

APPENDIX E
RESPONSE TO COMMENTS

Responses to Comments received on:

***Draft Environmental Assessment
Transfer of National Defense Reserve Fleet Vessels from the James River Reserve Fleet
for Disposal at Able UK Facilities, Teesside, U.K.***

Comment No.	Comment Source*	Comment	Response to Comment
1	1, 3, 4, 5, 8	Provide data on hull conditions of proposed 9 vessels	<p>EA states that 9 vessels listed are currently identified for transfer to Able UK under the Proposed Action, but MARAD may substitute other vessels.</p> <p>The EA states in Section 4.8.1 “<i>Any substitute vessels would be required to undergo updated surveys and inspections</i>”. When the final list of vessels has been agreed upon, MARAD will post survey data on its website (www.marad.dot.gov). MARAD will also post lists of known and suspected materials that are typical for the age, construction, design, size and use of the vessel(s) with estimated quantities where possible. See also Response to Comment #1a below.</p>
1a	1, 3, 4, 5, 8, 13	Provide inventory of all hazardous wastes in the 9 vessels	<p>The hazardous materials onboard MARAD’s obsolete ships are contained within the ship’s structural components and mechanical systems and as such can not be inventoried in the conventional manner. MARAD can only provide ranges. See Response to Comment #1. The presence of regulated materials aboard obsolete ships is well known and is documented in solicitations issued by both the Navy and Maritime Administration as well as in Ship Scrapping Guidance promulgated by the EPA. MARAD requires potential vessel dismantlers to address potential pollutants such as PCBs, asbestos, petroleum products, chromium-treated water, mercury, ozone depleting substances, etc. as part of their dismantling plans. As part of the procurement process, MARAD provides an estimate of the quantities of potential pollutants aboard the vessels. It has been demonstrated that these materials have been prevalent aboard ships built between the years of 1941 and 1979, and placed in lay-up. This would represent the majority of MARAD obsolete vessels.</p> <p>Estimates are developed for the following potential pollutants:</p> <ul style="list-style-type: none"> ▪ PCBs- Electrical cables, ventilation gaskets, rubber gaskets, felt gaskets, fiberglass/foam/cork, grouting/caulking/adhesives/isolation foundation mounts, paint coatings/blasting media, and miscellaneous electrical components. ▪ Asbestos – engine room, deckhouse ▪ Mercury

			<ul style="list-style-type: none"> ▪ Ozone depleting substances ▪ Chromated ballast water ▪ Waste Water ▪ Oily Water ▪ Heavy Fuel Oil ▪ Marine Diesel Oil ▪ Lube Oil ▪ Hydraulic Oil ▪ Blackwater ▪ Fixed Ballast ▪ Unregulated debris ▪ Biological material <p>Estimates are prepared based on quantities generated during the dismantling of “sister” or similar ships, extrapolation of data according to common construction features, and through vessel walkovers and reviews of literature. Estimates tend to be on the conservative side, because MARAD simply assumes that certain items do contain regulated concentrations of PCBs and estimates include the <u>total</u> weight of the material being disposed (which exceeds the actual quantity of the PCBs in the material). For example, of the electrical cable being disposed, approximately 40% of the weight of the cable is non-PCB material such as copper. Another example is that estimates of ventilation gaskets includes several inches of flange on either side of the actual gasket.</p> <p>When the final list of vessels has been agreed upon, MARAD will post these estimates on its website (www.marad.dot.gov).</p>
1b	1, 3, 4, 5, 8	Provide inventory of oils, contaminated or oily bilge and ballast water	See also Responses to Comments #1 and #1a. Oily bilge water is typically not encountered, nor is contaminated ballast water.
2	1, 3, 4, 5, 8, 10	EA should state that Able UK does not have necessary permits in place, reasons for lack of permits, consequences of failure to obtain necessary	The EA states in Section 4.8.4 “ <i>The Able UK facilities at which the vessels would be disposed of under the proposed action either currently possess or are in the process of obtaining all necessary permits and approvals that govern the removal, handling, transport, and disposal of hazardous materials. In no case will ship disposal actions begin until the UKEA has fully approved Able UK to receive and process the vessels.</i> ”

		permits, potential revocation of permits.	<p>In addition, Section 4.8.3 of the EA states that “<i>Able UK must obtain and certify that all requisite licenses and approvals have been obtained.</i>”</p> <p>MARAD recognizes the current permit situation at Able UK. MARAD will not send other ships to Able UK until all required permits are obtained. Additionally, the Transfrontier Shipment approval will not occur until all necessary permits are in place.</p>
3	1, 2, 3, 4, 5, 8, 10	<p>Section 6(c)(1) of the National Maritime Heritage Act directs MARAD to select a dismantling facility based upon the facilities ability to dismantle vessels “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.”</p> <p>EA should include alternative of conducting the shipbreaking at U.S. facility.</p>	<p>The NMHA direction to minimize the geographic distance that a vessel must be towed is applicable when towing a vessel poses a serious threat to the environment. The EA demonstrates that this is not the case for the proposed action. Further, only vessels approved for transAtlantic tow by the U.S. Coast Guard would be towed.</p> <p>If a serious environmental risk is potentially posed for the tow of a vessel, the ships are towed to minimize the geographic distance. For example, the <i>Marine Fiddler</i> was one ship initially selected for export to Able UK. After close inspection, it was determined that trans-Atlantic towing of the vessel would pose an environmental risk. The vessel was removed from consideration and is currently being dismantled at a facility in Chesapeake, Virginia.</p> <p>The EA’s focus is specifically on the potential effects of the transfer of vessels for disposal at Able UK facilities.</p> <p>Domestic scrapping of other ships is on-going, as evidenced by the vessels currently being disposed of in the U.S., and best value awards are also made to domestic facilities.</p>
4	1, 3, 4, 5, 8	EA must include fourth alternative: decontamination of all oil and hazardous wastes “as near to the site of origins as possible”	<p>The EA’s focus is specifically on the potential effects of the transfer of vessels for disposal at Able UK facilities.</p> <p>MARAD’s practice for all ship recycling and dismantling contracts is to transfer vessels in “as is” condition, subject to U.S. Coast Guard review and approval. For the Able UK contract, U.S. EPA also requires that “readily removable” PCB materials be removed prior to vessel release and transfer. MARAD’s methods reflect common business practice in all vessel disposal operations. Moreover, as detailed in the EA, U.S. Coast Guard approvals are obtained prior to towing. As described in the EA, and Response to Comment #1a, many of the hazardous materials are contained within the structure/structural components and mechanical/operational systems of the vessels and cannot be accessed except through vessel dismantling.</p>
5	1, 2, 3, 4, 7, 8, 10, 11	EA should justify claim of inadequate domestic capacity for the vessels	Domestic industrial capacity issues are beyond the scope of the EA. However, by way of information, the NMHA requires MARAD to dispose of ships in a manner that provides best value to the Government, without any predisposition to foreign or domestic facilities, taking into consideration the ability of facilities to dispose of vessels at least cost to the Government and in a timely manner.

6	1, 3, 4, 5, 8, 13	<p>EA should assess environmental and health impacts posed by hazardous materials not mentioned in the EA – PCBs in paints, cadmium, lead, mercury, and other toxic materials.</p> <p>EA should address individual and cumulative risks of leak, spill, or catastrophic loss during vessel tow.</p>	<p>Sections 3.7.4 and 3.7.5 of the EA describe U.S. Coast Guard Marine Safety Office duties, including marine safety, pollution prevention, and vessel certifications and inspections.</p> <p>Section 3.8 of the EA discusses common hazardous materials found in older vessels, including PCBs, mercury, and lead. Section 4.8.1 also indicates that PCBs, lead, and mercury are among the hazardous substances likely to be on older vessels such as those proposed for tow. Appendix A of the EA, the EPA Enforcement letter, includes paints as a possible material on the vessels that may contain PCBs.</p> <p>See EA Section 4.7, which details vessel inspection steps to determine seaworthiness. The U.S. Coast Guard evaluates and determines the seaworthiness of each vessel prior to tow. Coast Guard approval of vessel tows includes specific safety measures required prior to and during tows. Both MARAD and the U.S. Coast Guard have weather condition thresholds beyond which the tows would not take place. Section 4.7.4 of the EA discusses specific U.S. Coast Guard reviews and approvals that occur prior to approval of a vessel for tow and Coast Guard safety requirements imposed on the tow company. Section 4.7.7 of the EA accordingly concludes that <i>“navigation safety will be assured through the substantial number of vessel inspections, reviews, tow approvals, and certificates that will be developed for each vessel prior to the initiation of tow activities.”</i></p> <p>Section 4.8 of the EA details safety measures taken prior to and during tows, including U.S. Coast Guard review of the Oil Spill Contingency Plan and requirements for identification of a 24-hr. on-call hazardous materials response contractor. As stated in the EA, under the Proposed Action, prior to the tow of each vessel the U.S. Coast Guard reviews and approves the tow, and the United Kingdom Environmental Authority (UKEA) must issue approval via a Transfrontier Movement of Waste Authorization.</p> <p>In accordance with the EPA Enforcement Letter, because all readily removable hazardous PCB materials are removed prior to tow, along with all known liquid PCBs, and the U.S. Coast Guard evaluates the safety of the proposed tows, the vessels are suitable for export. The EPA letter demonstrates a recognition of decreased risks associated with the non-readily removable non-liquid PCBs. Hazardous materials remaining on board are contained within the structural components and mechanical/operating systems of the vessels. Based upon the USCG regulation and inspection protocols concerning the tows, and MARAD’s tow safety record, a catastrophic loss during vessel tow is remote at best. (See also Responses to Comments #8 and #9).</p> <p>Additional information on materials potentially on-board follows, (and has been added to the EA for informational purposes):</p> <p>Sodium Chromate</p> <p>For many years hexavalent chromium was used as a corrosion inhibitor in ballast water. To date,</p>
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7	1, 3, 4, 8	<p>EA does not “disclose” oil spill plan.</p> <p>MARAD should explore</p>	<p>An Oil Spill Contingency Plan, provided by the tow company, is submitted to the U.S. Coast Guard for review and approval when required. This document is specific to each towed vessel or tow and therefore is prepared and submitted for specific vessels. The Contingency Plan addresses emergency response requirements, procurements, equipment availability, communications plans, designated personnel, etc. MARAD’s region and fleet emergency</p>

¹ U.S. Environmental Protection Agency, Integrated Risk Information System (IRIS). *Toxicological Profile of Hexavalent Chromium*, Washington, DC, August 1998.

		option of pumping out all oil and oily bilge and ballast waters while the vessels are in the James River.	<p>response plan is also in effect during vessel break-out operations. The contingency plans are not developed and submitted until the actual vessels for tow are identified. At that point, MARAD will post the tow plans on the MARAD website (www.marad.dot.gov).</p> <p>The EA’s focus is specifically on the potential effects of the transfer of vessels for disposal at Able UK facilities. Removal of residual fuels and oily water from vessels while moored in the James River are beyond the scope of the EA.</p> <p>MARAD’s practice for all ship recycling and dismantling contracts is to transfer vessels in “as is” condition, subject to U.S. Coast Guard review and approval. (See also Response to Comment #4).</p>
8	1, 3, 4, 5, 8, 13	EA does not address likelihood or potential impacts of a possible leak, spill, or sinking enroute caused by unseaworthiness, mechanical failure, or act of God	<p>See EA Section 4.7, which details vessel inspection steps to determine seaworthiness. The U.S. Coast Guard evaluates and determines seaworthiness of each vessel prior to tow. Coast Guard approval of vessel tows includes specific safety measures required prior to and during tows. Both MARAD and US Coast Guard have weather condition thresholds beyond which the tows would not take place. Section 4.7.7 of the EA accordingly concludes that “<i>navigation safety will be assured through the substantial number of vessel inspections, reviews, tow approvals, and certificates that will be developed for each vessel prior to the initiation of tow activities.</i>”</p> <p>Based in part on MARAD’s reliance on the technical expertise and professional judgment of the US Coast Guard and other agencies listed in the EA, the EA concludes that potential effects would not be significant.</p> <p>Section 4.8 of the EA states that the safety of dead-ship tows has been demonstrated. Section 4.8.3 states that since U.S. Coast Guard Hampton Roads began a formal dead-ship tow review and approval process, there have been no known pollution incidents, according to Coast Guard records.</p> <p>Preparations, safeguards, inspections, and approvals required for overseas tows are described in the EA in Section 2.1.1, Table 2-2, Section 2.1.2, Table 2-3, and Section 4.7. For information purposes, additional detail is provided below:</p> <p>“Trip and Tow” Survey by Independent Marine Surveyor</p> <p>As part of the process of obtaining an International Loadline Exemption Certificate (from the U.S. Coast Guard) for one-time towing overseas, a survey of the vessel must be undertaken to insure that the hull, fittings and structure are adequate to protect the vessel from the sea. It is only after the survey is conducted and a Tow Survey Certificate is issued that a vessel is considered capable of the tow.</p> <p>Typical preparations made entail sounding the tanks of the vessel to determine the quantity of fluids aboard; making all openings watertight, such as installing covers to external pipe openings</p>

			<p>and verification of gasket integrity; determining origin and pumping of all free liquids from cargo spaces and voids; securing anchors to the main deck (to prevent possible penetration of the hull during transit); installing shackles/chain sufficient to support towing forces; verifying through-hull fittings are blanked and/or secured; and examining rudder and shaft locks.</p> <p>After the requirements are met and verified as being completed, and the Marine Surveyor considers the vessel seaworthy, the Tow Survey Certificate is issued and provided to the U.S. Coast Guard. The Certificate is one component of Coast Guard requirements necessary for obtaining the loadline exemption certificate.</p> <p><i>Vessel Survey Required by AbleUK Underwriter</i></p> <p>In the case of the international towing to the UK, AbleUK’s insurance underwriter requires an independent survey of the vessel. The inspection is similar to that performed for the trip and tow survey and is used for assessing the seaworthiness of the vessel and its ability to be towed to the UK (“insurability”). A list of recommendations is generated pertaining to any identified ship deficiencies and preparations to be made.</p> <p>It is only after verification that deficiencies were remedied and preparations completed that the underwriter’s Marine Surveyor will issue an Insurance Survey Certificate stating that the ship is insurable for the transit.</p> <p><i>Tug Master Survey</i></p> <p>The Tug Master from the towing company also inspects the ships to ensure the safety of the tow with respect to the towing operation, the tugs involved and the characteristics. This survey is limited to the outside hull below the main deck, rudder-locking device, shaft locking device and the overall condition of the hull at the waterline. If any issues are identified, they are provided to MARAD as well as the UK Maritime and Coast Agency. .</p> <p><i>Preparations to be Completed by the Fleet</i></p> <p>A spreadsheet is generated by the James River Reserve Fleet that compiles written and verbal comments made by the inspecting parties for actions to be made for preparation of the vessel for towing. Each action to be taken has the applicable department assigned and supervisor specified. Verification of the completion of the work is made by a MARAD Marine Surveyor and fleet management official.</p> <p><i>Survey by UK Maritime and Coast Agency</i></p> <p>The UK MCA is involved with inspecting the vessels to insure that the Tow Master’s and underwriter Marine Surveyor’s concerns were alleviated, that deficiencies had been remedied, and that vessels were seaworthy and capable of being towed through UK waters. Written approval for transiting UK waters is required by the towing company before ships will be</p>
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			<p>removed for the tow to the UK.</p> <p><i>Loadline Exemption Certificate from the U.S. Coast Guard</i></p> <p>Loadline certificates were originally issued for the purpose of establishing that a vessel has adequate reserve buoyancy for heavy seas. Current requirements also ensure the watertight integrity of a vessel below its waterline (i.e., hull penetrations) and the weathertight integrity above its waterline (i.e., critical openings in the superstructure, deckhouses, cargo hatches, etc.).</p> <p>These certificates are issued by the local Coast Guard Marine Safety Office and, in the case of the obsolete vessels, apply for the one-time tows made to dismantling facilities from fleet locations. Per 46 CFR 42.03 et seq., the vessel shall be considered as in compliance with applicable loadline requirements. Additionally, when a single voyage authorization is made by the Coast Guard, it states the conditions under which the voyage may be made and any additional safety measures required for a single voyage. The reason for the issuance of the <i>exemption</i> certificate is that ex-Navy vessels would not be issued Loadline Certificates due to their warship status, and obsolete merchant vessels have often been in lay-up for such a long period of time that the previous certificates have expired.</p> <p>The Coast Guard requires information related to the ships and towing evolution. Issues to be addressed relate to control of the vessels while under tow, towing configurations to be maintained during the duration of the tow, spill contingency plans, discussions of weather conditions and operational limitations, communications plan during towing, etc. These are specific to each vessel tow. After the paperwork is satisfactory and a final inspection of the vessel is completed by the local Coast Guard Marine Inspector, the International Loadline Exemption Certificate is issued.</p>
9	1, 3, 4, 5, 8	EA does not include data on historical dead tows nor addresses risks of tandem tows.	<p>See also Response to Comment #7. EA includes data on dead-ship tows in the Hampton Roads area since May 2001, when the U.S. Coast Guard began a formal review and record-keeping procedure. See EA Section 4.8.3, which states that the Coast Guard reviews and approves dead-ship tow proposals, including tandem tows, and may require tow-specific measures.</p> <p>Historical examples of catastrophic losses during tandem dead-ship tows can be found if a global review is undertaken (non-U.S., non-MARAD tows), but such incidents are not comparable to the proposed action, given the level of vessel inspections, safety reviews, U.S. Coast Guard approvals, UK MCA reviews and approvals, insurer inspections and approvals, and detailed tow plans required under the proposed action, and detailed in the EA.</p> <p>The EA has been revised to include the following additional information to further address the comment:</p> <p>Between 1983 and 1994 (when foreign sales were halted), approximately 173 MARAD vessels</p>

			were towed to overseas locations for scrapping. There were no losses during any of those tows. Further, insurance of the tows/ship is a contract requirement. If tandem tows are considered unsafe, the U.S. Coast Guard does not allow the vessels to depart.
10	1, 3, 4, 5, 8, 10	EA inappropriately excludes environmental impacts to the global commons and the U.K.	The EA meets the requirements of Executive Order 12114. Potential effects on the global commons are addressed throughout Section 4 of the EA. Impacts within the UK are addressed by UK laws and regulations, and are subject to a number of reviews and approvals by UK agencies, as described in the EA (e.g. see EA Sections 2.1.1, 4.7.6, 4.8.3, 4.8.4, and 4.8.5).
11	1, 3, 4, 5, 8, 13	EA fails to assess risks to human health (e.g. from uptake of PCBs in marine environment, or from washed up airborne asbestos, or occupational hazards)	The EA addresses potential effects during the tow of obsolete vessels. The number of safety and environmental checks, reviews, and approvals ensure that any effects of the proposed tows would not be significant. See for example EA Section 4.8. See also Response to Comment #21.
12	3, 5, 8, 13	EA fails to assess cumulative impacts.	EA addresses cumulative effects in Section 4.11.
13	1, 4, 5, 8	Proposed action “circumvents the Toxics Substances Control Act’s ban on the export of PCBs.” EA should analyze legal status of the proposed export under TSCA	Appendix A of the EA is the EPA TSCA Enforcement letter. All terms of this letter will be met prior to any vessel tows to the UK.
14	2, 7, 8	Re: Section 6(c)(1) of the National Maritime Heritage Act - MARAD ignored lower bids from other companies - MARAD chose contractor who could not remove vessels in timely manner - MARAD chose inexperienced	MARAD procurement/acquisition methods are beyond the scope of the EA. However, for the purpose of information to commentors: 1. The NMHA requires disposal facilities to be selected on a best value, not on a low bid basis. In the evaluation of proposals to determine best value the cost to the government is considered among other factors. MARAD did not ignore “lower” bids as all proposals are considered in the best value determination. 2. The selected contractor at issue, was ready and able to remove vessels in a timely manner. Legal challenges that prevented the towing of nine of the ships associated with that contract were beyond the control of the contractor. 3. MARAD awarded the contract to a facility with broad experience in dismantling and recycling of shoreside and marine structures including ships, and was found to be qualified.

		<p>shipbreaking contractor</p> <ul style="list-style-type: none"> - MARAD chose contractor with “strawman” facility 	4. The record, experience and capability of the contractor stands on its own.
15	2, 8	MARAD has unspent and unobligated funds	The comment is outside the scope of this EA.
16	2, 8	Commentor states that they tested 6 of the proposed vessels for PCBs in paints. Consider “dried paints” to be under “readily removable” definition.	The EPA Enforcement letter (Appendix A of the EA) defines “readily removable” as “ <i>means the PCBs or PCB item can be removed in a cost effective and efficient fashion without significant risks to human health and the environment, and without compromising ship integrity or seaworthiness. Objects are not readily removable if the objects must be removed by heat, chemical stripping, scraping, abrasive blasting, or similar process.</i> ”
17	2, 8, 13	EA sections describing PCBs make no mention of PCBs in paint.	<p>While Section 3.8 of the EA does not specifically list the potential for PCBs in paints, it also does not include an exhaustive list of the number of “potential locations on older obsolete ships” that may include PCBs. MARAD recognizes that PCBs may be contained in applied marine coatings. Section 3.8 of the EA also states that “Prior to 1980, PCBs were often added or used in materials without being listed.”</p> <p>Appendix A of the EA, the EPA Enforcement letter, includes paints as a possible material on the vessels that may contain PCBs.</p>
18	2, 8	Potential effects on air quality in UK	See Response to Comment #10
19	2, 8	Does PRP contract provision for vessel substitution ensure that only the worst condition vessels will remain in the JRRF?	See Responses to Comments #1 and #8. The seaworthiness of each subject vessel will be assessed and is subject to review and approval by the US Coast Guard.
20	5	Proposed action will increase potential risks of leaks due to transatlantic tows and due to “uncertainties” at Able UK facilities.	See Responses to Comments #1, #8 and #9 regarding the safety of transatlantic tows. See Response to Comment #2 regarding the safety of Able UK facilities and required permits at those facilities prior to ship recycling and dismantling.
21	5, 13	EA must discuss risk of non-liquid PCBs entering the environment as a result of the	The EA (primarily in Sections 4.7 and 4.8) describes the number of inspections, surveys, safety reviews, and approvals/permits required by US and UK agencies prior to the proposed tows taking place. The U.S. Coast Guard evaluates vessel seaworthiness and must grant approval for

		proposed action.	<p>each vessel to be towed prior to its release from the James River Fleet. Vessel seaworthiness, tow plans, tow safety measures, and other factors are all considered by the Coast Guard, MARAD, U.S. EPA, and UK agencies prior to tows. MARAD evaluated these safety and environmental review checks and approvals and reached the conclusion in the EA (Section 4.8.5) that <i>“the potential for release of hazardous materials into the environment during the tow activities – would not be significant, and will be adequately considered, mitigated, and planned for, in accordance with the listed agency requirements.”</i></p> <p>See also EA Appendix A, the EPA Enforcement letter, which states that NDRF vessels may contain PCBs <i>“in some solid materials.”</i> The EPA letter also states that <i>“Many items that contain PCBs are in locations accessible only by dismantling the vessel’s structure. Often, such items are integral to the continuing function of the vessel as a vessel or to maintain the watertight and structural integrity of the vessel.”</i></p>
22	5	EA should identify and evaluate other sources of liquid PCBs on board subject vessels.	See Responses to Comments #1a, #1b, #8, #9
23	5	Dead-ship tows are not insurable	The EA states in Section 4.8.3 that MARAD’s contract with PRP requires the contractor “to obtain all necessary insurance and bonding.” This also extends to tower’s insurance. See also Response to Comment #8.
24	5	EA should analyze legal status of the proposed export under RCRA. (incl. Transit States Notice)	See EA Section 3.8.1 on applicability of RCRA
25	5	EA should assess possible outcome of exported vessels being returned to US	This comment references exported vessels that are outside the scope of this EA.
26	5, 10	EA should assess possibility of transshipment/outsourcing to another scrapyards and/or a third country	This comment references exported vessels that are outside the scope of this EA.
27	5	Cooling water for nuclear power stations	Scenario described in comment is extremely remote and speculative, and therefore beyond the reasonable circumstances that NEPA requires an analysis of.
28	5	EA should assess air quality effects of transatlantic tow	EA evaluates these effects in Section 4.1. All U.S. areas for the proposed tows are in attainment for criteria pollutants, and impacts due to proposed action would be negligible and very short-

			term (a few days), particularly in context to the area’s ship traffic (see EA Section 3.7.3).
29	7	ESCO would have bid if they had known PRDA “was intended to be used as a means for bidding vessels at competitive prices”	MARAD procurement/acquisition methods are beyond the scope of this EA. However by way of information, ESCO did submit PRDA proposals for the disposal of ships at both domestic and foreign facilities.
30	7	MARAD is in violation of section 35.02 of FY 01 NDAA requirement to acquire ship disposal services on best value basis	See Responses to Comments #3, 5, and 14.
30a	10	MARAD has not demonstrated that contract with PRP met best value factors	See Responses to Comments #3, 5, and 14.
31	10	MARAD did not use consistent definition of non-retention, obsolete vessels – inclusion of unfinished oilers in PRP contract.	Issues related to which ships were available under the PRDA are beyond the scope of this EA. However, by way of information, the “unfinished oilers” were included on the listing of obsolete, non-retention ships available for disposal. The listing was clearly annotated, posted in February of 2002 and available to all interested parties and potential offerors.
32	10	EA has not incorporated DoD or USN policy and standards into the EA. MARAD should include DoD U.S. Transportation Command, U.S. Navy Ship Disposal program office, and U.S. Army Corps of Engineers in review of the EA.	<p>MARAD and DOT policy guidance provides several factors for Federal agencies to consider when determining whether it is appropriate to extend the opportunity to become a cooperating agency [<i>“October 19, 2001 Memorandum from CEQ to Heads of Federal Agencies”</i>]. First, agencies that have Jurisdiction by law must be invited (40C.F.R.1508.15) if they have:</p> <ul style="list-style-type: none"> - Authority to approve a proposal or a portion of a proposal - Authority to veto or a portion of a proposal - Authority to finance a proposal or portion of a proposal. <p>Second, agencies with Special Expertise (40 C.F.R.1508.14) may be invited if they have:</p> <ul style="list-style-type: none"> - Statutory responsibility - Agency mission (similar in scope) - Related program expertise <p>Although the agencies the commentor referenced have similar missions and program expertise,</p>

			the scope of this EA is not normally an action that would require this type of cooperation among agencies, considering the fact that these actions are categorically excluded by the Navy and the U.S. Coast Guard disposes of most of their vessels via the General Services Administration disposal process.
33	10	MARAD must provide support for differences between 1997 EA that evaluated domestic scrapping and this EA	The 1997 <i>Environmental Assessment of the Sale of NDRF Vessels for Scrapping</i> was an overarching EA that evaluated all alternatives for disposal of obsolete vessels. The current <i>Draft EA for Transfer of NDRF Vessels from JRRF for Disposal at Able UK Facilities, Teesside, U.K.</i> specifically evaluates the potential effects of the tow of approximately nine vessels to Able U.K.
34	10	MARAD should include in the EA how it expects to meet the September 2006 deadline for disposal of obsolete ships	This issue is beyond the scope of the EA.
35	14	City of Newport News, VA favors removal of the reserve fleet.	

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No.	Party	DMS Doc. No.	No.	Party	DMS Doc. No.
1	Rutkowski, Robert E. #1	2004-17166-3	8	ESCO Marine, Inc. #2 (“fully concur” with all comments submitted by #1, 2, 3)	2004-17166-10
2	International Shipbreaking Limited, LLC	2004-17166-4	9	ESCO Marine, Inc, #3 (“concur” with comments submitted by #2, 3)	2004-17166-11
3	Sierra Club	2004-17166-5	10	Ross and Parks, Inc.	2004-17166-12
4	Rutkowski, Robert E. #2	2004-17166-6	11	All Star Metals LLC #1	2004-17166-13
5	Basel Action Network	2004-17166-7	12	All Star Metals LLC #2 (duplicate to # 11/DMS 17166-13)	2004-17166-14
6	International Shipbreaking Limited, LLC (duplicate to #2/ DMS 17166-4)	2004-17166-8	13	Environmental Stewardship Concepts	2004-17166-15
7	ESCO Marine, Inc. #1	2004-17166-9	14	City of Newport News, Office of City Manager	2004-17166-16

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Comment Letters

Docket Clerk, US DOT Dockets

Room PL-401, Department of Transportation

4000 7th St. SW, Washington DC 20590-0001

RE: Docket No. MARAD 2004-17166

Dear Sir or Madam:

On February 27, 2004, the US Maritime Administration (MARAD) and the Department of Transportation (DOT) welcomed the public's opinion and comments on the draft Environmental Assessment on the Transfer of National Defense Reserve Fleet Vessels from the James Rivers Reserve Fleet for Disposal at Able UK Facilities, Teesside, UK.

The draft EA fails to establish that there are no significant risks facing the affected communities and environment both in the US and UK and in the global commons. This failure stems from the draft EA's failure to present crucial data or critical alternatives in its analysis. The following are important points that the draft EA must elaborate:

1. The EA should have provided an actual study of the nine remaining vessels instead of making a blanket assurance that things are safe and operational, without the corresponding proof of such assertions. We need to ask MARAD and EPA to:

[Provide data on the hull conditions and materials remaining in the vessels (see Section 3.7);

[Provide an inventory of all of the hazardous wastes in the 9 vessels (see Section 3.8); and

[Provide an inventory of oils, and contaminated or oily bilge and ballast water, etc. (see Section 3.8)

2. MARAD must state the facts - that AbleUK does not have the necessary permits in place to undertake this scheme and there are strong doubts that such permits will be put in place in the near future, if ever. The EA should address the following issues: the actual lack of existence of those permits, the consequences of the failure to obtain or the revocation of those permits. Lack of such permits violates the OECD agreement on shipments of wastes for recycling implemented in the Resource Conservation and Recovery Act (RCRA) under which this export was allowed. (Check out and reference the UK Environmental Agency's position in denying the permits at: http://www.environment-agency.gov.uk/subjects/waste/588494/?version=1&lang=_e)

3. Further, the export circumvents the Toxics Substances Control Act's ban on the export of PCBs. Such export is forbidden in the absence of an exemption granted following a special rulemaking procedure that was not obtained from EPA to waive the ban.

4. In its discussion of the environmental effects, Section 4.0 of the draft EA, the draft EA offers a misleading limited choice between the proposed action alternative (sending to the UK) and a no action alternative (keeping the vessels in the James River). The EA should have included a third alternative -- a critical environmental analysis of conducting the ship breaking in the US,

including a recognition that minimizing dangerous towing operations will minimize the environmental risk as well as energy use.

5. MARAD must also include analysis of a fourth option in the EA -- prior decontamination of all oils and hazardous wastes as near to the site of origin as possible, prior to any further recycling, at home or abroad.

6. MARAD claims insufficient US domestic recycling capacity. Then it should justify why several US ship recyclers were denied the contract given that Able UK cannot even perform its present obligation and given the fact that these same US recyclers in fact claim that they have adequate capacity to recycle the ships while helping to build the recycling infrastructure in this country and providing jobs. (see Needless Risk report pages 14-15). (Section 2.3.1).

7. There is a need to raise environmental and health issues on other hazardous materials that were not mentioned in the EA, particularly PCBs in paints, cadmium, lead, mercury, etc. The effects of all hazardous materials on the environment during towage and in the case of a loss at sea or in coastal waters must be explored thoroughly in the EA. (related to Section 3.8 of the draft EA)

8. The draft EA discusses a catastrophic oil spill plan, but does not disclose such plan despite the requirement to assess risks of natural disasters and unique and uncertain risks. MARAD should provide this plan, and it should also explore the simple option of pumping out all the oil and oily bilge and ballast waters while the vessels are sitting in the James River. (Section 4.3)

9. The coast guard towing permit is hardly a guarantee against losses, as history can demonstrate. Yet, the draft EA does not assess the likelihood or potential impacts of a possible leak, spill or sinking en route caused by unseaworthiness, mechanical failure or act of god.

10. MARAD discusses in the draft EA the number of dead tows performed in 2003, but includes no data on the numerous historical failed dead tow attempts or the reasons for the failures. Nor does MARAD assess the risks of tandem dead tows, the fact that the US navy does not allow tandem tows, or the uninsurability of such tows. (Sections 4.7.4 and 4.8.1)

11. The scope of review inappropriately excludes environmental impacts to the global commons (high seas) and the United Kingdom.

12. The Draft EA fails to assess risks to human health (e.g. from uptake of PCBs in marine environment, or from washed up airborne asbestos, or occupational hazards).

Thank you for the opportunity to bring these remarks to your attention.

Mindful of the enormous responsibilities which stand before you, I am,

Yours sincerely,
Robert E. Rutkowski

cc:
Nancy Pelosi
Andrew H. Card, Jr.

2527 Faxon Court
Topeka, Kansas 66605-2086

P/F: 1 785 379-9671
r_e_rutkowski@myrealbox.com

March 22, 2004

Docket Clerk
U.S. Department of Transportation Dockets
Room PL-401
Department of Transportation
400 7th Street, SW
Washington, DC 20590-0001

Ms. Deborah Aheron
U.S. Department of Transportation
Maritime Administration
400 7th Street, SW
Washington, DC 20590-0001

Re: Docket number MARAD 2004-17116

Dear Sirs or Madams,

We have reviewed the draft Environmental Assessment dated February 20, 2004 prepared by the Louis Berger Group, Inc. and would like to share our thoughts with you.

□ ***Page 5 Legal Framework: Selection of Scrapping Facilities.***

We believe that MARAD did not properly follow Congress' direction pursuant to 6 (c) (1) of the NMHA of 1994 for the following reasons:

1. MARAD ignored lower bids from other companies such as ourselves (violates the least cost to the government provision). MARAD is well aware that we bid \$112 per ton on May 14, 2004 for these ships well before the Able UK contract was signed on July 25, 2004 at \$144.65 per ton. In addition, MARAD asked us on December 4, 2003 to extend our pricing for an additional year, which we did on December 16, 2003;
2. MARAD chose a contractor who could not remove the vessels in a timely manner;
3. MARAD chose an inexperienced "Shipbreaking" contractor, thereby not giving consideration to worker safety and the environment. Able UK may have performed some past "marine structure" work, but to our knowledge there has been no shipbreaking performed at this facility.
4. MARAD chose a contractor with a "strawman" facility. The actual physical facility did not match the advertisement and there were no permits in place to start construction to meet the advertisement. Also, this facility may not have anything

other than a mud seafloor bottom: This may be acceptable for rigs, but is questionable for vessels with deteriorated hulls.

5. MARAD did not minimize the geographic distance that the vessels must be towed by choosing to tow them over 4,600 miles. Also, the facility location places the final leg of the journey thru congested sea lanes and environmentally critical coastlines.

These mis-directions have shown that MARAD has a pre-disposition for foreign scrapping over domestic scrapping by choosing a more expensive option using a less experienced contractor that is farther away and that takes longer to remove the ships. This shows a clear pre-disposition, in violation of 6 (c) (1) of the NMHA of 1994.

□ ***Page 9 Description of proposed Action Alternatives***

The logic that pervades this section creates an artificial “Hobson’s choice’ for the reader. One is led to believe that only the transfer of the vessels to Able UK is available and that choice is better than doing nothing. As described below, there are other alternatives available to MARAD; unfortunately they simply prefer to export the vessels. Ironically, since MARAD has so far been unsuccessful in exporting, they have taken no action as their alternative in order to support their flawed logic and less than accurate recitation of the facts.

□ ***Page 15 No Action Alternative:***

Under the No Action Alternative, the nine obsolete NDRF vessels would remain moored at the JRRF “*until funding was available and/or they were disposed of via another cost effective, best value proposal made through the PRDA process, or through an invitation for bid.*” Congress appropriated \$31 million for fiscal year ’03, a substantial amount of which is still unspent and they appropriated \$16 million for ’04, all of which is unobligated and unspent. In addition, MARAD has long had lower cost proposals in hand, yet they continue to not take any action in choosing other best value alternatives.

□ ***Page 16 Domestic Disposal Facilities***

We know of six ship recycling facilities *currently* operating in the United States, four in Brownsville, TX, one in Philadelphia, PA and one in Norfolk, VA.. Of these facilities, four can take ships simultaneously, including our facility that can accommodate nine vessels simultaneously. All of these facilities have long met MARAD shipbreaking requirements and two have been operating under the more stringent Navy standards for “five years”. Currently, our facility only has four vessels occupying space, with over 220 employees solely dedicated to shipbreaking. At their request, we have supplied MARAD with our capacity figures and diagram of our facility. Apparently, MARAD did not share this information with their consultant. We have attached this information to this letter for your benefit.

One area that perplexes us is the insistence that a ship disposal facility “*have the capacity to accommodate a number of ships simultaneously*”. While we mentioned above that four facilities can accommodate multiple vessels, these same facilities can also receive and dismantle vessels continuously. This cannot be said of Able UK. Once Able UK receives their vessels and closes the imaginary door to their storage area, they cannot receive additional vessels until the work is completed and the imaginary door is re-opened. The domestic facilities can receive vessels continuously and dismantle them simultaneously in a proven assembly line process. This is the ship disposal equivalent of walking and chewing gum at the same time.

□ **Page 23 section 3.3.3 Sediment**

We note with interest the last paragraph of this section that states “*Polychlorinated Biphenyls (PCBs) were recently reported in the James River in 2002 (The Daily Press, 2003). The source of the PCBs has not yet been determined.*” One possible source could be the PCB contaminated paint covering the hulls on many of the vessels moored at the JRRF. We have tested six of the nine vessels awaiting departure to Able UK and three have tested positive for PCB contaminated paint in excess of 50 ppm. In fact, one of the vessels tested up to levels exceeding 3,200 ppm of PCBs in exterior superstructure paint. Apparently, MARAD does not test for PCBs in paint on their vessels. Nor does Able UK, which is mandated to ... “*remove solid items containing PCBs ≥ 50ppm when such solid items are readily removable...*”, including “*dried paints*” as stated in the Enforcement Discretion letter dated May 22, 2003 (Exhibit A). The removal of PCB laden dried paint has been successfully completed by Navy ship disposal contractors on numerous vessels for many years.

□ **Page 33 section 3.8 Hazardous Materials and page 55 section 4.8.1 Vessel Surveys**

The sections describing PCBs make no mention of PCBs in paint. We find this curious since not only does the Enforcement Discretion letter specifically address this, the EPA has a testing protocol for determining the levels of PCBs in paint and MARAD requires domestic scrappers to test for PCBs in paint using this protocol. The reason this is so important is to prevent PCB contaminated scrap metal from being torch cut by shipyard workers and being used as a feedstock for steel mills who do not have the proper environmental permits, controls and processes in place to prevent the PCBs from entering the environment via smokestack emissions. The EPA (or to our knowledge the EA) has not inquired what steel mills will be buying the scrap steel, whether the mills have been notified of the potential for PCB and whether they that have the permits, controls and processes in place to destroy the PCBs. Even though the ship will be dismantled at Teeside, the PCBs will only be destroyed if they are smelted at an approved facility or removed prior to sale. It is noted that no steel mill or smelter in the US is willing to accept the PCB material. We must remove or landfill. (Note: we have installed our own smelter that will handle aluminum contaminated up to 499 ppm of PCBs).

□ **Page 43 Section 4.2 Air Quality**

This section makes no assessment of the effects on air quality of the improper smelting of PCB contaminated scrap metal referred to above. We would presume that this would qualify for assessment under EO12114.

□ **Page 51 Vessel Surveys**

We understand that Able UK representatives surveyed many if not all of the vessels for tow ability last summer. That is one of the reasons the *Canopus* was substituted for the *Marine Fiddler*. This information has not been provided in the Environmental Assessment. Since the contract allows for substitution of vessels based upon their ability to endure a 4,600 mile ocean tow, and we know certain of the remaining nine vessels are in unsuitable condition to make the tow, doesn't that result in the perverse result that only the worst condition vessels will remain in the JRRF? This completely undercuts the Environmental Assessment's conclusions on page 58 since certain of the vessels will never leave under the Able UK contract.

We trust these comments prove useful in providing an accurate and factual assessment of the history leading up to the award of this flawed contract and to an accurate assessment of the real environmental threats this contract results in. Please call me at 914-253-4940 if you have any questions.

Sincerely,

Kevin J. McCabe
Chairman

274552

#3



March 18, 2004

Docket Clerk, US DOT Dockets
Room PL-401
Department of Transportation
4000 7th Street, SW
Washington, DC 20590-0001

RE: Docket No. MARAD 2004-17166

To Whom It May Concern:

On behalf of the Sierra Club, I respectfully submit this document for the official record as public comment regarding the draft Environmental Assessment for the *Transfer of National Defense Reserve Fleet Vessels from the James River Reserve Fleet for Disposal at Able UK Facilities, Teesside, UK*.

The plan to send vessels from the James River Reserve fleet (commonly referred to as the Ghost Fleet) to the United Kingdom for disposal presents many concerns to the members of the Sierra Club. We are concerned that this plan is in contravention of current U.S. law, that this plan unnecessarily imperils the marine environment in the United States, on the high seas, and abroad, that there are safer adequate means of disposal in the United States, and that domestic scrapping of these vessels is in the public interest. Domestic scrapping would ensure ongoing control over the environmental impacts of vessel scrapping, domestic disposal is good for the economy and would create jobs, and the United States has a global responsibility to manage its own wastes.

The draft Environmental Assessment (EA) released by MARAD and the Department of Transportation omits crucial information needed to help the public determine the potentially significant environmental risks of the export to the U.K.

The Sierra Club urges MARAD to address the following points in the Environmental Assessment:

1. The EA should have provided an actual study of each of the nine remaining vessels instead of making a blanket assurance that the vessels are safe and operational, without the corresponding proof of such assertions. MARAD and EPA should do the following:
 - a. Provide data on the hull conditions as well as the materials remaining in each of the vessels (Section 3.7);

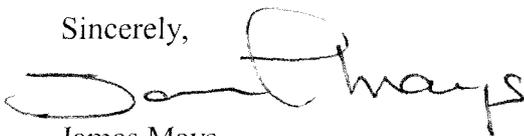
- b. Provide an inventory of all the hazardous wastes in the nine vessels (Section 3.8); and,
 - c. Provide an inventory of oils, and contaminated or oily bilge and ballast water, etc. (Section 3.8).
2. The draft EA does not state the facts that Able UK does not have the necessary permits in place to undertake this project, and that there are strong doubts that such permits will be in place in time for this project to continue. Nor does the draft EA explain the environmental reasons for the lack of permits. Lack of such permits violates the OECD agreement on shipments of wastes for recovery implemented in the Resource Conservation and Recovery Act (RCRA) under which this export was allowed. The EA should address the following issues:
 - a. The lack of necessary permits;
 - b. The environmental reasons for lack of necessary permits;
 - c. The consequences of the failure to obtain the necessary permits;
 - d. The potential revocation of these permits.
3. Section 6(c)(1) of the National Maritime Heritage Act directs MARAD to select a dismantling facility based upon the facilities ability to dismantle vessels “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.” In its discussion of the environmental effects (Section 4.0), the draft EA offers a limited choice between the proposed action alternative (sending to the UK) and a no action alternative (keeping the vessels in the James River). The EA should include a third alternative – a critical environmental analysis of conducting the ship breaking in the United States, including a recognition that minimizing dangerous towing operations will minimize the environmental risk as well as energy use.
4. MARAD must also include analysis of a fourth option in the EA – prior decontamination of all oils and hazardous wastes as near to the site of origin as possible, prior to any further recycling, at home or abroad.
5. Because MARAD claims insufficient US domestic disposal capacity, the EA should justify why several US ship scrappers were denied the Pilot Program contract given that Able UK cannot even perform its present obligations and given the fact that these same US ship scrappers in fact claim that they have adequate capacity to dismantle the ships while helping to build the vessel recovery infrastructure in this country and providing jobs. (Section 2.3.1).
6. The draft EA should assess the potentially significant environmental and health impacts posed by the hazardous materials not mentioned in the EA – particularly PCBs in paints, cadmium, lead, mercury, and other toxic materials. The potential environmental impacts of all hazardous materials on each of the vessels must be thoroughly assessed. This assessment must address the

individual and cumulative risks of leak, spill, or catastrophic loss during vessel tow. (Related to Section 3.8 of the draft EA).

7. The draft EA discusses a catastrophic oil spill plan, but does not disclose such plan despite the requirement to assess risks of natural disasters and unique and uncertain risks. MARAD should disclose this plan, and it should also explore the simple option of pumping out all the oil and oily bilge and ballast waters while the vessels are sitting in the James River. (Section 4.3).
8. Although the coast guard towing permit is hardly a guarantee against losses, as history can demonstrate, the draft EA does not assess the likelihood or potential impacts of a possible leak, spill, or sinking en route caused by unseaworthiness, mechanical failure, or act of god.
9. In the draft EA, MARAD discusses the number of dead tows performed in 2003, but includes no data on the numerous historical failed dead tow attempts, or the reasons for these failures. Nor does MARAD assess the risks of tandem dead tows, the fact that the US navy does not allow tandem tows, or the insurability of such tows. (Sections 4.7.4 and 4.8.1)
10. The scope of review inappropriately excludes environmental impacts to the global commons (high seas) and the United Kingdom.
11. The draft EA fails to assess risks to human health (e.g. from uptake of PCBs in marine environment, or from washed up airborne asbestos, or occupational hazards).
12. The draft EA fails to assess the cumulative impacts of each of the above mentioned potential environmental risks, despite NEPA's requirements.

The draft EA fails to establish that there are no significant risks facing the affected communities or environment in the US, the UK, or the global commons. *This failure stems from the failure to present crucial data and analysis or critical alternatives in the draft EA.* The draft EA does not give a comprehensive evaluation of the potential impacts resulting from the export of these nine vessels. The Sierra Club respectfully urges MARAD and DOT to integrate the above concerns into the final Environmental Assessment.

Sincerely,



James Mays
Chair, Sierra Club Waste Committee
2545 County Rt. 3
Olivebridge, NY 12461
(845) 657-2013

Docket Clerk, US DOT Dockets
Room PL-401, Department of Transportation
4000 7th St. SW, Washington DC 20590-0001

RE: Docket No. MARAD 2004-17166

Dear Sir or Madam:

On February 27, 2004, the US Maritime Administration (MARAD) and the Department of Transportation (DOT) welcomed the public's opinion and comments on the draft Environmental Assessment on the Transfer of National Defense Reserve Fleet Vessels from the James Rivers Reserve Fleet for Disposal at Able UK Facilities, Teesside, UK.

I ask MARAD to better address:

1. The EA should have provided an actual study of the nine remaining vessels instead of making a blanket assurance that things are safe and operational, without the corresponding proof of such assertions. We need to ask MARAD and EPA to: Provide data on the hull conditions and materials remaining in the vessels (see Section 3.7); Provide an inventory of all of the hazardous wastes in the 9 vessels (see Section 3.8); and Provide an inventory of oils, and contaminated or oily bilge and ballast water, etc. (see Section 3.8)
2. MARAD must state the facts - that AbleUK does not have the necessary permits in place to undertake this scheme and there are strong doubts that such permits will be put in place in the near future, if ever. The EA should address the following issues: the actual lack of existence of those permits, the consequences of the failure to obtain or the revocation of those permits. Lack of such permits violates the OECD agreement on shipments of wastes for recycling implemented in the Resource Conservation and Recovery Act (RCRA) under which this export was allowed. I reference the UK Environmental Agency's position in denying the permits at:http://www.environment-agency.gov.uk/subjects/waste/588494/?version=1&lang=_e)
3. Further, the export circumvents the Toxics Substances Control Act's ban on the export of PCBs. Such export is forbidden in the absence of an exemption granted following a special rulemaking procedure that was not obtained from EPA to waive the ban.
4. In its discussion of the environmental effects, Section 4.0 of the draft EA, the draft EA offers a misleading limited choice between the proposed action alternative (sending to the UK) and a no action alternative (keeping the vessels in the James River). The EA should have included a third alternative -- a critical environmental analysis of conducting the ship breaking in the US, including a recognition that minimizing dangerous towing operations will minimize the environmental risk as well as energy use.
5. MARAD must also include analysis of a fourth option in the EA -- prior decontamination of all oils and hazardous wastes as near to the site of origin as possible, prior to any further recycling, at home or abroad.
6. MARAD claims insufficient US domestic recycling capacity. Then it should justify why several US ship recyclers were denied the contract given that Able UK cannot even perform its present obligation and given the fact that these same US recyclers in fact claim that they have adequate capacity to recycle the ships

while helping to build therecycling infrastructure in this country and providing jobs. (see Needless Risk report pages 14-15). (Section 2.3.1).

7. There is a need to raise environmental and health issues on other hazardous materials that were not mentioned in the EA, particularly PCBs in paints, cadmium, lead, mercury, etc. The effects of all hazardous materials on the environment during towage and in the case of a loss at sea or in coastal waters must be explored thoroughly in theEA. (related to Section 3.8 of the draft EA)

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11. The scope of review inappropriately excludes environmental impacts to the global commons (high seas) and the United Kingdom.

12. The Draft EA fails to assess risks to human health (e.g. from uptake of PCBs in marine environment, or from washed up airborne asbestos, or occupational hazards).

Thank you for the opportunity to bring these remarks to your attention.

Mindful of the enormous responsibilities which stand before you, I am,

Yours sincerely,
Robert E. Rutkowski

cc:
Nancy Pelosi
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March 29, 2004

Docket Clerk, US DOT Dockets
Room PL-401, Department of Transportation
4000 7th St. SW, Washington DC 20590-0001
RE: Docket No. MARAD 2004-17166

Dear Sir or Madam:

The Basel Action Network (BAN) submits these comments pursuant to the invitation of the US Maritime Administration (MARAD) and the US Department of Transportation (DOT) welcoming the public's opinion and comments on the draft Environmental Assessment on the Transfer of National Defense Reserve Fleet Vessels from the James Rivers Reserve Fleet for Disposal at Able UK Facilities, Teesside, UK (EA), 69 Fed. Reg. 9422 (Feb. 27, 2004).

BAN is gravely concerned about the lack of substantive analysis in the EA's attempt to assess the potentially significant environmental and health risks posed by the proposed export of nine "Ghost Fleet" vessels for disposal in the United Kingdom. As discussed herein, the magnitude of potentially significant environmental harm posed by the proposed export is very high. It is very alarming that MARAD has done so little to assess these potential harms in a serious and substantive way. The glaring omissions are simply unacceptable, and BAN sincerely hopes that MARAD promptly addresses these issues as it revisits the EA. Moreover, given the lack of substantive analysis, BAN would respectfully request an opportunity to provide further comment on a revised draft EA.

In light of the specific requirements of the National Environmental Policy Act (NEPA), as implemented by the Council on Environmental Quality's (CEQ) "Regulations for Implementing NEPA" (40 CFR §§ 1500-1508), as well as Executive Order 12114, the EA's specific deficiencies are discussed in turn below. BAN reminds MARAD that NEPA requires the agency to engage in scientific analysis of a high quality before it takes any decision in this matter. See 40 CFR § 1500.1(b).

I. The EA must provide current data on the hull conditions of the remaining nine vessels, particularly looking at the corrosion and wastage found at the waterline area, and include a full inventory of materials remaining in the vessels (see Section 3.7)

The deteriorated condition of the National Defense Reserve Fleet (NDRF) vessels has already caused several vessels to leak. The proposed project will increase the potential environmental risks of leaks in at least two major ways. First, trans-Atlantic towing will place severe and unknown stresses on weak and dilapidated hulls and tanks, increasing the existing risk of leak during the tow period. In contrast to leak remediation in the James River, timely prevention and/or remediation of a leak during oceanic transit is nearly impossible. Second, due to uncertainties surrounding the capacity of the proposed disposal facility to actually dispose of the vessels in a timely fashion, vessels further

weakened by trans-Atlantic towing may sit in U.K. territorial waters for an indefinite period. The net effect of this latter uncertainty is the transfer of an exacerbated risk of leak from U.S. to U.K. waters. These risks have not been disclosed or assessed.

The risk of leak is detailed in a letter written by MARAD to the United States Environmental Protection Agency (EPA) on 12 November 2001 in which MARAD cites several incidences of spills or serious threats since 1998, including:

- September 1998: EXPORT CHALLENGER began leaking from the hull and discharged approximately 4,000 gallons of fuel.
- 14 August 2000: Tank C-407-F of the USS DONNER started to leak, discharging approximately 1,000 gallons of oil. The spill extended a ½ mile oil slick.
- 31 August 2001: 300-400 gallons of water was found leaking into the USS BUILDER engine room daily. Total oil on board the vessel is 48,000 gallons.

The age of the 62 JRRF vessels examined by the JRRF Hull Deterioration Study ranges from 62 to 22 years of age with an average age of 48.75 years in the year 2003. The vessels' conditions were prioritized in various studies conducted over the years. One of the recent studies created a prioritization by ranking four criteria: total hull oil on board; date built; date the vessel entered the JRRF; and hull condition. Each of these categories was then given certain rankings and the addition of all of these scores gave a total vessel score. The higher the number the more risk the vessel poses to the environment.

Of the 13 vessels proposed for export to the UK, all are in the JRRF fleet and 11 appear on the priority list of 40 worst-condition vessels. The vessels, their ages, hull oil quantities, year they entered the JRRF, and their hull conditions, with 1 being worst, are listed in Annex 4 of this submission. The total score is meant to help prioritize the vessels most in need of disposal and/or remediation.

One of the most serious concerns with respect to the vessels proposed for export is the fact that the steel plating of the vessels' hulls has deteriorated due to corrosion. The following table demonstrates the percentage of plating wastage for three of the 13 vessels proposed for export.

Figure 1: Hull Plating Wastage Percentage

Source: Hull Deterioration Study, 1998. (Annex 3).

In March 2000, the Department of Transportation Office of the Inspector General (OIG) issued an audit report regarding the progress of the MARAD disposal program. The OIG stated that:

"Environmental dangers associated with MARAD's old, deteriorating ships are very real and increasing daily. These vessels are literally rotting and disintegrating as they await disposal. Some vessels have deteriorated to a point where a hammer can penetrate their hulls... if the oil on these vessels were to enter into the water, immediate state or Federal action would be required..."

The above facts point to the fragile state of the hulls of the vessels. Thus, a thorough study on the condition of the remaining nine vessels is a prerequisite

to a serious assessment of the risks posed by the proposed vessel exports. Such study would demonstrate that the environmental risks of domestic disposal, an alternative completely omitted from the EA, are drastically less than the risks posed by the proposed export.

II. The EA must provide a full inventory of all of the hazardous wastes in the nine vessels and an analysis of the potential significant cumulative, direct, and indirect impacts on the environment and human health in the US, the UK, and on the global commons during towage and in the case of a total or partial loss at sea or in coastal waters (see Section 3.8)

In order to have a reasonable determination of significant impact on the environment and human health, the EA must afford the agency and the public an understanding of what hazards the nine vessels actually contain. BAN has obtained a listing of some of the hazardous wastes on board the thirteen vessels, attached hereto as Annexes 5 and 6. Some of the hazardous substances of particular concern are discussed in turn.

1. PCBs - "Liquid" and "Non-liquid"

The risk assessment prepared by the Det Norske Veritas (DNV) for Post-Service Remediation Partners, LLC (PRP), reveals that the total non-liquid PCB content could be as high as 698 tonnes on the 13 vessels. The materials commonly containing non-liquid PCBs include gaskets, paints, adhesives, cables, foam, cork, felt and other insulation, caulking material, rubber-like material, and plastics.

Although the EA fails entirely to discuss the likely environmental and health risks posed by the significant quantities of PCBs present on the vessels, MARAD has in the past argued that non-liquid PCBs are less likely to enter or threaten the marine environment than liquid PCBs. MARAD must discuss this risk in the EA, and should not continue to maintain a position not supported by science. The risk of non-liquid PCBs entering the environment as a result of the proposed export is significant.

PCBs are not commonly classified as "solid" or "liquid" because PCBs only exist as oily liquids. The so-called "solid" or "non-liquid" PCB's present on the vessels at issue here are more accurately liquid PCB's impregnated into porous materials like gaskets, filters, and in other materials discussed earlier. PCB's are toxic in any form, regardless of whether the PCB's are in free liquid form, impregnated into porous materials (gaskets, filters, etc.) or in thick resins.

PCB's are not inert in any form, and remain mobile in water, tissue, soil, sediment and air. The degree of movement of PCB's in or from any medium depends on the physical conditions, especially temperature, light, and amount of water. PCB's impregnated in solid materials such as gaskets, filters, rubber hoses, etc., share the same basic chemical structure of the PCB's in an oily liquid form. This characteristic ensures that PCB's are no less toxic in their "solid" forms, and they are equally able to migrate out of the solid material into the environment, particularly for PCB's impregnated in old, cracking, flaking, powdering, and crumbling, aged insulation, paint, and gasket materials, as is the case with these vessels.

In a letter purporting to grant MARAD enforcement discretion regarding the PCB control regulations of the Toxic Substances Control Act (TSCA), currently the subject of a pending litigation, the United States EPA has required that MARAD demand that, prior to export, the contractor remove all transformers and large high and low voltage capacitors, hydraulic and heat transfer fluids containing PCBs greater than 50 parts per million (ppm) in concentration. However, it remains unclear whether all of the liquids on board the vessels that may contain PCBs have ever been tested for PCBs. For example, it is unclear whether or not the fuel or the bilge waters have been tested for PCBs.

Likewise, EPA has required the removal of all "readily removable" solid PCBs. According to the EPA, "readily removable" means the PCBs or PCB item that can be removed in a cost effective and efficient fashion without significant risks to human health and the environment, and without compromising vessel integrity or seaworthiness. Objects are not readily removable if the objects must be removed by heat, chemical stripping, scraping, abrasive blasting, or similar process. With this definition, it remains unclear what "readily removable" really meant to those tasked with removing some of the PCBs. In other words, the actual quantity of PCBs on board the vessels proposed for export is unclear and altogether unassessed in the EA. In any case, these requirements will leave the following potential sources of PCBs on board the vessels:

[Liquid PCBs in concentrations below than 50 ppm (e.g. fuel, transformer, and other oils and bilge waters)

This category can be quite significant if PCBs are found in the fuel oil present on some of the vessels proposed for export. Even at lower concentrations the total volume of discharged PCBs could represent a very significant contaminant in a sensitive marine environment. Such sources would very easily enter the marine environment in the event of a sinking or breaching of the hull.

[Liquid PCBs present in fuel oil or bilge waters in concentrations greater than 50 ppm but untested

It is possible that diesel or bunker fuels or bilge waters are contaminated with PCBs. Thus, it is imperative to test all liquids, not just ones that were manufactured to contain PCBs, to ascertain PCB content. To our knowledge this has not been done for fuel oils or bilge waters. Such sources would very easily enter the marine environment in the event of a sinking or breaching of the hull.

[Non-liquid PCBs in concentrations greater than 50 ppm that were not readily removable

Non-liquid PCBs consist of old deteriorating gaskets, paints, adhesives, rubber devices, and electrical insulation. Due to the age of the vessels these materials are typically flaking, powdering, and crumbling. Indeed it is estimated that on one vessel alone as much as 17,000 pounds of loose paint was encountered. These materials easily disperse in the marine environment.

[Non-liquid PCBs in concentrations less than 50 ppm

Likewise, there may be considerable quantities of PCB material in concentrations below 50 ppm, the environmental impacts of which have not been assessed.

[Liquid PCBs in concentrations greater than 50ppm that were supposed to be removed but were not found prior to export.

The MARAD/PRP contract discusses the possibility that liquid PCBs exceeding 50ppm could be found and that if that were indeed the case, then they would need to be incinerated. Thus, despite the conditions imposed by EPA in their enforcement discretion letter, they have anticipated the likelihood that not all PCBs, liquid or otherwise, exceeding 50ppm will be found. Any liquid PCBs have a great risk of leaking into the marine environment in the event of a breached hull or sinking.

Last, the notion that liquid PCBs pose a greater threat to the marine environment than non-liquid PCBs is false. Indeed, PCBs were used specifically because of their propensity not to solidify. When placed into a non-liquid matrix, PCBs retain that quality and will therefore easily leach if submerged, even temporarily, in a marine environment.

Retrievable and Irretrievable Loss

Losses of the vessel at sea can fall into two categories - retrievable and irretrievable.

In a typical retrievable accident, the lost vessel is submerged in and filled with sea or river water and is then brought back to the surface. In such an event, and depending on the duration of the loss, transformer, capacitor and hydraulic fluids most often remain sealed in containerized units and therefore do not disperse. However, crumbling, powdering, fragmenting chips and fluff will easily wash into and disperse in the environment. In a typical irretrievable accident, it is expected that both liquid and non-liquid PCBs will escape into the marine environment.

The notion that liquid PCBs present more of a threat to the marine environment than non-liquid PCBs is simply untrue.

PCB Leakage - Toxic Impact to Communities and the Environment

PCBs are known to have a high degree of chemical stability, resistance to thermal breakdown, and resistance to many oxidants and other chemicals. These characteristics propelled their wide usage as coolants and lubricants in transformers, capacitors, and other electrical equipment.

PCBs do not occur in the natural environment. They enter the air, water, and soil during their manufacture, use, and disposal; from accidental spills and leaks during their transport; and from leaks or fires involving products containing PCBs.

PCBs are very stable. They do not readily break down in the environment, and are able to persist for very long periods of time. PCBs can travel long distances in the air and be deposited in areas far away from where they were released. A study involving Arctic-living Inuit revealed that the arctic people's overall blood-level PCB concentrations were up to 70 times greater than the pooled sample from the southern part of Canada. Because no PCBs are manufactured in the Arctic, and PCB use and disposal is minor, experts agree that PCBs are migrating to the Arctic from industrialized countries such as the United States.

Due to the persistent nature of PCBs, they are taken up by small organisms and fish in water. The cycle continues when other animals eat these organisms and fish, resulting in a bio-magnification of PCB content higher up in the food

chain. This phenomenon is known as bioaccumulation. PCBs thereby accumulate in fish and marine mammals, reaching levels that may be many thousands of times higher than in water.

PCBs have alarming reproductive and developmental effects on humans and wildlife, including:

Health Risks. "The most common route of human exposure to PCBs is through eating PCB contaminated fish. The EPA estimates an increased cancer risk as high as 1 in 2500 for people eating certain species of fish from the Hudson River; thousand times higher than the EPA's goal for protection." In the Chesapeake Bay ecosystem human exposure occurs through two major pathways: consumption of seafood and other aquatic animals, and inhalation of airborne PCBs.

Children's Health. One of the more vulnerable populations to PCBs are children. "In a study of Dutch children, PCB levels were tied to an increased prevalence of ear infections and chickenpox and with lowered immune system function, and thus greater susceptibility to disease."

Path of Exposure. Air may also be a source of human exposure to PCBs. "By one estimate, residents of the Hudson Valley may inhale as many PCBs as they would get by eating one contaminated fish per year."

Annex 7 of this Submission (Clearwater Fact Sheet 12) provides a summary of the known effects of PCBs on human health.

There is a chorus of agreement not only among US authorities, but also among global authorities - the US EPA, the International Agency for Research on Cancer, the National Toxicology Program, the Institute for Occupational Safety and Health - all consider PCBs a probable human carcinogen. The global acknowledgement of the dangers posed by PCBs is to such an extent that PCBs is one of the identified persistent organic pollutants slated for global elimination under the Stockholm Convention on Persistent Organic Pollutants.

Not only are PCBs probable carcinogens, PCBs also cause non-carcinogenic diseases including liver damage, endocrine effects, and reproductive and developmental defects. "Children born to women who worked in PCB factories showed decreased birth weight and a significant decrease in gestational age with increasing exposures to PCBs."

The EA must assess these and other potentially significant environmental and health threats posed by the proposed exports. These dangers must be assessed both in the context of transport risk and disposal method. The EA must assess these risks in the context of a proposed export to an unauthorized facility that lacks a dry dock, without the consent of the UK Environment Agency, and in violation of both the Toxic Substances Control Act PCB export ban and the notice, consent and permitting requirements of the Resource Conservation and Recovery Act.

The EA must assess the potentially significant impacts of PCBs on the Teesside community where the vessels will be dismantled and disposed of, on the James River community, on the transit route, and, given the persistence and bioaccumulative properties of PCBs, on the global environment and global health.

2. Fuel and Bunker Oils

Annex 6 to this submission shows that the 9 vessels proposed for export in total contain approximately 2,933 tonnes of diesel or heavy bunker fuel oil. These figures do not factor in the vastly larger volume of oily waters contained in the bilges. Any accident involving an oil spill could have devastating effects on birds and marine life, particularly if it took place near the US or UK coast. The recent accidents involving the Exxon Valdez and the Prestige are somber reminders of these potential impacts.

Petroleum products, such as fuel and bunker oils, have different compositions that may produce varied long- and short-term impacts on the marine and coastal environments, and on human health. The EA has not assessed any of these potential impacts. According to a study sponsored by the Australian government, large-scale releases of oil to the environment "have the potential to cause immense damage, particularly to intertidal and subtidal ecosystems such as coral reefs, mangroves, seagrass communities and so on. Additionally, major spills at sea may have less obvious but serious long-term consequences for marine communities, such as detrimental effects on planktonic phases of marine organisms."

Ground contamination from potential fuel oil leaks must also be assessed. The high molecular weight of aliphatic components of fuel oils that have been released through leakage from vessels have very low water solubility and will not vaporize from soils or surface waters. Thus, these "heavier components may be absorbed to particulate organic matter or settle to the sediment," and are most likely to leach through the soil into the groundwater.

Additionally, the vessels proposed for export contain so-called "dirty" bunker oils, consisting of hazardous liquid wastes additives. Some oil suppliers have mixed hazardous wastes such as heavily PCB-contaminated transformer oils and organic acids into bunker oils thereby increasing the environmental risk from leakage and disposal. The Basel Convention's Shipbreaking Guidelines' gray list of hazardous substances in mentions the presence of PCBs in oils. Potential impacts from dirty bunker oils must be assessed.

3. Asbestos

Asbestos is a significant contaminant of all of the nine vessels, which each contain an approximate average of 100 tons. According to the DNV risk assessment, "if asbestos waste is washed up onto the shoreline and becomes dry, it could become airborne and become a hazard to people and other susceptible fauna." Asbestos in high quantities poses potentially significant risks to health and the environment both during transport and during disposal. These risks must be assessed. Compliance with the Resource Conservation and Recovery Act and other applicable US, international, and UK laws must also be assessed.

4. Mercury

Mercury is found in gauges, strip lighting, electrical float strips, and other applications on the vessels proposed for export. Mercury, particularly methylmercury, which can be formed in the environment from biological action on elemental mercury, is very toxic and bioaccumulative in the marine environment. These risks must be assessed. Compliance with the Resource Conservation and Recovery Act and other applicable US, international, and UK laws must also be assessed.

5. Cadmium

The vessels proposed for export are each likely to contain hundreds or thousands of cadmium-plated parts. Several NDRF vessels were sampled cadmium, and all tested positive. While the Toxic Characteristic Leachate Procedure test was not performed, it is believed that all such cadmium-plated articles would fail the test. These risks must be assessed. Compliance with the Resource Conservation and Recovery Act and other applicable US, international, and UK laws must also be assessed.

6. Chromium and Lead Based Paints

There is a high level of lead and chromate based paints used on board the vessels. Lead and chromate paints will fail the Toxic Characteristic Leachate Procedure test and are therefore considered hazardous waste. Exterior paints on board the vessels are in extremely poor condition, bubbling, flaking and falling in large pieces on the decks. On one vessel, the EXPORT CHALLENGER, there are approximately 17,000 pounds of loose or chipped toxic chromium and lead based paint. The risks posed by these substances, during transport and at disposal, must be assessed. Compliance with the Resource Conservation and Recovery Act and other applicable US, international, and UK laws must also be assessed.

7. Sodium Chromate treated mud ballasts

The mud ballasts on board the vessels contain Sodium Chromate, and was used by the Navy to prevent corrosion in the mud ballasts. Sodium chromate is potentially harmful to health as it is a recognized human carcinogen. The risks posed by Sodium Chromate to human health and the environment must be assessed. Compliance with the Resource Conservation and Recovery Act and other applicable US, international, and UK laws must also be assessed.

8. Toxic Bilge waters

It is known that the vessels have a tremendous amount of polluted waters, which is often toxic enough to be classified as hazardous waste. This is often due to the chemical additives used to prevent corrosion. These substances must be inventoried, and their risks assessed. Compliance with the Resource Conservation and Recovery Act and other applicable US, international, and UK laws must also be assessed.

In sum, the EA should include a complete inventory of hazardous and toxic waste on board the vessels and assess the potentially significant impacts of these substances on human health and the environment in the US, the UK, and the global commons.

III. The EA fails to adequately assess the alternatives available for the disposal of the vessels proposed for export. Other alternatives exist and should have been assessed.

A. The domestic shipbreaking alternative should have been assessed.

Domestic shipbreaking will involve less transport risk. Domestic ship breaking would require the burning of less fossil fuel during transport, reducing air pollution and global warming. Domestic shipbreaking would minimize the cumulative impacts of the export alternative. Domestic shipbreaking would eliminate the present violations of the Toxic Substances Control Act and the

Resource Conservation and Recovery Act. Domestic shipbreaking would provide an investment of tax dollars into US shipbreaking infrastructure, and thereby promote US capacity to break its own defunct vessels going forward. Each of these factors must be assessed.

There are competent US Shipbreakers

MARAD has awarded contracts to domestic shipbreakers in the past, and as recently as September 2003 a contract of \$2.7 million was awarded to Bay Bridge Enterprises in the Chesapeake Bay to dismantle 5 vessels. Additionally, from 1996 to 1999, contracts were awarded to International Shipbreaking Ltd. (ISL) (Brownsville, Texas), ESCO Marine Inc. (Brownsville, Texas), and the Bedoli Group, Inc. (Brownsville, Texas).

According to a June 10, 2003 letter from ISL to MARAD, ISL proposed to handle the disposal of the same 13 vessels granted to Post-Service Remediation Partners (PRP) for \$12.8 million. The contract awarded to AbleUK on July 25, 2003 was for \$17.8 million. MARAD contracted to pay \$4.9 million more for the AbleUK contract than it would have had to pay for the ISL contract. The EA has not assessed this contract decision or the environmental consequences of towing the vessels 4,829 nautical miles to the UK instead of 1,428 nautical miles to Texas.

Further, Bay Bridge Enterprises, LLC. of Chesapeake, Virginia offered to perform the same contract for \$495,000 less than the AbleUK contract. The Bay Bridge contract would not have involved any open seas towing risks.

The EA fails to assess domestic alternatives. Likewise, the EA fails to explain why, given the available domestic alternatives, the AbleUK alternative achieved the "Best Value" standard of the National Maritime Preservation Act.

Losses at Sea are Common

The deteriorated condition of the nine vessels proposed for export exacerbates the ordinary risks of dead tandem high seas towing. The unpredictable weather of the North East Atlantic escalates the risk of sinking, breaching or leaking. In fact, towing losses for vessels bound for scrap yards are not uncommon. "Tandem tows are particularly problematic. A tandem tow... will result in the tow rig surging and the two vessels under tow impacting one another. Additional factors are control of the tow depending on rig, and servicing the tow if a problem surfaces on one of the vessels. Additionally a tandem tow decreases speed of advance and correspondingly increases the time that the tow is exposed to changes in the weather."

The EA fails to assess any of these risks. Some recent towing loss incidents of vessels bound for scrapping operations are highlighted below. Most of these losses were irretrievable.

· USS STODDERT: Lost at sea during a tandem dead tow between Pearl Harbor, Hawaii, and the Panama Canal in early January 2001. The vessel was destined for ISL in Brownsville, Texas. In an affidavit prepared by Paul Torres, Engineer and Mate on the tow, the "STODDERT was staunch and seaworthy prior to the tow". Yet during the journey, the rear vessel USS COCHRANE slammed into the USS STODDERT causing it to take on water. The Captain of the tugboat then scuttled the vessel intentionally.

- USS CONSTITUTION: Vessel sank in the Pacific Ocean, 700 miles north of Hawaii, during dead tow from Portland, Oregon to China for scrapping, November 1997.
- S.S. SUN: Sank during dead tow on July 25th 2001, off southeast South Africa.
- BOREI: Russian fishing trawler sank in the Sea of Japan on August 8, 2002. According to the press service of the State Piscatorial Committee of the Russian Federation, two fishing vessels, the Yashino and the Borei were being tandem towed from Vladivostok, Russia to Pusan, South Korea for repairs. The weather deteriorated, and the towing cable connecting the Borei broke. The trawler was thrown against the tug, began taking on water and eventually sank.
- RYNDAM: On March 16, 2003, the Ryndam sank in the Caribbean Sea during dead tow to Alang, India for scrapping.
- USS WAYNE VICTORY: In December 2001, the aging Wayne Victory was being towed to a Texas scrap yard when its hull cracked open 12 miles off Miami Beach,. Only \$100,000 worth of emergency repairs kept it afloat and prevented a leak. Inside the Wayne Victory were 57,000 gallons of oil. If the vessel were on the high seas, the repairs may not have been possible.
- K-159: Russian nuclear sub K-159 sank in the Barents Sea northwest of Kilden Island off the Kola Peninsula on August 30, 2003. The submarine was being towed to Polyarnoye scrap yard. Only one of the 10 crewmen on board the submarine were rescued, the other 9 were killed.
- USS BROOKLYN: Sold to Chile, January 9, 1951 and renamed O'Higgins, the vessel sunk while under tow to India for scrapping, November 3, 1992.
- M.V. SEA: Sank off South Africa while under tow and destined for scrap yards in India, July 11, 2001.
- S.S. BRITANIS/BELOFIN-1: Sank off Cape Town, South Africa October 21, 2000, under tow to India or Pakistan from Tampa, Florida, for disposal.

Tandem tows exacerbate the ordinarily serious risk of towing dead vessels due to the fact that they are far more difficult to control in the event of bad weather, loss of tug power, or other unforeseen circumstance. Numerous incidents have been documented where one of the towed vessels collided with the other towed vessel, sometimes causing sinkage or severe damage to a vessel's hull. These cases demonstrate the high risk of towing at sea, and the EA must assess the risk of loss of the vessels proposed for export in the context of this history of towing sea losses.

Dead Tows Are So Risky That They Are Not Insurable

According to vessel towing insurance expert and President of Global Insurance Specialists LLC, Seattle, Mr. Damon Nasman, "we believe that it is extremely difficult, if not impossible in this market to insure any tandem scrap tows. The reason being the high level of risk involved of a loss at sea." This view is corroborated by a statement found in a fax letter from Targe Towing Ltd. of Scotland, to the UK Secretary of State's Representative (SOSREP)'s office of Maritime Salvage and Intervention. That letter states, "it is known that some London Underwriters when represented by the former Salvage Association, did not normally approve tandem tows."

According to the shipbreaking contract between MARAD and AbleUK, the amount of insurance for Pollution (sudden and accidental liability) will be at \$5 million per occurrence. This is very little coverage given the high costs of repair, recovery, and remediation of lost vessels and spills. MARAD is "self-insured" against losses beyond \$5 million. The burden, in other words, is shifted on to the taxpayer. The taxpayer should have full information regarding these risks. MARAD must also disclose and assess its purported oil spill plan, and provide full risk disclosure.

B. Fourth alternative -- prior decontamination of all oils and hazardous wastes as near to the site of origin as possible, prior to any further recycling, at home or abroad.

The simplest way to allay the concerns over the hazardous waste on board the vessels is to remove it and dispose of it in accordance with US law. The EA fails to discuss this alternative. The US has the technical capability to undertake this alternative. There is no need to outsource US jobs and pollution.

IV. The EA should analyze the environmental consequences of the legal status of the proposed export under the Resource Conservation and Recovery Act (RCRA)

A. RCRA Notice and Consent Violations

RCRA governs the management of hazardous wastes in the United States, including their export to foreign countries. RCRA requires that potential exporters of controlled wastes obtain certain notifications, consents and approvals in connection with the export of hazardous wastes to foreign countries for disposal and/or recovery. RCRA further requires that the receiving facility be authorized to operate in the receiving country, in this case AbleUK and the United Kingdom respectively.

In October and November of 2003, the United Kingdom Environmental Agency (UKEA) informed MARAD that the required consent was lacking. Specifically, MARAD was informed that (i) the AbleUK disposal facility does not have permission to engage in trans-frontier shipment of waste; (ii) a required modification to the waste management license for AbleUK is invalid; and (iii) the required local authority planning permission for the creation of a dry dock is not in place, and is currently the subject of court proceedings.

The impacts of this information should be assessed before any of the vessels are exported to the United Kingdom for disposal. Indeed, if the AbleUK facility is not the final destination of the vessels, an entirely new EA will be required.

B. International Law - Transit States Notice Violation

Pursuant to RCRA, notice must be given to transit states, the states where the waste is proposed to pass through on the way to the destination nation. The consequences of MARAD's failure to provide notice or receive consent from the Netherlands, France, or Belgium prior to the export must be assessed, and MARAD must condition the proposed export on compliance with this and all legal requirements. In fact, the Belgian government has already raised a complaint to the UKEA for not being notified of the waste movement and threatened to exercise its sovereignty over its territorial waters by denying passage of the waste vessels.

The EA must also assess the operation of, and its compliance with, other applicable international agreements such as the Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal, and the European Waste Shipment Regulation (EWSR). Both of these instruments include waste movement procedures and penalties for violations. MARAD must disclose this information and condition the proposed export on compliance with these agreements.

C. Return and/or Trans-shipment of Waste Vessels

Given the current state of MARAD's RCRA compliance, it is possible that any exported vessel will be returned to the United States. This possible outcome must be assessed.

Similarly, the environmental impacts of the possibility of transshipment to a third country in the event of AbleUK's failure to secure necessary permits must be assessed. In no manner does BAN condone any further transshipment of the waste vessels, as BAN strongly maintains that the "Ghost Fleet" should be disposed of and handled within the US in compliance with requirements of international for countries to be self-sufficient in their hazardous wastes.

V. The EA should analyze the environmental consequences of the legal status of the proposed export under the Toxic Substances Control Act (TSCA)

The EA does not include any conclusion that the proposed export does not pose an unreasonable risk to health or the environment, and does not explain the basis on which such a conclusion could be made, despite the PCB export prohibition of the Toxic Substances Control Act, 15 U.S.C. § 2605(e)(1), (3); 40 C.F.R. §§ 761.20, 761.97 (TSCA). Nor does the EA discuss TSCA compliance in the context of TSCA's goal that PCB harms not be transferred from the United States to other nations. See, e.g., 59 FR 62788 at 60 (1994) ("EPA believes that export of PCBs to other countries needs to be limited so as not to pose a risk of injury to health or the environment in those countries.").

VI. The scope of the EA's review inappropriately excludes environmental impacts to the global commons (high seas) and the United Kingdom

Several of the hazardous wastes present in the remaining nine vessels, respect no geographical boundaries - PCBs, Mercury, CFCs, etc. The EA inappropriately fails to assess the potential global and UK impacts of these pollutants. Even if discharged outside of US territory, these substances can directly, indirectly and cumulatively impact US territory. These impacts must be assessed for each alternative. 40 CFR § 1508.7, 1508.8(a), (b); 42 USC § 4332(2)(E)(iii).

VII. Nuclear Power Stations - Cooling Water Threats

Both the US shipping route and the AbleUK disposal facility are close to nuclear power stations - the Surrey Nuclear Plant in Virginia, USA and the Hartlepool Power Station in the UK. Both of these plants rely on cooling water from nearby sources to prevent catastrophic events that could result in releases of radiation. The presence of Bunker C heavy fuel oil in the cooling water intake channels of these plants could cause serious problems with the functioning of the reactors, and increase risk of reactor malfunction and catastrophic radiation releases. These impacts must be assessed.

VIII. Assessing the cumulative impacts of fuel burned in the trans-Atlantic towing

An environmental concern that the EA fails to explore is the assessment of the direct, indirect and cumulative impacts of the fuel burned for the trans-Atlantic tow, as compared to the direct, indirect and cumulative impacts of a voyage within the domestic ship breaking yards in the US. In conducting this assessment the EA should assess air pollution-related health impacts of burning marine fuel, and in particular the formation of NOx and ozone and related health impacts. The EA should also assess the direct, indirect and cumulative impacts to global warming caused by CO2 emissions from the fuel burned by towing the vessels to the UK instead of disposing of them on the East Coast of the United States.

IX. Conclusion

Governments are increasingly called upon to assess and choose between risks. There is a monumental divide, however, between necessary and needless risks. In the case of the proposed vessel export, prudence, common sense, science and economics all suggest that export is a needless risk. The EA can play a pivotal role in ensuring the public that MARAD is making a risk decision based on all of the relevant information. BAN sincerely hopes that the EA accomplishes this task by undertaking an honest and comprehensive assessment above in light of the comments herein.

Yours sincerely,

James Puckett
Coordinator, Basel Action Network

ANNEX 4

MARAD Risk Scores for the 13 Vessels Slated to be Exported to AbleUK

NAME	Year Built	YearScore	Hull Oil	Oil Score	Date Enter	JRRF	JRRFScore	Hull Cond.(1 is worst)	HullScore	Total Score	On MARAD	Priority List of 40 Worst
CALOOSAHATCHEE	1945	36	.8	8	1991	6	4	14	64	yes		
CANISTEO	1945	36	5.7	8	1990	6	4	14	64	yes		
DONNER	1945	36	1.8	8	1976	12	1	20	62	yes		
MORMACMOON	1965	12	102.6	8	1985	6	6	10	36	yes		
MORMACWAVE	1962	20	198.5	16	1985	6	6	10	52	no		
PROTECTOR	1945	--	--	--	--	--	--	--	--	yes		
AMERICAN RANGER	1965	12	337.6	24	1983	6	4	14	56	yes		
AMERICAN BANKER	1962	20	313.4	24	1987	6	4	14	64	yes		
RIGEL	1955	--	15.3	--	--	--	--	--	yes			
COMPASS ISLAND	1956	32	219.7	24	1989	6	4	14	76	yes		
SANTA CRUZ	1966	12	135.7	16	1984	6	4	14	48	yes		
SANTA ISABEL	1967	12	407.0	40	1984	6	1	20	78	yes		
CANOPUS	1965	12	217.1	24	1997	6	4	14	56	no		

Sources: James River Reserve Fleet Scrapping Analysis; Rand Report.

DONNER	5,910	175.00	95.00	0.01	408	1	19	--	--	--	
	5,211.99										
MORMACMOON	9,013	261.00	109.00		0.04	823	267	128	--	25	
	1,600	5,799.96									
MORMACWAVE	10,931	265.00	109.00		0.04	1,553	96	168	1.0	18	
	1,600	7,104.96									
PROTECTOR	6,194	179.00	107.00		0.05	10	38	646	167.0	4	--
	5,042.95										
AMERICAN RANGER	8,821	274.50	101.00		0.04	322	279	464	205.0	2	
	--	7,395.46									
AMERICAN BANKER	9,940	299.00	131.00		0.04	10	322	99	266.0	--	
	--	8,500.96									
RIGEL	8,351	278.00	77.00	0.06	10	1	--	--	--	7,984.94	
COMPASS ISLAND	15,057		419.00		--	--	--	449	--	225.0	15
	--	13,949.00									
SANTA CRUZ	10,132	318.00	126.00		0.04	263	4	--	2.0	2	
	400	8,650.96									
SANTA ISABEL	11,476	338.00	126.00		0.04	762	12	9			
	1.0	1	200	9,621.96							
CANOPUS	12,618	360.00	317.00		0.02	?	1,480	--	218.0	1	
	?	12,361.00									
Total Weight	138,332	3,865.50	1,452	.40	12,155		3,109	2,291			
	1096.5	68	3,800	112,420.62							
Method of Disposal			Landfill		Landfill		Incinerator	Treatment			
	Treatment	Re-use	Re-use		Re-use		Re-use	Re-use			
% of Ship	100%	2.8%	.9%	.1%	9.0%	1.3%	1.8%	.8%	.1%	2.8%	80.4%

Source: OECD Waste Shipment Tracking Form - Notification No. USDC170603. June 4, 2003; Letter amending notification July 25, 2003 to David Fellows (UK EA) from James E. Caponiti (MARAD)

ANNEX 7

Clearwater Fact Sheet 12
www.clearwater.org

What Are The Human Health Effects Of PCBs?

Polychlorinated biphenyls are a group of 209 different chemicals, which share a common structure but vary in the number of attached chlorine atoms. General Electric dumped an estimated 1.3 million pounds of different types of PCBs into the Hudson River from 1946 until 1977, when they were banned. The international treaty on Persistent Organic Pollutants, drafted by 122 nations in Johannesburg in December 2000, targeted PCBs as one of the 'dirty dozen' chemicals to be phased out worldwide.

PCBs are a probable human carcinogen.

The International Agency for Research on Cancer and the Environmental Protection Agency classify PCBs as a probable human carcinogen. The National Toxicology Program has concluded that PCBs are reasonably likely to cause cancer in humans. The National Institute for Occupational Safety and Health has determined that PCBs are a potential occupational carcinogen.

Studies of PCBs in humans have found increased rates of melanomas, liver cancer, gall bladder cancer, biliary tract cancer, gastrointestinal tract cancer, and brain cancer, [1] and may be linked to breast cancer. PCBs are known to cause a variety of types of cancer in rats, mice, and other study animals. [2]

Why are PCBs called a 'probable' carcinogen?

EPA's regulations on cancer-causing chemicals use the term 'probable' when a chemical is known to cause cancer in animals and where there is evidence that suggests that it causes cancer in humans but which is not conclusive. Because you can't feed chemicals to humans to see how they respond, it is much more difficult to demonstrate carcinogenicity in humans than in animals. Instead, studies are undertaken of groups who have been exposed to a chemical, and if they suffer from more cancers than would be expected at normal levels, this may indicate that the chemical was a carcinogen. However, there are many difficulties doing these studies: small numbers of people known to be exposed to a chemical; the fact that people suffer from many cancers without any chemical exposure; the fact that in some cases these people were exposed to a number of other chemicals; and the need to demonstrate high cancer rates that cannot be random in order to draw conclusions. Thus the term 'probable' reflects the limited nature of the studies, and it is rare that a carcinogen is so effective that it can be called a 'known' human carcinogen.

The fact that PCBs are called a 'probable' carcinogen should not be taken as a sign that they are benign.

Acute toxic effects.

People exposed directly to high levels of PCBs, either via the skin, by consumption, or in the air, have experienced irritation of the nose and lungs, skin irritations such as severe acne (chloracne) and rashes, and eye problems. [3]

PCBs cause developmental effects.

Women exposed to PCBs before or during pregnancy can give birth to children with significant neurological and motor control problems, including lowered IQ and poor short-term memory.

A group of children in Michigan whose mothers had been exposed to PCBs were found to have decreased birth weight and head size, lowered performance on standardized memory, psychomotor and behavioral tests, and lowered IQ. These effects lasted through at least 7 years. [4] A group of women occupationally exposed to PCBs in upstate New York had shorter pregnancies and gave birth to children with lower birth weight. [5] Another study, of the children of women who ate contaminated Lake Ontario fish, found significant performance impairments on a standardized behavioral assessment test. [6]

Exposure of one form of PCB to rats resulted in retarded growth, delayed puberty, decreased sperm counts, and genital malformations. [7] In other studies, exposure of PCBs to rats in utero led to behavioral and psychomotor effects that lasted into adulthood. [8]

PCBs disrupt hormone function.

PCBs with only a few chlorine atoms can mimic the body's natural hormones, especially estrogen. Women who consumed PCB-contaminated fish from Lake Ontario were found to have shortened menstrual cycles. [9] PCBs are also thought to play a role in reduced sperm counts, altered sex organs, premature puberty, and changed sex ratios of children. More highly chlorinated PCBs (with more chlorine atoms) act like dioxins in altering the metabolism of sex steroids in the body,

changing the normal levels of estrogens and testosterone. [11] PCBs tend to change in the body and in the environment from more highly chlorinated to lower-chlorinated forms, increasing their estrogenic effects.

Immune system and thyroid effects.

In a study of adolescents Mohawk males in New York State, PCBs were shown to upset the balance of thyroid hormones, which may affect growth as well as intellectual and behavioral development. [12]

Like dioxin, PCBs bind to receptors that control immune system function, disturbing the amounts of some immune system elements like lymphocytes and T cells. [13]

In a study of Dutch children, PCB levels were tied to an increased prevalence of ear infections and chickenpox and with lowered immune system function, and thus greater susceptibility to disease. [14]

Eating fish is the major route of exposure to PCBs.

The most common route of exposure to PCBs is from eating contaminated fish. The EPA estimates an increased cancer risk as high as 1 in 2500 for people eating certain species of fish from the Hudson River; thousand times higher than the EPA's goal for protection. [15]

Air near a contaminated site may also be polluted by PCBs. By one estimate, residents of the Hudson Valley may inhale as many PCBs as they would get by eating one contaminated fish per year. [16] Although small amounts of PCBs can enter the body from swimming in highly contaminated water, this is unlikely to be significant except in the most extreme cases.

Municipalities that use the Hudson River as a drinking water source carefully monitor the water for PCBs, and there are no detectable levels in the water supplies. [17]

PCBs accumulate in the body and in the ecosystem.

Once PCBs enter a person's (or animal's) body, they tend to be absorbed into fat tissue and remain there.

Unlike water-soluble chemicals, they are not excreted, so the body accumulates PCBs over years. This means that PCBs also accumulate via the food chain: a small fish may absorb PCBs in water or by eating plankton, and these PCBs are stored in its body fat. When a larger fish eats the small fish, it also eats and absorbs all the PCBs that have built up in the small fish. In this way, larger fish and animals can build up a highly concentrated store of PCBs. Some types of PCBs may degrade into nontoxic form while they are stored in the body, but this process can take many years.

In the same way, PCBs accumulate in women and pass on to their infants through breast milk. This accumulation means that nursing infants may ingest PCB levels much higher than the levels in fish and other foods consumed by their mothers. [18]

PCBs have been found all over the world, including significant amounts in the Arctic and Antarctic, far from any sources. In fact, several studies have found very high levels of PCBs in the blood and breast milk of Inuit women. [19] It is

thought that PCBs spread through the air, after evaporating from contaminated water and sediments, as well as through the water.

For More Information

For more information on PCB health effects, we recommend starting with these two papers:

Carpenter, D. O. (1998). Polychlorinated Biphenyls and Human Health. *International Journal of Occupational Medicine and Environmental Health*, 11(4): 291-303.

Johnson, B. L. et al (1999). Public Health Implications of Exposure to Polychlorinated Biphenyls (PCBs). Agency for Toxic Substances and Disease Registry. Online at <http://www.atsdr.cdc.gov/DT/pcb007.html>

For details on the EPA's risk assessment for human health in the Hudson Valley, and for details of the proposed cleanup plan, see

EPA (2000). Hudson River PCBs Reassessment RI/FS Phase 3 Report: Feasibility Study. U. S. Environmental Protection Agency, and U. S. Army Corps of Engineers. Online at <http://www.epa.gov/hudson/>

Footnotes

- [1] Summarized in ATSDR (2000) and Johnson et al (1999)
- [2] Summarized in Johnson et al (1999)
- [3] See the discussion of the Yusho and Yu-Cheng episodes, in Johnson et al (1999) and elsewhere.
- [4] Jacobson and Jacobson (1996)
- [5] Taylor et al, summarized in Johnson et al (1999).
- [6] Stewart et al (2000)
- [7] Gray et al (1995)
- [8] Weinand-Harer et al (1997)
- [9] Mendola et al (1997)
- [11] Arcaro et al (1999)
- [12] Schell et al (2000)
- [13] Summarized in Carpenter (1998)
- [14] Weisglas-Kuperus et al (2000)
- [15] EPA (2000), Table 1-9.
- [16] David Carpenter, personal communication.
- [17] www.pokwater.org
- [18] Korrick and Altshul (1998)
- [19] Summarized in Johnson et al (1999)

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EPA (2000). Hudson River PCBs Reassessment RI/FS Phase 3 Report: Feasibility Study. U. S. Environmental Protection Agency, and U. S. Army Corps of Engineers. Online at <http://www.epa.gov/hudson/>

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Johnson, B. L. et al (1999). Public Health Implications of Exposure to Polychlorinated Biphenyls (PCBs). Agency for Toxic Substances and Disease Registry. Online at <http://www.atsdr.cdc.gov/DT/pcb007.html>

Korrick, S. A. and Altshul, L. 1998. High Breast Milk Levels of Polychlorinated Biphenyls (PCBs) among Four Women Living Adjacent to a PCB-Contaminated Waste Site. *Environmental Health Perspectives*, 106(8): 513.

Mendola, P. et al, 1997. Consumption of PCB-contaminated Freshwater Fish and Shortened Menstrual Cycle Length. *American Journal of Epidemiology*, 145(11): 955.

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Schell, L. M. et al 2000. Polychlorinated biphenyls and thyroid function in adolescents of the Mohawk Nation at Akwesasne. In *Proceedings of the Ninth International Conference*, Turin, Italy.

Stewart, P. et al 2000. Prenatal PCB exposure and neonatal behavioral assessment scale (NBAS) performance. *Neurotoxicology and Teratology*, 22: 21-29.

Weinand-Harer, A. et al 1997. Behavioral effects of maternal exposure to an ortho-chlorinated or a coplanar PCB congener in rats. *Environmental Toxicology and Pharmacology*, 3: 97-103.

Weisglas-Kuperus, N. et al 2000. Immunologic Effects of background Exposure to Polychlorinated Biphenyls and Dioxins in Dutch Preschool Children. *Environmental Health Perspectives*, 108(12): 1203.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BASEL ACTION NETWORK, a Sub-Project of the Tides Center, 1827 39th Avenue EastSeattle, WA 98112, andSIERRA CLUB, 11986 Elmgrove CircleCincinnati, OH 45240, Plaintiffs, v. MARITIME ADMINISTRATION, and Capt. WILLIAM G. SCHUBERT, in his official capacity as Administrator,400 7th Street, SWWashington, DC 20590, andENVIRONMENTAL PROTECTION AGENCY, and MARIANNE HORINKO, in her official capacity as Acting Administrator,1200 Pennsylvania Avenue, NWWashington, DC 20460, Defendants.

))))))))) Case No.: DECLARATION OF WERNER F. HOYT, P.E. IN SUPPORT OF PLAINTIFFS' REQUEST FOR INJUNCTIVE RELIEF

I, Werner F. Hoyt, P.E., declare as follows:

1. I am an independent consulting engineer located in Mt. Shasta, California. I have and undergraduate degree in aerospace engineering from the University of Oklahoma and a masters degree in mechanical engineering with emphasis on metallurgy and Naval Engineering from the U.S. Naval Postgraduate School - Monterey. I am a registered professional mechanical engineer in California and hold US Coast Guard (USCG) licenses as a Chief Engineer, Limited and Second Assistant unlimited both motor and steam. I have over 20 years of experience in ship repair, conversion, reactivation, and breaking.

2. I contributed substantially to the VSE Corp. proposal to accomplish ship breaking under the Navy's pilot ship disposal program, reviewing and approving as senior engineer the operations plan developed by VSE and Earth Tech staffs. As operations manager and chief engineer for Ship Dismantling and Recycling (SDR), a joint venture between VSE Corp. and Earth Tech (a wholly owned subsidiary of Tyco Industries), I operated a model ship scrapping program at Hunters Point San Francisco, California. The SDR program was praised by the Navy for its environmental, health, safety, and production methods. SDR accomplished ship breaking from January 2000 to December 2001, when it was dissolved due to lack of Congressional Funding for ship disposal in the FY02 Congressional budget for Ship Breaking.

3. From 1980 to 1984, I served as both engineering watch officer and deck officer on the USS Worden (CG-18) and the USS Meyerkord (FF-1058), directly experiencing at sea the effect of hurricanes and typhoons with winds of over 100 knots and seas in excess of 35 feet.

4. From 1984 to 1996, I was a Naval Engineering Duty Officer accomplishing waterfront supervision, repair and overhaul planning, and supervision of contracts for Naval Ship repair and overhaul at Long Beach Naval Shipyard, Naval Ship Repair Facility Subic Bay, and Supervisor Shipbuilding Conversion and Repair, Long Beach. This included dry dock hull and structural inspections, review of hull inspection reports, work orders, and inspection of work performed to repair hull deterioration. Work supervised included repair of damage from collision, grounding, corrosion, and storm damage due to high sea states. Specific storm damage repaired at Subic Bay included bow damage to the Amphibious Assault Carrier USS Peleliu (LHA-5). Damage was incurred to the ship's bow approximately 40-45 ft above waterline transiting a winter storm in the Bering Sea while accomplishing a Northern route passage in 1988. I held the positions of Ship Superintendent (Corresponds to a marine port engineer) at Long Beach Naval Shipyard and Planning officer for Military Sealift Command Ships undergoing repair or drydocking overhaul at U.S. Naval Repair Facility Subic Bay. Work required compliance with either Navy Standards or ABS/USCG standards for ship repair as applicable.

5. From 1993 to 1996, I accomplished survey and certification of repairs to privately owned drydocks accomplishing Navy ship repair in the Long Beach/Los Angeles area for Naval Sea Systems Command Quality Office for Drydock Certification. Accomplished reactivation, drydock and overhaul repairs to three Knox class frigates at Long Beach removed from layup. During this period I served concurrently as the Planning Officer and Contracting Officer for Supervisor of Shipbuilding Conversion and Repair, Long Beach.

6. During the period Nov. 1996 to Nov. 1998, I was the VSE Corporation senior port engineer in charge of the removal from storage, inspection, repair, activation and sea trialing of two Navy ocean salvage tugs and one Knox class frigate for transfer to foreign Navies. As port engineer I was responsible for visual hull inspections, review and evaluation of non-destructive test method hull thickness surveys for required repairs as well as all salt water, waste, or other systems with suction or discharge to the sea.

7. From 1995 to 2001, I have directly supervised preparation for tow and pre-tow condition inspections with determination of preparation requirements for the following ships: Ex-Wabash (AOR-5)

Ex-Mobile (LKA-115)

Ex-Bolster (ATS-3)

Ex-Oullet (FF-1077)

Ex-Lockwood (FF-1064) - Scrapped by SDR

Ex-Gray(FF-1054) - Scrapped by SDR

Ex-Lang (FF-1060)

Ex-Meyerkord (FF-1058)

8. I have accomplished environmental assessments and hull surveys, and pre-tow inspections without towing from 2000 to 2001 for the following ships:

Ex- England (CG-22)

Ex- Halsey (CG-23)

Ex- Francis Hammond (FF-1067)

Ex- Cochrane (DDG-21)

Ex- Benjamin Stoddert (DDG-22)

9. I accomplished and hull survey, environmental health and safety, and hazmat assessment inspection utilizing the Red Oak Victory as representative of the aging ships in the fleet in storage at the Ready Reserve Fleets for National Environmental Education Training Center (NEETC) under a Department of Defense (DoD) grant by the Strategic Environmental Development Program during January to March of 2003.

10. The Red Oak Victory is currently part of the Richmond Museum, California. She was selected to become part of the museum because she was determined to be in the best overall condition of the Victory Class ships at Suisun Bay. She became our basis for evaluating hull and waste disposal stream conditions for our study due to availability after we had been denied access to the Ready Reserve Fleet to accomplish the study for the (NEETC).

11. Red Oak Victory's hull condition overall was excellent with less than 10% wastage ("wastage" is a term referring to the general thinning of the hull). Her layup (preparation for long term storage) included hard blanks welded over all sea chest openings, which would have arrested any corrosion. (The sea chest is an area where corrosion is a particular problem.) We did find a rust blister band approximately eight to twelve inches wide approximately three feet above waterline. This band of corrosion exists due to alternate wetting and drying of the hull while the vessel is in layup providing optimal conditions for corrosion. When this class was deemed obsolete and in excess, MARAD ceased hull and preservation maintenance. With the cessation of preservation these hulls began to deteriorate. During our inspection we accomplished four blind cross sections in the forward pressure area and four blind cross sections in the engine room midships by ultrasonic test method from the inside of the hull. We found hull plate thinning of up to ninety (90)

percent on several of the cross sections. Visual examination of the hull in these areas from the exterior found heavy rust blistering. It can be inferred that if the Red Oak Victory was in the best condition of the ships of this class that conditions are worse on other vessels of the same class, on vessels of a different class but of the same age, or on vessels that have been without preservation maintenance for the same period.

12. My observations of some of the vessels at Suisun bay found that some hulls were extremely deteriorated and had been patched internally with concrete at some point in time (specifically the Ex Wabash (AOG)). Marine Survey and Management Inc., a company that prepares and tows vessels from the United States for overseas scrapping, has conducted pre-tow surveys on ships with shell structures that are the same or similar as the thirteen ships described in paragraph 15 below. Because of the poor condition of these ships, the surveys resulted in an assessment that they were unsafe for tow without structural repair. This resulted in a cancellation of sale for scrap by MARAD in the late 1990's.

13. Environmental conditions at the reserve fleet in Suisun Bay are less severe than at James River. Temperatures and humidity during the summer months are substantially lower. The high temperature and humidity conditions at the James River Ready Reserve Fleet increase general rates of corrosion as well as corrosion in a rust carbuncle. Because of the more aggressive corrosion environment, I would expect more severe deterioration. This is substantiated by the government's hull deterioration study in 1998. Their exhibit of hull wastage indicated and average wastage of 15 to 25 percent with wastage of 35 to 40 percent near holed areas of the MormacMoon (1965) and Rigel (1955). These numbers are averages of readings and include localized deterioration which is far more severe. The first ships planned for tow are the Caloosahatchee and Canisteo built in 1945, with cessation of hull maintenance around 1990 and 1991 respectively. Due to both age and time in layup without hull preservation, corrosion in the area of the air water interface (blister band) are now approaching levels similar than that reported for Rigel and the MormacMoon. Cessation of hull maintenance occurred in 1985 for MormacMoon. No date was provided in the Rand Report on James River Scrapping Analysis but the date for cessation of maintenance is assumed to be 1985 or earlier.

14. Two areas of ships experience accelerated corrosion rates due to either stress concentration factors, lack of electrical continuity with the adjacent portions of the hull, and/or differences in microcrystalline structure. Specifically these are weld seams and lap rivet seams. Ship design included both structural characteristics until fully welded construction became standard practice at the end 1960's. Weld seam deterioration and repair is normally conducted during drydocking evolutions for inspection preservation and repair. Corrosion is accelerated in these areas due to corrosion protection system failing before that on the general plating due to the higher profile resulting from the weld. I have encountered as much as forty percent deterioration in weld seams on naval vessels requiring repair with docking intervals of five years. This specific problem was not directly noted in the Rand Report. Weld joints are of specific concern in the underwater hull where failure can lead to localized flooding to catastrophic failure under bending loads. On the main deck area deterioration generates a similar problem under bending loads. Riveted lap seams experience a similar accelerated corrosion problem starting with the failure of the anticorrosion system. Here the rivet head deterioration leads to decreased strength of the lap seam joint usually located along the turn of the hull in the vicinity of the rolling keel. Replacement of deteriorated rivets due to corrosion was a normal part of ship overhaul and repair with docking periodicities of three to five years. Corrosion resulting from long-term layup - three to five times the duration for a normal drydock cycle - increases severely the anticipated deterioration in these critical areas.

15. During my years in ship repair, overhaul, and ship breaking I have developed good estimating values for overall waste streams to be encountered on ships. The waste stream is the elements of the ship that cannot be recycled, or cannot be recycled economically. For naval vessels this was approximately 10 to 13 percent of light ship displacement. For cargo vessels this value was determined to be 7 to 8 percent of light ship displacement. In our Victory Class study, the waste streams were as follows based on plan reviews, direct observation, and sampling for contaminants to determine disposal level requirements:

Waste Stream	Quantity	% Displacement
ACM	10 Tons	0.22
Pb (paints)	65 Tons	1.48 (Est. ~ 7 tons of recoverable Ph)
Wire (PCB/ACM)	10 Tons	0.22
Fiberglass	5 Tons	0.11
Construction Debris	105 Tons	2.40
Deck covering	110 Tons	2.51
Total Waste stream	335 Tons	7.65
Recoverable Metals	4045 Tons	92.35
Total vessel	4380 Tons	100.00

Applying these values to the following ships the specific areas of concern have the following characteristic waste streams

Name	Light Ship Displacement (Tons)	Waste Stream Model	Total (Tons)	PCB Waste (Tons)	Pb (wire) (Tons)
(Paints)					
(Tons)					
Caloosahatchee	10,300	Cargo	773	23	152
Canisteo	10,723	Cargo	804	24	159
Donner	5,323	Military	532	12	79
Mormacmoon	7,545	Cargo	566	17	112
Mormacwave	7,545	Cargo	566	17	77
Protector	5,174	Military	517	46	112
American Ranger	7,545	Cargo	566	17	149
American Banker	10,048	Cargo	754	22	120
Rigel	8,097	Military	810	71	207
Compass Island	13,950	Military	1395	23	135
Santa Cruz	9,099	Cargo	682	20	135
Santa Isabel	9,092	Cargo	682	20	118
Canopus	12,000	Military	1200	106	178
Totals	116,441		17,230		515
1723					

The bulk of PCB contaminants are found in the wire disposal waste stream. Ships constructed during this period utilized a filler matrix in electrical wiring containing either cellulose fiber impregnated with PCBs or other material containing asbestos. Weather deck jacket wire could also contain solid lead as was encountered on weather deck lighting circuits containing up to 30% lead by weight. For ships of this era internal preservation systems were primarily lead-based anti-corrosive paints. As a consequence there is a substantial amount of lead. Average lead content for the Red Oak Victory was estimated at 10% by weight of the applied paints. This equates to 172 tons of lead estimated for the ships planned for tow.

16. Even ships in good condition sustain hull damage in heavy seas as I have experienced accomplishing storm damage and seeing storm damage occur to ships in company during severe sea states. In general, conditions in the North Atlantic are more severe in fall and winter than the Pacific. Over the last ten

years a number of unmanned vessels under tow to be scrapped have been lost due to storm related and hull conditions.

a. In Fall of 1997, the SS Constitution under tow from Portland to a Far East breaking yard sunk during a storm north of Hawaii. Suspected cause of loss was failure of a seachest or piping system.

b. In 2000 during a tandem tow of the Ex Stoddert and Ex Cochrane from Oahu to Brownsville Texas the Ex Cochrane sank after the sea state generated a surging condition in which the following ship collided with the stern of the lead ship of the tow.

c. In November of 2002 one vessel of a tandem tow sunk en route from Richmond, California, to a shipbreaker in China. The second vessel required repairs to the sanitary waste overboards in the forward hold. It is suspected that the vessel was lost due to a similar failure of the sanitary waste overboard in the after hold. Hull conditions were excellent as the vessels were ex Dew-line early warning ships built with ice strengthened hulls.

d. In 1991 a vessel under tow from the James River to Brownsville Texas required voyage repairs to the hull to complete the tow to the breaking yard.

17. Weather in the North Atlantic and North East Atlantic has caused even ships in sound operating condition to founder and break up due to unanticipated engine casualty or due to a loss of ships power. In the event of a tow, this would require cutting away the tow until propulsion could be re-established to protect the towing vessel. Once the towing vessel has recovered it can begin maneuvers to recover the tow. In moderate sea states this is very difficult. In severe sea states or storms it can prove impossible and would put the lives of personnel at risk. In assigning a tow vessel, strong consideration should be given to the age of the tow vessel and its maintenance record with particular attention to underway history of machinery failures/loss of power etc.

18. Tandem tows are particularly problematic. A tandem tow in certain sea states, specifically those waves that are at the natural frequency of the tow system, will result in the tow rig surging and the two vessels under tow impacting one another. Additional factors are control of the tow depending on rig, and servicing the tow if a problem surfaces on one of the vessels. Additionally a tandem tow decreases speed of advance and correspondingly increases the time that the tow is exposed to changes in the weather.

19. Heavy seas provide another problem for either single or tandem tows - pounding, hogging, and sagging. Pounding is when the ships meet the seas head-on resulting in substantially increased loading on the forward pressure areas of the ship. Hogging is a condition resulting from bending of the ship as it crosses over a large wave. Sagging is the opposite bending condition where the center of the ship is in the wave trough. Working is a term which reflects bending and flexing of the ship as it passes through waves.

20. Normal ship repair and certification practice is to repair or replace any areas which exceed 25% deterioration. This is a requirement normal operating guidelines. Deterioration in excess of 25 % either to hull plating or to the reinforcing longitudinal stringers or transverse webs result in a survey recommendation for repair prior to tow or continued operation of a vessel under either US Navy standards or under USCG and American Bureau of Shipping (ABS) inspection standards. In the case of an insurance company, it provides the basis for declining insurer's approval of the vessel to be towed or operated until the condition is corrected. The structural decrease in strength may be locally as much as 90% due to thinning.

21. Under pounding conditions, reduced hull thickness will result in local hull failure, not just plate buckling. Additionally the working of the vessel into the seas causes corrosion scabs to break out. In some locations these scabs penetrate clear through the hull. Once removed these provide open

access for water intrusion into the ship. Once enough water is taken on the location causes continuous flooding with either loss of the ship or the need to scuttle the ship due to inability of the tug crew to board and accomplish damage control and repairs. In heavy seas, the condition may go unnoticed for a substantial period of time even with an excellent tow crew and experienced master.

22. Hogging conditions can result in structural failure most likely in the middle of the ship on the main deck due to structural thinning. The areas of highest failure probability are weld seams with accelerated corrosion rates. In the worst case the structural failure would progress until the ship breaks in half and sinks.

23. Sagging conditions can result in transverse structural failure as well. The most likely location is the middle one third of the ship along transverse plate welds having higher corrosion rates than the general hull. Again structural failure can progress until the ship breaks. In either condition it is likely to cause flooding and sinking.

24. Severe working conditions can cause rivet lap seams to fail when enough rivets have been structurally compromised to allow the seam to start separating. At this point the ship begins flooding and eventually sinking.

25. Flooding as a result of substantial storm damage or structural failure as a result of hogging, sagging, or working of the vessel is not something the tow vessel can do anything about. Tow vessels typically are not manned with sufficient personnel to accomplish underway damage control repairs. Repair of damage in an unpowered vessel with any significant sea state is a high-risk situation posing severe risk to personnel.

26. Even with the best track planning and weather forecasts, tows in the North Atlantic are of extreme concern. Voyage speed of advance (SOA) with a tow ranges from 3-5 knots. Even departing with a good forecast, weather in October and November can change significantly. The weather front systems move four to eight times faster than the tug and its tow- along track. At 3-5 knots, even with modern forecasting and satellite imagery, once the weather changes and the tow has passed Newfoundland en route to England there is nowhere to run from a general widespread fall/winter storm system. Voyage duration at a 3-5 knot SOA ranges from 30 to 45 days from the James River to the approach to the Dover Strait. For this duration of exposure, there is a high probability of having one or more significant storm events overtake the tow in progress. From mid-October to mid-November this becomes near certainty. Even Naval vessels have experienced problems with Atlantic weather having to turn into the storm to ride it out. A tandem tow of vessels known to have hull structures compromised by corrosion is not recommended.

27. Proper rigging of the tow is required to prevent damage to the tow wire. Improper rigging can lead to chaffing of the tow wire and other problems which would result in the tug losing the tow and having to re-rig the tow underway. In heavy weather this may not be possible.

28. Under no circumstances should normal tow inspection, insurance inspection, and USCG inspection be circumvented. If the standards for ship hulls to be certified for operation are waived by MARAD, the taxpayer is at risk for the cleanup cost in the event of a ship loss. The environment is at risk from the pollution caused by the sinking vessel from hydrocarbons, PCBs in cabling and transformers and lead-based paint systems used to preserve interior spaces of ships constructed from the 1940's to the mid-1960's.

29. In light of the preceding considerations, the towing of any of the thirteen ships described above in paragraph 15 from the James River to England in the Fall or Winter presents a serious likelihood of leaks or accidents that would result in the release of wastes, including PCBs, into the environment. This likelihood is significantly increased if the ships are towed in tandem.

30. The risk of leaks or other accidents would be reduced substantially if the thirteen ships described above in paragraph 15 were scrapped at a facility in the Chesapeake region. It is my understanding that such a facility is available, and that there are other sites in the vicinity that could also be used for this purpose. This option would minimize the risk of release of PCBs and other harmful materials into the environment.

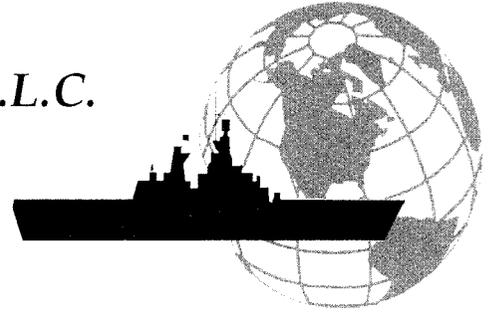
I declare under penalty of perjury and under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of September 2003, Mt. Shasta, California.

Werner F. Hoyt, P.E.

275043

International Shipbreaking Limited, L.L.C.



March 22, 2004

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Ms. Deborah Aheron
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Re: Docket number MARAD 2004-17166 - 8

Dear Sirs or Madams,

We have reviewed the draft Environmental Assessment dated February 20, 2004 prepared by the Louis Berger Group, Inc. and would like to share our thoughts with you.

□ ***Page 5 Legal Framework: Selection of Scrapping Facilities.***

We believe that MARAD did not properly follow Congress' direction pursuant to 6 (c) (1) of the NMHA of 1994 for the following reasons:

1. MARAD ignored lower bids from other companies such as ourselves (violates the least cost to the government provision). MARAD is well aware that we bid \$112 per ton on may 14, 2004 for these ships well before the Able UK contract was signed on July 25, 2004 at \$144.65 per ton. In addition, MARAD asked us on December 4, 2003 to extend our pricing for an additional year, which we did on December 16, 2003;
2. MARAD chose a contractor who could not remove the vessels in a timely manner;
3. MARAD chose an inexperienced "Shipbreaking" contractor, thereby not giving consideration to worker safety and the environment. Able UK may have performed some past "marine structure" work, but to our knowledge there has been no shipbreaking performed at this facility.
4. MARAD chose a contractor with a "strawman" facility. The actual physical facility did not match the advertisement and there were no permits in place to start construction to meet the advertisement. Also, this facility may not have anything

other than a mud seafloor bottom: This may be acceptable for rigs, but is questionable for vessels with deteriorated hulls.

5. MARAD did not minimize the geographic distance that the vessels must be towed by choosing to tow them over 4,600 miles. Also, the facility location places the final leg of the journey thru congested sea lanes and environmentally critical coastlines.

These mis-directions have shown that MARAD has a pre-disposition for foreign scrapping over domestic scrapping by choosing a more expensive option using a less experienced contractor that is farther away and that takes longer to remove the ships. This shows a clear pre-disposition, in violation of 6 (c) (1) of the NMHA of 1994.

□ ***Page 9 Description of proposed Action Alternatives***

The logic that pervades this section creates an artificial “Hobson’s choice’ for the reader. One is led to believe that only the transfer of the vessels to Able UK is available and that choice is better than doing nothing. As described below, there are other alternatives available to MARAD; unfortunately they simply prefer to export the vessels. Ironically, since MARAD has so far been unsuccessful in exporting, they have taken no action as their alternative in order to support their flawed logic and less than accurate recitation of the facts.

□ ***Page 15 No Action Alternative:***

Under the No Action Alternative, the nine obsolete NDRF vessels would remain moored at the JRRF “*until funding was available and/or they were disposed of via another cost effective, best value proposal made through the PRDA process, or through an invitation for bid.*” Congress appropriated \$31 million for fiscal year ’03, a substantial amount of which is still unspent and they appropriated \$16 million for ’04, all of which is unobligated and unspent. In addition, MARAD has long had lower cost proposals in hand, yet they continue to not take any action in choosing other best value alternatives.

□ ***Page 16 Domestic Disposal Facilities***

We know of six ship recycling facilities *currently* operating in the United States, four in Brownsville, TX, one in Philadelphia, PA and one in Norfolk, VA.. Of these facilities, four can take ships simultaneously, including our facility that can accommodate nine vessels simultaneously. All of these facilities have long met MARAD shipbreaking requirements and two have been operating under the more stringent Navy standards for “five years”. Currently, our facility only has four vessels occupying space. With over 220 employees solely dedicated to shipbreaking. At their request, we have supplied MARAD with our capacity figures and diagram of our facility. Apparently, MARAD did not share this information with their consultant. We have attached this information to this letter for your benefit.

One area that perplexes us is the insistence that a ship disposal facility “*have the capacity to accommodate a number of ships simultaneously*”. While we mentioned above that four facilities can accommodate multiple vessels, these same facilities can also receive and dismantle vessels continuously. This cannot be said of Able UK. Once Able UK receives their vessels and closes the imaginary door to their storage area, they cannot receive additional vessels until the work is completed and the imaginary door is re-opened. The domestic facilities can receive vessels continuously and dismantle them simultaneously in a proven assembly line process. This is the ship disposal equivalent of walking and chewing gum at the same time.

□ **Page 23 section 3.3.3 Sediment**

We note with interest the last paragraph of this section that states “*Polychlorinated Biphenyls (PCBs) were recently reported in the James River in 2002 (The Daily Press, 2003). The source of the PCBs has not yet been determined.*” One possible source could be the PCB contaminated paint covering the hulls on many of the vessels moored at the JRRF. We have tested six of the nine vessels awaiting departure to Able UK and three have tested positive for PCB contaminated paint in excess of 50 ppm. In fact, one of the vessels tested up to levels exceeding 3,200 ppm of PCBs in exterior superstructure paint. Apparently, MARAD does not test for PCBs in paint on their vessels. Nor does Able UK, which is mandated to ... “*remove solid items containing PCBs ≥ 50ppm when such solid items are readily removable...*”, including “dried paints” as stated in the Enforcement Discretion letter dated May 22, 2003 (Exhibit A). The removal of PCB laden dried paint has been successfully completed by Navy ship disposal contractors on numerous vessels for many years.

□ **Page 33 section 3.8 Hazardous Materials and page 55 section 4.8.1 Vessel Surveys**

The sections describing PCBs make no mention of PCBs in paint. We find this curious since not only does the Enforcement Discretion letter specifically address this, the EPA has a testing protocol for determining the levels of PCBs in paint and MARAD requires domestic scrappers to test for PCBs in paint using this protocol. The reason this is so important is to prevent PCB contaminated scrap metal from being torch cut by shipyard workers and being used as a feedstock for steel mills who do not have the proper environmental permits, controls and processes in place to prevent the PCBs from entering the environment via smokestack emissions. The EPA (or to our knowledge the EA) has not inquired what steel mills will be buying the scrap steel, whether the mills have been notified of the potential for PCB and whether they that have the permits, controls and processes in place to destroy the PCBs. Even though the ship will be dismantled at Teeside, the PCBs will only be destroyed if they are smelted at an approved facility or removed prior to sale. It is noted that no steel mill or smelter in the US is willing to accept the PCB material. We must remove or landfill. (Note: we have installed our own smelter that will handle aluminum contaminated up to 499 ppm of PCBs).

□ **Page 43 Section 4.2 Air Quality**

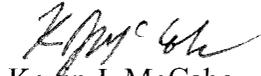
This section makes no assessment of the effects on air quality of the improper smelting of PCB contaminated scrap metal referred to above. We would presume that this would qualify for assessment under EO12114.

□ **Page 51 Vessel Surveys**

We understand that Able UK representatives surveyed many if not all of the vessels for tow ability last summer. That is one of the reasons the *Canopus* was substituted for the *Marine Fiddler*. This information has not been provided in the Environmental Assessment. Since the contract allows for substitution of vessels based upon their ability to endure a 4,600 mile ocean tow, and we know certain of the remaining nine vessels are in unsuitable condition to make the tow, doesn't that result in the perverse result that only the worst condition vessels will remain in the JRRF? This completely undercuts the Environmental Assessment's conclusions on page 58 since certain of the vessels will never leave under the Able UK contract.

We trust these comments prove useful in providing an accurate and factual assessment of the history leading up to the award of this flawed contract and to an accurate assessment of the real environmental threats this contract results in. Please call me at 914-253-4940 if you have any questions.

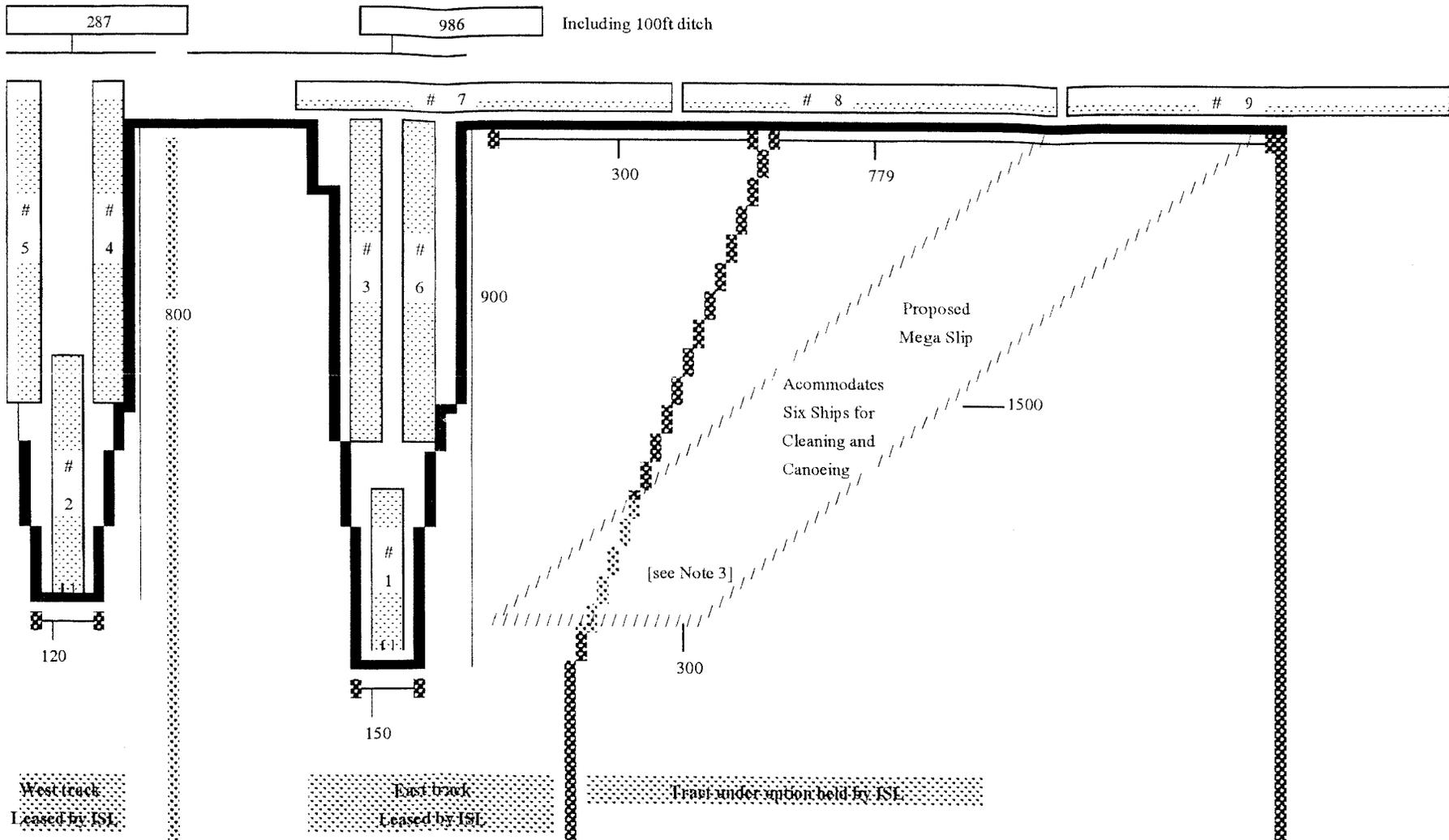
Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. McCabe". The signature is fluid and cursive, with the first name "Kevin" being the most prominent part.

Kevin J. McCabe
Chairman

Facility Diagram

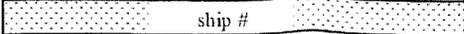
International Shipbreaking Limited, L.L.C.



CONFIDENTIAL INFORMATION

For Illustration Purposes

Diagram is not drawn to scale

Note: Ships represented by  ship # with diagram representing ability to work on 9 ships at a time.

International Shipbreaking Limited LLC

Notes to Facility Diagram

1. ISL currently controls three tracks in the Port of Brownsville, the West Track, the East Track and the Option Track. The West Track contains a dismantling slip that is 800 feet in length and 270 feet in width at the mouth tapering to 120 feet in width at the ramp. The East Track contains a dismantling slip that is 900 feet in length and 350 feet in width at the mouth tapering to 150 feet in width at the ramp. The Option Property does not currently contain a slip. Each dismantling slip can accommodate three vessels at a time.
2. ISL also has permission from the Port of Brownsville to moor vessels along its frontage to the Ship Channel. ISL has enough frontage to position an additional three vessels where cleaning and other work can occur. Therefore, both slips and the frontage would allow for nine vessels to be stored at any point in time.
3. Were there enough demand for additional capacity, ISL could also install a third dismantling slip on the Option Property. This slip would be engineered to be 1,500 feet in length and 250 feet in width and would accommodate six vessels at any one time, increasing our capacity such that 15 vessels could be dismantled at any point in time.

ESCO MARINE INC.

16200 Joe Garza Sr. Rd. – Brownsville, Texas 78521

Phone: 956 831 8300 Fax: 956 838 5700



March 29th, 2004

email to: <http://dmses.dot.gov/submit/>

DOCKET CLERK

U. S. Department of Transportation Dockets
Room PL-401
400 7th Street, S. W.
Washington, D. C. 20590-0001

Re: Docket No. MARAD 2004-17166

TO WHOM IT MAY CONCERN:

After reviewing the draft *Environmental Assessment for the Transfer of National Defense Reserve Fleet Vessels from the James River Reserve Fleet for disposal at the Able UK Facilities, Teesside, UK*, dated February 20th, 2004, Esco Marine Inc. (Esco) would like to make the following comments:

1. Environmental Assessment (EA) §1.2 (Page 5)

a) Marad had breakers available in the U. S. that could have taken delivery of the same vessels offered to Abel UK (Abel) for substantially less money and this work would have been done by companies with proven track records in this industry and Technical Compliance Plans (TCP) which have already met with Marad's approval.

Esco was more than ready to bid on these vessels but understood that the bid received under the PRDA solicitation was for a program that had new and innovative solutions to our existing shipbreaking technology.

The PRDA, as Esco believed at that time, was developed by the Government to encourage the development of new technology to be brought into operation under Government subsidies.

Esco, as well as other companies involved (including Able) have offered no "new or innovative" processes for dismantling vessels, and if Esco had known the PRDA was intended to be used as a means for bidding vessels at competitive prices, then without question Esco would have entered a bid.

Esco's track record on bidding prices-per-ton for these ships and other similar type vessels would have been well below other competitors and certainly would have been below the \$144.65 per ton. In fact, Esco has since put in a PRDA for the Able vessels below \$110 per lightweight ton.

b) Esco was in a position to move the ships on a faster time schedule than Abel could have effected.

c) Without question Esco, as well as other U. S. breakers, have an established track records in worker safety and environmental compliance, along with technical expertise which Able does not possess.

As far as we in the industry have been able to determine Able has never broken any ships nor do they have in place worker safety and environmental programs compatible with those in the U. S.

In addition, to the best of our knowledge Able's facility does not meet the criteria as they represented to Marad.

It is irresponsible and negligent on behalf of Marad to choose a contractor some 4,000 miles away from the vessels present location at the James River Reserve Fleet (JRRF) to a contractor with no established experience in shipbreaking and to a location where environmental and safety standards will be difficult to monitor and track.

d) Marad should have taken into consideration the risks involved in towing highly deteriorated and damaged vessels a great distance over the Atlantic Ocean. This should not have been an acceptable course of action when domestic yards were available to do the same work with less risk for moving the ships and doing so for considerable less monies.

In summary of the above, it is clear that Marad is in violation of § 35.02 - of the Fiscal Year (FY) 2001 National Defense Authorization Act which specifically required Marad to acquire ship disposal services on a best value basis consistent with the Federal Acquisition Regulation (FAR).

Instead of flying off to England, Marad should have used its time and energy to offer these vessels to the many yards in Brownsville, Texas where there are highly trained workers, approved environmental and safety programs already in place and where the net costs to Marad and the taxpayers would be appreciably lower than the Able project.

Therefore, directing the vessels to the U. S. breakers would have given the "best value" and involved considerably less risk to the Government.

It is also important to note that during 2002 & 2003 Esco sent many letters to Marad informing them that Esco needed vessels for breaking, that our yard had the capacity to take 5-7 ships per year (depending on the vessel type), and we were willing to expand our capacity -- which Esco is presently doing -- in fact to effectively double our capacity for Marad vessels. Esco also asked Marad to come and check out our yard but, over all objections, Marad seemingly put all its best efforts into the Able UK project.

On page 6 of the EA Marad once again lists numerous points as to why Able was "best value" and to counter that we would like to specifically point out the following:

1) Disposal costs (which can be demonstrated by Esco's prices under which they have been awarded other vessels) would be substantially less by have these vessels dismantled in the U. S.

This does not even take into consideration the down-stream benefits to the U. S. economy such as the jobs it creates as well as the raw materials generated which are badly needed in our U. S. economy such as scrap iron, non-ferrous and reusable machinery.

2) It is well known that the vessels in the JRRF are high risk vessels and no one can logically want to tow them over 4,000 miles for dismantling.

Esco's yard and its personnel have towed hundreds of ships from the JRRF to Brownsville (which is a coast-wise - not ocean tow) safely and without incident.

3) In assessing the facility/risk factors, Marad should have easily determined that there was a high risk of failure by towing to England because of exposure to the vessels to the rigors of a long ocean tow, the inexperience of Able with this type of shipbreaking and the fact that the ships would have been located some 4,000 away from the U. S. making environmental and safety monitoring difficult. The U. S. breakers and Marad have a well-established monitoring program as well as good tracking procedures for the waste-stream which results from dismantling these types of vessels.

4) Marad has substantiated results from the environmental/worker safety programs provided by U.S. breakers at their yards. Because of Able's lack of experience in ever cutting a ship or having in place established environmental/safety programs compatible with Marad requirements, and an approved TCP, the risk of failure or much greater than if the vessel were dismantled in the U. S.

On page 15 of the EA -- No Action Alternative -- the fact that Marad was keeping such high risk ships in the JRRF increased the environmental hazards due to possible storms, oil leakage and other problems resulting from deteriorating vessels. The longer the vessels stay in the Fleet, the more likely the probability of further deterioration and for a catastrophe to occur.

Although Marad had the alternative to contract for the dismantling of these vessels with Esco or other U. S. breakers at a cost substantially below the Able contract prices, thereby allowing Marad to meet the Congressional mandate, Marad still took a course of action that was contrary to any logic both as to risk assessment and costs.

Page 16 - Domestic Disposal § 2.3.1 - Marad's personnel and management have knowledge that Esco has the facilities, equipment, personnel and technical expertise to dismantle 5-7 ships per year at its Brownsville facility.

Marad also knows there are other facilities in Brownsville and the U. S. that can take additional ships and they also have the expertise and proven records to accomplish Marad's stated objectives.

Apparently Marad -- for whatever reasons -- expended its energies into soliciting Able at greater costs and risks to the U. S. taxpayers when it should have put its efforts into providing as many ships as possible to the U.S. breakers, and then all 13 of these vessels could have been easily cut with tangible savings and less risk as well as not literally "giving away" the 2 newbuilding tankers *Benjamin Sherwood and Henry Eckford* as a part of the Able project since value of these two vessels is considerably more than the value of the 13 vessel contract.

Esco wrote numerous letters to Marad (well before the Able bid) and all during the year 2003 asking for ships to cut, explaining that we were actually laying off workers, and that Esco had made a large capital investment expecting to handle a large tonnage of Marad ships for recycling and yet Esco had to wait almost 2 years after receiving the last Marad ship (General Patch) before obtaining another ship.

Esco has repeatedly explained to Marad that its facilities work best when it has numerous ships and has a backlog to constantly feed its operations. While one ship is being completed in the slip, 2-3 other ships can be remediated, oil can be removed and pre-cutting done to feed our operations.

Esco is still waiting to receive vessels from the JRRF and has also made a proposal to Marad under the PRDA process for taking the 13 Able vessels for breaking, including the 4 ships presently moored at Abel UK. Our price is substantially lower than Able's bid and other bids in the industry for the same vessels yet to date we have received no response from Marad.

Sincerely yours,

Richard Jaross
ESCO MARINE INC.
Phone: 956 831 8300/Fax: 956 838 5700/956 831 0123

ESCO Marine, Inc. concurs with the environmental comments and critique posted by both International Shipbraking and the Sierra Club.

ESCO MARINE INC.

16200 Joe Garza Sr. Rd. – Brownsville, Texas 78521

Phone: 956 831 8300 Fax: 956 838 5700



March 29th, 2004

email to: <http://dmses.dot.gov/submit/>

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Esco has repeatedly explained to Marad that its facilities work best when it has numerous ships and has a backlog to constantly feed its operations. While one ship is being completed in the slip, 2-3 other ships can be remediated, oil can be removed and pre-cutting done to feed our operations.

Esco is still waiting to receive vessels from the JRRF and has also made a proposal to Marad under the PRDA process for taking the 13 Able vessels for breaking, including the 4 ships presently moored at Abel UK. Our price is substantially lower than Able's bid and other bids in the industry for the same vessels yet to date we have received no response from Marad.

Esco has not addressed many other issues found in the EA as they are well covered under the comments submitted by International Shipbreaking, the Sierra Club and Robert E. Rutkowski with which we fully concur.

Esco would like to reiterate that it is readily apparent there is something wrong when you have a viable industry here in the U. S. that could carry out this work for Marad with less risks, at lower costs and keep jobs here in the U. S., while Marad takes actions which are completely contrary to the dictates of Congress and the interests of the U. S. taxpayers.

In addition to the rest of our points set out in this correspondence, Esco would like to bring to the public's attention that Esco bid \$956,360.47 (approx. \$96.00 per ton) in a public Invitation for Bid to remediate and dismantle the vessel Santa Isabel and was in fact awarded the contract as lowest bidder, but Marad later rescinded this contract and the vessel went to Able for \$1,443,896.30 **at an additional cost to the taxpayers of \$485,536.** This was evidently due in part to the fact that Esco is a small business -- with small business limitations -- and was unable to place a 150% performance bond on the project. This bonding requirement, although stated in the Invitation for Bid, was clearly expressed to be subject to reduction based on experience and historical record, both of which are Esco's strong points. In fact, it should be noted that Esco had dismantled other Marad ships effectively and to Marad's satisfaction under much lower performance bond requirements (approx. 60% of contract value).

Nevertheless, Marad disregarded all of our sensible pleas for fairness, and proceeded to rescind our contract and award the vessel to Abel. It is ironic and definitely sad that Marad's bad judgment with respect to the disposal of that and other vessels has ended up costing the government and the tax-payers a ridiculously larger sum of money now that the vessel is mired in a quagmire of law suits and controversy.

Sincerely yours,
Richard Jaross
ESCO MARINE INC.
Phone: 956 831 8300/Fax: 956 838 5700/956 831 0123

ROSS & PARKS, INC.

March 29, 2004

Docket Clerk
U.S. Department of Transportation Dockets
Room PL-401
Department of Transportation
400 7th Street, SW
Washington, DC 20590-0001

Ms. Deborah Aheron
U.S. Department of Transportation
Maritime Administration
400 7th Street, SW
Washington, DC 20590-0001

Re: Docket number MARAD 2004-17116

Dear Sirs or Madams,

I would like to share with you comments on MARAD's Draft Environmental Assessment to Transfer of National Defense Reserve Fleet Vessels from the James River Reserve Fleet for Disposal at Able UK Facilities, Teeside, U.K. I concur with the general thrust and specificity of the comments that have been posted by International Ship Breaking, LLC and the Sierra Club. In addition:

1. Section 1.0, paragraph 1: The U.S. Maritime Administration (MARAD) defines non-retention, obsolete vessels as those "that have reached the end of their useful life and are available for disposal."

Comment: MARAD did not use a consistent form of this definition when determining which vessels are part of the National Defense Reserve Fleet (NDRF) vessels that are to transfer to Able UK facilities in Teeside, U.K. for disposal. This inconsistency calls into question the intent and competitiveness of the PRP contract as well as MARAD's methodology that leads to the rejection of a domestic scrapping option in the Environmental Assessment.

The MARAD Post-service Remediation Partners (PRP) contract is for 15 obsolete, non-retention vessels. Four in a Pilot Program, nine to go only upon the successful completion of the Pilot Program, and two Kaiser-class Navy oilers that can either be transferred for a credit upon successful completion of the Pilot Program or, according to section H.10 of the PRP/MARAD contract, for a fee of \$3.5 million if the contract is terminated at the convenience of the government before the end of the pilot program.

Contract No. DTMA1C03010 Section H.5.1, MARAD states that within 90 days of delivery "PRP shall, in writing, notify the Administrative Contracting Officer of the selected use of the Unfinished Ships from the five (5) options proposed by PRP." Nonetheless, the ultimate disposition options for the oilers has not been announced by either MARAD or Post Service Remediation.

The oilers were not listed in the October 21, 2001, 121 vessel NDRF Non-Retention/PRDA candidate list. The addition of the oilers came after the initial PRDA submission period of January 7-11, 2002. They were added -- along with eight other obsolete, non-retention vessels -- in a February 27, 2002 amended list of 131 "*Obsolete Non-Retention Vessels as PRDA Candidates*." However, the oilers, the Benjamin Isherwood and Henry Eckford, are not only obsolete, they are, as the PRP/MARAD contract notes, also "unfinished." That the vessels were "unfinished" was not noted in that amendment or in any of the other amendments that MARAD put out for the PRDA. Further, they are subject to the conditions of Section 3603 of the National Defense Authorization Act for Fiscal Year 2000, Public Law 105 - 261, approved October 17, 1998 (112 STAT. 1920).¹ This Public Law explicitly names the Eckford and Isherwood as Navy oilers that could be reconstructed for sale or charter to a NATO country for use as an oiler. However, it also sets a number of conditions such as:

Section 3603 (2) Required conditions. _ The [Department of Transportation] Secretary may not convey a vessel under this section unless_

- (A) competitive procedures are used for sales under this section;
- (B) the vessel is sold for not less than the fair market value of the vessel in the United States, as determined by the Secretary of Transportation;
- (C) the recipient agrees that any repair, except for emergency repairs, restoration, or reconstruction work for the vessel will be performed in the United States;
- (D) the recipient agrees to hold the Government harmless for any claims arising from defects in the vessel or from exposure to hazardous material, including asbestos and polychlorinated biphenyls, after the conveyance of the vessel, except for claims arising before the date of the conveyance or from use of the vessel by the Government after that date;
- (E) the recipient provides sufficient evidence to the Secretary that it has adequate financial resources in the form of cash, liquid assets, or a written loan commitment to complete the reconstruction of the vessel; and
- (F) with respect to the vessel, the recipient remains subject to all laws and regulations governing the export of military items, including the requirements administered by the Department of State regarding export licenses and certification of nontransfer end use.

¹ **Sec. 3603. Authority to Convey Certain National Defense Reserve Fleet Vessels.**

(a) **Authority To Convey.** _The Secretary of Transportation may convey all right, title, and interest of the United States government in and to the vessels BENJAMIN ISHERWOOD (TAO-191) and HENRY ECKFORD (TAO-192) to a purchaser for the limited purpose of reconstruction of those vessels for sale or charter to a North Atlantic Treaty Organization country for full use as an oiler.

The remainder of the language of Section 3603 can be found at:

<http://marad.dot.gov/publications/complaw03/pdf/National%20Defense%20Reserve%20Fleet%20Ready%20Reserve%20Force.pdf>

MARAD did not incorporate these clauses into the contract with PRP. There was no competitive procedure used for the sale. There was no survey undertaken to determine the fair market value of the vessel. The Able UK has stated to the press² that it intends to exercise all options at its yards -- which is not in the United States. Since the disposition of the oilers is not incorporated into the contract, it is unknown if current contract language is sufficient to absolve the US Government of any future liability arising from refit, sale or charter of the oilers. Neither the original owner of PRP (The Pyne Companies) or the post-contract transferee, Able UK, were able to post the performance bond originally called for in the MARAD/PRP contract, raising whether either party had/has financial resources in hand to undertake the reconstruction to double hull. There is no appendix to the contract to show that PRP intends to follow U.S. law and regulations governing the export of military items.

Mr. Peter Stephenson, the Managing Director of Able UK, is quoted³ as stating that the storage of the four vessels currently at his quay in the UK, is costing him some 300,000 British pounds per week. Given that Able UK was unable to pay the full performance bond for the entire PRP/MARAD contract when Mr. Percy Pyne transferred the ownership of PRP from his company to Able UK, and that there is currently an extraordinarily high price of scrap metal on the international market; it is reasonable to expect one of the five options might be scrapping of the oilers -- particularly if PRP or a party the oilers are conveyed to, does not have the \$50 million necessary to refit the oilers with double hulls, thus extending their shelf life for NATO countries. Most importantly, there is no language in the contract that forbids the Eckford and the Isherwood from being scrapped.⁴

Whether one of the five options is scrapping, the options will undoubtedly have environmental effects. MARAD should be completely transparent with the regulatory authorities, the public, industry, and Congress by explaining what the five options are and potential environmental consequences of each option. If the five options do not include scrapping, the environmental effects of that should also be incorporated as the contract 1) does not exclude that option by substitution, and 2) MARAD could comply with voluntary International Maritime Organization and private sector maritime organizations standards for compiling toxic and environmental inventories prior to sale.⁵

² *Hopes for New Ships Work*, Evening Gazette, December 5, 2003 found at: http://icteesside.icnetwork.co.uk/0100news/0001head/content_objectid=13695046_method=full_siteid=50080_headline=-Hopes%2Dfor%2Dnew%2Dships%2Dwork-name_page.html

³ Telegraph.co.uk, *Shipyard looks to take 'ghost' work abroad*, Christopher Hope, Business Correspondent, 24/03/2004; <http://www.money.telegraph.co.uk/money/main.jhtml?xml=/money/2004/03/24/cnable24.xml&menuId=242&sSheet=/money/2004/03/24/ixfrontcity.html>

⁴ At current scrapping prices, Able UK would make a profit if it scrapped the oilers rather than refit them. The profit would be greater if scrapping is done in a low wage nation, but at current scrap prices, Able UK should be able to post a profit above cost even if it scraps the vessels at its facility in the UK.

⁵ These efforts are to ensure that scrappers can adequately protect their workers and the environment during this final stage in the vessels' life cycle.

2. Section 1.1.1 states "the Secretary of Transportation, acting through MARAD, maintains the NDRF, which includes 146 ships that have been designated as obsolete."

Comment: This language is obfuscatory and could lead the public, regulatory agencies, or Congress to misunderstand the relationship of the Department of Defense, the U.S. Navy, and U.S. Army to the NDRF and their role in the preparation and formal review of this document.

While the DOT/MARAD maintain the NDRF, the funding and program management for the operation and maintenance of the non-Ready Reserve Fleet vessels of the NDRF, including the non-retention vessels⁶, comes through the budget authority of the Department of Defense capital-revolving account, the National Defense Sealift Fund⁷ which is a fiscal component of the DoD U.S. Transportation Command.⁸ Project management of the O&M activities rests with MARAD HQ and is further de-centralized to three MARAD field offices which maintain their own staff as well as subcontracts. There is no evidence that MARAD has incorporated Department of Defense or U.S. Navy policy and standards in the compilation of this draft Environmental Assessment.⁹ In addition, the Sturgis, a former Army nuclear barge, is part of the James River Reserve Fleet. The U.S. Army Corps of Engineers is the problem holder and the program manager. To ensure that MARAD meets the best management practices of its customers and tenants, it is respectfully requested that MARAD request the involvement of the DoD U.S. Transportation Command, the U.S. Navy Ship Disposal program office, and the U.S. Army Corps of Engineers program office in the next iteration and review of this Environmental Assessment.

3. Section 1.2, Legal Framework, (b)(1)-(4) states the P.L.106-398,P3502(a), 114 Stat. 1654a-490 (2000) four Federal Acquisition Regulation (FAR) best value criteria to be used in the selection of scrapping facility:

- (1) in a timely manner;
- (2) at least cost to the Government;
- (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 (Pub. L. 106-398, S3502(b), 114 Stat. 1654a-490 (2000)).

⁶ The only exception is the Sturgis, a U.S. Army Corps of Engineers former-nuclear power plant barge which is part of the James River Reserve Fleet and the Savannah, Department of Transportation nuclear powered vessel that is mothballed. MARAD also has a number of small research vessels that it maintains at fee for various U.S. agencies such as NOAA.

⁷ In this instance, the actual fiscal relationship is handled by a Chief of Naval Operations office and MARAD.

⁸ An office within the U.S. Transportation Command maintains minimal program oversight of MARAD's Operations and Maintenance responsibilities.

⁹ The options in the *July 1997 Environmental Assessment of the Sale of National Defense Reserve Fleet Vessels for Scrapping* were Domestic Scrapping, Overseas Scrapping, and No Action. According to a 1999 interview by the author of these comments with a MARAD official familiar with the study, the report was paid for by MARAD but was for the use of both MARAD and the U.S. Navy and was an essential component of the process of getting the 1997 PCB waiver.

On page 6 of the Draft EA, MARAD states its "best value" award to PRP considered the following factors:

- Benefit to the ship disposal program short and long term
- Number of vessels/tonnage
- Rate of vessel removals from MARAD fleets
- Rate of vessel dismantling
- Disposal costs
- Condition of vessel(s) (James River high-risk vessels are the current priority)
- Environmental threat mitigation at MARAD fleets
- Proposal feasibility/risk
- Environment/worker safety protection at dismantling facility
- Proposal approach, methodology, special provisions

Comment: MARAD provides no content to demonstrate that the contract with PRP met any of its factors that would allow it to state they made a "best value" award. I fully concur with the Legal Framework comments of International Shipbreaking Limited, LLC. in this regard.

In addition, MARAD has not defined what the benefit is of the PRP contract to the ship disposal program short and long term.

Given the total number of vessels/tonnage of the ships MARAD must dispose of, it is unclear why the PRP contract represented "best value" either by definition of the FAR or to the government.

Since the rate of removal of the PRP contracted vessels is through 2004 (and at the discretion of MARAD could be extended), it is clear that PRP represents no increased best value to the Government than would scrapping in the United States.

The contract does not specify an actual date by which the dismantling must take place (only the end dates of tows before fines, which could be waived).

International Shipbreaking Limited addresses the issue of "best value" disposal cost. In addition, the \$17 million plus that is tied up in the Able UK contract is not available for ship scrapping. Another issue is PRP is to receive \$6 million US for disposal costs of the four vessels already towed to the UK. The disposal cost for 5 vessels being dismantled at Bay Bridge Enterprises in the Virginia Tidewater area is \$5 million. Clearly there is no fiscal advantage to scrapping in the UK. This is without even looking at the subsidy that the oilers will provide to Able UK's ability to economically scrap.¹⁰

¹⁰ *Commission of the European Communities: Technological and Economic Feasibility Study of Ship Scrapping in Europe, Report No. 2000-3527; Revision No. 01; February 2001.*

The MARAD/PRP contract allows for substitution of vessels at the discretion of PRP. This was already exercised in the choice of the first four vessels. MARAD has not demonstrated that this clause provides "best value".

MARAD does not provide evidence that the PRP contract provides "best value" in terms of environmental threat mitigation at MARAD fleets. The "best value" in terms of environmental threat mitigation at the MARAD fleets -- given that \$17 million dollars of FY03 funding is tied up in the MARAD contract; the Administration is only requesting \$11 million a year in disposal funding; and MARAD Administrator William Schubert stated several times at the July 2003 Ft. Eustis public briefing hosted by Virginia Senator George Allen and U.S. Representative JoAnn Davis (VA-1), that MARAD would only try to remove the worst-case vessels by the September 2006 deadline -- is to submit an FY2005 budget request to increase the National Defense Sealift Fund NDRF operation and maintenance line to remove the fuel from the decaying vessels.

Again, MARAD has yet to demonstrate how the PRP contract represents "best value" in regards to proposal feasibility/risk. On page 6, Legal Framework, MARAD asserts they used a "competitive procurement mechanism," the Program Research and Development Announcement (PRDA) to solicit proposals. MARAD has provided absolutely no transparency, as the FAR requires, to ensure the PRDA could be used by industry as a competitive procurement mechanism -- much less a driver for technological advancement in the research and development field (for which the PRDA is intended). It is a new procurement mechanism, developed initially by the Department of Energy and is not well understood by government or the private sector -- and not at all by the ship scrapping industry. In the 2001 MARAD Report to Congress (which MARAD cited to Judge Rosemary Collyer of the Washington DC Federal District Court as a "supplemental" environmental assessment), MARAD asserts they will issue a Request for Proposals, which is recognized by the FAR and the private sector as a competitive procurement mechanism.

MARAD has provided no substantiation as to why the PRP contract represents "best value" for the environment and worker safety protection as compared to the other proposals it received under the PRDA.

As noted in the discussion above about the PRDA, MARAD has failed to demonstrate why the PRP proposal represented "best value" in approach or methodology. And since the "special provisions" are not delineated, how can that be used as a criteria?

To give MARAD some benefit of doubt, perhaps they are comparing the PRP contract to other outside of the United States of America PRDA proposals. However, that is not the intent of the NEPA process¹¹ or of the Executive Order 12114¹². And in regard to EO

¹¹ This unfamiliarity with the NEPA process was demonstrated as early as the July 1997 Environmental Assessment of the Sale of National Defense Reserve Fleet Vessels for Scrapping which had no process of public or regulatory comment, but included a Record of Decision. The 1997 Report, however, includes six excellent appendixes that detail a number of issues, including the costs, techniques, and regulatory/policy issues related to each proposed action (Domestic Scrapping, Foreign Scrapping, and No Action).

12114, MARAD clearly did not assess the political effect of its actions thus far (the four vessel trans-Atlantic tow for disposal in the UK) in the development of this environmental assessment of nine vessels. That should also be corrected in the next draft of this Environmental Assessment.

4. As noted in other comments to the draft Environmental Assessment, MARAD has not substantiated its claim that domestic scrapping is not a viable option as "no US disposal facility currently has the capacity to accommodate a number of ships simultaneously. In regards to its further claim, "... or can meet the cost-effectiveness required by MARAD to meet the congressionally imposed deadline of September 2006," I respectfully submit the following comments:

Comment: Since MARAD rejects the option of Domestic Scrapping for this current Environmental Assessment, while it embraced the same option in the 1997 Environmental Assessment and the 2001 Report to Congress, it must provide substantiation to what has changed from the previous Environmental Assessment and supplemental EA's.

Additionally, the seeming tension between the deadline and the budget (a.k.a. "cost-effectiveness") is a false dichotomy that does not answer whether domestic scrapping is a viable option for the NDRF vessels included in the PRP contract.

Congress set the new deadline based upon the MARAD Report to Congress in 2001. That report had a viable budget and program management plan. Neither the budget or the program management plan has been implemented by MARAD or received the endorsement of the Office of Management and Budget which is the body which submits the President's annual budget to Congress. OMB is only willing to submit a budget of \$11 million per year. According to MARAD's 2001 Report and the 2001 RAND report for the U.S. Navy on *Disposal Options for Ships*, that is not enough to meet the Congressionally imposed deadline.

Interestingly enough, while the Administration has not endorsed a higher annual budget, it has endorsed -- despite significant political problems for the Administration -- the export of the ships to Able UK for a contract amount that exceeds what the President

¹² Tellingly, the bibliography of the Draft EA cites for Executive Order 11214, a page from the Mining Mineral Service that has no statutory language. The Mining Mineral Service is a group in the Department of the Interior. A search of the MARAD website has no reference to the EO, and a search of the Department of Transportation site has links only to other member agency documents. Clearly, the DOT has no overarching policy for implementation and despite reference in materials, MARAD has not, as the EO requires, developed agency procedures. While the EA does not address whether MARAD determined that the export of vessels to the UK constituted a significant foreign action, by the time this Draft EA was written, the pilot action had caused significant impacts that are detailed in EO 12114 Section 2-5 i-iii. These impacts should be noted and reflected upon in the Environmental Assessment. However, rather than reflection, the Draft EA acts as if the four "pilot" vessels allowed by the U.S. District Court in the TRO had proceeded without incident or protest to the Able UK facility and the pilot was successfully concluded. In fact, the pilot cannot be executed because Able UK did/does not have the permits or technology to scrap as described in place, its fiscal health appears tenuous, and the official position of the UK government following two successful lawsuits against the MARAD "pilot" project is the vessels should be returned to the United States in the spring of 2004.

requested in FY03, the EPA "enforcement discretion," as well as the transfer of the oilers at below basic scrapping market value in contravention of the provisions of public law.

As to why Congress has not overridden the President's budget is pure speculation at this point.

MARAD should include in the next iteration of this document, how, if at all, it expects it to meet the 2006 deadline.

5. Able UK's Peter Stephenson¹³ has begun publicly announcing he may utilize the contract provisions that allow him, upon approval of DOT/MARAD, to change subcontractors. He also announced he was looking at using contractors outside the UK in unnamed countries.

Comment: It is unclear whether MARAD will allow this substitution of yards and regulatory constructs and what the potential effects might be to this environmental assessment.

When the contract was first let, Able UK was a subcontractor to PRP. When PRP was unable to come up with the full performance bond, The Pyne Companies transferred the entity to Able UK. However, while there were some contract modifications, the MARAD/PRP Amendment 1¹⁴ was not modified to take into consideration that Able UK may try to subcontract to another UK yard -- which was not inspected,¹⁵ or outsource to scrappers in another unnamed, though cheaper country.

The viability and conditions of the subcontracting within the UK or offshore outsourcing should be addressed in the Environmental Assessment as should a more honest accounting of the present state of Able UK to dispose of the vessels. Since the EPA discretion letter was issued on what is clearly now seen as false premises (though whether that is simply on the part of PRP and Able UK is unknown), MARAD should explain in the Legal Framework section, why the PRP contract should not, or cannot, be pulled and how that affects the options it can use to dispose of the 11 remaining vessels in the PRP contract.

For any future non-U.S. contracts or pilot projects that may be undertaken, an important Lesson Learned of this experience is the inadvisability of using MARAD and US EPA headquarters personnel to inspect foreign yards and review regulatory compliance as it

¹³ Telegraph.co.uk , *Shipyard looks to take 'ghost' work abroad*, Christopher Hope, Business Correspondent, 24/03/2004; <http://www.money.telegraph.co.uk/money/main.jhtml?xml=/money/2004/03/24/cnable24.xml&menuId=242&sSheet=/money/2004/03/24/ixfrontcity.html>

¹⁴ In an email request over 10 days ago to the MARAD POC for this draft EA, I requested that MARAD post the earlier environmental assessments as well as the contract modification referenced in the index to the draft EA so that the public and regulatory agencies might have them available to reference during this comment period. MARAD did not do so.

¹⁵ Having MARAD and the US EPA inspect foreign yards and review regulatory compliance does not seem to have worked in the instance of the Able UK Teeside facility. Given what has now become known in terms of Able UK's lack of permits, required infrastructure and technology as presented to the U.S. government contracting officer and regulatory oversight personnel, due diligence was not adequately undertaken.

does not seem to have worked in the instance of the Able UK Teeside facility. Given what has now become known in terms of PRP's fiscal viability and Able UK's lack of permits, required infrastructure and technology as presented to MARAD in the PRP proposal, due diligence on the part of on-the-ground and supervisory U.S. government representatives was not adequately undertaken.¹⁶

6. Given the number and scope of the requested changes that MARAD is receiving during this comment period, I respectfully request that the next iteration of this document remain in the draft format.

I thank you for the opportunity to comment on this document, MARAD-2004-17166-2, and look forward to the next iteration.

Sincerely,

Polly Parks
President, Ross & Parks, Inc.

¹⁶ I do not want to lay blame unfairly. If for some reason MARAD or EPA personnel involved in the contract and discretion letter recommended not going forward with this contract, that should be noted in the Environmental Assessment. If that occurred, the EA should explain why the contract was then allowed to go forward and whether this may have impacted the methodology used in evaluating the PRP proposal, as well as this draft environmental assessment (i.e., the EA is for the transfer of nine vessels, not simply the environmental effects of towing nine vessels as is covered in the technical section of the EA. If that was the case, there is no argument as to there being a domestic option.).

Docket Clerk - U.S. DOT Dockets
Room No. PL-401, Dept. of Transportation
4000 7th St. S.W.
Washington, D.C. 20590-0001

Sub: Submission of comments invited under public notice, 9423 Federal Register/Vol.69, No.39/
Feb. 27, 2004/Notices

Ref: (1) **Docket No. MARAD 2004-17166**, Dept. of Transportation; (2) Draft Environmental Assessment for transfer and disposal of approx. nine obsolete vessels from the JRRF to the Able UK facility located in Teeside, U.K.; (3) Report titled "Transfer of National Defense Reserve Fleet Vessels from the James River Reserve Fleet for disposal at Able UK facilities, Teeside, U.K.- Environmental Assessment", dated Feb. 20, 2004, prepared for the MARAD, by the Louis Berger Group, Inc., Washington, D.C.

To whom it may concern:

On behalf of All Star Metals, L.L.C, we would like to submit following comments with reference to above referred matter:

(1) The said EA was done addressing Environmental Impact on a wide range of issues ranging from Air Quality to Navigation, as evidenced by discussions wide sections 4.1 to 4.13.

(2) Even though the report can be claimed to be lacking in depth with respect to certain issues, as evidenced by comments already sent in response to this notice and posted for public viewing*, what is more vital, is that he fundamental premises on which the report is based, are flawed, in one crucial aspect as described below. Consequently, any past, current and future actions of MARAD, based on the report, can be, and already have been, subject to disputes, challenges and legal actions.

One of the basic premise, on which the report concluded that there were no other options possible other than no action at all or exporting the vessels in, "*as is condition*, for disposal, which met the criteria established by the congress wide the amended section 6(c)(1) of the NMHA' (Pub. L. 106-398, §3502(a), 114 Stat. 1654a-490 (2000); [16 United States Code (USC) §5405(c) (1)]; (Pub. L. 106-398, §3502(b), 114 Stat. 1654a-490 (2000); Section 3502 of the Fiscal Year (FY) 2001 National Defense Authorization Act; and specifically Bob Stump National Defense Authorization Act for Fiscal Year 2003, Pub. L. 107-314. It was assumed that it would not be possible for MARAD to meet the deadline of disposal by Sept. 30, 2006, (imposed by congress), without the use of additional vessel disposal facilities abroad. It made further reference to a study of 2001 or earlier, (sect. 1.2, page 6,) that seemed to imply that domestic ship dismantling industry was offering limited cost-effective capacity, which led MARAD to consider awarding the ships for disposal , through a pilot program, to overseas facilities.

However, no mention has been made as to whether, the "so called" cost-effective capacity constraint, is with respect to both the environmental cleaning and ship breaking capacities or not. If an effort is made to ascertain the true status In this regard, we are sure that **no** capacity constraint would be found with respect to the former (environmental cleaning).

We also hold a strong view that, provided the existing facilities in USA are utilized equitably, keeping individual capacities in mind, (i.e. without overloading any one facility), the required capacities for ship dismantling can also be achieved, while meeting the regulatory standards. This is visible in the number of PRDA submissions given by domestic parties.

(*Ref: (1) Comments from Sierra Club, Olivebridge, N.Y. Dt. 3/18/04; (2) Comments from Mr. Kevin McCabe, Chairman, I.S.L., Brownsville, TX, Dt. 3/23/04; and (3) Comments from Mr. Robert Rutkowski, Dt. 3/10/04 & 3/28/04.)

Once a fresh look is taken with this perspective, the need to do extensive "EA" for sending obsolete vessels abroad, while still posing an environmental hazard, would not even arise, at the same time leaving MARAD and PRDA free to explore and utilize the ship breaking capacities abroad, *if at all needed*.

If you have any further questions, please feel free to direct any questions and comments to me at the contact information listed below.

Sincerely,

Nikhil Shah

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Docket Clerk - U.S. DOT Dockets
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If you have any further questions, please feel free to direct any questions and comments to me at the contact information listed below.

Sincerely,

Nikhil Shah

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275230

Environmental Stewardship Concepts

#13

March 22, 2004

Docket Clerk, US DOT Dockets
Room PL-401, Department of Transportation
4000 7th St. SW, Washington DC 20590-0001
RE: Docket No. MARAD 2004-17166 - 15

DEPT. OF TRANSPORTATION
04 MAR 31 PM 1:57

Dear Sir or Madam:

I submit these comments pursuant to the invitation of the US Maritime Administration (MARAD) and the US Department of Transportation (DOT) welcoming the public's opinion and comments on the draft Environmental Assessment on the Transfer of National Defense Reserve Fleet Vessels from the James Rivers Reserve Fleet for Disposal at Able UK Facilities, Teesside, UK (EA), 69 Fed. Reg. 9422 (Feb. 27, 2004).

In my comments I stress the draft EA's failure to properly assess the risk posed by polychlorinated biphenyls (PCBs) on all the affected environments, including those within US territory, UK territory, and the global commons. I am a nationally recognized expert on ecological risk assessment pertaining to endocrine disrupting chemicals and persistent organic pollutants, including PCB's. I have particular knowledge of and familiarity with contamination caused by PCBs in aquatic systems.

The draft EA is deficient in omitting the quantity of PCBs estimated to be on board the vessels proposed for export given the fact that those quantities are known, and may be as much as 300 tons.

If any accident or sinking occurs resulting in the immediate or eventual release of even a small amount of PCBs, particularly in the James River/Chesapeake Bay area or in the coastal waters of the United Kingdom, the resulting PCB contamination would likely be catastrophic for the marine environment and ultimately contaminate the human food chain.

PCB's pose serious threats to human health and the environment because of their high toxicity, persistence in the environment, and the tendency to accumulate and concentrate in organisms and their body tissues.

"Solid" v. "Liquid" PCBs

Peter L. deFur, Ph.D.
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Richmond, Virginia 23233
804-360-4213 Fax 804-360-7935
Email pldefur@igc.org



Past MARAD documentation has claimed that PCBs in so-called "solid form" do not pose as grave a threat to the environment or human health as so-called "liquid PCBs." However, PCBs are not commonly classified as "solid" or "liquid" in the scientific community because in actuality the compounds only exist as viscous liquids. The so-called "solid" or "non-liquid" PCBs present on the vessels at issue here are more accurately characterized as liquid PCBs impregnated into porous materials such as gaskets, filters, and hoses, or mixed with paints. PCBs impregnated in solid materials share the same basic chemical structure of the PCBs in an oily liquid form. PCB's will migrate out of any matrix, and those PCBs are biologically active and toxic, regardless of whether the PCBs are in free liquid form, impregnated into porous materials (gaskets, filters, etc.) or in thick resins. The degree of movement of PCBs in or from any medium depends on physical conditions, especially the PCB concentration gradient, temperature, light and amount of water.

The migration from solid matrices into the environment is particularly likely in a submerged marine environment. The migration of PCBs impregnated in old, cracking, flaking, powdering, and crumbling, aged insulation, paint, and gasket materials, to the marine environment would be rapid if a vessel were submerged or flooded.

If a vessel were to accidentally sink, become flooded with sea or river water, and then be recovered, the sealed transformer, capacitor and hydraulic fluids containing PCBs may well be maintained in well-sealed units. However, in this scenario, PCBs will be released by crumbling, powdering, and fragmenting chips and fluff from so-called "solid PCBs."

In a scenario where a sunken vessel cannot be retrieved from the James River or the Tees River estuary, the persistence of PCBs will render them toxic and biologically active for a very long time in this Virginia and Chesapeake Bay watershed. PCBs are bioaccumulative in the food chain and will move from the contamination source into sediments and animal tissues, including fish that may be consumed by humans, bald eagles, and other wildlife in the region.

The draft EA also fails to disclose to the public that two of the vessels (Export Challenger and Wayne Victory) alone contain between 10,000 and 17,000 lbs of peeling paint. The volume of PCB-laden paint on all of the vessels should be disclosed because of the magnitude of contamination they pose to the environment.

Environmental Threat from PCBs

PCBs are of particular concern to human health and the environment because although their effects may not be immediate, they are likely to cause long-term toxic effects in fish, wildlife, and humans and/or in isolated places. In aquatic ecosystems, PCBs are found primarily in sediments because they are highly fat-soluble and not water-soluble. Humans are exposed principally, but not

exclusively, through the food chain by eating animals, notably fish, that have accumulated PCBs from the sediments. Often, concentrations of PCBs are increased through food chain accumulation and bio-magnification as one PCB-contaminated animal eats another. (We all note with dismay the recent data showing accumulation of PCBs in farm raised salmon owing to the PCBs in the salmon feed.) Human PCB exposure in the Chesapeake Bay ecosystem derives from two major sources: 1) consumption of seafood and other aquatic animals, and 2) inhaling atmospheric PCBs.

PCBs migrate from their sources into water and, albeit at lower concentrations, into soils, sediments and the air. This occurs by passive physical diffusion depending on temperature and other environmental conditions. Animals can and will also take up PCBs directly either by consuming the contaminated material or PCBs, or by absorbing PCBs through the skin. This last process is most common for animals such as worms that live in close and intimate contact with the contamination. This migration can occur as soon as the PCBs are introduced into an environmental medium and can continue for many years or decades, until the PCBs are completely released into the environment.

PCBs can migrate long distances in the atmosphere and when taken into the body cause developmental problems, especially neurodevelopmental problems. PCBs can cause or contribute to problems with human reproduction, embryonic and fetal development, brain growth and development, immune system functions, and cancer. Some PCBs act through a mechanism that combines PCBs, dioxins and furans in a common pathway, so that all the dioxins, furans and PCB's exert a single action. Children are particularly sensitive to the effects of PCB's, because early exposure to even low levels of PCB's can cause impairment of the brain and of behavior.

Fish, birds, and marine mammals are also especially sensitive to the effects of PCBs; the eggs, larvae and young are the most sensitive stages for most of these animals. Even concentrations of less than one part per billion in eggs can impair the growth of these animals or alter the normal growth of the young.

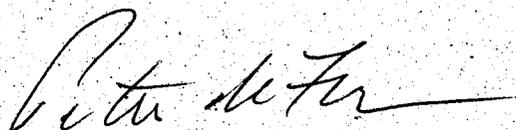
Any accidental PCB contamination of the Chesapeake Bay or coastal waters may harm natural populations of fish, birds and mammals and contaminate fisheries to the point that human health would be at risk. This sequence of events would demand the closing of Bay fisheries for commercial and recreational activity, as has happened on the Hudson and Housatonic Rivers in New York State.

The draft EA inappropriately fails to disclose or analyze the environmental and health risks that I outline here. Nor are the cumulative effects of the above-outlined risks disclosed or assessed. Given the quantities of PCBs on the vessels, the riverine and marine trafficking and export of these vessels over inland, coastal and open ocean waterways, poses substantial risks to human

health and the environment. Such risk could be prevented by elaborating options that either minimize marine transport or decontaminate vessels prior to export. Such options are not explored in the draft EA.

I urge the US DOT and MARAD to revise the Draft EA to more accurately and effectively account for and disclose the contamination from PCBs in the Defense Reserve Fleet Vessels. The revisions need to disclose the harm from PCB contamination and explain the human health effects and numerous environmental effects that are possible from PCB contamination as a result of routine or accidental release of PCBs from these vessels.

Sincerely,

A handwritten signature in cursive script that reads "Peter deFur". The signature is written in black ink and is positioned above the typed name.

Peter deFur, Ph.D.

President

Environmental Stewardship Concepts

275470



City Of Newport News

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#14

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March 23, 2004

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U.S. DOT Dockets, Rm. PL-401
Department of Transportation
400 7th Street, SW
Washington, D.C. 20590-0001

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To Whom It May Concern:

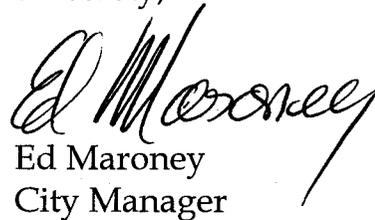
RE: MARAD 2004-17166 - 16

The Department of Planning has reviewed the draft Environmental Assessment for the Transfer of National Defense Reserve Fleet Vessels from the James River Reserve Fleet for Disposal at Able UK Facilities, Teesside, U.K. The City favors the removal of the reserve fleet, because of potential for water quality impacts on the James River and Newport News local creeks, if they remain.

City staff noted the discussion of the contingency hazardous waste response plans in the assessment. Please notify the City, if any leakage of hazardous waste threatens our shoreline.

Thank you for this opportunity to comment on the Environmental Assessment.

Sincerely,



Ed Maroney
City Manager

EM:kj

C: /My Documents/ EA Draft National Defense Reserve Fleet Vessels for DOT.wpd

Copy to: Assistant City Manager, NAM
Director of Planning