GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

MAY 19 2005

The Honorable F. James Sensenbrenner, Jr.
Chairman, Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515-6216

Dear Mr. Chairman:

This letter provides the views of the Department of Commerce on H.R. 1442, a bill to complete the codification of title 46 of the United States Code. The Department has reviewed H.R. 1442 and provides comments on sections of the bill dealing with loans and guarantees, and control of merchant marine capabilities. The enclosure provides more detailed comments on the bill.

The Department of Commerce appreciates the opportunity to present views on H.R. 1442, and we look forward to working with you as this bill moves through the legislative process. The Office of Management and Budget has advised that there is no objection to the transmittal of these views from the standpoint of the Administration's program.

Sincerely,

Jane T. Dana

Jane T. Dana
Acting General Counsel

Enclosure

cc: The Honorable John Conyers, Jr.,
Ranking Member

SPECIFIC COMMENTS BY THE DEPARTMENT OF COMMERCE (DEPARTMENT) ON H.R. 1442, A BILL TO COMPLETE THE CODIFICATION OF TITLE 46, UNITED STATES CODE, "SHIPPING"

Loans and Guarantees, Chapter 537

- Section 53706(a)(3)(B)(iii) permits, among other things, the loan program to purchase (typically by credit bid) a vessel that is being foreclosed on in an action **begun** by the Secretary. The language in bold is how it appears in both the current Title XI and the recodification. A vessel mortgaged to the loan program can be arrested for sale by an entity other than the loan program and force the loan program to intervene in the action to protect its interest by credit bid. The Department recommends the language be revised as follows (changes/additions shown in italics):

  "(3) Financing the purchase, reconstruction, or reconditioning of a vessel or fishery facility –

  "(B) that, under subchapter II of this chapter –

  "(iii) was sold at foreclosure either begun by *or intervened in* by the Secretary."

- Section 53707(c)(1) states that the loan program cannot make a loan on a vessel if the vessel operator or vessel has been held liable or liable in rem, respectively, for a civil penalty under section 1858 of title 16 and not paid the penalty. The loan program, through the Department's financial assistance review board, currently requires a certification similar to that above regarding loan eligibility but also adds the language - *and the time period for filing any appeal has expired.* Denial of applicant's loans prior to the expiration of the appeals period could expose the Department to lawsuits for violation of the applicant's due process rights. The Department recommends similar language to that contained in the certification dealing with the expiration of appeals language be added to this provision. In addition, since liability "in rem" applies to vessels rather than vessel operators, the Department recommends appropriate clarifying changes. For example, Section 53707(c)(1) could be modified to read as follows (changes/additions shown in italics):

  "(c) OPERATORS OF FISHING VESSELS.–The Secretary of Commerce may not guarantee or make a commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a fishing vessel under this chapter if the operator of the vessel or, *in the case of paragraph (c)(1), the vessel itself* has been—

  "(1) held liable or liable in rem, *respectively,* for a civil penalty under sections 1858 of title 16 and not paid the penalty *and the time period for filing any appeal has expired;*"

Control of Merchant Marine Capabilities, Part E, Chapter 561

- Section 56306(b) - This section allows the Department of Transportation to transfer vessels to other Federal agencies, and provides for reimbursement from those agencies for the costs involved. The Department strongly recommends adding language indicating the other Federal agency must desire the transfer or be willing to accept the vessel.