SEC. ___. CLARIFICATION OF SOLE OWNERSHIP RESULTING FROM SHIP DONATIONS AT NO COST TO THE NAVY.

(a) CLARIFICATION OF TRANSFER AUTHORITY.—Subsection (a) of section 7306 of title 10, United States Code, is amended to read as follows:

"(a) AUTHORITY TO MAKE TRANSFER.—The Secretary of the Navy may convey, by donation, all right, title, and interest to any vessel stricken from the Naval Vessel Register or any captured vessel, for use as a museum or memorial for public display in the United States, to—

"(1) any State, the District of Columbia, any Commonwealth or possession of the United States, or any municipal corporation or political subdivision thereof; or

"(2) any nonprofit entity.".

(b) CLARIFICATION OF LIMITATIONS ON LIABILITY AND RESPONSIBILITY.—Subsection (b) of such section is amended to read as follows:

"(b) LIMITATIONS ON LIABILITY AND RESPONSIBILITY.—

"(1) IMMUNITY OF UNITED STATES.—The United States and all departments and agencies thereof, and their officers and employees, shall not be liable at law or in equity for any injury or damage to any person or property occurring on a vessel donated under this section.

"(2) IMPROVEMENTS, UPGRADES, AND REPAIRS.—Notwithstanding any other law, the United States and all departments and agencies thereof, and their officers and employees, shall have no responsibility or obligation to make, engage in, or provide funding for, any improvement, upgrade, modification, maintenance, preservation, or repair to a vessel donated under this section.".

(c) CLARIFICATION THAT TRANSFERS TO BE MADE AT NO COST TO UNITED STATES.—Subsection (c) of such section is amended by inserting after "under this section" the following: ", the maintenance and preservation of that vessel as a museum or memorial, and the ultimate disposal of that vessel, including demilitarization of Munitions List items at the end of the useful life of the vessel as a museum or memorial,".

(d) APPLICATION OF ENVIRONMENTAL LAWS; DEFINITIONS.—Such section is further amended by adding at the end the following new subsections:

"(e) APPLICATION OF ENVIRONMENTAL LAWS.—Nothing in this section shall affect the applicability of Federal, State, interstate, and local environmental laws and regulations, including the Toxic Substances Control Act (15 U.S.C. 2601 et seq.) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), to the Department of Defense or to a donee.

"(f) DEFINITIONS.—In this section:

"(1) The term 'nonprofit entity' means any entity qualifying as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986.

"(2) The term 'Munitions List' means the United States Munitions List created and controlled under section 38 of the Arms Export Control Act (22 U.S.C. 2778).

"(3) The term 'donee' means any entity receiving a vessel pursuant to subsection (a).".

(e) CLERICAL AMENDMENTS.—

(1) SECTION HEADING.—The heading of such section is amended to read as follows:

"§ 7306. Vessels stricken from Naval Vessel Register; captured vessels: conveyance by donation".

(2) TABLE OF SECTIONS— The item relating to such section in the table of sections at the beginning of chapter 633 of such title is amended to read as follows:

"7306. Vessels stricken from Naval Vessel Register; captured vessels: conveyance by donation.".

Section-by-Section Analysis

The current ship donation statute, 10 U.S.C. 7306, authorizes the Department of the Navy (DON) to donate any vessel stricken from the Naval Vessel Register, but requires that donated naval vessels be maintained in a condition satisfactory to the Secretary of the Navy. The DON incorporates this requirement in the donation contract between the DON and the donee. The statutory requirement presents numerous problems associated with ownership, maintenance costs, and historic preservation. This proposal would eliminate the statutory requirement with regard to future donations. Prior donation contracts would be unaffected by this proposal.

Subsection (b) is being replaced in its entirety because the current language in the statute caused great confusion amongst donees. The existing requirement that a donee maintain a donated vessel in a condition satisfactory to the Secretary of the Navy was frequently misinterpreted to imply that the DON retains an ownership interest in the donated vessel despite the fact that the DON conveys title to the donee. Ownership determines who pays for the numerous costs to maintain, repair, and ultimately dispose of a vessel. It also determines, in part, who is responsible for costs related to third-party litigation. With almost 50 donated ships around the country, the costs to the DON could be substantial if the agency were required to bear the responsibilities of a never ending ownership interest. The replacement language immunizes the United States against any third-party litigation liability as well as any fiscal responsibility to maintain or preserve the transferred vessel. The additional language in subsection (e) clarifies that the provisions of all environmental laws continue to apply. For example, the provisions of section 6(e) of the Toxic Substances Control Act regarding the distribution in commerce of polychlorinated biphenyls (PCBs) continue to apply to PCBs on the subject vessels, and the Environmental Protection Agency and DON may continue to handle PCB compliance issues as they have in the past.

In various circumstances over the last few years, parties have made the argument that the DON is the owner of donated vessels. Most recently, in Letter Ruling 2010-03 (March 3, 2010), the Hawaii Department of Taxation found that, for purposes of Hawaii general tax liability, ex-Missouri "is in substance still federally owned based on the terms of the Contract" because of the DON's contractual ties requiring the vessel to be maintained in a condition satisfactory to the Secretary. In 2001, in *Meagher v. United States*, 170 F.Supp.2d 960, 964 (N.D. Cal. 2001), the owner of ex-Hornet unsuccessfully sued the DON in U.S. District Court based on a third-party injury, arguing that the DON was the owner of the vessel because of the significant ties that the DON maintained to the ship. Ownership issues also arise regularly outside of litigation. In

2010, the owners of ex-Olympia argued that the DON owned the ship and should either take it back or dispose of it. Significant public outcry resulted when the DON refused, damaging the agency's public image, although eventually the museum owner agreed to attempt to re-donate the vessel to another organization.

Many donated ships either require substantial repairs or are reaching the end of their effective lives as museums. Despite the fact that the donation statute requires all donations be made at no cost to the United States (10 U.S.C. 7306(c)), congressional earmarks have required the DON to absorb tens of millions of dollars of costs for donated ships. In the last 20 years, at least $66.8 million have been earmarked for just three donated ships: ex-Intrepid, ex-Alabama, and ex-Missouri (by way of example, in 2002, Congress directed the DON to provide a $4.2 million grant to the USS Alabama Battleship Foundation "to be available only for the preservation of the former U.S.S. Alabama (ex BB-60) as a museum and memorial"). Given that maintenance costs can be difficult for some museums to manage, without the stronger statutory language of this proposal, museums may raise the issue of ownership more frequently to compel the DON to fund those costs.

The legislative proposal clarifies the purpose of the transfer is to operate the vessel as a museum or memorial for public display in the United States. This provides the DON with the flexibility to oversee a donee's actions effectively without any implication of retention of ownership. For example, the DON may either provide an easement to a state or historical society, or contractually bind the donee to work with a historical organization to maintain the ship in historically accurate, and therefore satisfactory, condition. In addition, the DON may impose specific maintenance obligations on the donee in order to reduce the risk that the vessel will fall into disrepair after donation. Further, as demilitarization of the hull of a warship is deferred to the end of the vessel's useful life as a museum, the DON would continue to require that donees obtain the consent of the Navy to either transfer the vessel to another U.S. organization for continued use as a museum, or to dispose of the vessel.

The proposal also clarifies that the "no cost" provision in the donation statute covers the entire life of the vessel after donation, meaning that the donee is responsible for the maintenance, preservation, and ultimate disposal of the vessel. While the DON has consistently interpreted the donation statute in this way, donees nevertheless frequently seek additional funds from the federal government after donation. More explicit statutory direction will help to clarify the donee's responsibilities.

In addition to the ownership and cost issues, the DON runs the risk that the statute's current requirement may trigger significant oversight requirements under the National Historic Preservation Act (NHPA). If this were to happen, the DON would likely have to divert more resources to become more closely involved in how ship museums are run. Even a decrease in a museum's budget could trigger NHPA review, which might lead to additional efforts to get the DON to absorb costs.

The proposal also clarifies that transfers are by "donation," rather than "by gift or otherwise." This is a more accurate description of the DON's process to make inactive vessels available for display.

The proposal also moves the reference to the District of Columbia within the provision within subsection (a)(1) to authorize a municipal corporation or political subdivision of the District of Columbia to be a recipient of the transferred vessel.

Finally, the proposal removes the reference to 40 U.S.C. 113 (which relates to the Federal Property Act (FPA)). The FPA contains an additional vessel donation authority available to Federal Government agencies (including the DON), but totally separate and independent of the DON's unique vessel donation authority at 10 U.S.C. 7306.

Budget Implications: This proposal is budget neutral. The DON does not currently budget for any of the potential costs that might occur were it held liable as an owner. The proposal serves to further solidify our interpretation of the existing law and protect the DON from future potential liabilities.

RESOURCE REQUIREMENTS ($ MILLIONS)									
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Administrative Costs	0.04	0.04	0.04	0.04	0.04	Operations & Maintenance, Navy	BA1	22G10	0204228N
Total	0	0	0	0	0	N/A	N/A	N/A	N/A

Changes to Existing Law: This proposal would make the following changes to section 7306 of title 10, United States Code:

§ 7306. Vessels stricken from Naval Vessel Register; captured vessels: transfer by ~~gift or otherwise~~ donation

(a) AUTHORITY TO MAKE TRANSFER.~~—Subject to section 113 of title 40, the~~The Secretary of the Navy may ~~transfer, by gift or otherwise,~~ convey, by donation, all right, title, and interest to any vessel stricken from the Naval Vessel Register, or any captured vessel, for use as a museum or memorial for public display in the United States, to—

(1) any State, Commonwealth, or possession of the United States, the District of Columbia, or any municipal corporation or political subdivision thereof; or

~~(2) the District of Columbia; or~~.

(~~3~~2) any ~~not-for-profit or~~ nonprofit entity.

(b)~~VESSEL TO BE MAINTAINED IN CONDITION SATISFACTORY TO SECRETARY.—An agreement for the transfer of a vessel under subsection (a) shall include a requirement that the transferee will maintain the vessel in a condition satisfactory to the Secretary.~~ LIMITATIONS ON LIABILITY AND RESPONSIBILITY.—

(1) IMMUNITY OF UNITED STATES.—The United States and all departments and agencies thereof, and their officers and employees, shall not be liable at law or in equity

for any injury or damage to any person or property occurring on a vessel donated under this section.

(2) IMPROVEMENTS, UPGRADES, AND REPAIRS.—Notwithstanding any other law, the United States and all departments and agencies thereof, and their officers and employees, shall have no responsibility or obligation to make, engage in, or provide funding for, any improvement, upgrade, modification, maintenance, preservation, or repair of a vessel donated under this section.

(c) TRANSFERS TO BE AT NO COST TO UNITED STATES.—Any transfer of a vessel under this section, the maintenance and preservation of that vessel as a museum or memorial, and the ultimate disposal of that vessel, including demilitarization of Munitions List items at the end of the useful life of the vessel as a museum or memorial, shall be made at no cost to the United States.

(d) CONGRESSIONAL NOTICE-AND-WAIT PERIOD.—(1) A transfer under this section may not take effect until—

(A) the Secretary submits to Congress notice of the proposed transfer; and

(B) 30 days of a session of Congress have expired following the date on which the notice is sent to Congress.

(2) For purposes of paragraph (1)(B)—

(A) the period of a session of Congress is broken only by an adjournment of Congress sine die at the end of the final session of a Congress; and

(B) any day on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain, or because of an adjournment sine die at the end of the first session of a Congress, shall be excluded in the computation of such 30-day period.

(e) APPLICATION OF ENVIRONMENTAL LAWS.—Nothing in this section shall affect the applicability of Federal, State, interstate, and local environmental laws and regulations, including the Toxic Substances Control Act (15 U.S.C. 2601 et seq.) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), to the Department of Defense or to a donee.

(f) DEFINITIONS.—In this section:

(1) The term "nonprofit entity" means any entity qualifying as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986.

(2) The term "Munitions List" means the United States Munitions List related and controlled under section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(3) The term "donee" means any entity receiving a vessel pursuant to subsection (a).