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Navy TAO(X) Oiler Shipbuilding Program: Background and Issues for Congress

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Summary

The TAO(X) oiler shipbuilding program is a program to build a new class of 17 fleet oilers for the Navy. The primary role of Navy fleet oilers is to transfer fuel to Navy surface ships that are operating at sea, so as to extend the operating endurance of these surface ships and their embarked aircraft. The Navy wants to procure the first TAO(X) in FY2016.

The Navy's proposed FY2016 budget requests $674.2 million to fully fund the procurement of the first TAO(X). The Navy is requesting this funding in its regular shipbuilding account (the Shipbuilding and Conversion, Navy, or SCN, account), rather than in the National Defense Sealift Fund (NDSF), a separate account in the Department of Defense (DOD) budget where DOD sealift ships and Navy auxiliary ships have been funded.

It was reported in January and February 2015 that the Navy, as part of its acquisition strategy for the TAO(X) program, wants to issue a combined solicitation consisting of separate Requests for Proposals (RFPs) for the detailed design and construction of the first six TAO(X)s, the detailed design and construction of an amphibious assault ship called LHA-8 that the Navy wants to procure in FY2017, and contract design support for the LX(R) program, a program to procure a new class of 11 amphibious ships. It was also reported that the Navy wants to limit bidding in this combined solicitation to two bidders—Ingalls Shipbuilding of Huntington Ingalls Industries (HII/Ingalls) and National Steel and Shipbuilding Company of General Dynamics (GD/NASSCO)—on the grounds that these are the only two shipbuilders that have the capability to build both TAO(X)s and LHA-8.

Issues for Congress for FY2016 regarding the TAO(X) program include

- the potential impact on the TAO(X) program of an extended or full-year continuing resolution (CR) for FY2016;
- whether to approve, reject, or modify the Navy's FY2016 request for $674.2 million for the procurement of the first TAO(X);
- whether to fund the procurement of TAO(X)s in the SCN account, as the Navy proposes, or the NDSF;
- whether to approve, reject, or modify the Navy's proposal to use a combined solicitation for the detailed design and construction of the first six TAO(X)s, the detailed design and construction of LHA-8, and contract design support for the LX(R) program, and to limit the bidding in this solicitation to HII/Ingalls and GD/NASSCO; and
- whether to grant the Navy authority to use a block buy contract to procure the first few TAO(X)s.

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Introduction

This report provides background information and issues for Congress on the TAO(X) oiler shipbuilding program, a program to build a new class of 17 fleet oilers for the Navy. The Navy wants to procure the first TAO(X) in FY2016. The Navy's proposed FY2016 budget requests $674.2 million to fully fund the procurement of the first TAO(X).

Issues for Congress for FY2016 regarding the TAO(X) program include whether to approve, reject, or modify the Navy's FY2016 request for $674.2 million for the procurement of the first TAO(X); whether to fund the procurement of TAO(X)s in the Shipbuilding and Conversion, Navy (SCN) account, as the Navy proposes, or in the National Defense Sealift Fund (NDSF); whether to approve, reject, or modify the Navy's proposal to use a combined solicitation for the detailed design and construction of the first six TAO(X)s, the detailed design and construction of LHA-8, and contract design support for the LX(R) program, and to limit the bidding in this solicitation to HII/Ingalls and GD/NASSCO; and whether to grant the Navy authority to use a block buy contract to procure the first few TAO(X)s.

Decisions that Congress makes regarding the program could affect Navy capabilities and funding requirements and the U.S. shipbuilding industrial base.

Background

Strategic and Budgetary Context

For an overview of the strategic and budgetary context in which this and other Navy shipbuilding programs may be considered, see CRS Report RL32665, *Navy Force Structure and Shipbuilding Plans: Background and Issues for Congress*, by Ronald O'Rourke.

Role of Navy Fleet Oilers

The primary role of Navy fleet oilers is to transfer fuel to Navy surface ships that are operating at sea, so as to extend the operating endurance of these surface ships and their embarked aircraft. Fleet oilers also provide other surface ships with lubricants, fresh water, and small amounts of dry cargo. Fleet oilers transfer fuel and other supplies to other surface ships in operations called underway replenishments (UNREPs). During an UNREP, an oiler steams next to the receiving ship and transfers fuel by hose (see **Figure 1**, **Figure 2**, and **Figure 3**).[1]

[1] The Navy states that

> A typical connected replenishment starts when a warship makes an "approach" on a CLF ship. The CLF ship maintains steady course and speed while the "customer ship" approaches and comes alongside the CLF ship, matching course and speed. The distance between the two ships is usually between 120-200 feet. The CLF ship then passes heavy metal wires, to the customer ship, that are connected at the replenishment stations. These wires are placed under tension to support fuel hoses for refueling operations or trolleys that move pallets of provisions, ammunition, or other cargo from ship to ship. Ships with flight decks can also receive provisions and ammunition via vertical replenishment. During this evolution a helicopter transfers cargo in external sling loads, or in the case of mail or passengers, inside the helicopter.
>
> (Statement of Mr. F. Scott DiLisio, Director, Strategic Mobility / Combat Logistics Division, Office of the Chief of Naval Operations, on the Logistics and Sealift Force Requirements and Force Structure Assessment Before the House Armed Services Committee Seapower and Projection

(continued...)

Oilers are one kind of Navy UNREP ship; other Navy UNREP ships include ammunition ships, dry cargo ships, and multiproduct replenishment ships. The Navy's UNREP ships are known more formally as the Navy's combat logistics force (CLF). Most of the Navy's CLF ships are operated by MSC.

Figure 1. Fleet Oiler Conducting an UNREP

Source: Navy photo accessed May 5, 2014, at http://www.navy.mil/view_image.asp?id=163895. The Navy states that the photo is dated October 24, 2013, and shows the oiler *Tippecanoe* (TAO-199) extending its fuel probe to the Aegis cruiser USS *Antietam* (CG-54), a part of the George Washington (CVN-73) Carrier Strike Group, in the South China Sea.

Navy oilers carry the designation TAO (sometimes written as T-AO). The T means that the ships are operated by the Military Sealift Command (MSC) with a mostly-civilian crew; the A means it is an auxiliary ship of some kind; and the O means that it is, specifically, an oiler.

Although the role of fleet oilers might not be considered as glamorous as that of other Navy ships, fleet oilers are critical to the Navy's ability to operate in forward-deployed areas around the world on a sustained basis. The U.S. Navy's ability to perform UNREP operations in a safe and efficient manner on a routine basis is a skill that many other navies lack. An absence of fleet oilers would significantly complicate the Navy's ability to operate at sea on a sustained basis in areas such as the Western Pacific or the Indian Ocean/Persian Gulf region. The Navy states that

> the ability to rearm, refuel and re-provision our ships at sea, independent of any restrictions placed on it by a foreign country, is critical to the Navy's ability to project warfighting power from the sea.

(...continued)

Forces Subcommittee, July 30, 2014, p. 3.)

As the lifeline of resupply to Navy operating forces underway, the ships of the Navy's Combat Logistic Force (CLF) enable Carrier Strike Groups and Amphibious Ready Groups to operate forward and remain on station during peacetime and war, with minimal reliance on host nation support.[2]

Figure 2. Fleet Oiler Conducting an UNREP

Source: Navy photo accessed May 5, 2014, at http://www.navy.mil/view_image.asp?id=61415. The Navy states that the photo is dated July 13, 2008, and shows the oiler *Leroy Grumman* (TAO-195) refueling the frigate *Underwood* (FFG-36) during an exercise with the Iwo Jima (LHD-7) Expeditionary Strike Group in the Atlantic Ocean.

Existing Henry J. Kaiser (TAO-187) Class Oilers

The Navy's existing force of fleet oilers consists of 15 Henry J. Kaiser (TAO-187) class ships (**Figure 4**).[3] These ships were procured between FY1982 and FY1989 and entered service between 1986 and 1996. They have an expected service life of 35 years; the first ship in the class will reach that age in 2021. The ships are about 677 feet long and have a full load displacement of about 41,000 tons, including about 26,500 tons of fuel and other cargo. The ships were built by Avondale Shipyards of New Orleans, LA, a shipyard that eventually became part of the shipbuilding firm Huntington Ingalls Industries (HII). HII is currently winding down Navy

[2] Statement of Mr. F. Scott DiLisio, Director, Strategic Mobility / Combat Logistics Division, Office of the Chief of Naval Operations, on the Logistics and Sealift Force Requirements and Force Structure Assessment Before the House Armed Services Committee Seapower and Projection Forces Subcommittee, July 30, 2014, pp. 2-3.

[3] The oilers shown in **Figure 1**, **Figure 2**, and **Figure 3** are also Kaiser-class class oilers.

shipbuilding operations at Avondale and plans to have Avondale exit the Navy shipbuilding business. (HII continues to operate two other shipyards that build Navy ships.)

Figure 3. Fleet Oiler Conducting an UNREP

Source: Navy photo accessed May 5, 2014, at http://www.navy.mil/view_image.asp?id=1737. The Navy states that the photo is dated June 19, 2002, and shows the oiler *Walter S. Diehl* (TAO-193), at center, conducting simultaneous UNREPs with the aircraft carrier *John F. Kennedy* (CV-67) and the Aegis destroyer *Hopper* (DDG-70). CV-67, a conventionally powered carrier, has since retired from the Navy, and all of the Navy's aircraft carriers today are nuclear powered. Even so, Navy oilers continue to conduct UNREPs with Navy aircraft carriers to provide fuel for the carriers' embarked air wings.

TAO(X) Program

Program Quantity

The Navy envisages building 17 new TAO(X) oilers as replacements for the 15 Kaiser-class ships. In the designation TAO(X), the (X) means that the exact design of the ship has not yet been determined. The figure of 17 TAO(X)s was determined as part of a Force Structure Analysis (FSA) that the Navy completed in 2012 and presented to Congress in 2013. This FSA established a goal of achieving and maintaining a future Navy fleet of 306 battle force ships of various kinds, including 17 oilers.[4] The required number of oilers largely depends on the numbers and types of other surface ships (and their embarked aircraft) to be refueled, and the projected operational patterns for these ships and aircraft.

[4] For more on the Navy's 306-ship plan, see CRS Report RL32665, *Navy Force Structure and Shipbuilding Plans: Background and Issues for Congress*, by Ronald O'Rourke.

Figure 4. Henry J. Kaiser (TAO-187) Class Fleet Oiler

Source: U.S. Navy image accessed April 14, 2014, at http://www.navy.mil/management/photodb/photos/130703-N-TG831-240.jpg. (The oilers shown in **Figure 1**, **Figure 2**, and **Figure 3** are also Kaiser-class class oilers.)

Program Schedule

The Navy wants to procure the first TAO(X) in FY2016 and the remaining 16 ships at a rate of one per year during the period FY2018-FY2033.[5] If this procurement schedule were implemented, the Navy projects that the lead ship would enter service in FY2020 and that the remaining ships would enter service at a rate of one per year during the period FY2021-FY2036.

Program Funding

Table 1 shows procurement funding for the TAO(X) program under the Navy's proposed FY2016 budget. The funding is located in the Navy's regular shipbuilding account, called the Shipbuilding and Conversion, Navy (SCN) account.

[5] The "gap" year in FY2017 is intended to give the Navy and the shipbuilder time to correct problems in the ship's design that are discovered in the process of building the first ship in the class, before those problems are built into succeeding ships in the class. Inserting a gap year between the first and second ships is a common practice in Navy shipbuilding programs.

Table 1. TAO(X) Program Procurement Funding

(Millions of dollars, rounded to nearest tenth)

	FY15	FY16 (req.)	FY17 (proj.)	FY18 (proj.)	FY19 (proj.)	FY20 (proj.)
Procurement funding	0	674.2	0	576.8	579.2	590.6
Procurement quantity	0	1	0	1	1	1

Source: Navy FY2016 budget submission.

The estimated procurement cost of the lead ship includes detailed design/non-recurring engineering (DD/NRE) costs for the class. This one-time cost accounts for most of the difference in estimated procurement cost between the first ship and the follow-on ships. Incorporating most or all of the DD/NRE cost for a class of ship into the procurement cost of the lead ship in the class is a traditional budgeting practice for Navy shipbuilding programs.

Contracts for Trade Studies

On July 3, 2013, the Navy awarded three shipbuilding firms—General Dynamics' National Steel and Shipbuilding Company (GD/NASSCO) of San Diego, CA; HII's Ingalls Shipbuilding Division (HII/Ingalls) of Pascagoula, MS; and VT Halter Marine (VTHM) of Pascagoula, MS—contracts of $1.7 million each to conduct eight-month design trade-off studies for the TAO(X).[6] The studies informed Navy deliberations regarding the capabilities and cost of the TAO(X).

Ship Capabilities and Design

Although the design of the TAO(X) has not yet been determined in detail, the Navy anticipates that the ship will have capabilities similar to those of the Kaiser-class ships, and that the TAO(X) will rely on existing technologies rather than new technologies. To guard against oil spills, TAO(X)s are to be double-hulled, like modern commercial oil tankers, with a space between the two hulls to protect the inner hull against events that puncture the outer hull. (The final Kaiser-class ships are double-hulled, but earlier ships in the class are single-hulled.)

At an April 24, 2013, hearing on Navy and Air Force acquisition before the Seapower and Projection Forces subcommittee of the House Armed Services Committee, Sean Stackley, the Assistant Secretary of the Navy for Research, Development, and Acquisition (i.e., the Navy's acquisition executive), testified that

> we're doing design studies leading up to the ultimate competition for procurement in 2016. We are, in fact, doing everything we can to just leverage mature technologies.
>
> There is no invention or breakthrough required for TAOX. We want to leverage commercial design to the extent practical, and we're working through those details right now, inside the building [i.e., the Pentagon], inside the process and with industry.[7]

A July 15, 2013, press report quoted Frank McCarthy, the Navy's program manager for support ships, boats, and craft, as stating that

[6] See, for example, Megan Eckstein, "Navy Awards Three Trade-Off Industry Study Contracts For T-AO(X) Oilers," *Inside the Navy*, July 8, 2013.

[7] Transcript of hearing.

> We know the [TAO(X)'s] basic capacities, the size, the relative speed, how much dry cargo we're going to hold, and whether it's going to be aircraft-capable or not, and how capable it's going to be.... So we do know those things, and we have tons of lessons learned from the T-AO-187 program and the [Lewis and Clark class] T-AKE [dry cargo ship] program because it's a similar mission ship in terms of being a shuttle [i.e., UNREP] ship. We've taken all those lessons learned and rolled them into the system specification, and we've involved our operators and users at Military Sealift Command to help inform the system specification.

The press report stated that the TAO(X) would have capabilities similar to the Kaiser-class ships, but that compared to the Kaiser-class design, the TAO(X) will have increased space for dry cargo, as well as a refueling capability for helicopters on its deck.[8]

At an April 10, 2014, hearing on Navy shipbuilding programs before the Seapower subcommittee of the Senate Armed Services Committee, the Navy testified that

> Research and development efforts continue as the Navy matures its concept for the replacement of the KAISER Class (T-AO 187) of Fleet Replenishment Oilers. The new replacement oilers, currently designated as T-AO(X), will be double-hulled and meet Oil Pollution Act 1990 and International Marine Pollution Regulations. Similar to the LHA(R) and LX(R) [amphibious ship acquisition] programs, T-AO(X) benefitted from early industry engagement in terms of cost/capability trade-off studies that will help to refine the ship specifications.[9]

At a July 30, 2014, hearing on logistics and sealift ships before the Seapower and Projection Forces subcommittee of the House Armed Services Committee, the Navy stated:

> Basically, we did a complete study of the current oiler base, [the] Kaiser class, to determine what pieces of the Kaiser class gave us our acceptable requirement set. We took the Kaiser class, [and] increased—increased some of the freeze chill [cargo-carrying] portions. [We] Increased the lift so we could handle a heavier lift. [We] Readdressed speed requirements so we have a ray [sic: an array] of different speed requirements that we went and looked at, which would bring you [i.e., imply] different propulsion sets.
>
> So—so, basically, we're looking at what is does a carrier need to take oil? And provisions—what does the rest of the [carrier] strike group need? So, you get a strike group answer, you get an ARG answer, and then you get a—basically, a rest of the strike group answer. So, we were looking [at] kind of a middle of the road [approach]. We have a very good class of ships right now in the Kaiser class. So, we didn't have to go too far from the Kaiser class [design] to get to something that we liked [for the TAO-X requirements].
>
> Then we want to use the—the competition in the industry to take us the rest of the way with some interesting ideas on how to manage energy, get the O&S [operation and support] costs down, and—and see if we can get the number of mariners [needed to operate the ship] down, as well.

[8] Megan Eckstein, "TAO(X) Leverages Lessons From Recent Ship Classes, Uses Existing Tech," *Inside the Navy*, July 15, 2013.

[9] Statement of The Honorable Sean J. Stackley, Assistant Secretary of the Navy (Research, Development and Acquisition) and Vice Admiral Joseph P. Mulloy, Deputy Chief of Naval Operations for Integration of Capabilities and Resources and Vice Admiral William H. Hilardes, Commander, Naval Sea Systems Command, Before the Subcommittee on Seapower of the Senate Armed Services Committee on Department of the Navy Shipbuilding Programs, April 10, 2014, p. 16.

> So—so, basically, we're pretty happy with our current [Kaiser-class] oiler. What we're looking for is something new. Something as fast as we could get it, that could do multi-product [replenishment work], and continue the workforce development that we currently enjoy.[10]

Combined Solicitation Limited to Two Builders[11]

On June 25, 2015, the Navy, as part of its acquisition strategy for TAO(X) program, issued a combined solicitation consisting of separate Requests for Proposals (RFPs) for the detailed design and construction (DD&C) of the first six TAO(X)s, the detailed design and construction in FY2017 (and also procurement of long lead-time materials in FY2016) for an amphibious assault ship called LHA-8 that the Navy wants to procure in FY2017, and contract design support for the LX(R) program, a program to procure a new class of 11 amphibious ships.[12] The Navy has limited bidding in this combined solicitation to two bidders—Ingalls Shipbuilding of Huntington Ingalls Industries (HII/Ingalls) and National Steel and Shipbuilding Company of General Dynamics (GD/NASSCO)—on the grounds that these are the only two shipbuilders that have the capability to build both TAO(X)s and LHA-8. Under the Navy's plan for the combined solicitation, one of these two yards would be awarded the DD&C contract for the first six TAO(X)s, the other yard would be awarded the DD&C contract (and procurement of long lead-time materials) for LHA-8, and the shipyard with the lowest combined evaluated price will receive a higher profit on its DD&C contract[13] and will be awarded the majority of the LX(R) contract design engineering man-hours.

FY2016 Procurement Funding Request

The Navy's proposed FY2016 budget requests $674.2 million in procurement funding for the procurement of the first TAO(X). The Navy is requesting this funding in the Navy's regular shipbuilding account, called the Shipbuilding and Conversion, Navy (SCN) account, rather than in the National Defense Sealift Fund (NDSF), an account in the Department of Defense's (DOD's) budget that has been used in recent years for funding the construction of new DOD sealift ships and Navy auxiliary ships.

The Navy states that it is requesting procurement funding for TAO(X)s in the SCN account rather than in the NDSF because the Navy judged that it has received a signal from Congress that Congress wants to fund the procurement of TAO(X)s in the SCN account rather than the NDSF.[14] The Navy states that there were three components to this perceived signal:

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[10] Spoken remarks of F. Scott DiLisio, Director, Strategic Mobility / Combat Logistics Division, Office of the Chief of Naval Operations, during the question-and-answer portion of hearing, as shown in transcript of hearing.

[11] Source for this section: Navy briefing for CRS and Congressional Budget Office (CBO), March 23, 2015.

[12] Press reports describe it as a single RFP; see, for example, Sam LaGrone, "Navy Issues RFP for Oilers and LHA-8 to NASSCO, Ingalls," *USNI News*, July 10, 2015; Valerie Insinna, "Navy Quietly Issues RFP for LHA-8, TAO(X)," *Defense Daily*, July 14, 2015: 2. For more on the LX(R) program, see CRS Report R43543, *Navy LX(R) Amphibious Ship Program: Background and Issues for Congress*, by Ronald O'Rourke. Contract design work is intended to develop the design of a ship enough so that a contract can then be awarded for the detailed design of the ship.

[13] The Navy is planning to employ a Profit Related to Offer (PRO) contracting approach within this combined solicitation strategy to encourage competitive pricing by the shipyards. Under PRO bidding, both bidders are granted work, but the bidder with the lower price is given a high profit margin. PRO bidding has been used in other Navy shipbuilding programs, particularly the DDG-51 destroyer program, where it has been used since the 1990s.

[14] Source for this discussion: Verbal explanation provided by Navy officials to CRS following the Department of the Navy's FY2016 budget rollout briefing for the House Armed Services Committee on February 6, 2015, which CRS (continued...)

- Congress's decision to fund research and development work for the TAO(X) program not in the NDSF account, as the Navy had requested, but in the Navy's regular research and development account;
- Senate Appropriations Committee report language on the FY2015 DOD Appropriations Act;[15] and
- Bill language in the enacted FY2015 DOD Appropriations Act.[16]

Issues for Congress

The Navy's proposals for the TAO(X) program raise certain issues for Congress for FY2016, including those discussed below.

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attended.

[15] S.Rept. 113-211 of July 17, 2014 on the FY2015 DOD Appropriations Act (H.R. 4870) stated (emboldening added for emphasis):

> National Defense Sealift Fund [NDSF].—In the fiscal year 2015 budget request, the Navy proposes the elimination of the National Defense Sealift Fund [NDSF], which was established in fiscal year 1993 to address shortfalls in U.S. sealift capabilities. While the Committee has lingering concerns over some previous application of NDSF funds, the Committee sees no reason to eliminate the NDSF in its entirety. Therefore, the Committee recommends retaining the NDSF and transferring funds included in the Shipbuilding and Conversion, Navy; Research, Development, Test and Evaluation, Navy; and Operation and Maintenance, Navy accounts for functions previously funded in the NDSF back into the NDSF. **The Committee directs that none of these funds may be used for the development or acquisition of ships.** (Page 245.)

[16] The paragraph in the enacted FY2015 DOD appropriations act (Division C of H.R. 83/P.L. 113-235 of December 16, 2014) that appropriates funding for the NDSF included a newly added proviso, shown below in bold:

> For National Defense Sealift Fund programs, projects, and activities, and for expenses 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), and for the necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, $485,012,000, to remain available until expended: *Provided*, That none of the funds provided in this paragraph shall be used to award a new contract that provides for the acquisition of any of the following major components unless such components are manufactured in the United States: auxiliary equipment, including pumps, for all shipboard services; propulsion system components (engines, reduction gears, and propellers); shipboard cranes; and spreaders for shipboard cranes: *Provided further*, That the exercise of an option in a contract awarded through the obligation of previously appropriated funds shall not be considered to be the award of a new contract: ***Provided further*, That none of the funds provided in this paragraph shall be used to award a new contract for the construction, acquisition, or conversion of vessels, including procurement of critical, long lead time components and designs for vessels to be constructed or converted in the future:** *Provided further*, That the Secretary of the military department responsible for such procurement may waive the restrictions in the first proviso on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes.

Potential Impact of Continuing Resolution (CR) for FY2016

Overview

One issue for Congress concerns the potential impact on the TAO(X) program of an extended continuing resolution (CR) or a full-year CR for FY2016. Extended or full-year CRs can lead to challenges in program execution because they typically prohibit the following:

- new program starts ("new starts"), meaning the initiation of new program efforts that did not exist in the prior year;
- an increase in procurement quantity for a program compared to that program's procurement quantity in the prior year; and
- the signing of new multiyear procurement (MYP) contracts.[17]

In addition, the Navy's shipbuilding account, known formally as the Shipbuilding and Conversion, Navy (SCN) appropriation account, is written in the annual DOD appropriations act not just with a total appropriated amount for the entire account (like other DOD acquisition accounts), but also with specific appropriated amounts at the line-item level. As a consequence, under a CR (which is typically based on the prior year's appropriations act), SCN funding is managed not at the account level (like it is under a CR for other DOD acquisition accounts), but at the line-item level. For the SCN account—uniquely among DOD acquisition accounts—this can lead to line-by-line misalignments (excesses and shortfalls) in funding for SCN-funded programs, compared to the amounts those programs received in the prior year. The shortfalls in particular can lead to program-execution challenges under an extended or full-year CR.

In addition to the above impacts, a CR might also require the agency (in this case, the Navy) to divide a contract action into multiple actions, which can increase the total cost of the effort by reducing economies of scale and increasing administrative costs.

The potential impacts described above can be avoided or mitigated if the CR includes special provisions (called anomalies) for exempting individual programs or groups of programs from the general provisions of the CR, or if the CR includes expanded authorities for DOD for reprogramming and transferring funds.

Impact on TAO(X) Program

The Navy states that an extended or full-year CR for FY2016 would impact the TAO(X) program because a CR's typical prohibition on new starts would prevent the awarding of a contract for the construction of the first TAO(X) in FY2016.[18]

FY2016 Procurement Funding

Another issue for Congress is whether to approve, reject, or modify the Navy's FY2016 request for $674.2 million for the procurement of the first TAO(X). Decisions on this issue could depend

[17] For more on MYP contracts, see CRS Report R41909, *Multiyear Procurement (MYP) and Block Buy Contracting in Defense Acquisition: Background and Issues for Congress*, by Ronald O'Rourke and Moshe Schwartz.

[18] Source: Navy point paper, entitled "FY 2016 DON Continuing Resolution (CR) Impact," undated, provided by Navy Office of Legislative Affairs to CRS on September 14, 2015. See also Christopher P. Cavas, "US Navy Considers Impact of a Yearling CR," *Defense News*, September 5, 2015.

in part on assessments as to whether the Navy has accurately estimated the procurement cost of the first TAO(X).

Whether to Fund Procurement of TAO(X)s in SCN account or NDSF

A second issue for Congress is whether to fund the procurement of TAO(X)s in the Navy's regular shipbuilding account, called the Shipbuilding and Conversion, Navy (SCN) account, or in the National Defense Sealift Fund (NDSF), an account in DOD's budget that has been used in recent years for funding the construction of new DOD sealift ships and Navy auxiliary ships. As noted above, the Navy's FY2016 budget submission proposes funding the procurement of the ships in the SCN account.

The NDSF was established by the FY1993 Defense Authorization Act, as amended by the FY1993 Defense Appropriations Act, to fund the construction of Department of Defense (DOD) sealift ships.[19] The provision in the U.S. Code governing the NDSF (10 U.S.C. 2218) was amended in 1999 to, among other things, permit the NDSF to also be used for the construction of CLF ships and other auxiliary support ships.[20] Consistent with congressional views expressed in committee reports on the FY2001 Defense Authorization Bill, the NDSF since FY2003 has been used to fund the construction of Navy auxiliaries.[21] The NDSF was established and later amended in large part so that DOD sealift ships and Navy auxiliary ships would not have to compete directly against Navy combat ships for finite shipbuilding funds in the SCN account.

As part of its proposed FY2015 budget, the Navy proposed disestablishing the NDSF.[22] Congress, in marking up the FY2015 DOD appropriations act, did not agree to disestablish the NDSF.[23]

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[19] Section 1024 of the FY1993 Defense Authorization Act (H.R. 5006/P.L. 102-484 of October 23, 1992; see pages 178-181 of H.Rept. 102-966 of October 1, 1992, the conference report on the act), as amended by Title V of the FY1993 Defense Appropriations Act (H.R. 5504/P.L. 102-396 of October 6, 1992). Although P.L. 102-396 was signed into law before P.L. 102-484, the paragraph on the NDSF in Title V of P.L. 102-396 states: "That for purposes of this paragraph, this Act shall be treated as having been enacted after the National Defense Authorization Act for Fiscal Year 1993 (regardless of the actual dates of enactment)."

[20] Section 1014(b) of the FY2000 39 Defense Authorization Act (S. 1059/P.L. 106-65 of October 5, 1999; see pages 792-793 of H.Rept. 106-301 of August 6 (legislative day, August 5), 1999, the conference report on the act).

[21] See H.Rept. 106-616 of May 12, 2000, the House Armed Services Committee report on the FY2001 Defense Authorization Bill (H.R. 4205), page 89; S.Rept. 106-292 of May 12, 2000, the Senate Armed Services Committee report on the FY2001 Defense Authorization Bill (S. 2549), page 93. See also H.Rept. 106-945 of October 6, 2000, the conference report on the FY2001 Defense Authorization Act (H.R. 4205/P.L. 106-398 of October 30, 2000), page 35 (§127).

For an earlier discussion of the issue of the changing composition of the SCN account, including the transfer to the NDSF of ships previously funded in the SCN account, see Statement of Ronald O'Rourke, Specialist in National Defense, Congressional Research Service, before the House Armed Services Committee Subcommittee on Military Procurement hearing on The Navy's Proposed Shipbuilding Program for FY2003, March 20, 2002, pp. CRS-20 to CRS-23.

[22] In discussing its proposal to disestablish the NDSF, the Navy stated that

> The FY 2015 President's Budget includes no funding for the National Defense Sealift Fund (NDSF). The [funding] requirements have been moved to the Shipbuilding and Conversion, Navy (SCN), Research, Development, Test, and Evaluation, Navy (RDTEN), and Operation and Maintenance, Navy (OMN) appropriations as appropriate, and the NDSF appropriation is recommended for disestablishment. This proposal streamlines the number of DoN [Department of the Navy] accounts, reducing financial complexity, and supports the Department's audit readiness goals.

(continued...)

In considering whether to fund the procurement of TAO(X)s in the SCN account of the NDSF, issues that Congress may consider include differences in how shipbuilding funds in the two accounts may be used, and differences in U.S. content requirements for ships funded through the two accounts.

Use of Funds

The NDSF is located in a part of the DOD budget that is outside the procurement title of the annual DOD appropriations act. Consequently, ships whose construction is funded through the NDSF are not subject to the DOD full funding policy in the same way as are ships and other DOD procurement programs that are funded through the procurement title of the annual DOD appropriations act.[24] In explaining the use of NDSF funding, DOD in 1995 stated:

> The National Defense Sealift Fund (NDSF) is not a procurement appropriation but a revolving fund. Dollars appropriated by Congress for the fund are not appropriated to purchase specific hulls as in the case of, for example the Navy's DDG-51 [destroyer] program. Rather, dollars made available to the NDSF are executed on an oldest money first basis. Therefore, full funding provisions as normally understood for ship acquisition do not apply.[25]

(...continued)

> The Strategic Sealift programs will continue to be funded within the Department [of the Navy], meeting COCOM [Combatant Commander] mobility requirements.
>
> (Department of the Navy, *Highlights of the Department of the Navy FY 2015 Budget, 2014*, pp. 4-5.)

[23] The Senate Appropriations Committee, in its report (S.Rept. 113-211 of July 17, 2014) on the FY2015 DOD Appropriations Act (H.R. 4870) stated:

> *National Defense Sealift Fund [NDSF].*—In the fiscal year 2015 budget request, the Navy proposes the elimination of the National Defense Sealift Fund [NDSF], which was established in fiscal year 1993 to address shortfalls in U.S. sealift capabilities. While the Committee has lingering concerns over some previous application of NDSF funds, the Committee sees no reason to eliminate the NDSF in its entirety. Therefore, the Committee recommends retaining the NDSF and transferring funds included in the Shipbuilding and Conversion, Navy; Research, Development, Test and Evaluation, Navy; and Operation and Maintenance, Navy accounts for functions previously funded in the NDSF back into the NDSF. The Committee directs that none of these funds may be used for the development or acquisition of ships. (Page 245.)

The enacted version of the FY2015 DOD Appropriations Act (Division C of H.R. 83/P.L. 113-235 of December 16, 2014) included a paragraph appropriating funds for the NDSF that is similar to the paragraphs that appropriated funds for the NDSF in DOD appropriations acts for prior fiscal years. The explanatory statement for Division C of H.R. 83/P.L. 113-235 included a table showing FY2015 appropriations for line items within the NDSF (PDF page 284 of 368). See also pages 30-31 of H.Rept. 113-446 of May 13, 2014), the House Armed Services Committee's report on the FY2015 National Defense Authorization Act (H.R. 4435).

[24] For more on the full funding policy, see CRS Report RL31404, *Defense Procurement: Full Funding Policy—Background, Issues, and Options for Congress*, by Ronald O'Rourke and Stephen Daggett.

[25] DOD information paper on strategic sealift acquisition program provided to CRS by U.S. Navy Office of Legislative Affairs, January 25, 1995, p. 1. For additional discussion, see the subsection entitled "DOD Sealift and Auxiliary Ships in NDSF" in the Background section of CRS Report RL31404, *Defense Procurement: Full Funding Policy—Background, Issues, and Options for Congress*. For a similar discussion, see the section entitled "DOD LMSR-Type Sealift Ships" in Appendix C to CRS Report RL32776, *Navy Ship Procurement: Alternative Funding Approaches—Background and Options for Congress*, by Ronald O'Rourke.

For NDSF-funded ships, what this has meant is that although Congress in a given year would nominally fund the construction of an individual ship of a certain class, the Navy in practice could allocate that amount across multiple ships in that class. This is what happened with both the NDSF-funded Lewis and Clark (TAKE-1) class dry cargo ships and, before that, an NDSF-funded class of DOD sealift ships called Large, Medium-Speed Roll-on/Roll-off (LMSR) ships. In both cases, the result was that although ships in these two programs were each nominally fully funded in a single year, they in fact had their construction financed with funds from amounts that were nominally appropriated in other fiscal years for other ships in the class.[26]

The Navy's ability to use NDSF funds in this manner permits the Navy to, among other things, marginally reduce the procurement cost of ships funded through the NDSF by batch-ordering certain components of multiple ships in a shipbuilding program before some of the ships in question are funded—something that the Navy cannot do with a shipbuilding program funded through the SCN account unless the Navy receives approval from Congress to execute the program through a multiyear procurement (MYP) contract.[27]

U.S. Content

In recent years, the paragraph in the annual DOD appropriations act that appropriates funds for the NDSF has contained a provision that states:

> *Provided*, That none of the funds provided in this paragraph shall be used to award a new contract that provides for the acquisition of any of the following major components unless such components are manufactured in the United States: auxiliary equipment, including pumps, for all shipboard services; propulsion system components (engines, reduction gears, and propellers); shipboard cranes; and spreaders for shipboard cranes....

The paragraph in the annual DOD appropriations act that appropriates funds for the SCN account does not contain exactly the same provision.[28] During Congress's consideration of the Navy's proposed FY2015 budget (which proposed disestablishing the NDSF—a proposal that Congress did not agree to), this led to concern among firms that manufacture the ship components listed in the above provision, and among supporters of those firms, that disestablishing the NDSF and shifting the execution of the TAO(X) program and other future auxiliary and sealift shipbuilding programs from the NDSF to the SCN account would lead to the Navy possibly selecting foreign firms rather than U.S. firms to make these components for the TAO(X) program and other future auxiliary and sealift shipbuilding programs, unless the paragraph in the annual DOD appropriations act that appropriates funds for the SCN account were amended to include a

[26] This situation can be summarized in a funding matrix of hulls vs. funding sources of the kind shown for the LMSR program in Table 1 on page CRS-6 of CRS Report 96-257 F, *Sealift (LMSR) Shipbuilding and Conversion Program: Background and Status*, by Valerie Bailey Grasso. This report is out of print and is available from Ronald O'Rourke.

[27] For more on MYP contracting, including batch-ordering of components, see CRS Report R41909, *Multiyear Procurement (MYP) and Block Buy Contracting in Defense Acquisition: Background and Issues for Congress*, by Ronald O'Rourke and Moshe Schwartz. For programs being executed under MYP contracts, the batch orders of components are referred to as Economic Order Quantity (EOQ) procurements.

[28] The SCN account includes a provision that states: "*Provided further*, That none of the funds provided under this heading for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign facilities for the construction of major components of such vessel ... " This provision does not define "major components" and does not specifically mention "auxiliary equipment, including pumps, for all shipboard services; propulsion system components (engines, reduction gears, and propellers); shipboard cranes; and spreaders for shipboard cranes," as does the paragraph that appropriates funds for the NDSF.

provision with the same key wording as the provision in the paragraph that appropriates funds for the NDSF.[29]

Navy's Proposal for Combined Solicitation Limited to Two Builders

A third issue for Congress is whether to approve, reject, or modify the Navy's proposal to use a combined solicitation consisting of separate Requests for Proposals (RFPs) for the detailed design and construction of the first six TAO(X)s, the detailed design and construction of LHA-8, and contract design support for the LX(R) program, and to limit bidding in this combined solicitation to HII/Ingalls and GD/NASSCO. Potential matters to consider include the Navy's rationale for using the combined solicitation and the potential impact on various shipyards of the Navy's proposal to limit bidding to HII/Ingalls and GD/NASSCO.

At a March 18, 2015, hearing on Navy shipbuilding programs before the Seapower subcommittee of the Senate Armed Services subcommittee, the following exchange occurred:

> SENATOR MAZIE K. HIRONO, RANKING MEMBER (continuing):
>
> For you again, Mr. Secretary, the Navy announced the intention to complete a package of ship contracts including the TAO(X) oiler, the LHA(R)[30] (ph)—I just love all these acronyms, amphibious assault ship and the LX(R) dock landing ship replacement, all in one package.
>
> The Navy also said that it would restrict competition for that package or contract to only two shipyards. What is the Navy's strategy for awarding these contracts? And why is it in the taxpayers' best interest to restrict competition for these ships?
>
> SEAN J. STACKLEY, ASSISTANT SECRETARY OF THE NAVY FOR RESEARCH, DEVELOPMENT, AND ACQUISITION:
>
> Thanks for the question, Ma'am. We're trying to balance a couple of things. First, our requirements, so we have a requirement to replace our fleet oilers and that's the, that first of class ship for the TAO(X) as the replacement for our fleet oilers is in the [FY]2016 budget year.
>
> We also have a requirement for a new big deck amphib, the LHA-8, which is a[n] [FY]2017 ship with advance procurement in [FY]2016. And we've talked about the LX(R), which is the replacement amphibious ship for our LSD 41 class, which we have in the budget in [FY]2020 with advance procurement the year prior.
>
> So when we look ahead at those three major programs across our industrial base, a couple of things become immediately apparent. First, we talked about the fragility of the industrial base, what we want to do is add stability to the industrial base.
>
> Second, we've talked about affordability of our shipbuilding programs, so what we want to do is figure out how to drive affordability into those programs to the extent possible. And then third is competition, which couples the industrial base in the element of affordability.

[29] Lara Seligman, "Suppliers: Navy's Plan Could Open TAO(X) Parts To Foreign Manufacturers," *Inside the Navy*, November 14, 2014; Sydney J. Freedberg Jr., "Engine Maker 'At Risk;' Wants Navy Help," *Breaking Defense* (http://breakingdefense.com), November 14, 2014; Philip Ewing, "Engine Maker: Navy Should Stick With U.S.-Made," *Politico Pro Defense*, November 13, 2014.

[30] LHA(R) means LHA replacement; it is an alternative term for the Navy's new LHA-type ships, including LHA-8.

> The strategy that we had put forward does a couple of things. First, it sends—it sends a signal to our industrial base, so we're going to limit competition to the two shipbuilders that we believe are absolutely essential to our industrial base.
>
> HIRONO:
>
> By the way, what are the two shipbuilders?
>
> STACKLEY:
>
> Ingalls Shipbuilding and ...
>
> HIRONO:
>
> In Mississippi.
>
> STACKLEY:
>
> In Mississippi. And NASSCO in San Diego. Today, Ingalls builds four different ship classes. Today, NASSCO builds one Navy ship class in commercial work. We view them, both critical to our industrial base.
>
> And if we were to go down a path of open competition, and soliciting these one at a time, there is tremendous uncertainty in terms of what the outcome would be in terms of our industrial base and our—the affordability of those programs.
>
> So what we've—what we've elected to do is—one, limit the competition to those two builders. Two, we're soliciting each of these programs separately but together and requiring bids on each from both shipbuilders, so that we can get competition inside of each as opposed to either allocating or awarding one at a time which puts one of the shipbuilders at risk.
>
> So in order to preserve the industrial base, leverage competition, bring affordability and stability to that industrial base, we've elected to limit the competition, go out with a single solicitation that contains both the LHA-8 and the TAO(X).
>
> Size them what we believe to be about the same in terms of man hours of work and also about the same in terms of horizon of time, so that the industry has some surety that, "OK, we understand how much work is coming our way. We can build that in our business base." We're sharpening our pencils in terms of competition.[31]

A March 23, 2015, press report states:

> Decisions are looming on two major new US Navy shipbuilding programs, and while the service wants to get the best deal for the ships, it's also concerned about preserving its industrial base.
>
> To that end, acquisition chief Sean Stackley is structuring the competition to build the new T-AO(X) fleet oiler and LHA 8 amphibious assault ship so that San Diego-based General Dynamics National Steel and Shipbuilding Co. (NASSCO) and the Huntington Ingalls Industries' yard in Mississippi—each of which plan to bid for the ships—both get enough work to remain viable.
>
> The ships "are key to our core structure. And they're also key to our industrial base," Stackley said March 18 in an interview. "So when we try to balance requirements and affordability in the industrial base, a couple of things come to mind. First and foremost is, we have two major builders for these types of ships, Ingalls and NASSCO. And each of them are in a position where they have to win one of the programs. However, if we go

[31] Transcript of hearing.

> down the path of competing them one at a time, it's easy to envision a scenario where either one of them sweeps the table."
>
> A decision on the T-AO(X) is expected in 2016, with the LHA 8 to come in 2017. Stackley noted that the yard that does not win the oiler "will be in a very difficult position to compete head-to-head for the next program, the LHA 8, because of the imbalance of workload that was just created between the two. So to keep them head-to-head in terms of competiveness, we have determined that first, we're going to limit the competition to those two shipyards, because each needs to win one of those first two contracts" to remain viable.
>
> In return for limiting the competition to Ingalls and NASSCO, Stackley said, "we are going to require that they both bid on both programs, with a commitment that each of them will win one of the contracts, as long as their bids are responsible."
>
> That approach, he said, "gives us the stability we're looking for in the industrial base. It gives us the advantages of competition across the programs."...
>
> To many observers, it appears as if the Navy's bidding strategy concedes that Ingalls will win the assault ship and NASSCO the oiler.
>
> "No. There's no predetermination whatsoever here," Stackley insisted. "We've determined that both shipyards are capable of building both ship classes—and we spent a lot of time doing that evaluation before we went forward with this acquisition strategy. We've also sized, as best as we reasonably can, the awards so they're about equal in terms of the amount of work going into the winner of each of these—six T-AO(X)s on one hand and LHA 8 on the other. We think that, in terms of the shipyards' capabilities and in terms of the size and shape of the workload, we've got parity here for a very healthy competition."

Whether to Authorize a Block Buy for the First Few TAO(X)s

A fourth issue for Congress is whether to grant the Navy authority to use a block buy contract to procure the first few TAO(X)s. The Navy, as part of the combined solicitation discussed in the previous section, intends to award a contract for detailed design and construction (DD&C) of the first six TAO(X)s.[32] A March 2015 Government Accountability Office (GAO) report states that "the Navy anticipates competitively awarding a fixed-price incentive type contract in fiscal year 2016 for lead ship detail design and construction with options for five follow-on ships at a rate of one per year beginning in fiscal year 2018."[33] Although the Navy is proposing that the DD&C contract be a contract with options, Congress has the option of granting the Navy the authority to make it a block buy contract.

Block buy contracts are similar in some ways to multi-year procurement (MYP) contracts, but are not governed by the statutory requirements that govern MYP contracts. One consequence of this difference is that block buy contracts, unlike MYP contracts, can be used at the outset of a shipbuilding program, to procure the first ship in the program and the next few ships that follow.

Block buy contracts can reduce the Navy's flexibility for making changes in its shipbuilding program to respond to changes in the strategic or budgetary environment. Compared to a contract with options, however, block buy contracts can reduce the cost of the ships being procured by

[32] Lara Seligman, "Navy: Bidder With Lowest Total Price For LHA, Oiler To Win Bulk Of LX(R)," *Inside the Navy*, February 23, 2015 (posted online February 20, 2015).

[33] Government Accountability Office, *Defense Acquisitions[:]Assessments of Selected Weapon Programs*, GAO-15-342SP, March 2015, p. 140.

several percent, particularly if the authority to use a block buy contract includes a phrase granting authority to use Economic Order Quantity (EOQ) purchases (i.e., up-front batch orders) of selected ship components.[34]

The Navy used a block buy contract to procure the first four boats in the Virginia-class attack submarine program during the five-year period FY1998-FY2002.[35] The Navy is also using a pair of 10-ship block buy contracts to procure ships 5 through 24 in the Littoral Combat Ship (LCS) program during the seven-year period FY2010-FY2016.[36] The legislative provisions granting the Navy authority to use block buy contracts in the Virginia-class and LCS programs did not include a phrase granting authority to use EOQ purchases as part of the block buy contracts. As a result, the Virginia-class and LCS block buy contracts did not employ EOQ purchases, and the savings realized under these block buy contracts were somewhat less than what would have been possible under block buy contracts that included EOQ purchases. Including EOQ purchases in a block buy contract can increase a program's near-term procurement funding requirements because of the need to pay up front for the batch orders of selected ship components.

Legislative Activity for FY2016

FY2016 Budget

The Navy's proposed FY2016 budget requests $674.2 million in procurement funding in the SCN account for the procurement of the first TAO(X).

FY2016 National Defense Authorization Act (H.R. 1735/S. 1376)

House

The House Armed Services Committee, in its report (H.Rept. 114-102 of May 5, 2015) on H.R. 1735, recommends approving the Navy's FY2016 request for procurement funding for the TAO(X) program, but recommends providing this funding in the National Defense Sealift Fund (NDSF) rather than the SCN account (page 422, line 017, and page 526, National Sealift Defense Fund, Transfer from SCN—TAO(X)).

H.Rept. 114-102 states:

> *National Defense Sealift Fund*
>
> The committee notes that the National Defense Sealift Fund (NDSF) was created by the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484) to address sealift funding issues using a revolving fund concept. Since its inception, the

[34] For more on block buy and MYP contracting, see CRS Report R41909, *Multiyear Procurement (MYP) and Block Buy Contracting in Defense Acquisition: Background and Issues for Congress*, by Ronald O'Rourke and Moshe Schwartz.

[35] Congress granted the authority for the block buy contract in Section 121(b) of the FY1998 National Defense Authorization Act (H.R. 1119/P.L. 105-85 of November 18, 1997). For more on the Virginia-class program, including its use of block buy and MYP contracting, see CRS Report RL32418, *Navy Virginia (SSN-774) Class Attack Submarine Procurement: Background and Issues for Congress*, by Ronald O'Rourke.

[36] Congress granted the authority for the block buy contracts in Section 150 of H.R. 3082/P.L. 111-322 of December 22, 2010, an act that, among other things, funded federal government operations through March 4, 2011.

committee notes that NDSF has been successfully used to support multiple procurements and has a legacy of success in supporting U.S. shipbuilding interests.

Therefore, the committee recommends the transfer of $674.2 million for the Navy TAO(X) Oiler Shipbuilding Program from the Shipbuilding and Conversion, Navy account to the National Defense Sealift Fund, Navy account. (Pages 29-30)

Section 836 of H.R. 1735 as reported by the committee states:

SEC. 836. Requirement that certain ship components be manufactured in the national technology and industrial base.

(a) Additional procurement limitation.—Section 2534(a) of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(6) COMPONENTS FOR AUXILIARY SHIPS.—Subject to subsection (k), the following components:

"(A) Auxiliary equipment, including pumps, for all shipboard services.

"(B) Propulsion system components, including engines, reduction gears, and propellers.

"(C) Shipboard cranes.

(D) Spreaders for shipboard cranes.".

(b) Implementation.—Such section is further amended by adding at the end the following new subsection:

"(k) Implementation of auxiliary ship component limitation.—Subsection (a)(6) applies only with respect to contracts awarded by the Secretary of a military department for new construction of an auxiliary ship after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016 using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy.".

Section 143 of H.R. 1735 as reported by the committee states:

SEC. 143. Independent assessment of United States Combat Logistic Force requirements.

(a) Assessment required.—

(1) IN GENERAL.—The Secretary of Defense shall seek to enter into an agreement with a federally funded research and development center with appropriate expertise and analytical capability to conduct an assessment of the anticipated future demands of the combat logistics force ships of the Navy and the challenges such ships may face when conducting and supporting future naval operations in contested maritime environments.

(2) ELEMENTS.—The assessment under paragraph (1) shall include the following:

(A) An assessment of the programmed ability of the United States Combat Logistic Force to support the Navy and the naval forces of allies of the United States that are operating in a dispersed manner and not concentrated in carrier or expeditionary strike groups, in accordance with the concept of distributed lethality of the Navy.

(B) An assessment of the programmed ability of the United States Combat Logistic Force to support the Navy and the naval forces of allies of the United States that are engaged in major combat operations against an adversary possessing maritime anti-access and area-denial capabilities, including anti-ship ballistic and cruise missiles, land-based maritime strike aircraft, submarines, and sea mines.

(C) An assessment of the programmed ability of the United States Combat Logistic Force to support distributed and expeditionary air operations from an expanded set of alternative and austere air bases in accordance with concepts under development by the Air Force and the Marine Corps.

(D) An assessment of gaps and deficiencies in the capability and capacity of the United States Combat Logistic Force to conduct and support operations of the United States and allies under the conditions described in subparagraphs (A), (B), and (C).

(E) Recommendations for adjustments to the programmed ability of the United States Combat Logistic Force to address capability and capacity gaps and deficiencies described in subparagraph (D).

(F) Any other matters the federally funded research and development center considers appropriate.

(b) Report required.—

(1) IN GENERAL.—Not later than April 1, 2016, the Secretary of Defense shall submit to the congressional defense committees a report that includes the assessment under subsection (a) and any other matters the Secretary considers appropriate.

(2) FORM.—The report required under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(c) Support.—The Secretary of Defense shall provide the federally funded research and development center that conducts the assessment under subsection (a) with timely access to appropriate information, data, resources, and analyses necessary for the center to conduct such assessment thoroughly and independently.

Senate

The Senate Armed Services Committee, in its report (S.Rept. 114-49 of May 19, 2015) on S. 1376, recommends approving the Navy's FY2016 request for procurement funding for the TAO(X) program (page 363, line 17).

Section 118 of the bill as reported by the committee states:

SEC. 118. Fleet Replenishment Oiler Program.

(a) Contract authority.—The Secretary of the Navy may enter into one or more contracts to procure up to six Fleet Replenishment Oilers. Such procurements may also include advance procurement for Economic Order Quantity (EOQ) and long lead time materials, beginning with the lead ship, commencing not earlier than fiscal year 2016.

(b) Liability.—Any contract entered into under subsection (a) shall provide that any obligation of the United States to make a payment under the contract is subject to the availability of appropriations for that purpose, and that total liability to the government for termination of any contract entered into shall be limited to the total amount of funding obligated at the time of termination.

Regarding Section 118, S.Rept. 114-49 states:

Fleet replenishment oiler program (sec. 118)

The committee recommends a provision that would grant the Secretary of the Navy contracting authority to procure up to six fleet replenishment oilers (T–AO(X)). This new ship class is a nondevelopmental recapitalization program based on existing commercial technology and standards. The ship design is considered to be low risk by the Navy, with the design scheduled to be complete prior to the start of construction on the lead ship. This provision would generate an estimated $45.0 million in savings per ship compared to annual procurement cost estimates. In addition, the provision would provide a long-term commitment to the shipbuilder and vendors, which would enable workforce stability and planning efficiency. (Pages 11-12)

S.Rept. 114-49 also states:

Combat logistics fleet

The ability of U.S. naval forces to deter aggression and rapidly respond to crisis around the world is sustained by Military Sealift Command ships. U.S. global logistics capability provides a significant advantage over the regionally focused fleets of potential adversaries. With challenges to U.S. allies and interests growing, the committee believes U.S. naval forces must be able to remain deployed and at sea, even in the face of enemy anti-access/area-denial (A2/AD) threats.

The size and structure of today's logistics force appears to be based on a longstanding operating concept in which naval forces operate almost exclusively in strike groups or ready groups with accompanying logistics ships. While such a model applied in the years following the end of the Cold War, today a smaller fleet, new missions, such as ballistic missile defense and counter-piracy, and improving adversary A2/AD capabilities cause strike groups and ready groups to disperse over more expansive areas. Additionally, global shipping systems place fuel and supplies at depots closer to naval forces, enabling logistics ships to shuttle them out to the fleet as opposed to having to carry them for the whole deployment.

As the Navy finalizes the requirements for the new oiler, T–AO(X), the changes in naval operations and threats since its predecessor, the Henry J. Kaiser-class, was designed should be a foremost consideration. Therefore, the Secretary of the Navy, in coordination with U.S. Pacific Command, is directed to provide the committee a report no later than February 1, 2016, describing the requirements for T–AO(X) that addresses the following elements:

(1) Ship's capacity for fuel, dry stores, and chilled or frozen stores;

(2) Operational concept for fleet resupply that forms the basis for the T–AO(X) requirement, including how T–AO(X) will complement existing T–AKE class logistics ships and how the concept will evolve over the life of the T–AO(X) class;

(3) Number of T–AO(X) hulls required, how this requirement addresses a more dispersed fleet and combat losses likely in a modern conflict, and how the requirement may evolve over the next 30 years;

(4) How the T–AO(X) will be protected from missile and submarine attack as it supports a more widely distributed fleet; and

(5) An analysis of various fleet resupply force structures to meet projected mission needs in the 2025 timeframe, including: the current program of record, an alternative consisting a larger number of smaller ships with the same overall resupply capacity, and a mixture of the program of record and smaller ships. (Pages 32-33)

Conference (Version Vetoed)

The conference report (H.Rept. 114-270 of September 29, 2015) on H.R. 1735 (which was agreed to by the House and Senate on October 1 and 7, 2015, respectively, and vetoed by the President on October 22, 2015), recommends approving the Navy's FY2016 request for procurement funding for the TAO(X) program (page 912, line 17).

Section 127 of H.R. 1735 states:

SEC. 127. Fleet Replenishment Oiler Program.

(a) Contract authority.—The Secretary of the Navy may enter into one or more contracts to procure up to six Fleet Replenishment Oilers. Such procurements may also include advance procurement for economic order quantity and long lead time materials, beginning with the lead ship, commencing not earlier than fiscal year 2016.

(b) Liability.—Any contract entered into under subsection (a) shall provide that any obligation of the United States to make a payment under the contract is subject to the availability of appropriations for that purpose, and that total liability to the Government for termination of any contract entered into shall be limited to the total amount of funding obligated at the time of termination.

Regarding Section 127, H.Rept. 114-270 states:

Fleet replenishment oiler program (sec. 127)

The Senate amendment contained a provision (sec. 118) that would grant the Secretary of the Navy contracting authority to procure up to six fleet replenishment oilers (T–AO(X)). This new ship class is a non-developmental recapitalization program based on existing commercial technology and standards. The ship design is considered to be low risk by the Navy, with the design scheduled to be complete prior to the start of construction on the lead ship. This provision would enable an estimated $45.0 million in savings per ship, for ships 2–6, for a total of $225.0 million in savings compared to current annual procurement cost estimates.

The House bill contained no similar provision.

The House recedes. (Page 610)

Section 1026 of H.R. 1735 states:

SEC. 1026. Independent assessment of United States Combat Logistic Force requirements.

(a) Assessment required.—

(1) IN GENERAL.—The Secretary of Defense shall seek to enter into an agreement with a federally funded research and development center with appropriate expertise and analytical capability to conduct an assessment of the anticipated future demands of the combat logistics force ships of the Navy and the challenges such ships may face when conducting and supporting future naval operations in contested maritime environments.

(2) ELEMENTS.—The assessment under paragraph (1) shall include the following:

(A) An assessment of the programmed ability of the United States Combat Logistic Force to support the Navy and the naval forces of allies of the United States that are operating in a dispersed manner and not concentrated in carrier or expeditionary strike groups, in accordance with the concept of distributed lethality of the Navy.

(B) An assessment of the programmed ability of the United States Combat Logistic Force to support the Navy and the naval forces of allies of the United States that are engaged in major combat operations against an adversary possessing maritime anti-access and area-denial capabilities, including anti-ship ballistic and cruise missiles, land-based maritime strike aircraft, submarines, and sea mines.

(C) An assessment of the programmed ability of the United States Combat Logistic Force to support distributed and expeditionary air operations from an expanded set of alternative and austere air bases in accordance with concepts under development by the Air Force and the Marine Corps.

(D) An assessment of gaps and deficiencies in the capability and capacity of the United States Combat Logistic Force to conduct and support operations of the United States and allies under the conditions described in subparagraphs (A), (B), and (C).

> (E) Recommendations for adjustments to the programmed ability of the United States Combat Logistic Force to address capability and capacity gaps and deficiencies described in subparagraph (D).
>
> (F) Any other matters the federally funded research and development center considers appropriate.
>
> (b) Report required.—
>
> (1) IN GENERAL.—Not later than April 1, 2016, the Secretary of Defense shall submit to the congressional defense committees a report that includes the assessment under subsection (a) and any other matters the Secretary considers appropriate.
>
> (2) FORM.—The report required under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.
>
> (c) Support.—The Secretary of Defense shall provide the federally funded research and development center that conducts the assessment under subsection (a) with timely access to appropriate information, data, resources, and analyses necessary for the center to conduct such assessment thoroughly and independently.

FY2016 DOD Appropriations Act (H.R. 2685/S. 1558)

House

The House Appropriations Committee, in its report (H.Rept. 114-139 of June 5, 2015) on H.R. 2685, recommends approving the Navy's FY2016 request for procurement funding for the TAO(X) program (page 160).

In H.R. 2685 as reported by the committee, the paragraph that appropriates funds for the National Defense Sealift Fund includes a provision that states:

> *Provided further*, That none of the funds provided in this paragraph shall be used to award a new contract for the construction, acquisition, or conversion of vessels, including procurement of critical, long lead time components and designs for vessels to be constructed or converted in the future....

Section 8123 of H.R. 2685 as reported by the committee states:

> Sec. 8123. None of the funds provided in this Act for the T-AO(X) program shall be used to award a new contract that provides for the acquisition of the following components unless those components are manufactured in the United States: Auxiliary equipment (including pumps) for shipboard services; propulsion equipment (including engines, reduction gears, and propellers); shipboard cranes; and spreaders for shipboard cranes.

Senate

The Senate Appropriations Committee, in its report (S.Rept. 114-63 of June 11, 2015) on S. 1558, recommends approving the Navy's FY2016 request for procurement funding for the TAO(X) program (page 98, line 17).

In H.R. 2685 as reported by the committee, the paragraph that appropriates funds for the National Defense Sealift Fund includes a provision that states:

> *Provided further*, That none of the funds provided in this paragraph shall be used to award a new contract for the construction, acquisition, or conversion of vessels, including procurement of critical, long lead time components and designs for vessels to be constructed or converted in the future....

Section 8104 of S. 1558 as reported by the committee states:

> Sec. 8104. None of the funds provided in this Act for the T–AO(X) program shall be used to award a new contract that provides for the acquisition of the following components unless those components are manufactured in the United States: Auxiliary equipment (including pumps) for shipboard services; propulsion equipment (including engines, reduction gears, and propellers); shipboard cranes; and spreaders for shipboard cranes.

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