



Comptroller General
of the United States

Washington, D.C. 20548

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RELEASED

The Honorable Jack Brooks
Chairman, Legislation and National
Security Subcommittee
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

By letter dated February 16, 1988, you asked whether the Department of the Navy, Military Sealift Command (MSC), or the Department of Transportation, Maritime Administration (MarAd), has peacetime jurisdiction to administer and control the Ready Reserve Fleet (RRF), a reserve fleet of government-owned merchant ships. The Navy maintains that the RRF is not a functional element of the National Defense Reserve Fleet (NDRF), which MarAd administers and controls, and because of this and the fact that RRF ships are acquired with funds appropriated to Navy, RRF vessels are subject to Navy's control. MarAd disagrees. For the reasons discussed below, we conclude that MarAd is responsible for the peacetime administration and control of the RRF.

BACKGROUND

A defense reserve of merchant ships is not a new idea. When the United States after World War I began to retire its fleet of merchant vessels from service, a defense reserve of merchant vessels was established. Prior to World War II, some of these vessels were reactivated to support our armed forces. At the conclusion of World War II, the Congress enacted the Merchant Ship Sales Act of 1946 (the Act), section 11 of which directed the Maritime Commission (a MarAd predecessor) to place certain ships in a national defense reserve, known as the NDRF. 50 U.S.C. App. § 1744 (1986).

Section 11 of the Act provides that "the Secretary of Transportation shall place in a national defense reserve" certain vessels owned by the Department of Transportation which the Secretary determines, after consultation with the Secretary of the Army and the Navy, should be retained for the national defense. Section 11 further provides that "unless otherwise provided by law, all vessels placed in such reserve shall be preserved and maintained by the Secretary of Transportation for the purpose of national defense." Finally, it provides that a vessel placed in such

reserve may not be used for any purpose unless the President declares that the national defense or national emergency makes it necessary to do so. See 46 U.S.C. 1242 (1986). Because of the need to provide quick response sealift capacity to the military services, the Assistant Secretary of the Navy and the Assistant Secretary of Commerce for Maritime Affairs (MarAd's immediate predecessor) in a November 1976 Memorandum of Agreement (1976 MOA) established the RRF. The 1976 MOA specified the MarAd and the Navy roles concerning such matters as the composition of the RRF, ship preparation and maintenance, ship manning and operation, test of ship activation, and budgeting. It provided that the RRF would be composed of ships obtained by MarAd from the NDRF and from others, including the Navy, and that except when activated, "all ships of the RRF, like other ships of the NDRF, will be under the exclusive control of MarAd." See 1976 MOA, para. 4. From 1976 to 1984, MarAd appropriations were used to fund the acquisition of ships for the RRF.^{1/}

In October 1982, the Assistant Secretary of the Navy and the Assistant Secretary of Commerce executed a new MOA that more fully elaborated the parties' responsibilities set forth in the 1976 MOA and added new provisions relating to funding for RRF ship acquisitions and a requirement for competitive bidding for all modifications of RRF ships. The 1982 MOA provided that beginning in fiscal year 1984 the Navy would provide MarAd funds for the acquisition of ships for the RRF but that MarAd would negotiate the contracts for such acquisitions. Since 1984 Congress has appropriated funds for RRF acquisitions exclusively to the Navy.

MSC concedes that MarAd administers and controls the NDRF, but disputes MarAd's authority to administer and control the RRF. MSC argues that by agreeing to the 1976 and 1982 MOAs, the parties did not intend that the RRF would be a "functional" element of the NDRF. In support of its position MSC points out that the NDRF and the RRF are funded and operated

^{1/} The 1976 MOA provided that the Navy agreed to reimburse MarAd for costs related to the establishment of the RRF, including the cost of repairing RRF ships, ship tests, and the activation, operation and inactivation of ships placed in service. From fiscal years 1977 to 1981, Navy appropriations were used to provide most of the funds for the operation and maintenance of the RRF. MarAd appropriations also were used to fund these same costs during this period. After fiscal year 1981, Navy appropriations were used to fund all operation and maintenance expenses.

separately. MSC attaches significance to the fact that the RRF was established solely to fulfill military sealift requirements, while the NDRF has a broader national security mission. MSC also argues that because Congress since 1984 has appropriated funds for the acquisition of RRF ships solely to the Navy, Congress has impliedly authorized the Navy to administer and control the program.

MarAd advises us that it is authorized to administer and control the RRF. MarAd argues that such control necessarily results from the fact that the RRF is a subset of the NDRF, which, under section 11 of the 1946 Act, MarAd (as the delegatee of the Department of Transportation) is charged to maintain and preserve. MarAd rejects MSC's argument that MSC and MarAd did not intend for the RRF to be a "functional element" of the NDRF because the MOAs clearly state the parties understanding that the RRF is an element of the NDRF administered by MarAd. The fact that Congress, beginning in 1984, funded RRF ship acquisition through Navy's appropriations, did not alter the statutory authority for the RRF--section 11 of the 1946 Act--or the terms and conditions for its peacetime maintenance or control, as set forth in the 1982 MOA.

ANALYSIS

Our analysis begins with section 11 of the 1946 Act. As noted earlier, the NDRF consists of vessels owned by the Secretary of Transportation which are retained for national defense purposes. Section 11 provides that "unless otherwise provided for by law," MarAd shall preserve and maintain "all vessels placed in the [NDRF]." Notwithstanding MSC's arguments, we think the 1982 MOA clearly indicates that MarAd and MSC understood the RRF to be an element of the NDRF. (Whether the RRF is a "functional" element is not, in our opinion, legally significant.) In this regard, the first paragraph of the 1982 MOA provides that the RRF "shall be an element of the National Defense Reserve Fleet (NDRF) that is maintained by the Maritime Administration." Further, we have been informally advised by MarAd officials that all RRF ships, like all ships in the NDRF, are documented, i.e., titled, in the name of the United States Government, represented by the Department of Transportation, acting by and through MarAd. The fact that RRF ships may be separately identified and maintained to meet the RRF's enhanced program requirements does not mean that they are not a part of the NDRF. Thus, consistent with section 11 of the 1946 Act and the 1982 MOA, MarAd must preserve and maintain RRF vessels as part of the NDRF unless MSC is otherwise authorized by law to control the RRF.

MSC argues that such other authority may be implied from Congress' appropriation of funds to the Navy for RRF ship acquisitions. We disagree. Congress in 1984 transferred funding for RRF ship acquisition from MarAd to the Navy apparently to ensure that it would compete with funding for other military requirements and would receive sufficient priority.^{2/}

Our review of the DOD authorization and appropriation acts and their legislative histories for FY 1984 through FY 1988 does not disclose any intention by Congress to authorize a Navy-controlled reserve fleet of merchant vessels independent of the NDRF. To the contrary, our review discloses that Congress authorized and appropriated funds to the Navy with the clear understanding that such funds would be used to acquire ships for the RRF as a "component" or "subset" of the NDRF. For example, the House Report accompanying the DOD Authorization Act, 1984, explained the authorization of appropriations for RRF acquisitions as follows:

"The Committee recommends approval of the request for \$31 million for acquisition of ships for the Ready Reserve Force. The Ready Reserve Force is a component of the National Defense Reserve Fleet and is maintained to provide timely sealift capacity. . . ." H.R. Rep. No. 98-107, 98th Cong., 1st Sess. 75 (1983).

The accompanying Senate report provided:

"The Administration requested \$31 million for acquisition of nine commercial ships for the Ready Reserve Fleet (RRF). . . . The RRF, a subset of the National Defense Reserve Fleet, provides timely sealift capability. . . ." S. Rep. No. 98-174, 98th Cong., 1st Sess. 81 (1983).

There are virtually identical remarks in the legislative histories for the DOD FY 85 and 86 authorization acts. See e.g., S. Rep. No. 98-500, 98th Cong., 2nd Sess. 77 (1984); H.R. Rep. No. 98-691, 98 Cong., 2nd Sess. 90 (1984); and S. Rep. No. 99-41, 99th Cong., 1st Sess. 71 (1985). Similarly, the Secretary of Defense's Annual Report to the Congress for FY 86 describes the RRF as a "part of the National Defense Reserve Fleet" and an "upgraded segment of

2/ See, Reauthorization of the Maritime Administration and Federal Maritime Commission for Fiscal Year 1987 Before the Subcommittee on Merchant Marine of the Senate Committee on Commerce, 99th Cong., 2nd Sess. 33 (1986).

the NDRF." See Hearings Before the Subcommittee of the Department of Defense, House Committee on Appropriations, 99th Cong., 1st Sess. 573, 754 (1986).

Given the legislative history of the authorization and appropriation acts that have provided for the funding of the RRF since 1984, we see no basis to conclude that Congress intended to alter the RRF's status as part of the NDRF administered and controlled by MarAd.

As a final observation, section 8137 of the Department of Defense Appropriations Act, 1988 (Pub. L. No. 100-202), directed the President to submit in his FY 1989 budget proposals "an arrangement for the [RRF] in which funding and program responsibilities are consolidated in a single Federal organization." The President's fiscal year 1989 budget proposal recognizes that the RRF is comprised of ships laid up in the NDRF, which has historically been managed by MarAd yet funded with Navy appropriations. To solve the disjointed funding and program responsibility, the President's FY 89 budget proposes to consolidate "the entire funding and program responsibility for RRF ships" in MarAd. See, Budget of the United States Government, 1989 at p. I-R49.

We trust the foregoing answers your question. As agreed with your staff, we will withhold distribution of this letter for 30 days at which time we will forward copies to the Navy and MarAd.

Sincerely yours,

Charles A. Bowsher
for Charles A. Bowsher
Comptroller General
of the United States