SEC. __. MODIFICATIONS TO NATIONAL DEFENSE SEALIFT FUND REQUIREMENTS.

(a) TWO-YEAR SUSPENSION OF LIMITATION ON FUNDS AVAILABLE FOR NATIONAL DEFENSE SEALIFT PURPOSES.—Subsection (c)(3) of section 2218 of title 10, United States Code, is amended to read as follows:

"(3) Amounts may be obligated or expended for a purpose set forth in subparagraph (B) or (D) of paragraph (1) only from—

"(A) funds appropriated for any of fiscal years 2017 through 2018 that are otherwise available for such purpose; or

"(B) funds deposited in the Fund pursuant to subsection (d)(1).".

(b) TWO-YEAR SUSPENSION OF REQUIREMENT TO DEPOSIT FUNDS FOR NATIONAL DEFENSE SEALIFT PURPOSES IN THE NATIONAL DEFENSE SEALIFT FUND.—Subsection (d)(1) of such section is amended by inserting "for a fiscal year after fiscal year 2018" after "appropriated to the Department of Defense".

(c) APPLICABILITY OF "BUY AMERICAN" AND OTHER RESTRICTIONS. —Subsection (c) of such section is further amended by adding at the end the following new paragraph:

"(4) Funds appropriated for the Department of Defense for fiscal years 2017 through 2018 that are available —

"(A) for the installation and maintenance of defense features for national defense purposes on privately owned and operated vessels may be obligated and expended for such purpose only for vessels that are constructed in the United States and documented under the laws of the United States; and

"(B) for expenses for maintaining the National Defense Reserve Fleet under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and the costs of acquisition of vessels, and alteration and conversion of vessels in (or to be placed in the fleet), may be obligated and expended for such purposes only for vessels built in United States shipyards or vessels authorized for inclusion in the National Defense Reserve Fleet and only in accordance with section 1424(b) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note).".

(d) CONFORMING AMENDMENT.—Subsection (f)(2) of such section is amended by striking "Public Law 101-510 (104 Stat. 1683)" and inserting "the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note)".

(e) EFFECTIVE DATE.—The amendments made by this section shall not apply with respect to funds appropriated for a fiscal year before fiscal year 2017.

Section-by-Section Analysis

This proposal would suspend for two years the requirement that all expenditures for national defense sealift purposes must be made through the National Defense Sealift Fund and that all appropriations for national defense sealift purposes must be deposited into that Fund.

The National Defense Sealift Fund (NDSF) was created by the Fiscal Year (FY) 1993 National Defense Authorization Act, Public Law 102-484, to address sealift funding issues using a revolving fund concept. Subsequent to its creation, the legal provisions of the NSDF have changed on several occasions, including changing the definitions of what constitutes a sealift asset. These changes have been included in the National Defense Authorization Acts for Fiscal Years 1997, 2000, 2001, 2002, 2004, 2007 and 2009.

In practice, the NDSF has never operated as a revolving fund. Congress appropriates funds in the Revolving Fund Title, but requires compliance with other financial policies (e.g. the procurement budget activity must reflect full funding). In addition, different funds within the NDSF account are not treated completely as a revolving fund. Moreover, there is a growing sentiment, at least with the appropriations committees, that no future sealift ships should be constructed utilizing the NDSF. This sentiment was reflected in the FY 2013 Department of Defense (DoD) Appropriations Act whereby the funding for TAO-X research and development was included in the Research, Development, Test, and Evaluation, Navy (RDT&E, N) appropriation, rather than the NDSF. Similarly, the FY 2014 President's Budget requested, and

funding was appropriated for, the last Mobile Landing Platform in the Shipbuilding and Conversion, Navy (SCN) appropriation, rather than the NDSF. Subsequently, the FY 2016 budget requested the construction of the TAO-X in SCN.

As a result of these changes over the years, the Department of the Navy (DON) evaluated the continued need for an NDSF account. While it is certainly important to continue to support funding for sealift requirements, the DON determined that there were other viable funding mechanisms to support this effort. Working within the DON, and with other sealift partners such as the U.S. Transportation Command (USTRANSCOM) and the Maritime Administration (MARAD), the decision was made to eliminate funding requests in the NDSF account commencing with the FY 2017 budget submission. Funding requirements will continue to be met by budgeting ship construction in SCN, research and development in RDT&E,N program elements, and operation and maintenance needs in O&M,N.

The budget change will preserve funding for sealift requirements while providing the DON one less appropriation to manage, prepare financial statements for, and address for financial auditability purposes. In addition, it streamlines the funding flow by reducing reimbursable documents that have to flow between Navy commands when a ship is activated. Overall, the change in the budget structure will be more efficient while still supporting sealift requirements.

The "Buy American" restrictions of 10 USC 2218(c)(1)(C) and (E) would continue to apply to expenditures made using appropriated funds other than through the NDSF while clarifying that such funds are available for all vessels in the National Defense Reserve Fleet (NDRF). Such clarification is needed because almost two-thirds of the vessels currently in the Ready Reserve Force component of the NDRF, including many critical ROROs, were foreign-built vessels specifically authorized to be included in the fleet prior to the enactment of the NDSF or transferred to the fleet from DOD (the FSSs). The proposal also contains "Buy American" restrictions that are equivalent to those in subsection (f) to require that the construction, alteration, and conversion of vessels shall be conducted in United States shipyards and shall be subject to section 1424(b) of Public Law 101–510 (104 Stat. 1683), unless otherwise specifically authorized by law". This change has no budgetary impact.

Budget Implications: The FY 2017 President's Budget requests no funding in the NDSF account. Funding is realigned, to finance sealift requirements, in RDT&E, N, and O&M, N.

RESOURCE REQUIREMENTS ($ MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	-55.5	-32.3	-37.6	-60.2	-32.8	National Defense Sealift Fund	02	080	0408042N
	-157.1	-116.8	-119.0	-137.8	-140.8	National Defense Sealift Fund	02	060	0408042N

	-274.5	-284.8	-289.9	-295.6	-301.0	National Defense Sealift Fund	05	100	0408042N
	-23.7	-8.5	-16.9	-17.2	-17.0	National Defense Sealift Fund	02	070	0408042N
	-19.7	-18.6	-15.2	-15.1	-15.4	National Defense Sealift Fund	04	090	0408042N
Total	-530.5	-461.0	-478.6	-525.9	-507.0				
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	180.8	125.3	135.9	155.0	157.8	Operation and Maintenance, Navy	02	2A1F	0408042N
	274.5	284.8	289.9	295.6	301.0	Operation and Maintenance, Navy	02	2A2F	0408042N
	55.5	32.3	37.6	60.2	32.8	Operation and Maintenance, Navy	02	2C1H	0408042N
	4.2	6.5	6.3	6.0	6.2	Research, Development, Test and Evaluation, Navy	04	44	0603563N
	14.8	11.6	8.9	9.1	9.3	Research, Development, Test and Evaluation, Navy	04	45	0603564N
	0.7	0.5	0	0	0	Research, Development, Test and Evaluation, Navy	05	126	0604567N
Total	530.5	461.0	478.6	525.9	507.0				
Net	0	0	0	0	0				

Changes to Existing Law: This proposal would make the following changes to section 2218 of title 10, United States Code:

§ 2218. National Defense Sealift Fund

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the "National Defense Sealift Fund".

(b) ADMINISTRATION OF FUND.—The Secretary of Defense shall administer the Fund consistent with the provisions of this section.

(c) FUND PURPOSES.—(1) Funds in the National Defense Sealift Fund shall be available for obligation and expenditure only for the following purposes:

(A) Construction (including design of vessels), purchase, alteration, and conversion of Department of Defense sealift vessels.

(B) Operation, maintenance, and lease or charter of Department of Defense vessels for national defense purposes.

(C) Installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States.

(D) Research and development relating to national defense sealift.

(E) Expenses for maintaining the National Defense Reserve Fleet under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the costs of acquisition of vessels for, and alteration and conversion of vessels in (or to be placed in), the fleet, but only for vessels built in United States shipyards.

(2) Funds in the National Defense Sealift Fund may be obligated or expended only in amounts authorized by law.

~~(3) Funds obligated and expended for a purpose set forth in subparagraph (B) or (D) of paragraph (1) may be derived only from funds deposited in the National Defense Sealift Fund pursuant to subsection (d)(1).~~

(3) Amounts may be obligated or expended for a purpose set forth in subparagraph (B) or (D) of paragraph (1) only from—

(A) funds appropriated for any of fiscal years 2017 through 2018 that are otherwise available for such purpose; or

(B) funds deposited in the Fund pursuant to subsection (d)(1).

(4) Funds appropriated for the Department of Defense for fiscal years 2017 through 2018 that are available—

(A) for the installation and maintenance of defense features for national defense purposes on privately owned and operated vessels may be obligated and expended for such purpose only for vessels that are constructed in the United States and documented under the laws of the United States; and

(B) for expenses for maintaining the National Defense Reserve Fleet under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the costs of acquisition of vessels for, and alteration and conversion of vessels in (or to be placed in), the fleet, may be obligated and expended for such purposes only for vessels built in United States shipyards or vessels authorized for inclusion in the National Defense Reserve Fleet and only in accordance with section 1424(b) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note).

(d) DEPOSITS.—There shall be deposited in the Fund the following:

(1) All funds appropriated to the Department of Defense for a fiscal year after fiscal year 2018 for—

(A) construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(B) operations, maintenance, and lease or charter of national defense sealift vessels;

(C) installation and maintenance of defense features for national defense purposes on privately owned and operated vessels; and

(D) research and development relating to national defense sealift.

(2) All receipts from the disposition of national defense sealift vessels, excluding receipts from the sale, exchange, or scrapping of National Defense Reserve Fleet vessels under sections 57101–57104 and chapter 573 of title 46.

(3) All receipts from the charter of vessels under section 1424(c) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note).

(e) ACCEPTANCE OF SUPPORT.—(1) The Secretary of Defense may accept from any person, foreign government, or international organization any contribution of money, personal property (excluding vessels), or assistance in kind for support of the sealift functions of the Department of Defense.

(2) Any contribution of property accepted under paragraph (1) may be retained and used by the Department of Defense or disposed of in accordance with procedures prescribed by the Secretary of Defense.

(3) The Secretary of Defense shall deposit in the Fund money and receipts from the disposition of any property accepted under paragraph (1).

(f) LIMITATIONS.—(1) A vessel built in a foreign ship yard may not be purchased with funds in the National Defense Sealift Fund pursuant to subsection (c)(1), unless specifically authorized by law.

(2) Construction, alteration, or conversion of vessels with funds in the National Defense Sealift Fund pursuant to subsection (c)(1) shall be conducted in United States ship yards and shall be subject to section 1424(b) of ~~Public Law 101–510 (104 Stat. 1683)~~ the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note).

(g) EXPIRATION OF FUNDS AFTER 5 YEARS.—No part of an appropriation that is deposited in the National Defense Sealift Fund pursuant to subsection (d)(1) shall remain available for obligation more than five years after the end of fiscal year for which appropriated except to the extent specifically provided by law.

(h) BUDGET REQUESTS.—Budget requests submitted to Congress for the National Defense Sealift Fund shall separately identify—

(1) the amount requested for programs, projects, and activities for construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(2) the amount requested for programs, projects, and activities for operation, maintenance, and lease or charter of national defense sealift vessels;

(3) the amount requested for programs, projects, and activities for installation and maintenance of defense features for national defense purposes on privately owned and

operated vessels that are constructed in the United States and documented under the laws of the United States; and

(4) the amount requested for programs, projects, and activities for research and development relating to national defense sealift.

(i) TITLE OR MANAGEMENT OF VESSELS.—Nothing in this section (other than subsection (c)(1)(E)) shall be construed to affect or modify title to, management of, or funding responsibilities for, any vessel of the National Defense Reserve Fleet, or assigned to the Ready Reserve Force component of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(j) CONTRACTS FOR INCORPORATION OF DEFENSE FEATURES IN COMMERCIAL VESSELS.—(1) The head of an agency may enter into a contract with a company submitting an offer for that company to install and maintain defense features for national defense purposes in one or more commercial vessels owned or controlled by that company in accordance with the purpose for which funds in the National Defense Sealift Fund are available under subsection (c)(1)(C). The head of the agency may enter into such a contract only after the head of the agency makes a determination of the economic soundness of the offer. As consideration for a contract with the head of an agency under this subsection, the company entering into the contract shall agree with the Secretary of Defense to make any vessel covered by the contract available to the Secretary, fully crewed and ready for sea, at any time at any port determined by the Secretary, and for whatever duration the Secretary determines necessary.

(2) The head of an agency may make advance payments to the contractor under a contract under paragraph (1) in a lump sum, in annual payments, or in a combination thereof for costs associated with the installation and maintenance of the defense features on a vessel covered by the contract, as follows:

(A) The costs to build, procure, and install a defense feature in the vessel.

(B) The costs to periodically maintain and test any defense feature on the vessel.

(C) Any increased costs of operation or any loss of revenue attributable to the installation or maintenance of any defense feature on the vessel.

(D) Any additional costs associated with the terms and conditions of the contract.

(E) Payments of such sums as the Government would otherwise expend, if the vessel were placed in the Ready Reserve Fleet, for maintaining the vessel in the status designated as "ROS–4 status" in the Ready Reserve Fleet for 25 years.

(3) For any contract under paragraph (1) under which the United States makes advance payments under paragraph (2) for the costs associated with installation or maintenance of any defense feature on a commercial vessel, the contractor shall provide to the United States such security interests in the vessel, by way of a preferred mortgage under section 31322 of title 46 or otherwise, as the head of the agency may prescribe in order to adequately protect the United States against loss for the total amount of those costs.

(4) Each contract entered into under this subsection shall—

(A) set forth terms and conditions under which, so long as a vessel covered by the contract is owned or controlled by the contractor, the contractor is to operate the vessel for the Department of Defense notwithstanding any other contract or commitment of that contractor; and

(B) provide that the contractor operating the vessel for the Department of Defense shall be paid for that operation at fair and reasonable rates.

(5) The head of an agency may not delegate authority under this subsection to any officer or employee in a position below the level of head of a procuring activity.

(6) The head of an agency may not enter into a contract under paragraph (1) that would provide for payments to the contractor as authorized in paragraph (2)(E) until notice of the proposed contract is submitted to the congressional defense committees and a period of 90 days has elapsed.

(k) DEFINITIONS.—In this section:

(1) The term "Fund" means the National Defense Sealift Fund established by subsection (a).

(2) The term "Department of Defense sealift vessel" means any ship owned, operated, controlled, or chartered by the Department of Defense that is any of the following:

(A) A fast sealift ship, including any vessel in the Fast Sealift Program established under section 1424 of Public Law 101–510 (104 Stat. 1683).

(B) Any other auxiliary vessel that was procured or chartered with specific authorization in law for the vessel, or class of vessels, to be funded in the National Defense Sealift Fund.

(3) The term "national defense sealift vessel" means—

(A) a Department of Defense sealift vessel; and

(B) a national defense reserve fleet vessel, including a vessel in the Ready Reserve Force maintained under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(4) The term "head of an agency" has the meaning given that term in section 2302(1) of this title.