which has jurisdiction over such service.

(8) This subsection shall apply only to individuals first entering a State maritime academy after the date occurring 6 months after the effective date of the Maritime Education and Training Act of 1980.

(h) APPOINTMENT OF CADET AS MIDSHIPMAN IN UNITED STATES NAVAL RESERVE.—Any citizen of the United States attending a State maritime academy may be appointed by the Secretary of the Navy as a midshipman in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve).

PUBLIC LAW 97-31; ACT OF JUNE 2, 1951

[SEC. 801. VESSEL OPERATIONS REVOLVING FUND; ESTABLISHMENT; USES; LIMITATIONS.

[46 U.S.C. App. 1241a]

【For working capital for the “Vessel Operations Revolving Fund”, which is hereby created for the purpose of carrying out vessel operating functions of the Secretary of Transportation, including charter, operation, maintenance, repair, reconditioning, and betterment of merchant vessels under the jurisdiction of the Secretary of Transportation, \$20,000,000, to remain available until expended.

【Notwithstanding any other provision of law, rates for shipping services rendered under said Fund shall be prescribed by the Secretary of Transportation and the Fund shall be credited with all receipts from vessel operating activities conducted thereunder: Provided, That the provisions of sections 1(a), 1(c), 3(c) and 4 of Public Law 17, Seventy-eighth Congress (57 Stat. 45), as amended, shall be applicable in connection with such operations and to seamen employed through general agents as employees of the United States, who may be employed in accordance with customary commercial practices in the maritime industry, notwithstanding the provisions of any law applicable in terms to the employment of persons by the United States: Provided further, That such sums as may be determined to be necessary by the Secretary of Transportation, with the approval of the Bureau of the Budget, but not exceeding 2 per centum of vessel operating expenses, may be advanced from this Fund to the appropriation “Salaries and expenses” for the purposes of that appropriation in connection with vessel operating functions, but without regard to the limitations on amounts as stated therein: Provided further, That notwithstanding any other provisions of law, the unexpended balances of any working funds or of allocation accounts established, subsequent to January 1, 1951, for the activities provided for under this appropriation, together with receipts heretofore and hereafter received from such activities, may be transferred to and consolidated with this Fund,

which shall be available for the purposes of such working funds or allocation accounts.

[No money made available to the Department of Transportation, for Maritime Activities, by this or any other Act shall be used in payment for a vessel the title to which is acquired by the Government either by requisition or purchase, or the use of which is taken either by requisition or agreement, or which is insured by the Government and lost while so insured, unless the price or hire to be paid therefor, (except in cases where section 802 of the Merchant Marine Act, 1936, as amended, is applicable) is computed in accordance with subsection 902(a) of said Act, as that subsection is interpreted by the General Accounting Office.]

SEC. 801. VESSEL OPERATIONS REVOLVING FUND.

(a) *IN GENERAL.*—*There is established in the Treasury, for the purposes set forth in subsection (b), a Vessel Operations Revolving Fund which shall be available without appropriation to the Secretary of Transportation. All amounts in the Fund shall be available for the purposes of the Fund, notwithstanding any other provision of law, and shall remain available until expended.*

(b) *USES.*—*Amounts in the Fund shall be available for—*

(1) *all expenses and charges relating to the maintenance, repair, and operation of vessels under the jurisdiction of the Secretary;*

(2) *all expenses and charges relating to the maintenance, repair, and operation of the facilities necessary to preserve and maintain such vessels;*

(3) *payment of all costs of, and indirect costs that are reasonably related to, contracting, procurement, inspection, storage, management, distribution, and accountability of vessels under the jurisdiction of the Secretary and such property, facilities, and nonpersonal services as the Secretary deems necessary for the operation and maintenance of such vessels;*

(4) *expenses incurred in activating, repairing, and deactivating vessels under the jurisdiction of the Secretary;*

(5) *the acquisition of such vessels for the National Defense Reserve Fleet as both the Secretary and the Secretary of Navy deem necessary;*

(6) *necessary expenses incurred in the protection, preservation, maintenance, acquisition, or use of vessels of the National Defense Reserve Fleet involved in mortgage foreclosure or forfeiture proceedings instituted by the United States Government, including payment of prior claims and liens, expenses of sale, and other related charges; and*

(7) *costs and expenses incurred to repair damages to Government property under the jurisdiction or control of the Secretary that is used in connection with the National Defense Reserve Fleet.*

(c) *CREDITS TO THE FUND.*—

(1) *IN GENERAL.*—*Notwithstanding any other provision of law, there shall be credited to and retained by the Fund—*

(A) *all amounts received in connection with vessel operations for vessels under the jurisdiction of the Secretary; except that there shall be no surcharge on charter hire or similar collection in connection with vessel operations for*

the purpose of the reserve described in subsection (c)(2); and

(B) any reimbursements, advances, setoffs, refunds, or recoveries arising out of or relating to the operation and maintenance of vessels of the National Defense Reserve Fleet under the jurisdiction of the Secretary, including any recoveries from litigation, arbitration, or otherwise.

(2) RESERVE.—There shall be established and retained in the Fund from litigation and arbitration recoveries a reserve, not to exceed \$30,000,000 at any one time, for use as a reserve for unscheduled repairs and other necessary expenses in connection with casualties to vessels in the National Reserve Fleet.

(d) LAWS RELATING TO SEAMEN.—Subject to the provisions of sections 1(a) and (c), 3(c), and 4 of the Act of March 24, 1943 (50 U.S.C. App. 1291(a) and (c), 1293(c), 1294), seamen employed on vessels in the custody of the Secretary and operated through the Secretary's ship managers or general agents may be so employed by such ship managers or agents in accordance with customary commercial practices in the maritime industry without regard to any of the laws on employment of persons by the United States.

(e) ADVANCEMENTS.—With the approval of the Director of the Office of Management and Budget, the Secretary may advance amounts the Secretary considers necessary from the Fund to the Maritime Administration Operations and Training appropriation account for purposes of carrying out duties and powers related to the maintenance, repair, and operation of vessels under the jurisdiction of the Secretary, without regard to the limitations on amounts stated in the Operations and Training appropriation.

(f) LIMITATIONS.—

(1) IN GENERAL.—Amounts made available to the Secretary for purposes of this section or any other law may not be used to pay for a vessel described in paragraph (2) unless the compensation to be paid is computed under section 56303 of title 46, United States Code, as that section is interpreted by the Comptroller General.

(2) APPLICABLE VESSELS.—Paragraph (1) applies to a vessel—

(A) the title to which is acquired by the Government by requisition or purchase;

(B) the use of which is taken by requisition or agreement;

or

(C) that is lost while insured by the Government.

(3) NONAPPLICABLE VESSELS.—Paragraph (1) does not apply to a vessel under a construction-differential subsidy contract.

MARITIME SECURITY ACT OF 2003

[SEC. 3528. REVIEW OF PROGRAM.

[46 U.S.C. App. 1271 note]

[(a) IN GENERAL.—The Secretary of Transportation shall conduct a comprehensive assessment of the human capital and other resource needs in connection with the Title XI loan guarantee program under the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.). In connection with this assessment, the Secretary shall develop an organizational framework for the program offices that insures that a clear separation of duties is established among the

loan application, project monitoring, and default management functions.]

[(b) PROGRAM ENHANCEMENTS.—]

[AMENDMENTS EXECUTED UPON ENACTMENT OF MARITIME SECURITY ACT OF 2003]

[(c) REPORT.]The Secretary shall report to the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of the House of Representatives on the results of the development of an organizational framework under subsection (a) by January 2, 2004.]

OCEAN SHIPPING REFORM ACT OF 1998

SEC. 401. CERTAIN LOAN GUARANTEES AND COMMITMENTS.

[46 U.S.C. App. 1273a]

(a) The **[Secretary of Transportation]** *Administrator of the Maritime Administration* may not issue a guarantee or commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a liner vessel under the authority of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.) after the date of enactment of this Act unless the Chairman of the Federal Maritime Commission certifies that the operator of such vessel—

(1) has not been found by the Commission to have violated section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876), or the Foreign Shipping Practices Act of 1988 (46 U.S.C. App. 1701a), within the previous 5 years; and

(2) has not been found by the Commission to have committed a violation of the Shipping Act of 1984 (46 U.S.C. App. 1701 et seq.), which involves unjust or unfair discriminatory treatment or undue or unreasonable prejudice or disadvantage with respect to a United States shipper, ocean transportation intermediary, ocean common carrier, or port within the previous 5 years.

(b) The Secretary of Commerce may not issue a guarantee or a commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a fishing vessel under the authority of Title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.) if the fishing vessel operator has been—

(1) held liable or liable in rem for a civil penalty pursuant to section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858) and not paid the penalty;

(2) found guilty of an offense pursuant to section 309 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1859) and not paid the assessed fine or served the assessed sentence;

(3) held liable for a civil or criminal penalty pursuant to section 105 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375) and not paid the assessed fine or served the assessed sentence; or

(4) held liable for a civil penalty by the Coast Guard pursuant to title 33 or 46, United States Code, and not paid the assessed fine.

PUBLIC LAW 85-469

SEC. 101. ADVANCES TO FUND.

[46 U.S.C. App. 1280]

The Secretary *or the Administrator of the Maritime Administration* is authorized to advance to this account from the “Vessel operations revolving fund” (46 U. S. C. 1241a), such amounts as may be required for the payment, pursuant to section 1105 of the Merchant Marine Act, 1936, as amended (46 U. S. C. 1275), of unpaid principal amounts of defaulted mortgages and loans and of unpaid interest thereon: Provided, That such advances shall be repaid to the “Vessel operations revolving fund” as soon as practicable consistent with the status of this account: Provided further, That the total advances outstanding at any one time shall not exceed \$10,000,000.

MARITIME SECURITY ACT OF 2003

SEC. 3527. ANNUAL REPORT ON PROGRAM.

[46 U.S.C. App. 1280b]

The [Secretary of Transportation] *Administrator of the Maritime Administration* shall report to Congress annually on the loan guarantee program under title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.). The reports shall include—

- (1) the size, in dollars, of the portfolio of loans guaranteed;
- (2) the size, in dollars, of projects in the portfolio facing financial difficulties;
- (3) the number and type of projects covered;
- (4) a profile of pending loan applications;
- (5) the amount of appropriations available for new guarantees;
- (6) a profile of each project approved since the last report; and
- (7) a profile of any defaults since the last report.

MARITIME EDUCATION AND TRAINING ACT OF 1980

SEC. 1306. UNITED STATES MARITIME SERVICE.

[46 U.S.C. App. 1295e]

(a) **ESTABLISHMENT AND MAINTENANCE.**—The Secretary may establish and maintain a voluntary organization for the training of citizens of the United States to serve on merchant marine vessels of the United States *and to perform functions to assist the United States merchant marine, as determined necessary by the Secretary*, to be known as the United States Maritime Service.

(b) **ENROLLMENT; COMPENSATION; COURSE OF STUDY AND PERIODS OF TRAINING; UNIFORMS.**—The Secretary may determine the number of individuals to be enrolled for training and reserve purposes in such service, to fix the rates of pay and allowances of such individuals without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code (relating to classification and General Schedule pay rates), to prescribe the course of study and the periods of training in such service, and to prescribe the uniform of such service and the rules governing the wearing and furnishing of such uniform.

(c) RANKS, GRADES, AND RATINGS SAME AS FOR UNITED STATES COAST GUARD.—The ranks, grades, and ratings for personnel of the United States Maritime Service shall be the same as are then prescribed for the personnel of the United States Coast Guard.

(d) AWARDS AND MEDALS.—The Secretary may establish and maintain a medals and awards program to recognize distinguished service, superior achievement, professional performance, and other commendable achievement by personnel of the United States Maritime Service.

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SEC. 1309. OPERATION OF THE GLOBAL MARITIME AND TRANSPORTATION SCHOOL.

(a) OPERATION AS NONAPPROPRIATED FUND INSTRUMENTALITY.—*After the date of enactment of the Maritime Administration Enhancement Act of 2005, the Global Maritime and Transportation School shall continue to operate as a nonappropriated fund instrumentality of the United States under the jurisdiction of the Department of Transportation, Maritime Administration.*

(b) ACTIVITIES.—

(1) IN GENERAL.—*Under the general supervision of the Department of Transportation, Maritime Administration, GMATS shall develop, administer, and provide educational, training, and professional development activities, including educational activities, for Federal agencies, Federal employees, nonprofit organizations, other entities, and members of the general public, as well as carry out such other projects and activities that may be authorized by the Superintendent.*

(2) TRAINING SERVICES.—*The training services and educational activities provided by GMATS shall be available to the Armed Forces of the United States and Commissioned Officers of the National Oceanic and Atmospheric Administration, Federal and State agencies, Federal and State employees, nonprofit organizations, private companies or organizations, and private individuals of the United States or foreign countries friendly to the United States.*

(3) FEDERAL REQUESTS FOR SERVICES.—*Requests for training or other services from the Armed Forces of the United States or other agencies of the United States may be made pursuant to the provisions of section 1535 of title 31, United States Code.*

(c) FEES AND DONATIONS.—

(1) COLLECTION OF FEES.—*GMATS may charge and retain fair and reasonable fees for the activities provided.*

(2) ACCEPTANCE AND MAKING OF DONATIONS.—

(A) *GMATS may accept, use, hold, dispose, and administer gifts, bequests, and devises of money, securities, and other real or personal property made for the benefit of, or in connection with GMATS.*

(B) *GMATS shall not accept a donation from a person that is actively engaged in a procurement activity with GMATS or has an interest that may be substantially affected by the performance or nonperformance of an official duty of a member of the Board or an employee of GMATS.*

(C) GMATS is authorized to make gifts to the Department of Transportation and the Secretary is authorized to accept gifts from GMATS for any purpose.

(3) NOT FEDERAL FUNDS.—Fees collected under paragraph (1) and amounts received under paragraph (2) shall not be considered to be Federal funds and shall not be required to be deposited in the Treasury of the United States. GMATS shall not be funded by appropriated funds.

(d) USE OF USMMA FACULTY AND STAFF.—

(1) PAYMENT.—GMATS may provide payment to United States Merchant Marine Academy faculty and staff for teaching and other services for GMATS, but only to the extent that the provision of such teaching or services does not interfere or conflict with the official duties of the faculty and staff and are approved by the Superintendent.

(2) CONTRACTING AUTHORITY.—The Academy may enter into contracts with GMATS to provide faculty and staff of the Academy for teaching and other services and, to the extent of the actual costs incurred by the Academy under said contracts, credit such funds received under such contracts to the Academy's appropriations, notwithstanding those provisions of law relating to the deposit of miscellaneous receipts into the Treasury.

(e) GENERAL ADMINISTRATION.—

(1) AUTHORITY OF SUPERINTENDENT.—The Superintendent is responsible for the overall supervision and administration of GMATS and the determination of its policies. In implementing this responsibility, the Superintendent shall appoint members to the Board and shall designate one member as the Senior Managing Director and may designate other Managing Directors as necessary.

(2) AUTHORITY OF THE BOARD.—The Superintendent may delegate to the Board the Superintendent's responsibility to advise and oversee the supervision and administration of GMATS. The Board may consist of both United States Merchant Marine Academy employees and non-Academy employees, as determined by the Superintendent. The Board shall be subject to regulation by the Secretary and shall report to the Superintendent.

(3) AUTHORITY OF THE SENIOR MANAGING DIRECTOR.—The Superintendent may delegate to the Senior Managing Director of GMATS the authority to manage, administer, and operate GMATS.

(4) DUTIES OF THE MANAGING DIRECTORS.—The Senior Managing Director shall be responsible, subject to the supervision and direction of the Board and the Superintendent, for carrying out the functions of GMATS. All other Managing Directors shall be responsible, subject to the supervision and direction of the Senior Managing Director, for carrying out the functions of GMATS.

(5) BORROWING AND INVESTMENT AUTHORITY.—The Board, with the approval of the Superintendent, may authorize the Senior Managing Director—

(A) to borrow money on the credit of GMATS; and

(B) to invest funds held in excess of the current operating requirements of GMATS for purposes of maintaining a reasonable reserve.

(6) *LIABILITY.*—The Managing Directors and the other members of the Board shall not be held personally liable for any loss or damage that may accrue to GMATS as the result of any act performed within the scope of their duties under this section.

(f) *EMPLOYEES.*—Employees of GMATS are employees of a non-appropriated fund instrumentality of the United States.

(g) *NOT A FEDERAL AGENCY.*—The GMATS shall not be considered a Federal agency for purposes of—

(1) the Federal Advisory Committee Act (5 U.S.C.); or

(2) sections 552 and 552a of title 5, United States Code.

(h) *ACQUISITION AND DISPOSAL OF PROPERTY.*—In order to carry out the activities of GMATS, GMATS may—

(1) acquire goods, services, and real property by lease, purchase, or otherwise;

(2) maintain, enlarge, or remodel any such property;

(3) have sole control of any such personal or real property; and

(4) dispose of real and personal property without regard to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 101 et seq.).

(i) *CONTRACT AUTHORITY.*—GMATS may enter into contracts and leases without regard to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 101 et seq.) or any other law that prescribes procedures for the procurement of property or service by an executive agency.

(j) *USE OF DEPARTMENT FACILITIES AND RESOURCES.*—GMATS may use the facilities and resources of the Department of Transportation, with the approval of the Superintendent, but only if any costs incurred by the Department that are attributable solely to GMATS operations and all costs incurred by GMATS arising out of such operations are paid using funds of GMATS or the Department of Transportation receives other consideration for paying for such costs. Any reimbursement may be retained by the United States Merchant Marine Academy and credited to the charged appropriations account.

(k) *AUDITS OF RECORDS.*—The financial records of GMATS shall be made available to the Department of Transportation Inspector General, upon request, for purposes of conducting an audit.

(l) *DEFINITIONS.*—In this section:

(1) *GMATS.*—The term “GMATS” means the Global Maritime and Transportation School at the United States Merchant Marine Academy, a nonappropriated fund instrumentality of the Maritime Administration of the United States Department of Transportation.

(2) *BOARD.*—The term “Board” means the GMATS Board of Directors.

(3) *DIRECTOR.*—The term “Director” means a member of the GMATS Board.

(4) *MANAGING DIRECTOR.*—The term “Managing Director” means a member of the Board who is an employee of GMATS with operational responsibility for the organization, but not a Federal employee.

(5) *SENIOR MANAGING DIRECTOR.*—The term “Senior Managing Director” means the Managing Director designated the

“Senior Managing Director” by the Superintendent, as set forth in subsection (e) of this section.

(6) SECRETARY.—The term “Secretary” means the Secretary of Transportation.

(7) SUPERINTENDENT.—The term “Superintendent” means the Superintendent of the United States Merchant Marine Academy at Kings Point, New York, operated by the Maritime Administration, United States Department of Transportation or, in the absence of the Superintendent, the Superintendent’s authorized designee or such other person as the Secretary may designate.

MERCHANT MARINE DECORATIONS AND MEDALS ACT

SEC. 5. INDIVIDUAL NOT TO RECEIVE MORE THAN ONE OF ANY TYPE OF DECORATION; ACCEPTANCE BY PERSONAL REPRESENTATIVE; REPLACEMENTS.

[46 U.S.C. App. 2004]

(a) The Secretary of Transportation may not award more than one of any type of decoration or medal to an individual. For each succeeding act or service justifying the same decoration or medal, a suitable device may be awarded to be worn with the decoration or medal.

(b) When an individual scheduled to receive a decoration or medal under this Act is unable to accept it, the Secretary may make the award to an appropriate personal representative.

(c) The Secretary may [provide at cost, or authorize for the manufacture and sale at reasonable prices by private persons—] *provide*—

(1) the decorations and medals authorized under section 2 of this Act and replacements for those decorations and medals; and

(2) replacements for decorations and medals issued under a prior law.

(d) Decorations and medals authorized under section 2 of this Act may be of similar design as are authorized for members of the Armed Forces of the United States for similar acts or service.

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SEC. 8. EXCLUSIVENESS OF RIGHT TO DECORATION OR MEDAL; CIVIL PENALTY FOR VIOLATION.

[46 U.S.C. App. 2007]

Except as authorized by this Act or by the Secretary of Transportation, a person may not manufacture, sell, possess, or display a decoration or medal provided for in this Act. A person violating this section is liable to the United States Government for a civil penalty of \$2,000.