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National Security and
International Affairs Division

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September 10, 1993

The Honorable Daniel K. Inouye
Chairman, Subcommittee on Defense
Committee on Appropriations
United States Senate

The Honorable John P. Murtha
Chairman, Subcommittee on Defense
Committee on Appropriations
House of Representatives

Between 1989 and 1993, the U.S. Army operated three Small Aerostat Surveillance System (SASS) ships to detect and monitor ships and aircraft suspected of drug smuggling. The U.S. Coast Guard conducted similar operations between 1987 and 1991, using Sea-Based Aerostat (SBA) ships. In fiscal year 1992, the Department of Defense (DOD) Appropriations conferees directed the transfer of the Coast Guard's five SBA ships to the Department of Defense's (DOD) operational control to support Coast Guard operations. While the conferees approved funding for the operation of the five SBA ships, they approved funding for only two of the SASS ships.

The fiscal year 1993 DOD Appropriations Conference Report (H. Rpt. 102-1015) directed us to report on (1) DOD's efforts to combine SBA and SASS missions in the Caribbean and (2) DOD's use of funds appropriated in fiscal year 1992 for the operations and maintenance of SBA ships for purposes not authorized by Congress.

Results in Brief

As intended by the 1992 conferees, DOD took operational control of the five Coast Guard SBA ships in December 1991 and combined SBA and SASS counterdrug missions in the Caribbean in the following month. Although the conferees funded the operation of seven ships, DOD decided to operate only four ships: three SASS ships and one SBA ship in support of the Coast Guard mission. It placed three other SBA ships into storage and used one SBA ship for an SBA/SASS comparison test of operational capabilities.

In implementing this decision, DOD spent about $4.5 million of its fiscal year 1992 funds to operate the third SASS ship (called SASS III). DOD took this action even though the fiscal year 1992 appropriations conferees declined to fund the third ship, and without processing the funding as a

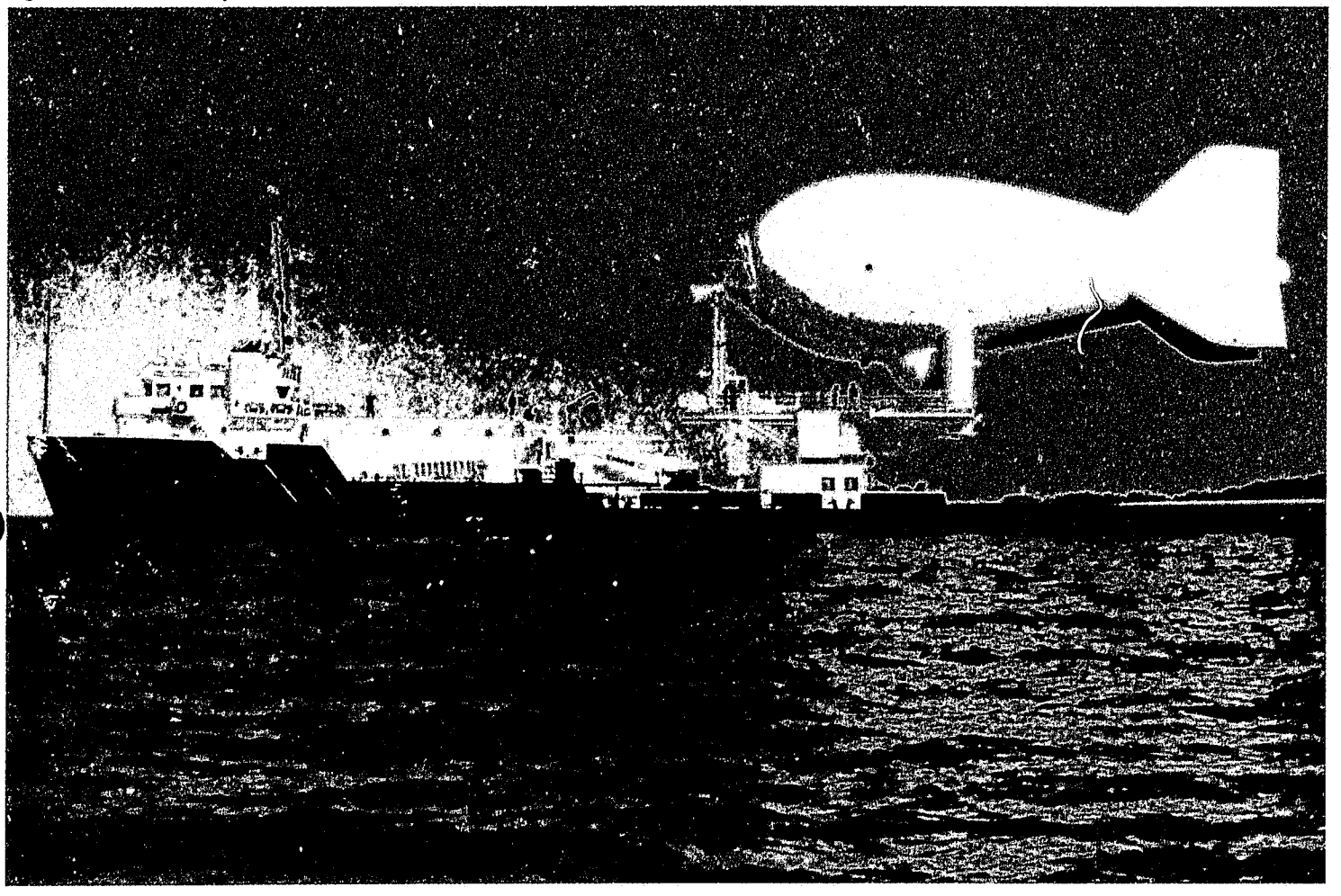
reprogramming. By doing so, DOD moved funds provided for specifically requested projects to a project for which funds were specifically denied.

In addition, by failing to properly record this expenditure, DOD officials could not show us which fiscal year 1992 account was used to fund SASS III operations from January through September 1992 or how DOD realized savings it stated were achieved within the counterdrug program.

Background

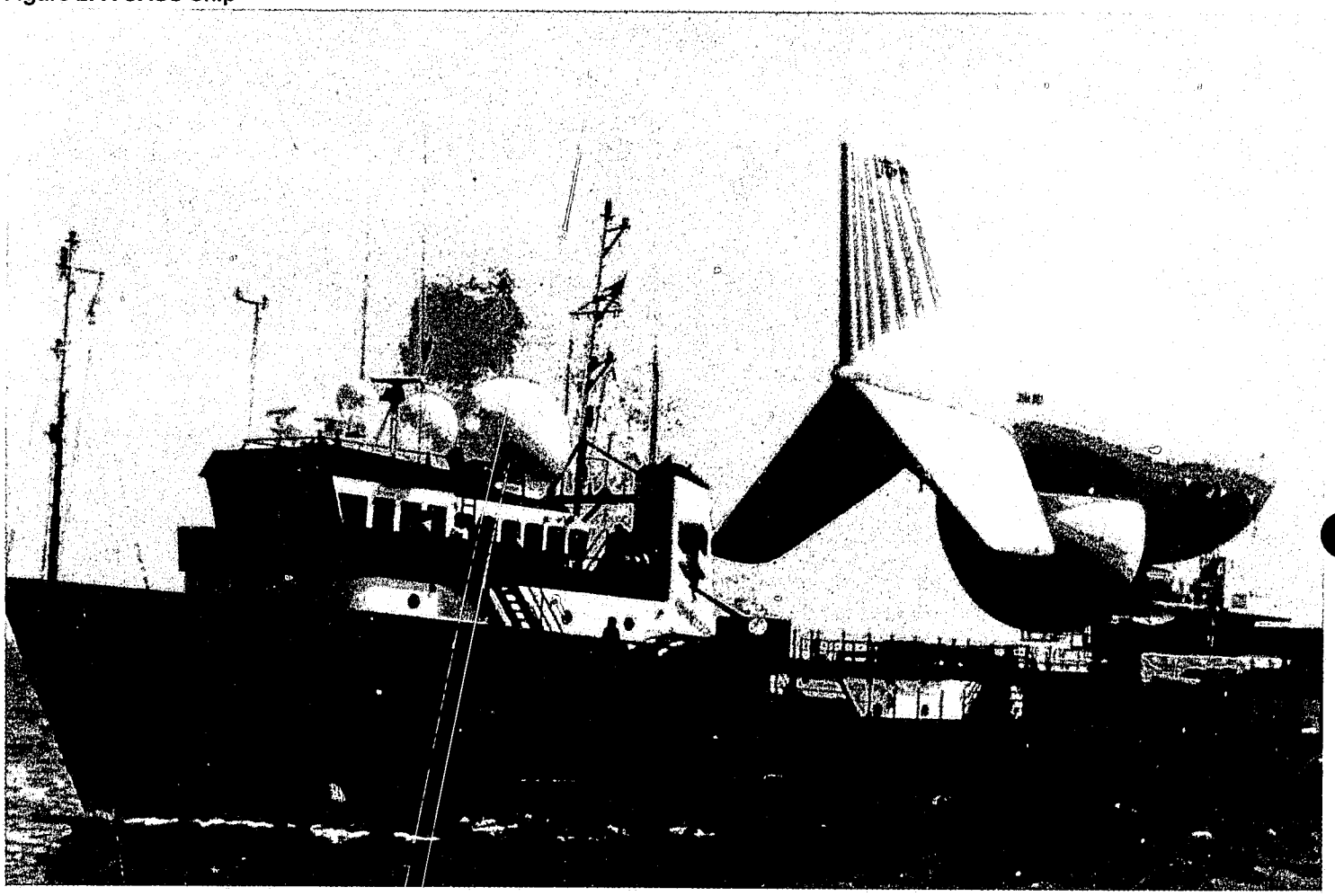
The SBA and SASS ships are small, 200-foot, leased commercial vessels with tethered blimps called aerostats (see fig. 1 and fig. 2). Radars mounted on the aerostats are capable of detecting and monitoring ships and aircraft suspected of drug smuggling. SASS ships supported the Army's military counterinsurgency mission in the Caribbean and Central America until 1989, when DOD assigned the ships to the counterdrug mission. Between 1987 and 1991, the Coast Guard deployed SBA ships to intercept illegal maritime drug and immigration traffic.

Figure 1: An SBA Ship



Source: U.S. Army.

Figure 2: A SASS Ship



Source: U.S. Army.

DOD Combined SBA and SASS Missions

DOD combined the SBA and SASS counterdrug missions in January 1992, 1 month after it took operational control of the five Coast Guard SBA ships. The conferees intended that DOD operate the SBA ships to support the Coast Guard's counterdrug mission. Although the conferees funded the operation of seven ships, DOD decided to reduce the total number to five to meet its requirement in the Caribbean. The Army believed the SASS ships to be more capable than the SBA ships and therefore decided to operate one SBA and three SASS ships in a counterdrug role, use one SBA ship for an SBA/SASS comparison test of operational capabilities, and place three SBA ships into storage.

After comparing both the costs and operational effectiveness of the SBA and SASS ships, the Army concluded in the summer of 1992 that the SBA ships were a better value than the SASS ships and opted to retire the three SASS ships instead. By the spring of 1993, the Army had terminated the operation of all three SASS ships. The Army currently operates all five SBA ships in the Caribbean to support the counterdrug mission. The fifth SBA ship was deployed on July 9, 1993. In order to provide the equipment to allow military command and control, the Army removed military radios from SASS ships and installed them on SBA ships.

DOD Continued SASS III Operations Even Though Conferees Did Not Fund SASS III

DOD contracted to operate the third SASS ship—SASS III—even though the congressional conferees, on the fiscal year 1992 defense appropriations, had provided no funds for the project. We believe that DOD's actions committed it to a reprogramming; however, DOD did not process the funding transaction as a reprogramming.

Army Awarded a Contract, Although Funds Were Not Approved

DOD's fiscal year 1992 appropriation[1] included a total of $38.4 million to operate the SBA and SASS ships: $19.4 million for the SBA ships and $19 million for SASS I and SASS II. DOD requested $16.2 million to operate SASS III and a fourth ship, SASS IV, but the conferees provided no funds for this purpose. Table 1 shows the congressionally approved operation and maintenance funding levels and project codes for the SASS and SBA ships.

Table 1: Fiscal Year 1992 Funds Approved for the Operations and Maintenance of SASS and SBA Ships

Dollars in millions

Project	Code	Amount approved
SASS I	2312	$10.9
SASS II	2306	8.1
SASS III/IV	2311	0.0[a]
SBA	None	19.4
Total		**$38.4[b]**

Note: Fiscal year 1992 DOD Appropriations Conference Report (H. Rpt. 102-328), November 18, 1991.

[a]DOD requested $16.2 million for SASS III/IV, but the conferees did not include funds for this project.

[b]According to the SBA Product Manager, $2.3 million was reprogrammed on September 12, 1992, from the "Drug Interdiction and Counterdrug Activities - Defense" account to cover unanticipated costs to conduct SBA/SASS comparison tests and install SASS military radios on SBA ships. This brought the fiscal year 1992 total expenditure for SBA and SASS to $40.7 million.

[1]Public Law 102-172, November 26, 1991.

Table 1 shows clearly that no funds were approved for the third SASS ship—SASS III. Notwithstanding the conferees' denial of funds for SASS III, the Army awarded a contract that included operating funds for SASS III. The contract was awarded on December 31, 1991—1 month after the conference report was issued (Nov. 18) and the appropriations act became law (Nov. 26). DOD spent about $4.5 million to operate SASS III from January through September 1992.

Although Army officials confirmed that the contract was signed after the denial of SASS III funding, officials from the Office of the Secretary of Defense told us they were not aware of the December 1991 contract[2] and that contract execution is the responsibility of Army program officials.

The Chairmen of the Subcommittees on Defense, Senate and House Appropriations Committees, in a joint letter dated March 18, 1992, to the Secretary of Defense, explained their position regarding the funding of SASS III. (See app. I.) The Chairmen stated that because the conferees had denied funding for SASS III and IV for fiscal year 1992, no funds could be transferred to these projects during the fiscal year and that DOD's failure to operate the SBA ships (in support of the Coast Guard counterdrug mission) was a "clear violation" of the conferees' intent. The Chairmen specifically objected to "standing down" the Coast Guard ships. In addition, according to the Coast Guard, DOD's deactivation of SBAs was unresponsive to its counterdrug requirements.

DOD Did Not Follow Reprogramming Regulations

DOD regulations define reprogramming actions as changes in the application of financial resources from the purpose originally contemplated and budgeted for, testified to, and described to Congress in budget requests. The regulations set forth specific procedures that must be followed when funds are reprogrammed, including seeking approval from House and Senate Armed Services and Appropriations Committees in some circumstances and notifying the Committees in others.[3]

DOD had requested specific funding from Congress for SASS I, SASS II, SASS III/IV, and the SBA ships. The appropriations conferees responded to DOD's request in a similarly specific format, providing funds for all but SASS III/IV, for a total of $38.4 million. DOD then placed three SBAs in storage, used one

[2]The Army operated SASS I, II, and III from October through December 1991 by extending an existing fiscal year 1991 contract. This contract expired on December 31, 1991.

[3]DOD Directive 7250.5, "Reprogramming of Appropriated Funds," Jan. 9, 1980, and DOD Instruction 7250.10, "Implementation of Reprogramming of Appropriated Funds," Jan. 10, 1980.

for operational testing, operated the remaining SBA, and continued to operate SASS III, although no funds were approved.

The Army's obligation of funds in the December 31, 1991, contract award to continue operation of SASS III from January through September 1992 committed the Army to a reprogramming, since the conferees had specifically denied funds for SASS III. Given the conferees' action and DOD's knowledge of their interest in the SBA/SASS mission, DOD should have processed the funding of SASS III as a reprogramming action.

DOD Financial Controls Not Adhered to

The Army project office obligated funds and signed a SASS contract (including SASS III) without a valid Funding Authorization Document. Army officials told us that they contracted for SASS III based on verbal authorization from headquarters Army officials. However, under DOD and Army regulations, funds cannot be obligated or contracts entered into without a Funding Authorization Document.[4]

Although DOD officials subsequently provided us with two Funding Authorization Documents, neither document supported the contract award. One document was issued in March 1992, 3 months after the contract was awarded, and although it addressed counterdrug projects, it did not specifically include the operation of SASS III. The other document, issued in early December 1991, addressed SASS III operations prior to December 31, 1991. The Army extended a contract on October 1, 1991, under fiscal year 1992 Continuing Resolution authority[5] for SASS operations for the first quarter of the fiscal year.

Because DOD did not properly document the source of funds used to operate SASS III from January through September 1992, it could not show whether the funds came from the fiscal year 1992 "Drug Interdiction and Counterdrug Activities—Defense" or some other defense account.

Although DOD stated that it funded SASS III operations from savings in other areas, without the proper documentation, the source and amount of such savings cannot be determined.

[4]DOD Accounting Manual, 7220.9-M, chapter 25, October 1983 (Change 9, June 6, 1988); Army Regulation 37-1, Army Accounting and Fund Control, chapter 6, April 30, 1991.

[5]Public Law 102-109, September 30, 1991.

Agency Comments and Our Evaluation

DOD disagreed with our report, stating that it did not violate the intent of Congress regarding the operation of SASS III during fiscal year 1992. (See app. II.) DOD believed that while Congress did not fund SASS III operations for fiscal year 1992, it did so for budgetary reasons rather than a desire to prohibit SASS III operations. Consequently, DOD believed that because it funded SASS III operations from savings in other parts of the program, it did not contravene the intent of Congress.

In our opinion, DOD's decision to store three SBAS and to fund SASS III was a significant departure from the fiscal year 1992 conference report. Under these circumstances, we think DOD at a minimum should have sought clarification from Congress on this matter. In fact, while DOD may have believed that funds for SASS III were denied strictly for budgetary reasons, it concedes that the conferees' denial of funds could reasonably have been viewed as a denial of SASS III operations. Moreover, the March 18, 1992, letter sent to the Secretary of Defense by the Chairmen of the Subcommittees on Defense of the Senate and House Appropriations Committees clarified their intent that SASS III was not to be operated during fiscal year 1992.

DOD also stated that its reprogramming regulations were not applicable to SASS III because its operations were funded through SBA savings within the same program element, thus representing a reprioritization of funds rather than a reprogramming. However, reprioritization generally refers to funding changes within program elements that are often necessitated by, for example, delays in contract performance or increases due to changed priorities. These changes are usually considered to be minor and not controversial. Because the conferees specifically denied fiscal year 1992 funding for SASS III and because the Chairmen expressly stated in March 1992 that no funds were to be transferred to SASS III during the fiscal year, we believe the SASS III funding change could not be viewed as minor or noncontroversial. Further, absent funding documentation, DOD has not been able to show that the $4.5 million transferred to SASS III came from savings within the program element. In our view, terming its action a reprioritization instead of a reprogramming does not alter the fact that DOD moved funds provided for specifically requested projects to a project for which funds were specifically denied.

DOD also suggested that Congress endorsed suspension of reprogramming procedures to the counterdrug mission based on a statement in the conference report that some flexibility is needed to transfer funds between appropriations and that "the Committees must be able to track these

transfers without going through the reprogramming process." DOD said that the report thus "clearly indicates that regular reprogramming procedures were not applicable to the counterdrug program for FY 1992."

The conference report explicitly states that "Formal reprogramming procedures will need to be followed for . . . any adjustments to Congressional interest items." In fact, DOD applied reprogramming procedures to another counterdrug funding transfer between the same two accounts. DOD formally reprogrammed $2.3 million from the Drug Interdiction and Counterdrug Activities - Defense account to the Operations and Maintenance, Army, account to conduct SBA/SASS tests. Thus, DOD's view that regular reprogramming procedures were not applicable to the $4.5 million SASS III transaction is inconsistent with its reprogramming of the $2.3 million.

DOD also said that it kept congressional oversight committees thoroughly and continually informed in a timely manner about its management decisions regarding SASS III operations in fiscal year 1992. However, when we asked DOD officials for documentation to support this statement, they referred to notes indicating contact with appropriations committees shortly before counterdrug oversight hearings in March 1992, 3 months after the conference report was issued. DOD officials agreed that the notes did not show or in any way suggest the Committees' approval to continue SASS III operations.

Scope and Methodology

We met with and received documents from the U.S. Army Product Manager, Ocean-Based Aerostats. We also met with officials and reviewed documents from the Office of the Secretary of Defense, the Joint Staff, the U.S. Commander in Chief Atlantic and its Joint Task Force 4, and the U.S. Coast Guard. We analyzed these documents, compared available budget and financial data, and reviewed pertinent legislation.

We conducted our review from December 1992 to June 1993 in accordance with generally accepted government auditing standards.

We are sending copies of this report to the Chairmen, Senate and House Committees on Appropriations; the Secretaries of Defense and the Army; the Commandant, U.S. Coast Guard; and the Director, Office of Management and Budget. We will also make copies available to others on request.

Please contact me at (202) 512-3504 if you or your staff have any questions concerning this report. Major contributors to this report were Gary K. Weeter, Assistant Director; Elizabeth G. Mead, Evaluator-in-Charge; and Richard B. Kelley, Evaluator.

Richard Davis

Richard Davis
Director, National
Security Analysis

Letter From Defense Appropriations Subcommittee Chairmen on Aerostat Ship Operations

Congress of the United States
House of Representatives
Committee on Appropriations
Washington, DC 20515-6015

March 18, 1992

Honorable Richard B. Cheney
Secretary of Defense
Washington, D.C. 20301

Dear Mr. Secretary:

In the conference report on the Defense Appropriations Act, 1992, the conferees directed the Department of Defense to take complete operational control of the land- and sea-based aerostats of the Coast Guard. In addition, the conferees stated that they expected the Department to budget for the operation of these programs in fiscal year 1993 and beyond.

It has come to the attention of the Committees that the Department has decided to stand down a portion of sea-based aerostats, effective immediately. The conferees believe this is a clear violation of the intent of their action and directs the Department to operate all five sea-based aerostats in support of U.S. Coast Guard anti-drug operations during fiscal year 1992.

Sections 8006 and 8010 prohibit the reprogramming of funds to an item which has been denied by the Congress. Therefore, no funds can be transferred into project 2311, SASS #3 and #4, during fiscal year 1992.

Any further action to be taken can be addressed during consideration of the fiscal year 1993 Defense Appropriations Bill.

Sincerely,

Daniel K. Inouye
Chairman
Subcommittee on Defense
Senate Appropriations

John P. Murtha
Chairman
Subcommittee on Defense
House Appropriations
Committee

Comments From the Department of Defense

OFFICE OF THE DEPARTMENT OF DEFENSE COORDINATOR
FOR DRUG ENFORCEMENT POLICY AND SUPPORT

1510 DEFENSE PENTAGON
WASHINGTON DC 20301-1510

25 AUG 1993

Mr. Frank C. Conahan
Assistant Comptroller General
National Security and International
Affairs Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Conahan:

This is the Department of Defense (DoD) response to the General Accounting Office (GAO) draft report GAO/NSIAD-93-213, entitled--"DRUG CONTROL: DoD Violated Intent of Congress," dated July 20, 1993 (GAO Code 395221/OSD Case 9458). The report addresses efforts to combine the Sea-Based Aerostat and the Small Aerostat Surveillance System missions in the Caribbean and the use of funds appropriated in fiscal year 1992 for operations and maintenance of the Sea-Based Aerostat ships. The Department nonconcurs with the report.

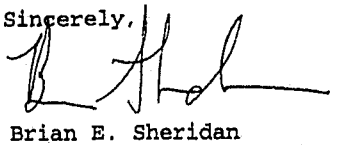
At no time did the DoD violate the intent of the Congress with regard to its operation of the Small Aerostat Surveillance System III. It is the Department's position that the consistent intent of the Congress has always been that the DoD will execute its counterdrug programs so as to best defeat the influx of drugs into the United States and to enhance certain efforts when such can be accomplished as the result of savings realized in the administration of other activities within the counterdrug program. Although the conferees did not appropriate DoD funds for the Small Aerostat Surveillance System III and IV (Project Number 2311), sufficient Drug Interdiction and Counter-Drug Activities, Defense funds were available to operate the Small Aerostat Surveillance System III during FY 1992, due to savings that the DoD realized through its management of sea-based aerostats.

In the absence of a specific prohibition regarding the operation of the Small Aerostat Surveillance System III in the Conference Report, it appeared to the Department that the most appropriate basis for the denial of funds was budgetary, derived from the Conferees' determination that improved operational efficiencies would result in savings. In that regard, the Conferees had specifically authorized the DoD to apply savings generated through its sea-based aerostats to other approved programs." Furthermore, the GAO conclusion that the DoD violated congressional intent is undermined by the thorough and timely manner in which the DOD officials continually informed the congressional oversight committees of management decisions affecting the program.

The DoD also did not violate its reprogramming regulations in regard to its administration of the Small Aerostat Surveillance System/the Sea-Based Aerostat program because DoD reprogramming procedures were not applicable to the program. The Small Aerostat Surveillance System III was funded with savings realized in the program element under which funding was provided by the DoD for the Small Aerostat Surveillance System III. That funding represents a reprioritization of funding within a program element. The Comptroller General previously decided that such a transaction is not a reprogramming (reference: 65 Comp. Gen. 360, 362). As a matter of congressional intent, the Statement of Managers' Report to the FY 1992 Appropriations Conference Report clearly indicated that regular reprogramming procedures were not applicable to the counterdrug program for FY 1992.

The detailed DoD comments are provided in the enclosure.

Sincerely,



Brian E. Sheridan
Acting DoD Drug Coordinator

Enclosure:
As stated

GAO Draft - Report GAO CODE 395221 - OSD CASE 9458

Dated July 20, 1993

"DRUG CONTROL: DoD VIOLATED INTENT OF CONGRESS"

DEPARTMENT OF DEFENSE COMMENTS

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FINDINGS

FINDING A: The DoD Combined Sea-Based Aerostat Ship and Small Aerostat Surveillance System Ship Missions. The GAO reported that the DoD combined the Sea-Based Aerostat ship and the Small Aerostat Surveillance System ship counterdrug missions after it took operational control of the five Coast Guard Sea-Based Aerostat ships in December 1991. The GAO also learned that the DoD planned to reduce the total of eight ships (five Sea-Based Aerostat and three Small Aerostat Surveillance System ships) to meet its requirement for five sea-going aerostat ships. The GAO observed that, in the summer of 1992, the Army--after comparing both the cost and operational effectiveness of the Sea-Based Aerostat and Small Aerostat Surveillance System ships--concluded that the Sea-Based Aerostat ships were a better value than Small Aerostat Surveillance Systems ships.

The GAO noted that, by the spring of 1993, the Army had retired the three Small Aerostat Surveillance System ships. The GAO also noted that the Army currently operates four of the five Sea-Based Aerostat ships in the Caribbean to support the counter-drug mission, and expect to operate the fifth ship in the near future. The GAO observed that the DoD requested almost $31 million in FY 1994 to operate five Sea-Based Aerostat ships and plans to spend an additional $245 million during the period between FY 1995 and FY 1999 for their continued operation. (pp. 5-6/GAO Draft Report)

Now on pp. 4-5.

DoD RESPONSE: Concur. The Small Aerostat Surveillance System and Sea-Based Aerostat missions were consolidated into a single project activity as stated by Mr. Duncan, the DoD Drug Coordinator, in his April 1, 1992 testimony to Congress. The Army currently operates five Sea-Based Aerostat ships in the Caribbean to support the counterdrug mission; the fifth Sea-Based Aerostat was deployed on July 9, 1993. Consolidating the Small Aerostat Surveillance System and the Sea-Based Aerostat missions enabled DoD to improve operational efficiency and reduce costs. In conducting the consolidated Small Aerostat Surveillance System/Sea-Based Aerostat program, the DoD never expended funds in excess of the $40.7 million ($38.4 million appropriated, $2.3 internally realigned into the program) to operate aerostat ships for the counterdrug mission.

FINDING B: The DoD Violated the Intent of the Congress. The GAO concluded that the DoD violated the intent of the Congress--as expressed in the DoD FY 1992 Appropriations Conference Report--by contracting to operate the third Small Aerostat Surveillance System ship even though the conferees had provided no funds for the project. The GAO pointed out that, in November 1991, the Congress appropriated a total of $38.4 million to operate aerostat ships for the counterdrug missions: $19.4 million to operate Sea-Based Aerostat ships and $19 million to operate only two Small Aerostat Surveillance System ships. The GAO noted that, while the DoD requested $16.2 million to operate two additional Small Aerostat Surveillance Systems ships, no funds were approved.

The GAO found that, notwithstanding the conferees denial of funds for a third Small Aerostat Surveillance System ship, on December 31, 1991, the Army nonetheless awarded a contract--one month after the conference report was issued and the subsequent Appropriations Act passed. The GAO observed that the Chairmen of the Subcommittees on Defense, Senate and House Appropriations Committees, reiterated the denial of funding for a third Small Aerostat Surveillance System ship in a joint letter to the Secretary of Defense in March 1992. The GAO noted that the letter notified the Secretary of Defense that transferring funds for the third ship during FY 1992 would violate the FY 1992 Defense Appropriations Act which "prohibits the reprogramming of funds to an item that has been denied by the Congress."

The GAO reported that, in responding to the concerns of the Chairmen, the DoD Coordinator for Drug Enforcement and Policy testified during April 1992 hearings that reprogramming funds to operate the third Small Aerostat Surveillance System ship was not required because the Army awarded the contract in October 1991, under the provisions of the FY 1992 Continuing Resolution. The GAO contended, however, that while the Drug Coordinator was correct regarding Small Aerostat Surveillance Systems ship operations between October and November 1991--in fact to continue operations for the rest of FY 1992, the Army signed a second contract on December 31, 1991, which was after the Continuing Resolution. (pp. 6-9/GAO Draft Report)

Now on pp. 5-6.

DoD RESPONSE: Nonconcur. The third Small Aerostat Surveillance System ship was placed into operation in October 1991, prior to the issuance of the conference report accompanying the DoD Appropriations Act for FY 1992. In order to maintain continuous mission support, the Program Office executed the FY 1992 contract. The DoD officials could not determine the most cost effective method of supporting the mission until they compared the Small Aerostat Surveillance System and the Sea-Based Aerostat ships during the Best Value Evaluation that ended in June 1992. The costs of operating the Small Aerostat Surveillance System III from January until September 1992 were covered by funds transferred from the Drug Interdiction and Counter-Drug Activities, Defense, account (a transfer appropriation account)

into the Operation and Maintenance, Army, account. Although the conferees did not approve the DoD $16.2 million budget request for the Small Aerostat Surveillance System III and IV (Project Number 2311), sufficient Drug Interdiction and Counter-Drug Activities, Defense funds were available to operate the Small Aerostat Surveillance System III during FY 1992, due to savings that the DoD realized through its management of sea-based aerostats. Because the DoD manages its sea-based aerostat mission as a single program, the expenditure of those savings for the operation of the Small Aerostat Surveillance System III is a funding change within a program element. The funding change was made in the best interests of meeting the needs of the counterdrug program and fulfilling the Department's counterdrug mission. It is the Department's position that the intent of the Congress, first and foremost, is that the Department will execute its counterdrug programs in a way that will best defeat the influx of drugs into the United States. The operation of the Small Aerostat Surveillance System III was designed to do that. It is the DoD view that the Congress did not intend for the Department to avoid enhancements to the counterdrug efforts when they can be accomplished as the result of savings realized in the administration of other activities within the same program. To hold such a view would be to mean that the denial of additional funds by the Congress, for whatever reason, would mean that existing available resources could not be used and savings in funds could not be used to enhance a program. Not only would such a result penalize efforts at sound and economical management of resources, but it would also be counterproductive to the goal of obtaining the most value and program within existing resources.

With respect to the foregoing, although it is true that the Congress did deny additional funds for the Small Aerostat Surveillance System III, nowhere in the legislative history of the denial is there an indication by the Congress that the Department was prohibited from operating the Small Aerostat Surveillance System III, particularly when such operation could be done within existing resources. In that regard, as reflected in the GAO report itself, at the time the Conference Committee acted on the FY 1992 Appropriations Act, the Department had already undertaken the Small Aerostat Surveillance System III effort under the terms and conditions of the Continuing Appropriations Resolution. Therefore, had the conferees desired to prohibit even the operation of the Small Aerostat Surveillance System III within existing resources, it would have been easy for them to have made a statement of specific prohibition in the conference report. Yet the conferees did not do so. It is, therefore, just as easy to conclude that the funds were denied for the Small Aerostat Surveillance System III for simple budgetary reasons as it is to conclude, as is apparently the case with the GAO, that the funds were denied as the result of a desire that the Small Aerostat Surveillance System III not be operated at all. The meaning of the denial of the funds is, therefore, at best, ambiguous. In fact, it appears to the

Department that the best view is that the denial was based on the conferees' determination that improved operational efficiencies would result in savings. In that regard, for instance, the conferees specifically authorized the DoD to apply savings generated through its sea-based aerostats to "other approved programs." (reference: H.R. Rep. # 102-328, 102nd Cong., 1st Sess., 186 (1991)).

FINDING C: The DoD Actions Violated Reprogramming Regulations. The GAO observed that, according to the DoD regulations, reprogramming actions should not be considered when an item has been denied by the Congress. The GAO explained that the Army obligation to continue operations for the third Small Aerostat Surveillance System ship for the period from January through September 1992 committed the Army to a reprogramming--since the conferees had deleted funds for the ship. The GAO concluded that, by failing to process the funding of the third ship as a reprogramming action, the DoD violated its regulations. (pp. 9-10/GAO Draft Report)

Now on pp. 6-7.

DoD RESPONSE: Nonconcur. The DoD reprogramming procedures were not applicable to the funding change at issue because the change did not amount to a reprogramming as a matter of law - and, therefore, did not trigger the DoD regulatory procedures for reprogramming appropriations. Further, even if the DoD reprogramming regulations are assumed generally to apply to the type of funding change at issue in this case, the Congress specifically endorsed suspension of the application of these procedures to the counterdrug mission.

As a factual matter, the Small Aerostat Surveillance System III was funded as a result of savings realized in the program element under which funding was provided for the Small Aerostat Surveillance System III. The funding represents a reprioritization of funding within a program element as the result of the DoD integrated management of the sea-based aerostat mission. It is a reprioritization, not a reprogramming. The Comptroller General previously decided that a reprioritization within a program element is not a reprogramming (reference: 65 Comp. Gen. 360, 362). Therefore, even had the reprogramming procedures been applicable to the program in general, they would not have been applicable to the Small Aerostat Surveillance System III funding.

As a matter of congressional intent, the Joint Explanatory Statement of Committee of Conference on the FY 1992 Appropriations Act specifically addressed reprogramming procedures. In so doing, it was stated:

> "Due to the changing requirements and priorities of law enforcement needs in the counter-drug mission, the conferees agree that some flexibility is required to transfer

> funds between appropriations. The conferees further believe that the Committees must be able to track these transfers without going through the reprogramming process." [emphasis added] H.R. Rep. No. 328, 102nd Cong., 1st Sess., 180 (1991)).

The foregoing clearly indicates that regular reprogramming procedures were not applicable to the counter-drug program for FY 1992. Furthermore, as reflected above, funding for the Small Aerostat Surveillance System III did not involve a transfer between appropriations and, further, it did not even involve reallocation of funds between different program elements of the same appropriation.

Finally, insofar as keeping the Congress informed of the use of funds for the Small Aerostat Surveillance System III, the conclusion that the reprogramming understandings were violated is also belied by the thorough and timely manner by which the DoD officials continually informed the congressional oversight committees of management decisions affecting the program. Therefore, even though reprogramming procedures were not applicable to the counter-drug program in general and to the Small Aerostat Surveillance System III program in particular, the objectives of those procedures were nevertheless achieved by the ongoing dialogue between the Department and the congressional oversight committees concerning the implementation of the program.

FINDING D: The DoD Did Not Adhere to Financial Controls. The GAO also concluded that the Army project office obligated funds and signed a Small Aerostat Surveillance System ship contract without a valid Funding Authorization Document. The GAO asserted that, although the DoD officials provided two Funding Authorization Documents--neither document supported the contract award. The GAO determined that one document (suspense number 2030-92-92D03308) was issued in March 1992, which was 3 months after the contract was awarded--and did not specifically include the third Small Aerostat Surveillance System ship. The GAO further determined that the second document (suspense number 2020-92-92D01244) addressed only Small Aerostat Surveillance System ship operations prior to December 31, 1991.

The GAO also concluded that, because the DoD failed to properly document the source of funds used to operate the third Small Aerostat Surveillance System ship from January through September 1992, the DoD was not able to determine whether funds came from the FY 1992 "Drug Interdiction and Counterdrug Activities--Defense" account or some other Defense account. The GAO attempted to trace the source of funding for the third Small Aerostat Surveillance System ship by reviewing an exhibit that the DoD was supposed to prepare on how counterdrug funds were spent, as directed by the DoD FY 1992 Appropriations Conference

Now on p. 7.

Report. The GAO reported that the DoD financial management officials could not find the exhibit or recall whether it had been submitted to the Congress. (pp. 10-12/GAO Draft report)

DOD RESPONSE: Nonconcur. Funding Authorization Documents relating to the Small Aerostat Surveillance System and the Sea-Based Aerostat program indicate sufficient funds were available for obligation and commitment to the Small Aerostat Surveillance System Ship contract upon the schedule formulated by the Program Manager. The total of program expenditures are available from Program Manager record detailing operations and expenses by vessel for FY 1992. The total expenses incurred for FY 1992 did not exceed the amount of funds made available from the "Drug Interdiction and Counterdrug Activities - Defense" account of that fiscal year.

In summary, the DoD decision to consolidate the Small Aerostat Surveillance System and the Sea-Based Aerostat funding into a single project activity represents a legally permissible exercise of its responsibility to administer the Department's sea-based aerostat assets. The expenditure of the DoD appropriations to operate a third Small Aerostat Surveillance System during FY 1992 did not contravene any duly enacted legislative provision or the DoD reprogramming regulations. Instead, the action and all other management actions taken with respect to the DoD sea-based assets were designed to achieve the greatest possible savings, while accomplishing operational requirements.

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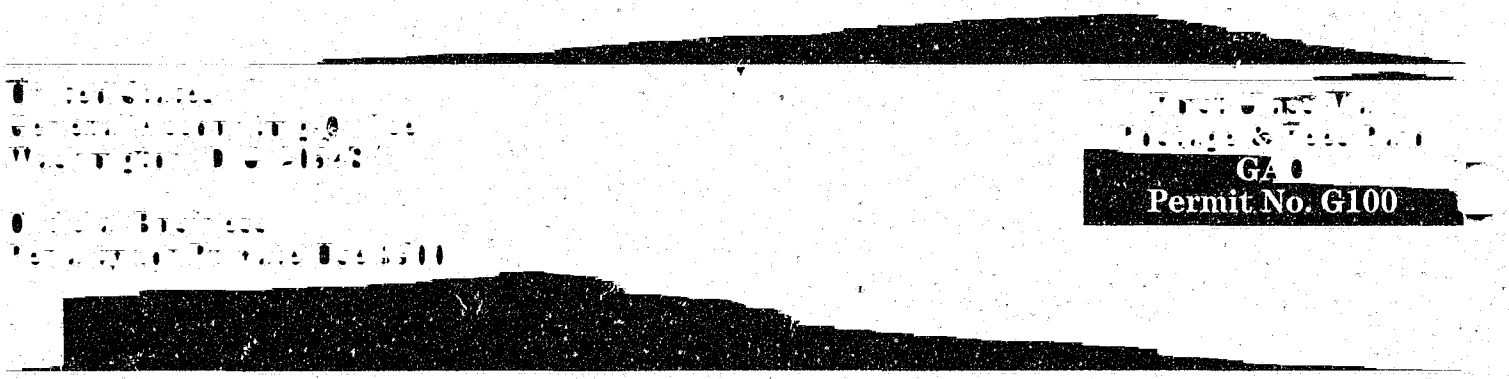
RECOMMENDATIONS

NONE.

[illegible]


GAO
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