

U.S. Congress to Adopt Defense Act with Significant Maritime Provisions

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U.S. House of Representatives and U.S. Senate negotiators reached agreement on the [National Defense Authorization Act for Fiscal Year 2020](#) (S. 1790) on December 9, and the 2020 NDAA is likely to become law in the next few days. The 2020 NDAA contains a number of significant changes to existing law affecting the maritime industry including changes relating to the Maritime Security Program and new related programs, the offshore wind industry, the worldwide fishing industry, and the mission of the U.S. Maritime Administration.

Maritime Security Program and Related Programs. The 2020 NDAA would reauthorize the existing Maritime Security Program as originally proposed by the House in July 2019. MSP is a program of 60 privately owned U.S.-flag commercial vessels with a high degree of military utility which are required to trade in U.S. foreign commerce. MSP has been in existence since 1996 and started as a 47 vessel program.

As of April 2019, 34 container vessels, 18 roll-on/roll-off vessels, six heavy lift vessels, and two tank vessels were enrolled in MSP. Each vessel currently receives an annual stipend of \$5 million paid in monthly installments in return for making the vessel available to the U.S. Government in national emergencies. U.S. citizenship requirements apply to vessel owners and operators although enrolled vessels can be constructed outside the U.S.

The 2020 NDAA would authorize MSP for an additional ten years from fiscal year 2025 (*i.e.* September 30, 2025) to fiscal year 2035 and would also increase the annual stipend to \$5.3 million a year starting in fiscal year 2022 and then increase it over time starting in fiscal year 2026 from \$5.8 million to \$6.8 million in fiscal year 2032. Current law would have decreased the annual stipend to \$3.7 million for fiscal years 2022 to 2025. As under current law, all of these amounts are subject to annual appropriation.

The 2020 NDAA would also authorize an MSP-like program for two submarine cable installation and repair vessels called the “Cable Security Fleet.” Each vessel would be paid \$5 million per year under annual renewable agreements and be required, like MSP vessels, to engage in the U.S. foreign trade and agree to a contingency agreement that would give the U.S. Government the ability make immediate use of the vessel in a national emergency. Like MSP which is a joint program between the U.S. Maritime Administration and the U.S. Transportation Command, the cable program would be a joint MARAD/DoD program. Program applications are supposed to be accepted within 60 days after enactment with the goal of enrolling two vessels starting in fiscal year 2021 (October 1, 2020).

The House had also proposed authorizing a tanker program in its version of the NDAA. Under the proposed tank vessel program, the annual stipend would have been fixed at \$6 million per year for a maximum program of ten vessels commencing in fiscal year 2021 (October 1, 2020). The tanker program did make it into the 2020 NDAA. In its stead, the bill mandates a quick turn-around study of U.S tanker capabilities and whether they are sufficient to meet the needs of U.S. national security. That report is required to be submitted by the time the President submits his budget for fiscal year 2021, usually by early February. Presumably, the results of that study will form the basis for Congress to revisit whether a tanker program is necessary.

The 2020 NDAA also amends the existing U.S. Government loan guarantee program known as the “Title XI Program” to focus on guarantees to be provided to construct “Vessels of National Interest” in U.S. shipyards. MARAD is required to publish a list of vessel types that would constitute “Vessels of National Interest” that would be eligible for focused and expedited U.S. government financing guarantees.

Offshore Wind Industry. The U.S. offshore wind industry is poised for an explosion of activity primarily in the northeastern United States. U.S. cabotage law, known as the Jones Act, restricts certain activities to qualified U.S.-flag vessels. Those restrictions in combination with the fact that offshore wind has already developed in Europe but is relatively undeveloped in the United States means there may be a shortage of qualified Jones Act vessels for certain aspects of offshore wind farm construction and maintenance.

Congress is moving to at least make the issue more transparent by requiring the Government Accountability Office or GAO to provide a report within six months of enactment of the 2020 NDAA on the need for U.S. flag vessels “to install, operate, and maintain emerging offshore energy infrastructure, including offshore wind energy.” The report must include an inventory of existing vessels that can already be utilized in the wind sector or be so modified, a projection of vessels that will be needed over the next ten years and “a summary of actions taken or proposed by offshore energy developers and producers, the United States domestic shipbuilding industry, and United States coastwise qualified operators to ensure sufficient vessel capacity in compliance with United States coastwise laws.

Fishing Industry. The 2020 NDAA contains comprehensive legislation designed to combat the worldwide problem of illegal fishing and fish processing. The legislation is entitled the Maritime Security and Fisheries Enforcement Act or Maritime SAFE Act. This fishing legislation was originally sponsored by Sen. Roger Wicker of Mississippi and Sen. Chris Coons of Delaware. The Maritime SAFE Act contains a range of provisions designed to curtail the global trade in seafood and seafood products derived from illegal fishing by seeking to bring together the resources of the whole of the U.S. federal government and the resources of other nations to combat illegal fishing.

MARAD’s Mission. A broad-ranging study of MARAD’s missions was undertaken in 2017 at the outset of the Trump Administration by the National Academy of Public Administration entitled “Maritime Administration: Defining its Mission, Aligning its Programs, and Meeting its Objectives.” The 2020 NDAA requires the Department of Transportation Inspector General within 180 days of enactment to initiate an audit of MARAD actions undertaken to address certain specific recommendations made in that study. Many of the recommendations highlighted relate to MARAD’s missions and making sure they have been updated for the current environment. Other recommendations highlighted related to merchant mariners. For example, of the recommendations the Inspector General is required to audit is – “The Maritime Administration should work closely with the U.S. Coast Guard (and other stakeholders) on a long-term solution for updating the Merchant Mariner Licensing and Documentation System to allow for data analysis and to meet both credentialing and sealift needs.”

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