SEC. ___. WAIVER OF RESTRICTIONS ON OVERHAUL, REPAIR, OR MAINTENANCE OF VESSELS IN FOREIGN SHIPYARDS DURING WAR OR THREAT TO NATIONAL SECURITY.

Section 8680 of title 10, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection:

"(c) WAIVER.—(1) The Secretary of the Navy may waive the restrictions in subsections (a) and (b) for the duration of a period of threat to the national security interests of the United States upon a written determination by the Secretary of the Navy that such a waiver is necessary in the national security interest of the United States.

"(2) The Secretary of the Navy shall provide written notification to the congressional defense committees not later than 15 days after making a determination under paragraph (1).

"(3) In this subsection, the term 'period of threat to the national security interests of the United States' means—

"(A) a time of war; or

"(B) any other time the Secretary of Defense determines that the security interest of the United States is threatened by the application, or the imminent danger of application, of physical force by any foreign government or agency against the United States, citizens of the United States, the property of citizens of the United States, or the commercial interests of citizens of the United States.".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would amend 10 U.S.C. 8680 to allow the Secretary of the Navy to waive the statute's restrictions during a time of war, or during a threat to national security (as determined by the Secretary of Defense). This proposal will provide the Department of the Navy necessary flexibility in repairing and maintaining its ships during a war, conflict, or imminent conflict, while preserving the policy underlying the statute.

Section 8680 prohibits any naval vessel with a homeport in the United States or Guam from being overhauled, repaired, or maintained in a shipyard outside the United States or Guam, other than in the case of voyage repairs (10 U.S.C. 8680(a)). The prohibition has a limited exception for certain maintenance or repair on deployed Littoral Combat Ships. The statute also places restrictions on overhaul, repair, and maintenance of vessels during the 15-month period prior to a reassignment of a vessel from a homeport outside the United States (or its territories) to a homeport in the United States (or its territories) or vice versa (10 U.S.C. § 8680(b)).

The statute does not currently contain any waiver provision. This proposal would provide the Secretary of the Navy with limited authority to waive the restrictions in 10 U.S.C. 8680(a) and (b) during a time of war, or when the Secretary of Defense determines that the security of the United States is threatened by particular acts of a foreign government or agency. Specifically, the waiver authority would apply "during a war and at any other time when the Secretary of Defense determines that the security of the United States is threatened by the application, or the imminent danger of application, of physical force by any foreign government or agency against the United States, its citizens, the property of its citizens, or their commercial interests."

In addition to the existence of a war or a determined national security threat, the proposal would also require a written determination by the Secretary of the Navy that waiving the statute is necessary in the national security of the United States. This ensures that, even during a war or conflict, the authority is only used when necessary.

Finally, the proposal would require the Secretary of the Navy to provide a written notification to the congressional defense committees no later than 15 days after making a written determination. This provision will maintain Congressional oversight over use of the waiver authority, while allowing the Secretary to execute the waiver authority in a timely manner when necessary during a conflict or imminent conflict.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount, and are included within the Fiscal Year (FY) 2021 President's Budget Request.

Changes to Existing Law: This proposal would amend section 8680 of title 10, United States Code, as follows:

§ 8680. Overhaul, repair, etc. of vessels in foreign shipyards: restrictions

(a) VESSELS UNDER JURISDICTION OF THE SECRETARY OF THE NAVY WITH HOMEPORT IN UNITED STATES OR GUAM.—(1) A naval vessel the homeport of which is in the United States or

Guam may not be overhauled, repaired, or maintained in a shipyard outside the United States or Guam, other than in the case of voyage repairs.

(2)(A) Notwithstanding paragraph (1) and subject to subparagraph (B), in the case of a naval vessel classified as a Littoral Combat Ship and operating on deployment, corrective and preventive maintenance or repair (whether intermediate or depot level) and facilities maintenance may be performed on the vessel—

(i) in a foreign shipyard;

(ii) at a facility outside of a foreign shipyard; or

(iii) at any other facility convenient to the vessel.

(B)(i) Corrective and preventive maintenance or repair may be performed on a vessel as described in subparagraph (A) if the work is performed by United States Government personnel or United States contractor personnel.

(ii) Facilities maintenance may be performed by a foreign contractor on a vessel as described in subparagraph (A) only as approved by the Secretary of the Navy.

(C) In this paragraph:

(i) The term "corrective and preventive maintenance or repair" means—

(I) maintenance or repair actions performed as a result of a failure in order to return or restore equipment to acceptable performance levels; and

(II) scheduled maintenance or repair actions to prevent or discover functional failures.

(ii) The term "facilities maintenance" means—

(I) the effort required to provide housekeeping services throughout the ship;

(II) the effort required to perform coating maintenance and repair to exterior and interior surfaces due to normal environmental conditions; and

(III) the effort required to clean mechanical spaces, mission zones, and topside spaces.

(b) VESSEL CHANGING HOMEPORTS.—(1) In the case of a naval vessel the homeport of which is not in the United States (or a territory of the United States), the Secretary of the Navy may not during the 15-month period preceding the planned reassignment of the vessel to a homeport in the United States (or a territory of the United States) begin any work for the overhaul, repair, or maintenance of the vessel that is scheduled to be for a period of more than six months.

(2) In the case of a naval vessel the homeport of which is in the United States (or a territory of the United States), the Secretary of the Navy shall during the 15-month period preceding the planned reassignment of the vessel to a homeport not in the United States (or a territory of the United States) perform in the United States (or a territory of the United States) any work for the overhaul, repair, or maintenance of the vessel that is scheduled—

(A) to begin during the 15-month period; and

(B) to be for a period of more than six months.

<u>(c) WAIVER.—(1) The Secretary of the Navy may waive the restrictions in subsections (a) and (b) for the duration of a period of threat to the national security interests of the United States upon a written determination by the Secretary of the Navy that such a waiver is necessary in the national security interest of the United States.</u>

(2) The Secretary of the Navy shall provide written notification to the congressional defense committees not later than 15 days after making a determination under paragraph (1).

(3) In this subsection, the term ‘period of threat to the national security interests of the United States’ means—

(A) a time of war; or

(B) any other time the Secretary of Defense determines that the security interest of the United States is threatened by the application, or the imminent danger of application, of physical force by any foreign government or agency against the United States, citizens of the United States, the property of citizens of the United States, or the commercial interests of citizens of the United States.

(~~c~~d) REPORT.—(1) The Secretary of the Navy shall submit to Congress each year, at the time that the President's budget is submitted to Congress that year under section 1105(a) of title 31, a report listing all repairs and maintenance performed on any covered naval vessel that has undergone work for the repair of the vessel in any shipyard outside the United States or Guam (in this section referred to as a “foreign shipyard”) during the fiscal year preceding the fiscal year in which the report is submitted.

(2) The report shall include the percentage of the annual ship repair budget of the Navy that was spent on repair of covered naval vessels in foreign shipyards during the fiscal year covered by the report.

(3) Except as provided in paragraph (4), the report also shall include the following with respect to each covered naval vessel:

(A) The justification under law and operational justification for the repair in a foreign shipyard.

(B) The name and class of vessel repaired.

(C) The category of repair and whether the repair qualified as voyage repair as defined in Commander Military Sealift Command Instruction 4700.15C (September 13, 2007) or Joint Fleet Maintenance Manual (Commander Fleet Forces Command Instruction 4790.3 Revision A, Change 7), Volume III. Scheduled availabilities are to be considered as a composite and reported as a single entity without individual repair and maintenance items listed separately.

(D) The shipyard where the repair work was carried out.

(E) The number of days the vessel was in port for repair.

(F) The cost of the repair and the amount (if any) that the cost of the repair was less than or greater than the cost of the repair provided for in the contract.

(G) The schedule for repair, the amount of work accomplished (stated in terms of work days), whether the repair was accomplished on schedule, and, if not so accomplished, the reason for the schedule over-run.

(H) The homeport or location of the vessel prior to its voyage for repair.

(I) Whether the repair was performed under a contract awarded through the use of competitive procedures or procedures other than competitive procedures.

(4) In the case of a covered vessel described in subparagraph (C) of paragraph (5), the report shall not be required to include the information described in subparagraphs (A), (E), (F), (G), and (I) of paragraph (3).

(5) In this subsection, the term “covered naval vessel” means any of the following:

(A) A naval vessel.

(B) Any other vessel under the jurisdiction of the Secretary of the Navy.

(C) A vessel not described in subparagraph (A) or (B) that is operated pursuant to a contract entered into by the Secretary of the Navy and the Maritime Administration or the United States Transportation Command in support of Department of Defense operations.