

REPORT TO CONGRESS ON THE PROGRESS OF THE VESSEL DISPOSAL PROGRAM

July 2009



Maritime Administration James River Reserve Fleet.



**U. S. Department of Transportation
Maritime Administration**

TABLE OF CONTENTS

List of Acronyms	1
INTRODUCTION	2
I. MARITIME ADMINISTRATION SHIP DISPOSAL ACTIVITIES IN FISCAL YEARS 2009-2010.....	2
Overview.....	2
Ship Disposal Alternatives.....	4
Ship Disposal Funding.....	7
Comprehensive Management Plan.....	8
Ship Disposal Performance Measures	9
Ship Disposal Solicitation—Test Program for Certain Commercial Items....	11
Ongoing Program Challenge—Aquatic Nuisance Species.....	11
FY 2009 Disposal Actions.....	14
Conclusions.....	16
II. PROGRESS OF THE U.S. NAVY’S VESSEL DISPOSAL PROGRAM ...	17
Navy-Titled Obsolete Vessels in the Maritime Administration’s National Defense Reserve Fleet.....	17

List of Acronyms

Army Corp of Engineers	(ACE)
Best Management Practices	(BMP)
Beaumont Reserve Fleet	(BRF)
Clean Water Act	(CWA)
Comprehensive Management Plan	(CMP)
Deep Sink Exercises	(SINKEX)
Department of Defense	(DOD)
Environmental Assessment	(EA)
Environmental Protection Agency	(EPA)
Environmental Excellence Initiative	(EEI)
Federal Acquisition Regulation	(FAR)
Fiscal Year	(FY)
Government Accountability Office	(GAO)
Hartlepoole Borough Council	(HBC)
Indefinite-Delivery/Indefinite-Quantity	(IDIQ)
James River Reserve Fleet	(JRRF)
Memorandum of Agreement	(MOA)
National Defense Reserve Fleet	(NDRF)
National Invasive Species Act	(NISA)
National Environment Protection Act	(NEPA)
National Marine Fisheries Services	(NMFS)
National Oceanic and Atmospheric Administration	(NOAA)
National Pollutant Discharge Elimination System	(NPDES)
Polychlorinated biphenyls	(PCB)
Resource Conservation and Recovery Act	(RCRA)
Suisun Bay Reserve Fleet	(SBRF)
Supervisor of Shipbuilding Conversion and Repair	(SUPSHIP)
Toxic Substance Control Act	(TSCA)
Uniform National Discharge Standards	(UNDS)
United Kingdom Environment Agency	(UKEA)
United States Navy	(Navy)
United States Coast Guard	(USCG)
Waste Management License	(WML)
Water Quality Control Board	(WQCB)

Report to Congress on the Progress of the Vessel Disposal Program

INTRODUCTION

This report is submitted pursuant to the following statutory direction:

- The Senate Report [109-109, July 26, 2005] accompanying the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006, P.L.109-115; 119 Stat. 2396 (2005), which requests periodic reporting on the progress made by the Maritime Administration (Agency) to dispose of the entire inventory of obsolete ships within the National Defense Reserve Fleet (NDRF).
- The National Defense Authorization Act for Fiscal Year 2006, P.L. 109-163, Section 3505(a); 119 Stat. 3551 (2006), which requires periodic reporting by the Secretary of Transportation, in coordination with the Secretary of the Navy, on progress made in implementing plans to dispose of obsolete ships in its programs.

Section I of this consolidated program report summarizes the Maritime Administration's ship disposal accomplishments through the second quarter of Fiscal Year (FY) 2009 and outlines the ship disposal outlook and challenges for the remainder of 2009 and into FY 2010. The last report submitted was dated July 2008. No report was submitted in January 2009 due to the lateness in the submission of the July 2008 report. The information and data presented in this report is current through April 30, 2009.

A review of the previous reports of the Ship Disposal Program, hereafter referred to as the Program, provides a historical perspective prior to FY 2008. In coordination with the Secretary of the Navy, this Report also includes in Section II the status of the Navy's vessel disposal program. The Navy has limited the scope of their input for this report to the status of Navy-owned vessels located at MARAD facilities.

I. MARITIME ADMINISTRATION SHIP DISPOSAL ACTIVITIES IN FISCAL YEARS 2009-2010

Overview

The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. 106-398, § 3502, 114 Stat. 1654A-490 (2000) (the Act), required the disposal by September 30, 2006, of all vessels in the Maritime Administration's NDRF that were not assigned to the Ready Reserve Force or otherwise designated for a specific purpose. In 2001, the Maritime Administration established the Program to accomplish the requirements of the Act. Since the establishment of the Program, the Maritime Administration has aggressively pursued all feasible disposal alternatives including domestic recycling, the sale of ships for re-use, artificial reefing, deep-sinking, donation, and the potential for foreign recycling.

Despite pursuit of all disposal alternatives, significant capacity limitations within the domestic recycling industry in 2001, and in the intervening years, prevented the disposal of all of the Maritime Administration's non-retention vessels by the September 2006 deadline as required by the Act. There were a total of three qualified domestic facilities in 2001 to compete for recycling contracts, eight as of the end of FY 2007, and six facilities as of the date of this report.

The Maritime Administration first reported to the Congress in 2002 that because of several factors it was unlikely to meet the 2006 statutory disposal deadline. These factors included insufficient domestic capacity; the lack of any active, qualified recycling facilities on the West Coast; the large annual influx of additional obsolete ships into the program; and the lack of access to foreign recycling. At present, domestic ship recycling capacity remains limited because economic decline has limited market demand for ferrous and nonferrous scrap metal by both domestic and foreign smelters and because the only significant sources that supply domestic recycling market with vessels for dismantling work are the Maritime Administration and the U.S. Navy.

Statutory restrictions in the Toxic Substances Control Act (TSCA) and other environmental regulations effectively preclude foreign dismantling of obsolete vessels as a viable Program option. TSCA prohibits the export of polychlorinated biphenyls (PCBs) and would require a lengthy formal Environmental Protection Agency (EPA) administrative rulemaking process for an exemption allowing the export of Maritime Administration's obsolete vessels containing PCBs above the regulated limit. Further, vessel export limitations imposed in FY 2009 legislation prohibit the export of NDRF vessels for recycling without Agency certification that there is no available capacity for recycling in the United States.

When the program started in FY 2001, there were 115 non-retention ships. From the first quarter of FY 2001 through the end of April 2009, the Maritime Administration has awarded dismantling contracts for 126 obsolete ships, has removed 122 ships from the fleet sites, and has completed disposal action on 107 ships. During the same period, 115 additional ships were downgraded from retention to non-retention status, adding them to the disposal queue. There are currently 91 non-retention ships in the disposal queue that are not under contract for recycling or disposal by other means. It is anticipated an additional three to five retention ships will be downgraded annually and added to the disposal queue.

Continuing challenges to the Program include constraints and lawsuits related to applicability and compliance with environmental laws and regulations, such as the Clean Water Act (CWA), National Invasive Species Act (NISA), the National Environmental Policy Act (NEPA), and the Resource Conservation and Recovery Act (RCRA). A lawsuit by the Natural Resources Defense Council (NRDC) in California has stopped the removal of Suisun Bay Reserve Fleet (SBRF) obsolete ships for disposal. No obsolete ships have been removed from the SBRF since January 2007 because of the legal challenges.

The Agency is pursuing a settlement of the issues with the plaintiffs and believes that drydocking of the vessels will satisfactorily address many of the legal challenges associated with aquatic invasive species and non-permitted discharges (NISA and CWA respectively). The Agency is in discussions with a San Francisco area drydock facility which may result in contracts to drydock obsolete vessels for marine growth removal. For vessels that are not going into drydock and/or disposed of in the near term, MARAD has begun an effort to remove loose and exfoliating paint from exterior surfaces. MARAD is working with the California State Water Quality Control Board (WQCB) with the goal of obtaining the appropriate state permits under the CWA. The Agency is also seeking to obtain the appropriate CWA permits from the States of Texas and Virginia, where its other two fleet sites are located. Also, an environmental review is currently being performed to comply with NEPA. Settlement discussions are underway with the plaintiffs with the goal of reaching agreement that will allow vessels to move from the SBRF in the near future.

Further impeding obsolete vessel removal in FY 2009 are three protests that have been filed with the Government Accountability Office (GAO) by one of the Agency's qualified recyclers. The protests stayed ship disposal awards for four months in FY 2009. The protests are related to the Program's use of best-value award evaluations, liquidated damages for late contract performance, the use of performance bonds, solicitation requirements related to NISA, and issues related to two new facilities proposed by the protester. In April 2009, the GAO ruled in the Agency's favor on one of the three protests and the issues of best-value awards, the use of liquidated damages, and performance bonds. The other two protests related to NISA and facility issues were dismissed by the GAO in the Agency's favor in May 2009.

Compliance with environmental regulation, the GAO protests and the recent economic downturn have had a notable effect on the domestic recycling disposal option and significantly increased the Government's cost and decreased the rate of recycling obsolete ships. Absent of further legal challenges and/or GAO protests, and assuming scrap steel prices remain in the \$200-\$300 per ton range, the Maritime Administration projects that the program will be able to recycle 12-16 ships per year. Alternatively, significant decreases or volatility in the price of steel, or slower economic recovery, will result in a further decrease in both dismantling contracts and dismantling production throughput by recyclers.

Ship Disposal Alternatives

- Domestic Recycling — Currently, domestic recycling is the most expedient and cost-effective disposal alternative relative to the transfer of ships for use in Navy deep-sink training exercises, artificial reefing, or ship donation. The disposal momentum of the last three years has been lost to a large degree by the economic downturn that occurred in the first quarter of FY 2009. The downturn had, and continues to have, negative effects on the limited domestic recycling industry with steep declines in scrap steel demand from mills, scrap steel market prices, and credit availability to finance recycling facility operating costs.

The downturn has also resulted in diminished ship recycling capacity/production throughput and a loss of labor resources throughout the industry. The effect on the recycling companies has caused a corresponding increase to the Maritime Administration in vessel disposal costs and decrease in the rate of ship disposal in FY 2009.

From FY 2005 through FY 2008 a total of 28 ships were sold with receipts to the government totaling \$8,512,426. Thus far in FY 2009 only two ships have been sold for a total of \$68,638. The biggest factor in the decline in vessel sales compared to previous years is the economic downturn that occurred at the beginning of FY 2009. The downturn resulted in a significant decline in demand for finished steel products which in turn lowered the demand for scrap steel and depressed the market price for scrap steel. Concurrent with the start of the economic downturn in September/October 2008, domestic recyclers refused to sign sales contracts for purchase offers submitted in response to a vessel sales solicitation for five ships. The five cancelled contracts would have brought \$3.5 million in revenue to the government.

The program has four qualified facilities in Brownsville, TX, one in New Orleans, LA, and one in Chesapeake, VA. The Maritime Administration is encouraging the development of cost-effective, qualified ship recycling facilities on the U.S. West Coast. One contractor is actively working to establish a dismantling facility in Vallejo, California. The contractor is currently working to secure the permits needed to accomplish the dredging necessary to commence operations at the proposed facility.

At the start of the Program in FY 2001, six ships were disposed of domestically through contract awards to three different facilities. Per ton ship disposal costs have decreased steadily since FY 2001. The decrease is attributable to a combination of factors, including potential competition by foreign proposals, increased competition among domestic contractors, and an increase in the domestic and international market price of recyclable steel through FY 2008. While the decrease in per ton cost is encouraging, the capacity limitations of the domestic disposal industry show little potential for increases in the current annual disposal rate of ships. The cost of drydocking the Agency's obsolete ships in California, the present location of the majority of the Agency's obsolete ships including its highest disposal priority vessels, and the cost of towing those vessels to the nearest domestic recycling facilities in Texas will add significantly to the overall costs of disposal by domestic recycling firms.

The Navy's program currently awards recycling contracts to only two domestic facilities, which had been sufficient to meet its reduced projected dismantling rate of fewer than five ships per year. The two Navy contractors are also qualified contractors under the Maritime Administration's program and are considered the two domestic facilities with the greatest current capacity. The Navy is investigating the feasibility of utilizing some or all of the four Maritime Administration recycling contractors not currently used by the Navy. If the Navy expands beyond the two recyclers currently shared with the Maritime Administration, the combined effect of the Navy and Maritime Administration awards to these contractors has

the potential to exceed their near-term capacity barring some unforeseen increase by those facilities in resources and production throughput. The overall capacity, resources, and management of all domestic contractors will be tested given the effect of the economic downturn and the number of vessel awards anticipated for 2009 and 2010 by both Programs.

Foreign Recycling — The Maritime Administrator's sole foreign recycler, AbleUK, has successfully re-acquired the national Waste Management License (WML) required for its facility, which it lost as part of a legal challenge in 2003. The four vessels exported as part of their original contract in 2003 are now in the process of being dismantled.

The Maritime Administration has put a hold on accepting new proposals for foreign recycling because of the statutory restrictions of TSCA and the vessel export limitations imposed in FY 2009 legislation prohibiting the export of NDRF vessels for recycling without Agency certification that there is no available capacity for recycling in the United States. The effective loss of vessel export as a viable disposal option has prevented the Maritime Administration from taking advantage of very cost-effective proposals, including some that are revenue producing to the government. The use of foreign recycling capacity would be especially valuable for the Maritime Administration's 57 obsolete vessels on the West Coast where there are no qualified facilities for vessel disposal.

Artificial Reefing — The use of obsolete ships as artificial reefs is currently constrained by limited demand for ships by the coastal States. The limited demand is a result of a general reluctance of States to be responsible for the preparation, tow, and sinking of the ships, and to share in the significant costs associated with reefing activities. Cost sharing with the States has the potential to increase demand to some degree. The Maritime Administration has the authority to provide financial assistance to the States and will consider such requests if they are comparable to the costs of other feasible disposal methods. However, the Maritime Administration will consider providing significant financial assistance to States only for vessels considered to be a higher disposal priority, which are not typically good candidates for artificial reefing.

Interagency Best Management Practices (BMP) for the preparation of ships to be used as artificial reefs have been developed and were implemented in FY 2006. While the BMPs provide consistent vessel preparation guidance nationwide, they require the removal of all solid PCBs above the regulated limits or application for a time consuming, scientific risk-based approval to dispose of PCBs in a marine environment. This stringent requirement related to PCBs is likely to negate potential cost advantages of artificial reefing compared to conventional dismantling.

In the last 2 years, the vessels TEXAS CLIPPER I and VANDENBERG have been transferred to the States of Texas and Florida, respectively, for reefing preparations. The TEXAS CLIPPER I was sunk as a reef in November 2007.

The VANDENBERG is scheduled to be sunk during the summer of 2009. In addition, the Maritime Administration currently has one additional ship (KITTIWAKE) in the approval process for use as an artificial reef in the Cayman Islands.

Vessel Sales — This is a low-revenue to no-cost option to the government for certain vessels. Prior to 2006, the sale of vessels was not a significant disposal option. Beginning in FY 2006, the increase in vessel sales was attributable to the increased market price of steel; however, because of market volatility it is not likely that the sale of obsolete ships can be relied upon for a significant number of disposals on an annual basis. In FY 2007 and 2008, 24 of the 48 obsolete ships awarded were sold for recycling (21) and reuse (3). Only two obsolete vessels have been sold for recycling thus far in FY 2009, which illustrates how the economic downturn has affected the industry. The vessel sales saved disposal appropriations and resulted in funding carryovers in FY 2007 and 2008 that have been helpful in mitigating increased disposal costs associated with increasing environmental regulation and declines in the scrap steel markets.

Vessel Donation — Donation of vessels is based on requests from nonprofit historical preservationist and humanitarian groups. Historically, donation has not been a significant disposal option; however, the Maritime Administration has established a formal donation program to support the efforts of legitimate not-for-profit groups to acquire and preserve vessels. The formal program replaces the previous practice where organizations obtained special legislation for the donation of ships. The authorization for the formal program is contained in Section 3512 of Pub. L. 108-136, the National Defense Authorization Act for Fiscal Year 2004. Only one ship has been donated since FY 2001 and that was a WWII Liberty ship transferred in FY 2008 to the government of Greece for use as a museum to be established in Piraeus.

Navy Fleet Training Exercises — Referred to as SINKEX, the joint Navy and Maritime Administration project to provide target vessels for Navy at-sea live-fire training exercises is a low-volume option with costs comparable to artificial reefing. Vessels are prepared for sinking by the Navy in accordance with procedures that protect the environment as set in 40 CFR 229.2. The feasibility of the Navy fleet training exercise as a viable ship disposal option in the future will depend on cost-effective estimates from the Navy that are comparable in cost to the Maritime Administration's other disposal alternatives and a demand for ships as targets. Only one ship has been used in SINKEX (2006); however, the Navy has recently shown renewed interest in five ships for exercises planned for mid-FY 2010. These ships were previously prepared for SINKEX by the Navy in 2005 and 2006.

Ship Disposal Funding

In FY 2008, the program operated with appropriations of \$14.0 million for ship disposal and \$3.0 million for the nuclear reactor and hazardous materials on board the retention vessel NS SAVANNAH.

The FY 2009 Omnibus Appropriations Act provided the Program \$12.0 million for the disposal of obsolete ships and \$3.0 million for the continued decommissioning process for the NS SAVANNAH.

Despite exceeding the targeted goal for contract awards, there was a carryover of \$18 million in unobligated FY 2008 funds into FY 2009. Factors affecting this carryover balance from FY 2007 to 2008 include the litigation related suspension of SBRF vessel removals since 2007 addressed later in this report, market conditions enabling sales contracts in lieu of fee-for-service contracts, and strong competitive bidding for fee-for-service contracts. There are several factors that affect whether the scrapping (recycling) of non-retention NDRF ships results in vessel sales and revenues or in the Program paying for recycling services with appropriated funds. The primary factors include the vessel's size/condition, the costs associated with dismantling and hazardous material remediation, the amount of recyclable materials, the market price of scrap metals (which has been negatively affected by the recent economic downturn), the amount of competition for each vessel offered in a recycling solicitation and GAO protests or other acquisition related legal challenges. Since those factors cannot be defined or reliably predicted ahead of time, it is not possible with any degree of accuracy to project sales receipts for the balance of FY 2009 and 2010.

Unobligated carryover resources will be easily absorbed by the rise in ship dismantling costs due to the plunge in demand for scrap steel and other industry effects of the economic downturn. These funds are also needed due to the significantly higher costs of the drydocking (hull cleaning for invasive species and paint exfoliation) and towing that will be necessary for the disposal of the 57 non-retention ships currently located in the SBRF in California.

Comprehensive Management Plan

The FY 2006 Authorization of Appropriations, Title XXXV, Maritime Administration, P.L. 109-153, Section 3505(a), 119 Stat. 3551 (2006) contained a requirement for the Maritime Administration to develop a Comprehensive Management Plan (CMP) for the disposal of its obsolete ships. The CMP was developed, implemented, and delivered to the Congress in July 2006. The plan addressed the Program's strategy, performance measures, funding, and decision-making framework for ship disposal in addition to identifying external factors that could affect execution of the plan.

The Maritime Administration's disposal strategy, as discussed in the CMP, continues to be an integrated plan that includes the elements considered critical for both the long-term disposal strategy and short-term disposal decisions. The Program's emphasis continues to be the expedited disposal of obsolete ships presenting the greatest environmental risk. Artificial reefing, donation, use in the Navy Fleet SINKEX training exercises, and sales are less effective at reducing environment risks because the best candidates for those disposal options are generally vessels that are cleaner and in better condition. The Maritime Administration's

responsibility in this area is first and foremost the mitigation of environmental threats posed by older, deteriorated hulls that contain residual oil. While the Maritime Administration's disposal strategy continues to focus on dismantling/recycling as the most expeditious option currently available, all disposal options are continuously being evaluated.

Through the use of full and open competition, the Maritime Administration continues to utilize all feasible disposal options available to achieve an environmentally acceptable end.

Ship Disposal Performance Measures

The Program's annual performance measures of vessels awarded, vessels removed, and vessels disposed of are the best and most direct measure of progress in disposing of obsolete ships and meeting the Department's environmental stewardship targets.

The Department's ability to meet future performance targets is based on factors including, but not limited to, the following:

- Timing of annual appropriations.
- Feasibility of disposal options available to the Program.
- Legal challenges to Program initiatives.
- The competitiveness, capability, capacity, and production throughput of recycling facilities.
- The costs of aquatic nuisance species sampling, assessment, and threat mitigation, including the drydocking of some ships for the removal of marine growth on the hulls.
- The costs of environmental remediation of hazmat streams present on the obsolete ships.
- The market price of recyclable steel.

Negative trends in any one of or a combination of those variables can significantly affect the attainability of the performance targets. The targets for each year are established during the annual budget request process a year and a half prior to the specified budget year.

The three performance measures listed below are the major milestones of the ship disposal cycle. The annual cost-per-ton measure is indicative of the Program's efficiency even though variables that can significantly affect that particular measure, such as the market price of recyclable steel, are beyond the Program's control. Actual results for FY 2009 are through April 30, 2009.

The difference (Δ) between the targets and actual results for vessel awards, removals and disposals over the last seven years shows that targets have been exceeded over the long term despite missing annual targets twice in the last eight years. The cumulative differential (Δ) between targets and actuals is indicative of the Program's overall progress and effectiveness.

Number of contract awards for the disposal of obsolete vessels from the National Defense Reserve Fleet sites for subsequent disposal.

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Totals (thru 4/30/09)</u>
Target:	3	3	11	14	15	13	13	12	12	96
Actual:	6	2	15	13	20	21	23	21	5	126 (Δ +30)

Number of obsolete vessels removed from the National Defense Reserve Fleet sites for subsequent disposal.

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Totals (thru 4/30/09)</u>
Target:	3	3	4	4	15	13	13	16	14	85
Actual:	6	6	2	15	18	25	20	25	6	123 (Δ +38)

Number of obsolete vessels disposed of (i.e., disposal action completed) from the National Defense Reserve Fleet sites.

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Totals (thru 4/30/09)</u>
Target:	3	3	4	4	15	15	15	16	15	90
Actual:	4	9	3	6	13	20	20	19	14	108 (Δ +18)

Average cost/per ton for vessel disposal actions based on disposal actions awarded in the fiscal year.

	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09
Target (Cost)/Ton:	(\$250)	(\$250)	(\$250)	(\$150)	(\$175)	(\$200)	(\$200)	(\$170)	(\$110)
Actual (Cost)/Ton:	(\$253)	(\$127)	(\$182)	(\$106)	(\$106)	(\$86)	(\$79)	\$21	(\$31)

While non-retention ship award, removal and disposal goals for the last three fiscal years were all exceeded, meeting the vessels award and removals goals for FY 2009 is in jeopardy due to the economic downturn, continued environmental litigation in California and GAO challenges that have stayed the Agency for contract awards until the GAO makes a ruling.

Ship Disposal Solicitation — Test Program for Certain Commercial Items (TPCCI)

In January 2005, the Maritime Administration utilized the Test Program for Certain Commercial Items (TPCCI) under the Federal Acquisition Regulation (FAR) to implement the use of Standing Quotations as the primary method for soliciting ship recycling services. The use of Standing Quotations is a simplified acquisition procedure for the competitive procurement of commercial ship dismantling/recycling services. The Standing Quotation process allows interested vendors to submit proposals on a continuous basis. Proposals are evaluated, and those offerors whose proposals are determined to be technically acceptable form a pool of standing quotations that are qualified to respond to ship specific solicitations for sales and fee-for-service offers. Since it is not possible to predict which vessels may have a positive recycling value to contractors (offerors), the Standing Quotation process includes a solicitation that allows for both sales (purchase) offers and fee-for-service offers. Those ships not receiving purchase offers are considered for fee-for-service awards. Contracts are then awarded for the offers that represent the best value to the Federal Government. The TPCCI, which expired on December 31, 2007, was extended by the Congress. The Maritime Administration has posted a phased vessel sales and fee-for-service solicitation that will allow revised prices and contract awards through the TPCCI program for FY 2009.

Ongoing Program Challenge — Aquatic Nuisance Species

In addition to challenges related to TSCA and PCBs, the Maritime Administration faced a new environmental challenge starting in FY 2006 that has, and will continue to have, significant budget and disposal rate implications for the foreseeable future. The Maritime Administration was notified by the United States Coast Guard (USCG) in the first quarter of FY 2006 that our obsolete ships were required to comply with 33 CFR Part 151, Subpart D (pertaining to aquatic hull growth), which became effective in September 2004 and is the USCG's implementing regulation for the NISA. The Coast Guard's regulations apply to "operating vessels" but they determined that obsolete vessels under tow enroute to recycling facilities are "operating vessels" within the meaning of this regulation. The USCG interpretation is meant to address the potential environmental hazard in that the movement of ships for disposal might serve as a vector for transmitting invasive species, and now the Maritime Administration must comply with the USCG interpretation and application of NISA and its regulations in administering ship disposal activities.

Consistent with preamble statements in both the 1999 and 2004 rulemakings, in 2007, the Coast Guard amended 33 CFR 151.2010 to clarify that the Subpart D regulations do not apply to armed forces vessels, inclusive of USCG vessels. The Uniform National Discharge Standards (UNDS) Amendment, 33 USC 1322(n), was added to the Clean Water Act in 1996. It mandates that the Department of Defense (DOD) and EPA jointly promulgate rules to control incidental discharges from armed forces vessels. Among the discharges identified for control was ballast water and "ship husbandry" or hull cleaning. The Navy anticipates that the UNDS Phase II and Phase III requirements for ballast water and underwater ship

husbandry will fully address the control of invasive species in or on DOD vessels. In the spring of 2006, the USCG and the Maritime Administration reached an agreement to accomplish in-water hull cleaning (commonly known as “scamping”) to remove soft aquatic growth prior to the movement by tow of the Department of Transportation’s non-retention merchant vessels.

Compliance with these regulations since early FY 2006 has resulted in significant additional costs associated with the use of mechanical hull cleaning methods. This interim mitigation action, which was developed into a hull cleaning best management practice by the Maritime Administration, was agreed to by the USCG while the Maritime Administration developed a programmatic plan for defining and taking appropriate steps to reduce the potential risk of transferring non-native aquatic species. In addition, because there is little science that defines the risks of transferring aquatic species by hull fouling from one specific geographic location to another, the Maritime Administration has been involved in research to identify potential invasive species on its vessels, risks related to various disposal alternatives, and possible mitigation measures appropriate to identified risks.

Compliance with these regulations has also impacted the removal rate of ships from Maritime Administration fleet sites and added significantly to ship disposal costs. To date, the mitigation costs have ranged between \$100,000 and \$200,000 per ship with the potential for even greater costs as mitigation efforts have generated local and regional legal challenges that may result in dry-docking SBRF ships in California to clean hulls before removal.

In August 2006, the State of California raised concerns that the in-water cleaning of hulls by the Maritime Administration prior to their tow might release hazardous materials contained in some hull coatings into State waters, and that the practice possibly violated the CWA and might require permitting by the California State Water Quality Control Board (WQCB), a division of the California State EPA.

As a result of events arising out of the situation in California, and concerns related to NISA and the CWA, the Maritime Administration has been placed in the position of negotiating with each State and local jurisdiction in order to continue transporting vessels for recycling. On February 21, 2007, the Maritime Administrator issued a temporary suspension of any additional movement of non-retention vessels from the NDRF anchorages in California, Texas, and Virginia. This action was precipitated by the aforementioned concerns of regional WQCB for San Francisco Bay, the possibility of legal challenges to hull cleaning and disposal activities from other State and local jurisdictions, and to avoid violating any Federal, State, and local laws that may now apply to these vessels due to the USCG’s hull cleaning requirement. The suspension was intended to remain in place until agreements were reached with USCG, EPA, and officials from those States involved in the vessel recycling process that sufficiently address the known and reasonably foreseeable issues related to alleged violations of the NISA and the CWA. Since the suspension, the Maritime Administration has consulted with the Department of Justice, USCG, the Navy, Office of Management and Budget, and the affected States to determine which laws are applicable and to identify potential legal jeopardy when the program resumes.

States affected include California, Texas, and Virginia, where the Maritime Administration's reserve fleets are anchored and where pretow hull cleaning activities occur, and the States where qualified recycling facilities are located, which in addition to Texas and Virginia include Louisiana. Since the suspension, the Maritime Administration has reached agreement with Texas and Virginia with regard to in-water hull cleaning, and with Virginia, Louisiana, and Texas to allow vessels that have been cleaned in other geographic locations into their State waters for disposal.

In summary, State-by-State status is as follows:

- Virginia has agreed to allow ships to be scamped in the James River Reserve Fleet (JRRF), which is located in Virginia. Discussions are in progress with the State to allow ships into State waters for recycling from all sources, if the ships' hulls are cleaned prior to arriving in State waters.
- The State of Texas has agreed to allow ships from the Beaumont Reserve Fleet (BRF) site to be towed to Brownsville, Texas without scamping; however, in order to further reduce potential environmental risk, the Maritime Administration is scamping those vessels. Texas has also agreed to allow scamping in its waters at the BRF and has agreed to allow ships into State waters for recycling from all sources, if the ships' hulls are cleaned prior to arriving in State waters.
- Louisiana has agreed to allow Maritime Administration vessels that originate in Texas and Virginia into its waters after hull cleaning, but has not yet agreed to allow ships from California into its waters.
- California has not agreed that the ships can be cleaned in its waters and has indicated such cleaning may constitute a violation of the CWA. The State's current position is that total containment of the solid and liquid scamping discharge is required or preferably that marine growth is removed while a vessel is on drydock.

In-water hull scamping of SBRF vessels prior to towing to recyclers will not resume until the Maritime Administration and the regional WQCB can resolve concerns related to hull scamping discharge containment. Discussions with the San Francisco regional WQCB have yet to result in an agreement to allow the conduct of in-water hull cleaning. The primary issue producing the present impasse is the potential discharge of hazardous substances from hull coatings during the scamping process.

Complicating the resolution of the issues with the San Francisco regional WQCB is the 2007 filing of a lawsuit against the Maritime Administration by the Natural Resources Defense Council (NRDC) in California related to the scamping and exfoliating paint issues of the SBRF vessels and the involvement in this lawsuit of the WQCB.

While diligently pursuing a resolution in California including settlement talks with the plaintiffs, the Maritime Administration is also in the process of developing a new programmatic Environmental Assessment (EA) to supplement and update a programmatic

EA prepared in 1997. The Maritime Administration has also completed development of BMPs for reserve fleet operations that is a part of the Administrator's Environmental Excellence Initiative (EEI). The BMPs are being implemented in all three reserve fleets and are being incorporated into the EA currently under development. Additionally, a Storm Water Pollution Prevention Plan (SWPPP) is being developed in order for the SBRF to acquire a National Pollutant Discharge Elimination System (NPDES) permit for fleet operations.

If the completion of the EA results in a finding of no significant impact to the environment, the Maritime Administration will seek to resume the removal of obsolete SBRF ships even if the lawsuit has not reached settlement. The removal of the ships will be done in conjunction with the drydocking of ships for the removal of marine growth and NISA compliance if drydocking is feasible in terms of cost and availability.

Meanwhile, the program is continuing with recycling awards to remove and dispose of lower priority vessels in the JRRF and BRF subject to pending GAO decisions that affect the award recycling contracts.

FY 2009 Disposal Actions

The ship disposal process, from contract award through dismantlement and recycling, can often span one, two, or even three fiscal years. Table 1 below indicates the date (bolded) for which one, two, or all three performance measures occurred thus far in FY 2009. All FY 2009 contracts awarded have been to domestic facilities for recycling.

With awards of the vessels shown in Table 1, the only high priority ships remaining in the Maritime Administration's three fleet sites are in the SBRF in California.

Table 1: MARAD FY 2009 Disposal Actions
(Bolded dates indicate FY 2009 disposal actions)

Ship	Fleet	Contractor	Site	Vessel Award	Vessel Removal	Vessel Disposal	Final Amount (\$)
CANISTEO	JRRF	AbleUK	UK	7/23/03	10/6/03	In Progress	(\$2,808,076)
CALOOSAHATCHEE	JRRF	AbleUK	UK	7/23/03	10/6/03	In Progress	(\$2,697,304)
COMPASS ISLAND	JRRF	AbleUK	UK	7/23/03	10/16/03	In Progress	(\$3,663,848)
CANOPUS	JRRF	AbleUK	UK	7/23/03	10/16/03	In Progress	(\$3,304,328)
ISHERWOOD	JRRF	AbleUK	UK	7/23/03	TBD	TBD	\$1,950,000
ECKFORD	JRRF	AbleUK	UK	7/23/03	TBD	TBD	\$1,050,000
MONTICELLO	SBRF	Navy SINKEX	CA	9/9/05	TBD	TBD	(\$915,548)
PYRO	SBRF	Navy SINKEX	CA	9/9/05	TBD	TBD	(\$754,549)
SAUGATUCK	JRRF	Bay Bridge Enterprises	VA	6/2/06	7/18/06	10/15/08	(\$549,999)
FLORIKAN	SBRF	Navy SINKEX	CA	9/8/06	TBD	TBD	(\$396,984)
CLAMP	SBRF	Navy SINKEX	CA	9/8/06	TBD	TBD	(\$363,484)
RECLAIMER	SBRF	Navy SINKEX	CA	9/8/06	TBD	TBD	(\$363,484)
PENN. TRADER	BRF	S. Scrap Material Co.	LA	1/5/07	1/30/07	10/10/08	\$1
HUNLEY	JRRF	S. Scrap Material Co.	LA	1/5/07	3/7/07	In Progress	\$1,500
VANDENBERG	JRRF	State of FL (Colonna's)	FL	1/26/07	3/30/07	In Progress	(\$1,250,000)
CAPE CHARLES	JRRF	Marine Metals, Inc.	TX	8/24/07	2/5/08	10/30/08	(\$488,965)
BAYAMON	JRRF	All Star Metals, Inc.	TX	1/24/08	2/20/08	12/24/08	\$12,221
DEL VALLE	BRF	Esco Marine, Inc	TX	1/28/08	3/5/08	10/10/08	\$62,726
MAINE	BRF	Esco Marine, Inc	TX	1/28/08	3/13/08	10/10/08	\$86,726
CAPE CARTHAGE	JRRF	Esco Marine, Inc	TX	2/27/08	4/17/08	12/03/08	(\$400,726)
CAPE CATOCHE	JRRF	Esco Marine, Inc	TX	2/27/08	5/1/08	3/23/09	(\$454,726)
DEL VIENTO	BRF	Esco Marine, Inc	TX	2/27/08	5/8/08	12/12/08	(\$280,654)
CAPE CATAWBA	JRRF	Int. Shipbreaking Ltd.	TX	3/24/08	5/6/08	11/24/08	\$25,023
CAPE CANAVERAL	JRRF	Int. Shipbreaking Ltd.	TX	3/24/08	6/4/08	In Progress	\$1
ADONIS	BRF	Int. Shipbreaking Ltd.	TX	3/24/08	4/23/08	12/5/08	\$1,151,727
BUYER	BRF	Int. Shipbreaking Ltd.	TX	3/24/08	5/28/08	In Progress	\$148,273
CAPE CANSO	JRRF	Esco Marine, Inc	TX	6/16/08	7/17/08	2/17/09	\$86,726
NITRO	JRRF	Esco Marine, Inc	TX	6/23/08	7/23/08	4/14/09	\$446,726
AMER. EXPLORER	BRF	S. Scrap Material Co	LA	7/8/08	8/13/08	In Progress	\$1,052,788
COURIER	BRF	S. Scrap Material Co	LA	7/8/08	7/25/08	In Progress	\$622,588
RIGEL	JRRF	All Star Metals, Inc.	TX	7/28/08	8/28/08	In Progress	\$469,626
TRUCKEE	JRRF	Bay Bridge Ent.	VA	7/28/08	8/6/08	In Progress	\$1,231,328
KALAMAZOO	JRRF	Esco Marine, Inc	TX	8/11/08	9/30/08	In Progress	\$1,465,726
GULF MERCHANT	BRF	Esco Marine, Inc	TX	8/11/08	10/18/08	In Progress	\$476,726
MILWAUKEE	JRRF	Bay Bridge Enterprises	VA	1/14/09	2/10/09	In Progress	\$56,410
HATTIESBERG VICT.	BRF	Esco Marine, Inc	TX	1/19/09	2/5/09	In Progress	(\$1,016,000)
PIONEER CONTR.	BRF	Marine Metals, Inc.	TX	1/19/09	2/20/09	In Progress	(\$321,000)
SAVANNAH (ex-AOR)	JRRF	Esco Marine, Inc	TX	1/19/09	2/24/09	In Progress	(\$515,726)
AMER. OSPREY	BRF	All Star Metals, Inc.	TX	5/4/09	TBD	TBD	\$12,228
GAGE	JRRF	Solicitation Posted	TBD	TBD	TBD	TBD	TBD
ORTOLON	JRRF	Solicitation Posted	TBD	TBD	TBD	TBD	TBD
GULF SHIPPER	BRF	Solicitation Posted	TBD	TBD	TBD	TBD	TBD
SURIBACHI	JRRF	Solicitation Posted	TBD	TBD	TBD	TBD	TBD
KITTIWAKE	JRRF	Cayman Is. Art. Reef	TBD	Pending	TBD	TBD	\$0

Note: Bolded dates indicate disposal actions completed in FY 2009

Conclusions

An aggressive program of maximizing the use of disposal funding and pursuing all feasible disposal options resulted in the award of 85 contracts to dispose of obsolete vessels in the last 4 years (FY 2005-2008). Those awards and the subsequent removal of vessels from the fleet sites have reversed a trend in the growth of the number of obsolete ships in the Maritime Administration's custody.

Moreover, the award and removal of the majority of the program's high priority ships has significantly mitigated the threat of residual oil discharge into the environment. Section 3502 of the National Maritime Heritage Act (P.L. 106-398, October 30, 2000), which extended the Congressional disposal mandate to September 30, 2006, listed 39 obsolete ships that posed the most immediate threat to the environment. Of the 39 ships identified in 2000 as high priority, only one ship has not yet been removed from the Maritime Administration's fleets.

These accomplishments notwithstanding, the statutory disposal deadline of September 30, 2006 for disposal of all the Maritime Administration's obsolete ships was not met. However, as the Maritime Administration first reported to the Congress in 2002, it was unlikely that the Maritime Administration would be able to dispose of more than 115 obsolete ships then in the fleet by the deadline due to the lack of sufficient domestic ship disposal capacity and the impediments to foreign recycling contracts as a viable alternative. Those constraints still exist today despite the increase from three to six qualified domestic disposal facilities. Without access to additional disposal alternatives, the rate of disposal is unlikely to increase beyond the current rate and the cost associated with vessel disposal is unlikely to decrease beyond current levels. This is especially true in light of the economic downturn and the slow rate of recovery.

Exfoliating paint is one of many reasons that the Maritime Administration has focused vessel disposal efforts on removing the worst vessels from its fleet sites first. The Maritime Administration continues to believe that removal of the ships is the most effective method for addressing all environmental risks posed by the obsolete vessels in the fleets. However, because of the ongoing challenges with NISA and the CWA that have delayed the removal of obsolete vessels in the SBRF, the Maritime Administration is now faced with longer-term management of the vessels, especially those moored in the SBRF in California. As such, in 2008 the Maritime Administrator established an environmental excellence initiative (EEI) to review the Agency's fleet management practices in the context of long-term vessel custody. The EEI includes refining procedures for accepting vessels into the fleets, identifying and evaluating environmental risks associated with long-term custody of vessels (including exfoliating paint), and development or adjustment of management practices to reduce further environmental risk.

The Maritime Administration will continue to investigate all alternatives identified in this report, and others that are identified, to expedite the disposal of its obsolete vessels at qualified facilities and at the least cost to the Government, while giving consideration to worker safety and the environment, as required by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 P.L 106-398, Section 3502; 114 Stat. 1654A-490.

II. PROGRESS OF THE U.S. NAVY'S VESSEL DISPOSAL PROGRAM

Navy-Titled Obsolete Vessels in the Maritime Administration National Defense Reserve Fleet

As of May 31, 2009, the total number of Navy-titled vessels designated for disposal remaining in the MARAD National Defense Reserve Fleet (NDRF) facilities are twelve (12) ships and two (2) service craft. Table 1 provides information regarding the method of disposal and projected cost for disposal of these vessels. On June 26, 2008, following completion of environmental preparations, ex-HORNE (CG30) was removed from MARAD Suisun Bay, CA via tow and sunk on July 14, 2008 as part of RIMPAC 2008 naval exercises.

Table 1: U. S. Navy-Titled Obsolete Vessels in the Maritime Administration National Defense Reserve Fleet designated for disposal

Ship	Location	Method of Disposition	Projected Cost of Disposal
Osprey (MHC 51)	MARAD BRF	Foreign Military Sale	\$0
Robin (MHC 54)	MARAD BRF	Foreign Military Sale	\$0
Oriole (MHC 55)	MARAD BRF	Foreign Military Sale	\$0
Kingfisher (MHC 56)	MARAD BRF	Foreign Military Sale	\$0
Cormorant (MHC 57)	MARAD BRF	Foreign Military Sale	\$0
Blackhawk (MHC 58)	MARAD BRF	Foreign Military Sale	\$0
Falcon (MHC 59)	MARAD BRF	Foreign Military Sale	\$0
Shrike (MHC 62)	MARAD BRF	Foreign Military Sale	\$0
Iowa (BB 61)	MARAD SBRF	Donation hold	\$0
Sea Shadow (IX 529)	MARAD SBRF	Donation hold	\$0
Triumph (AGOS 1)	MARAD SBRF	Pending title transfer to MARAD	\$0
Fort Fisher (LSD 40)	MARAD SBRF	Dismantle	\$0