

# Organizational Excellence

## Strategic Business Plan and Industry Champions

It is a top priority of the Maritime Administrator that MARAD provides programs and services that actively help to improve the current state of America's maritime industry. To this end, the 40 employees that make up MARAD's leadership held a three-day retreat at Piney Point, Maryland, in early May. The resulting product, after three intense days of hard work, was the Strategic Business Plan.

As the Strategic Business Plan was developed to involve every employee, the Administrator took the unprecedented step of holding roll-out meetings to share and gain input on the Plan from all employees. During July, rollouts were held in Washington, D.C.; New Orleans, Louisiana; and Norfolk, Virginia. In August, a rollout was conducted in San Francisco, California, and finally, in October, a rollout was conducted at the USMMA. Much feedback has been gathered, and is being integrated where appropriate.

The Strategic Business plan states MARAD's mission is to "Strengthen U.S. maritime industries to support the economic and security needs of the nation."

Our core values are Excellence, Integrity, and Teamwork.

The Strategic Business Plan also outlined four goals, each with a champion who is responsible for seeing that the relevant action items and dates are accomplished.

The Associate Administrator for National Security is the goal champion for delivering relevant, value-added products and services. Accomplishments in FY 2002 with respect to this goal include the following:

- Integration of marine security into the curriculum at the USMMA, and development of programs on maritime security at the GMATS. Personnel from the New York City Police Department and port authorities in Florida have already taken the courses at GMATS.
- Meeting with stakeholders to refocus implementation of the STCW for seafarers.
- Reallocation of personnel resources for the Title XI ship financing guarantee program.

The Director of the Office of Human Resources is the goal champion for attracting, developing, and retaining a diverse, high-quality, motivated workforce. With this goal in mind, the Office of Management and Information Services and the Office of Human Resources implemented a restructuring initiative reducing headquarters divisions from 30 to 14, eliminating additional offices, and realigning certain functions. This initiative was in place to begin on October 1, 2002; MARAD was one of three DOT agencies able to report in September 2002 that it had results in working to become more citizen-centered and to de-layer its structure.

The Acting Deputy Administrator is the goal champion for building strong industry relationships based on trust and mutual respect. The first step in this area was the designation of senior agency officials as "industry champions" for the diverse array of maritime service

providers and users. These industry champions will work with their external stakeholders to understand their requirements and plan for meeting their needs.

The Director of the Office of Congressional and Public Affairs is the goal champion for achieving leadership and recognition within the Government, Congress, public, and industry for maritime policies and programs. Progress toward this goal was marked by the following achievements:

- In August 2002, a successful course was held at the USMMA's GMATS to educate congressional staff on the maritime industry.
- A MARAD team in FY 2002 began developing a coordinated outreach and strategic plan that the Office of Congressional and Public Affairs will implement in FY 2003 that fully complements the MARAD Strategic Business Plan.
- Positive media coverage of the James River Reserve Fleet Turbo Activation in the *Baltimore Sun*.

The leadership of MARAD is continuing to ask for ideas from every member of the MARAD team to provide our stakeholders with the best products and services, as well as ways to free up MARAD's limited assets so that more resources may be devoted to items outlined in the Strategic Business Plan.

## President's Management Agenda

The President's Management Agenda calls for addressing five Government-wide initiatives: Strategic Management of Human Capital, Competitive Sourcing, Improved Financial Performance, Expanded Electronic Government, and Budget and Performance Integration.

### Strategic Management of Human Capital

MARAD's leadership plans to increase employee satisfaction through greater recognition of employee contributions to the success of the organization. The Office of Human Resources and the Director of Civil Rights partnered to develop and coordinate the agency's first Executive Leadership Conference. The agency's top 40 leaders met at that conference and developed a three-year leadership strategy and action plan. The plan is anticipated to improve both employee effectiveness and satisfaction by focusing staff resources.

The Office of Human Resources and the Director of Civil Rights have also partnered to educate employees on personnel and civil rights issues and concerns. Over the last two years, MARAD's human capital has been a priority focus of this partnership, and a number of initiatives in the recently developed "Putting People First" initiatives closely align with the human capital goal of the President's Management Agenda.

Through collaborative efforts, a number of new human capital initiatives were developed to ensure that the agency has a high performing workforce equipped with the skills and resources needed to meet the challenges and opportunities of the 21<sup>st</sup> century. Both offices supported

initiatives on workforce planning and succession planning. The “Employee of the Month” and “Peer of the Month” Awards were created. “The Administrator’s Corner,” which provides information for and about the MARAD team as well as current information on human resource trends, awards, and educational opportunities, also was created. In addition, the agency’s annual awards program was redesigned and held offsite for the first time.

MARAD’s employment totaled 888 at the end of FY 2002. During the year, we hired a total of 61 employees: 34 percent of the new hires were female; 23 percent were minorities, and eight percent were people with disabilities.

Two Career Opportunities Training Agreement Program (COTA), formerly Upward Mobility, positions were established. In addition, five cross-training positions were advertised under MARAD’s Career Enhancement Program, and two positions were advertised under the Department’s Rotational Assignment Program. Also, 51 applications were approved for tuition assistance through the MARAD Tuition Assistance Program.

MARAD employees received the following awards: One Senior Executive Service member received the Meritorious Presidential Rank Award, three employees received the Secretary’s Silver Medal, three received the Excellence Award, two received the EEO/Affirmative Action Award, and one received the Volunteerism/Community Service Award. In addition, 20 employees, as a group, received the Secretary’s Team Award, 15 employees received the Partnering for Excellence Award, and 10 MARAD employees received the Environmental Achievement Award. Thirteen employees received the Maritime Administrator’s Bronze Medal Award, and three received MARAD’s EEO Award in recognition of and appreciation for contributions made toward the furtherance of equal employment opportunity.

### **Mentoring Program**

The MARAD’s Women’s Council, which is managed through the agency’s civil rights program, redesigned and implemented WAVES—Working to Achieve Your Vision of Excellence and Success—the agency’s mentoring program. The program was redesigned to more effectively align with current management and leadership philosophies, help the agency meet projected workforce needs, enable senior leaders and managers to share their institutional knowledge with future agency leaders, and improve the overall competency of the MARAD team. As of September 30, 2002, the WAVES committee, composed of volunteers from throughout MARAD, had achieved its goals of launching a timely kickoff, presenting appropriate training and assignments, and having 10 working pairs of mentors and proteges at various levels in the agency.

The program also will help meet diversity goals, improve employee morale, opportunities for advancement, and employee retention. The mentoring committee and its external partners, the Internal Revenue Service and the Office of Personnel Management, received the prestigious “Thanks A Million” Award for excellence from Secretary Mineta.

### **Director of Civil Rights**

In addition to the collaborative activities outlined above, the Director of Civil Rights also developed a new Maritime Administrative Order, which addresses harassment and

sexual harassment, and continued to support educational initiatives through its management of the Minority Serving Institutions Summer Internship Program. MARAD also continued providing support to Bradbury Heights Elementary School (in Prince George’s County, Maryland), MARAD’s adopted school in support of DOT’s educational initiative. In addition, the agency supported and commemorated special emphasis programs including Hispanic Heritage Month, Native American Heritage Month, Martin Luther King, Jr., Day, African American Heritage Month, Women’s History Month, and Asian American Pacific Islander Month.

### **Competitive Sourcing**

To achieve efficient and effective competition between public and private sources, the Administration has committed itself to simplifying and improving the procedures for evaluating public and private sources, to better publicizing the activities subject to competition, and to ensuring senior-level agency attention to the promotion of competition.

In accordance with the Federal Activities Inventory Reform (FAIR) Act, agencies are assessing the susceptibility to competition of the activities their workforces are performing. MARAD submitted its FAIR Act inventory for FY 2002 in a timely fashion to the Office of the Secretary of Transportation for review and submission to the Office of Management and Budget (OMB). After OMB review, the inventories are made available to the public. Interested parties may challenge the omission or inclusion of any particular activity.

Agencies are developing specific performance plans to meet the FY 2002 goal of completing public-private or direct conversion competition on not less than five percent of the full-time equivalent employees (FTE’s) listed on the FAIR Act inventories. The performance target will increase by 10 percent in FY 2003. MARAD’s plan calls for studying its three NDRF sites. A contractor has been acquired to conduct the required OMB Circular A-76 study, so the competition of all FTE’s associated with the sites can be completed by September 30, 2003.

During the FY 2002 and FY 2003 period, MARAD is studying 149 commercial FTE’s on the FY 2001 FAIR Act inventory using the OMB Circular A-76 process. By the end of FY 2003, we will have competed 33 percent of MARAD’s commercial positions on the FAIR Act inventory, well ahead of the 15 percent target under the competitive sourcing initiative of the President’s Management Agenda, FY 2002.

### **Improved Financial Performance**

MARAD’s Office of Accounting continues to enhance MARAD’s financial management systems and reengineer MARAD’s business practices to make full use of resources to provide efficient high-quality, cost-effective, and responsive services for achieving the Administration’s goals. MARAD’s focus is on upgrading the agency’s accounting systems, achieving clean-audit opinions on MARAD’s financial statements, and enhancing and expanding the uses of web-based accounting. MARAD has made significant progress on migrating from our current accounting systems to the Departmental accounting systems. For the last three fiscal years, MARAD

successfully achieved clean-audit opinions, and received praise from two DOT Secretaries. MARAD has been actively participating as a pilot for testing and implementing the DOT-wide web-based travel management system.

On May 15, 2002, the Office of Financial Management, Office of the Secretary, approved MARAD's Delphi Implementation plan. MARAD will convert to DELPHI in April 2003. The implementation is presently on schedule.

### Acquisitions/Grants

Acquisitions activities in FY 2002 combined the goal of improved financial management with that of expanded electronic government information technology and, in some cases, with important aspects of national security. The successful teaming with the USCG and the TSA to award 79 grants totaling approximately \$92.3 million to improve and strengthen security at the Nation's ports is mentioned under National Security.

However, it is important in this context to emphasize that the grants were solicited, submitted, evaluated, awarded, and administered in a completely electronic and paper-free environment, and more importantly, completed in less than five months from announcement to award.

Other important achievements in the area of Acquisitions include the following:

- Vigorous pursuit of several PRDA's that resulted in innovative proposals from the maritime industry to dispose of the most environmentally at-risk vessels moored at the NDRF sites.
- Development of an innovative online training application for the Government purchase card program.
- Initiation of electronic acquisition management reviews, thereby significantly reducing the cost and resources required providing contract oversight.
- Electronic awarding and distributing of virtually all contracts, orders, and modifications valued at approximately \$234 million.

### Expanded Electronic Government Information Technology

MARAD has expanded its use of electronic information technology agency wide. Such achievements as administering the Port Security Grant Program and providing Internet-based information to shippers seeking U.S.-flag carriers are documented elsewhere in this annual report. MARAD's e-government initiatives have three broad elements: support of contract upgrades, new security requirements, and Enterprise Architecture (EA) implementation.

During FY 2002, MARAD implemented its own firewall on the web server to increase protection from unauthorized access to MARAD's Local Area Network (LAN) from the Internet. MARAD also implemented network-level security measures by integrating Cisco intrusion detection software on the LAN switching equipment. Finally, MARAD implemented host-level security protection on selected file servers. Taken together, the new security measures provide MARAD Headquarters LAN users with a multi-tiered

security infrastructure. MARAD also continued to manage the anti-viral program and, once again, the agency avoided any serious damage from potentially disruptive virus attacks.

During the year, Information Resource Management developed MARAD's first net-based applications system, the Electronic Invoice System (EIS), which is now undergoing system-level testing. The system allows access to a protected EIS web site by system stakeholders via the Internet.

In the RRF program offices in headquarters and in the regional offices, MARAD completed a business process review that examined how the agency conducted business operations, where areas of improvement could be found, what the current IT systems provide, and what IT capabilities are needed to support the improved business process.

Following the business process improvement phases, IT requirements were developed to support the business process. The requirements for the RRF Management System (RMS) were completed in late summer 2002.

MARAD is required to complete its EA plan during 2003. The development of that plan is on track, and is expected to be successfully completed in a timely fashion.

Improvements made to the NDRF during FY 2002 also include the following:

- MARAD became the second government agency to implement a totally paperless property-disposal system, with the operational deployment of the Excess Material Management System. This system allows regions to electronically identify and process excess material for transfer or disposal. Disposal actions are electronically integrated with the General Services Administration (GSA).
- The newly designed MARAD Logistics Support System, which allows the agency to more effectively support commercial purchases, began its operational deployment.
- The RRF added 340,000 square feet of RO/RO deck space to help meet DOD lift requirements. The CAPE WASHINGTON was the last of seven ships in the project, and its deck expansion was completed in FY 2002.
- Funding was received for the ramp-enhancement project, which will provide RRF RO/RO ships with the capability to discharge cargo in stream instead of alongside a pier.
- Supply-support overhauls or upgrades were completed for nine ships; an additional four are in progress.
- Spare-part stow evolutions were completed for seven ships.
- Modernization was completed for the Personal Computer Shipboard Allowance List, the established RRF supply management program. Installation completed on 21 ships; set to continue in FY 2003.
- Automatic external defibrillators were provided on ships that are regularly crewed to improve the capability of helping crewmembers if they experience cardiac arrest.

### Budget and Performance Integration

MARAD made substantial progress in integrating budget and performance during FY 2002.

During the spring and summer of 2002, MARAD prepared its first budget request to the Department for FY 2004 that integrated what has in previous years been separately presented as a performance plan within the budget. MARAD conducted its first annual performance planning meeting with senior management in early May 2002. This meeting was held in order to ensure that past results and future performance goals influenced the budget formulation process. The FY 2004 performance budget request that emerged at the end of this process describes how the requested funding will contribute to the achievement of both the DOT strategic and performance goals and the performance impact if the requested funds cannot be provided.

MARAD took steps during FY 2002 to use performance data to help make program and budget decisions and to improve program effectiveness. As a result, MARAD conducted its first quarterly performance review in October 2002, to discuss annual 2002 performance results for all MARAD output goals. In the future, MARAD plans to conduct quarterly performance reviews within 30 days of the close of each quarter.

These reviews are designed to facilitate discussions on program effectiveness, success in meeting existing output goals, suggestions for new output goals and measures, and identification of any additional opportunities to improve program efficiency. All senior managers participate in these reviews.

In July 2002, MARAD prepared a self-assessment to the Department that rated the agency's actual performance to date in this area at "yellow," and the agency's plans to achieve full compliance at "green."

### **Budget**

The FY 2002-enacted appropriations provided \$224.7 million for MARAD. This was \$121 million more than the President's budget request. The House and Senate Appropriations Committees did not agree to the proposed transfer of the MSP to DOD and instead provided the full authorization and request level of \$98.7 million to MARAD. The Committees provided the request level of \$89 million for operations and training, and added \$33 million for maritime guaranteed loan subsidy. No funds were included for the Ship Disposal Program.

For the second year, appropriations for operations and training included \$13 million for much needed capital improvements at the USMMA. The Academy used the funds to make significant progress in the barracks and pier renovation projects, install new roofs, address environmental deficiencies identified by EPA, make renovations for compliance with the Americans With Disabilities Act, and accomplish numerous maintenance and repair projects, many of which were health- and safety-related.

The FY 2003 President's budget also included \$11.2 million for the Ship Disposal Program. This program is one of MARAD's biggest concerns. The request would allow MARAD to dispose of some of the obsolete vessels that pose a severe environmental threat in the NDRF.

The FY 2003 President's budget was released to Congress in February 2002. The request totaled \$211.6 million. In light of the need to focus scarce resources on homeland security after the attacks of September 11, 2001, the budget request

maintains base level funding, and contains salary, and inflationary increases for all accounts.

## **Legal Services and Agency Decisions**

### **Administrative Decisions**

In FY 2002, the Maritime Administrator took a number of administrative actions to help strengthen the U.S. Merchant Marine. Significantly, the Maritime Administrator approved the use by Central Gulf Lines, Inc. of its third and final authorization under Section 615 of the Merchant Marine Act of 1936, as amended. The vessel covered by the authorization is a 52,200-deadweight ton multipurpose bulk vessel being built by Oshima Shipyard in Nagasaki, Japan. On delivery, the vessel was sold to Liberty Shipping Group Limited Partnership, and documented in the United States. Pursuant to the Section 615 authorization, the vessel was immediately eligible to transport cargoes reserved to privately owned U.S.-flag commercial vessels by the Cargo Preference Act of 1954, as amended. The Maritime Administrator also approved several replacements for MSP vessels covered by MSP operating agreements. In particular, Maersk Line, Limited was given permission to substitute four containerships in its MSP operating agreements. All of the militarily useful substituted vessels are from three to ten years newer than the vessels being replaced with one-third faster speed and over double the capacity.

### **Rulemaking**

MARAD's regulations are contained in Chapter II of Title 46 of the *Code of Federal Regulations*. Actively engaged in rulemaking throughout the reporting year, MARAD published three final rules. One final rule (Part 221) implemented statutory requirements to refuse approval of vessel transfer to a foreign registry when the vessel's fishery endorsement has been revoked under the Secretary of Commerce's fishing capacity reduction program. A second final rule (Part 298) implemented the recently enacted Section 1109 of the Merchant Marine Act, 1936, as amended. The final rule allows the Secretary of Transportation to hold funds from Title XI obligors as collateral by depositing them with the United States Treasury, and investing them in Treasury obligations. A third final rule (Part 356) allows MARAD to waive procedural requirements of the American Fisheries Act in order that non-material discrepancies in a vessel's documentation would not arbitrarily cause vessel owners to lose their fishery endorsement.

### **International**

MARAD's Office of the Chief Counsel provided leadership in an ambitious undertaking at the United Nations' ILO. The goal of this project is to complete and ready for adoption in FY 2005 a single unified instrument incorporating relevant provisions (updated as appropriate) of more than 60 current ILO conventions dealing with maritime labor issues. The Office of the Chief Counsel also continued to participate actively in negotiations at the United Nations' Committee on International Trade Law (UNCITRAL) on the development of a new international cargo liability regime to reflect modern transportation practices. In addition, legal advice was provided concerning detailed maritime derogation questions raised by the Consulate of the Russian Federation, and ongoing negotiations concerning the Understanding on

Rules and Procedures Governing the Settlement of Disputes (Annex 2 to the April 14, 1994, Marrakesh Agreement Establishing the World Trade Organization), and in advance of U.S. negotiations dealing with numerous free trade agreements. Particular emphasis was placed on free trade talks with Singapore and the Free Trade of the Americas discussions.

### RRF Claims Settlement

MARAD continued to act as the personal injury claims agent for Government-owned RRF vessels in FY 2002. Seventeen administrative claims for damages were presented during the fiscal year. Five claims were settled administratively, resulting in monetary awards of \$18,500. In addition, MARAD's ship managers reported claims pending that were expected to be settled within their independent settlement authority. During FY 2002, MARAD records reflect eight litigated personal injury cases were resolved with assistance from MARAD, resulting in monetary awards to the plaintiffs totaling approximately \$980 thousand.

### American Fishery Act

Implementation of the new citizenship requirements of the American Fishery Act (AFA), which became effective October 1, 2001, continued. The AFA requires MARAD to examine the ownership structure of certain vessels that desire to operate within the fisheries of the United States in order to ensure 75 percent of the ownership and control of each vessel is vested in U.S. Citizens. In FY 2002, the AFA resulted in the designation of approximately 500 vessels as being owned and controlled by United States citizens.

Determinations were not issued on petitions that related solely to the interests of a mortgagee as the requirements to hold a preferred mortgage on fishing industry vessels were subsequently amended.

The Supplemental Appropriations Act, 2001, Public Law 107-20, amended the requirements to hold a preferred mortgage on fishing industry vessels of 100 feet or greater in registered length, and instructed MARAD not to consider the citizenship of a lender, in its capacity as a lender, in determining the eligibility of a vessel owner to document a vessel with a fishery endorsement prior to April 1, 2003. Consequently, MARAD initiated the process of amending regulations to implement various changes enacted as part of the Supplemental Appropriations Act.

In August of 2002, MARAD published a Notice of Proposed Policy Review with a request for comments in the *Federal Register* (67 FR 50406). The rule at issue, 46 C.F.R. § 221.13, grants general prior approval of time charters and other forms of temporary use agreements to persons who are not United States citizens. MARAD is currently reviewing public comments received on the policy.

A suit brought by Victory Maritime, Inc. challenged an interpretation adopted by the AID of Section 901(b) of the 1936 Act. MARAD concluded that, under Section 901(b), 75 percent U.S.-flag percentage of cargo preference must be applied by vessel type (namely, "dry cargo liner," "dry bulk carrier," and "tanker") and geographic area, specifically on a country-by-country basis. The Department of Justice agreed, and the case is administratively closed pending promulgation of clarifying regulations by MARAD.

The Coast Guard Authorization Act for FY 1998 authorized MARAD to grant waivers of the U.S.- build requirement for coastwise trade to permit foreign-built small passenger vessels to carry 12 or fewer passengers in coastwise trade. That authority expired on September 30, 2002. Prior to the expiration, MARAD granted about 240 such waivers.

### Ship Financing

MARAD issued eight commitments to guarantee obligations covering the financing, in part, of 22 vessels being constructed in U.S. shipyards. Those commitments included one passenger vessel, two liftboats, one offshore drilling unit, six double-hull tank barges, 11 ferries, and one commitment for dry-dock reconstruction. The aggregate amount of these commitments was \$225,355,000.

In addition, there were closings on seven commitments to guarantee obligations covering the financing, in part, of 80 vessels: 62 covered hopper barges, one cruise vessel, two liftboats, one offshore drilling unit, four double-hull tank barges, two passenger catamarans, four passenger monohulls, and four articulated tug/barge units. These seven commitments were for an aggregate amount of \$355,632,000.

The dispute of Project America Ship I (PASI) and its parent company American Classic Voyages, Inc. (AMCV) with the Northrop Grumman Ship Systems, Inc. (formerly Ingalls Shipbuilding, Inc.) continued into FY 2002. Extensive negotiations failed to resolve the dispute, and AMCV encountered financial difficulties.

On October 19, 2001, AMCV and many of its subsidiaries filed for reorganization under Chapter 11 of the Bankruptcy Code. The Title XI debt of PASI and most of the Title XI debt of AMCV defaulted. MARAD was forced to pay \$187.3 million to honor its PASI guarantee, and \$142.3 million on its guarantees of four AMCV subsidiaries. MARAD's security for PASI was the partially completed hull under construction at the shipyard. The shipyard entered into a contract to sell the hull and agreed to remit the proceeds of the sale, less the reasonable costs of disposing of the hull, to MARAD. MARAD's security for AMCV's other Title XI debt was mortgages on four cruise ships, plus a security interest in an almost completed cruise ship. On May 6, 2002, the Bankruptcy Court affirmed the assumption of the Title XI debt on the American Queen. MARAD plans to sell the four remaining vessels.

During FY 2002, Friede Goldman Halter, Inc. and its subsidiaries (collectively, FGO) remained debtors under Chapter 11 of the Bankruptcy Code. FGO's assets include shipyards in Mississippi and Texas, where MARAD was financing construction of two deepwater drilling rigs for Petrodrill and a car carrier for Pasha Hawaii Transport Lines (PASHA). Construction on these vessels halted as a result of the bankruptcy.

The Firemans Fund performance bond for Petrodrill paid a cash settlement of over \$115 million to settle the Petrodrill claims and the rigs were moved to Cianbro Corporation in Portland, Maine, where they are currently being completed with the insurance proceeds and the remaining Title XI funds. MARAD and PASHA brought suit to compel Travelers Surety Companies to perform its surety obligations so that the vessel can be completed. In addition, FGO itself owes Title XI debt of \$20.3 million in connection with a shipyard improvement loan. MARAD is negotiating with FGO on the disposition of this shipyard.

During FY 2002, the bankruptcy of Massachusetts Heavy Industries, Inc. and MHI Shipbuilding, LLC (collectively MHI) continued until March 2002, when it was dismissed by the Bankruptcy Court. MARAD is foreclosing on the shipyard land and equipment, and anticipates conducting a foreclosure auction on January 16, 2003.

## Legislation

On November 28, 2001, the President signed into law the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act for Fiscal Year 2002. The Act appropriated \$98.7 million for the MSP, slightly over \$89 million for MARAD's operations and training, and approximately \$33.9 million for the Title XI loan guarantee program. Concurrently, the measure rescinded \$4.4 million of unobligated balances for ship construction.

On December 28, 2001, the President signed the National Defense Authorization Act for FY 2002. Title XXXV of the Act sets forth the authorization of appropriations for MARAD's operations and training and for loan guarantees under Title XI of the Merchant Marine Act, 1936. The measure also amended Title XI of the Merchant Marine Act, 1936 to permit the Secretary to hold and invest Title XI project collateral funds in the U.S. Treasury.

The new provision results in a more uniform process for perfecting security interests, and saves time and money for both the government and the loan guarantee applicants. The FY 2002 authorization of appropriations also further defined the term "war risks" under Title XII of the Merchant Marine Act, 1936 to include confiscation, expropriation, nationalization, and deprivation of vessels.

On January 10, 2002, the President signed into law the Department of Defense Appropriations Act for Fiscal Year 2002. Among other things, the act appropriated to the TSA \$93.3 million for grants to enhance seaport security. Pursuant to the law, grants were awarded based on individual port needs as determined by the Under Secretary of Transportation for Security, the Maritime Administrator, and the Commandant of the Coast Guard.

On August 2, 2002, the President signed into law the 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States. The bill appropriated \$125 million for port security activities to the TSA. The provision making the appropriation stated that the funds were to be distributed under the same terms and conditions as provided for under the Department of Defense Appropriations Act for Fiscal Year 2002.

At the close of FY 2002, Congress had not completed work on MARAD's annual appropriations for FY 2003. H.R. 4546, the National Defense Authorization Act for Fiscal Year 2003, passed the House on May 10, 2002, and contained MARAD's annual authorizing provisions in Title XXXV of the bill. In addition to provisions authorizing Title XI and operations and training, the bill contains provisions to authorize the transfer of an obsolete vessel of the NDRF to a museum, allow the Secretary to provide financial assistance to States that seek obsolete vessels for artificial reefs, and authorize the Secretary to seek independent analysis on Title XI loan guarantee applications. The Senate counterpart of H.R. 4546 does not contain MARAD-related provisions. The bills await action by the conference committee.

At the close of the fiscal year, MARAD appropriations for FY 2003 were also not finalized. On July 24, 2002, the Senate Appropriations Committee reported out S. 2778, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act for Fiscal Year 2003, which contains MARAD appropriations for FY 2003. The bill saw no further action in either house prior to the end of FY 2002.

Similarly, work on the Department of Defense Appropriations Act for Fiscal Year 2003 was not completed during FY 2002. On October 23, 2002, the President signed the measure into law, which contains \$20 million for the disposal of obsolete NDRF vessels in the James River. .

Although FY 2002 saw a significant amount of other maritime legislative activity, no other maritime-related bills were signed into law.

## Litigation

In FY 2002, MARAD faced a variety of litigation challenges before federal courts, administrative boards, labor arbitrations, and in matters involving different government agencies. Most cases dealt with traditional litigation such as contract disputes, personnel actions, environmental litigation, personnel injury claims and suits, civil rights cases, vessel accident litigation, and general litigation issues relating to the application of maritime laws.

MARAD attorneys continue to provide substantive legal support to the Department of Justice in handling litigation involving MARAD. Additionally, they worked with the DOD on developing the legal framework for ordering Merchant Marine Reserve Officers aboard the NDRF, enforcing the service obligations of graduates of the maritime academies, and were active in negotiations with State and Federal agencies on environmental issues.

The focus remains on resolving cases without taking the matters through to trial. In coordination with MARAD's Director of Civil Rights and Office of Human Resources, many disputes continue to be resolved well before they reach the formal complaint stage. Through mediation and negotiation, matters that could grow into complaints have been resolved often to the satisfaction of all parties concerned. Most of these cases have involved personnel and civil rights issues. However, complicated contract cases and environmental litigation were also successfully resolved through negotiation.

At the end of FY 2002, MARAD continues to defend itself in comprehensive environmental response compensation and liability cases. The most financially significant of these cases arise out of the operations of MARAD's predecessor agencies during World War II in constructing vessels. However, this area of litigation is declining.

MARAD also was involved in approximately 2,000 cases dealing with asbestos-related injuries. MARAD continues to assist the Department of Justice in preparing these cases, although most of these matters are administratively stayed by a district court decision.

During the fiscal year, there was a significant amount of litigation relating to the cargo preference program. While some of this litigation has been resolved, several significant matters are still pending. Of particular importance in this regard is the decision of the Department of Justice adopting as the legal position for the federal government much of the Agency's legal position on cargo preference.

In the civil rights field, the U.S. Court of Appeals for the Fifth Circuit recently affirmed a Federal District Court's summary dismissal of a pending case. Another case is currently pending trial in Federal District Court. This case involves a challenge, based on the Rehabilitation Act, to an Agency termination of employment for inability to perform the duties of the position, and is scheduled to go to trial in May 2003.

A number of matters were also litigated before the Equal Employment Opportunity Commission (EEOC). Two of these were resolved through the alternative dispute resolution process. Another was resolved in conjunction with the EEOC administrative judge. However, that settlement is currently under challenge by the complainant. Presently, there are three matters either under investigation or awaiting an order from the EEOC setting an administrative hearing.

During the reporting period, two Merit Systems Protection Board (MSPB) cases were concluded. Another MSPB case is currently pending trial.

Two cases involve contract litigation. One case is a maritime lien claim by an unpaid subcontractor. The second involves a contract dispute between a ship manager and a subcontractor. In both cases, the agency sought to have the complaints dismissed or stayed by compelling the parties to the contract to arbitrate their disputes without the involvement of the agency. The second matter was successfully resolved through negotiations.

At the end of the period, approximately 16 personal injury claims were pending in Federal District Court or on appeal. Most of these claims involved seamen injured aboard Agency vessels. However, some involved individuals, such as longshoremen, invitees, etc. who were not entitled to seafarer status. There is a continued trend of a declining number of cases in this area. This is attributable to increased safety efforts by the Agency, as well as a reduction in the number of days of operations by the RRF. In the event of multiple vessel activations, this trend can be expected to reverse upwards.

Full litigation support is also provided for cases arising out of Agency actions and programs, such as those brought under the Federal Tort Claims Act (FTCA), the Suits in Admiralty Act, the Public Vessels Act, and the Administrative Procedures Act. FTCA litigation has primarily centered on automobile accident cases. At the close of the fiscal year, the Agency had pending before it for administrative determination or in litigation 16 claims brought under the FTCA.

### Accounting

The draft financial statements will be available by November 30, 2002. The audited financial statements will be available by January 31, 2003.

### Audits

In FY 2002, DOT's Office of the Inspector General (OIG) and the General Accounting Office (GAO) started audit work or submitted principal final reports of interest to MARAD activities as follows:

#### OIG

"Information Technology Omnibus Procurement Program - DOT" (Report No. FI-2002-089, Dated: April 15, 2002) File 10-301

"Title XI Loan Guarantee Program - MARAD" (Work Underway - Project No. 02M1001M000, Notification Letter Dated: November 6, 2001) File 10-303

"Top Management Challenges Facing DOT" (Work Underway - No Project Number Issued, Notification Letter Dated: December 21, 2001); Comments from Captain Schubert (Dated: January 11, 2002) File 10-304

"Energy Management and Conservation Program - DOT" (Work Underway - Project No. 02F30077F000, Notification Letter Dated: February 25, 2002) File 10-305

"FY 2002 Financial Statements - DOT" (Work Underway - Project No. 02F3012F000, Notification Letter Dated: March 13, 2002) File 10-306

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