

**Interagency Agreement
between
the National Oceanic and Atmospheric Administration
of
the United States Department of Commerce
and
the United States Department of the Navy
on Cooperation under the Sunken Military Craft Act**

Article I – Purpose, Scope, and Authority

A. This Interagency Agreement (IA) is entered into by the United States Department of Commerce’s National Oceanic and Atmospheric Administration (hereinafter NOAA), and the United States Department of the Navy (hereinafter DON). Throughout this IA, these departments may be referred to as “the Participants”.

B. The longstanding practice and policy has been for the Participants to consult and cooperate on the protection of sunken military craft. The prohibitions found in Sections 1402(a) and (b) of the Sunken Military Craft Act (SMCA) do not apply to actions taken by, or at the direction of NOAA or as otherwise authorized by law. Accordingly, the purpose of this IA is to set forth the practices and policies for cooperation between the Participants under regulations at 32 CFR Part 767 that implement the SMCA.

C. The scope of this IA includes:

- any sunken military craft as defined under the SMCA that is under the jurisdiction of the DON and located within a national marine sanctuary or national marine monument that is part of the National Marine Sanctuary System (NMSS) (e.g. Papahānaumokuākea Marine National Monument); and
- NOAA activities directed at any sunken military craft under the jurisdiction of the DON that are located outside of a national marine sanctuary or a marine national monument.

D. Authority for participation in this IA is provided, *inter alia*, by the SMCA, the National Historic Preservation Act (NHPA) (54 U.S.C. §§ 300101 *et seq.*), the National Marine Sanctuaries Act (NMSA) (16 U.S.C. §§ 1431 *et seq.*), the Antiquities Act of 1906 (Antiquities Act) (16 U.S.C. §§ 431 – 433), and the Archaeological Resources Protection Act (ARPA) (16 U.S.C. §§ 470aa-470mm).

Article II – Background and Objectives

A. NOAA and DON have been consulting and cooperating on sunken military craft, such as the USS *Monitor*, for over forty years under several authorities, including the NMSA, DON permitting authority under the NHPA, and U.S. property law. On January 6, 2014, DON published a proposed rule to in part implement the SMCA. Once it is finalized, the rule is expected to be codified at 32 CFR Part 767.

B. This IA is intended to memorialize this longstanding practice and policy of cooperation as part of the implementation of the SMCA and 32 CFR Part 767. In particular, Section 1402(a)(3) of the SMCA 32 CFR § 767.5(e) recognizes NOAA's authority to issue permits for activities directed at certain sunken military craft located in national marine sanctuaries and marine national monuments.

Article III – Cooperation on sunken military craft

A. Cooperation on sunken military craft located in national marine sanctuaries and monuments.

1. Consistent with past practice and policy, NOAA will continue to be the lead permitting authority for activities directed at sunken military craft that are also historic resources when they are located in national marine sanctuaries and will serve as the lead for the marine national monument Co-Trustees for monuments within the NMSS.

2. NOAA will consult and cooperate with the DON prior to issuing any NOAA permit or conducting any other undertaking by NOAA that may disturb, injure, or remove a sunken military craft as part of its compliance with the NHPA and any other applicable standards and requirements of the Federal archaeology program.

3. A DON permit under the SMCA may be required for an activity within a national marine sanctuary or marine national monument if the Participants agree that either the activity or the sunken military craft is not addressed by the NOAA permitting regulations governing the sanctuary or monument. Examples might include activity directed at sunken military craft that were recently lost, non-historic, or located in sanctuaries or monuments in which there are no regulations governing historic resources. DON and NOAA agree that the Participants should not issue duplicative or overlapping permits, nor will they require an applicant to submit duplicative permit application information to both Participants.

4. NOAA will continue to notify DON regarding NOAA activities that are directed at but do not disturb sunken military craft, such as non-intrusive research and monitoring activities that are of mutual interest, prior to the conduct of any such activities.

5. When DON plans or proposes to carry out activities that may disturb, injure or remove a sunken military craft in a national marine sanctuary or marine national monument in the NMSS, DON will consult and cooperate with NOAA prior to the conduct of any such activities. DON activities in national marine sanctuaries and monuments may be subject to regulations for each sanctuary and monument.

6. Nothing in this IA is intended to supersede existing regulations, plans and policies regarding the conduct of military activities in national marine sanctuaries and marine national monuments, in particular immediate rescue and salvage operations conducted to preserve life, property or national security on ships or aircraft that may hereafter be lost in national marine sanctuaries or marine national monuments.

B. Cooperation on sunken military craft located outside of the NMSS.

1. Consistent with the past practice and policy, NOAA will continue to consult and cooperate with DON on any activities directed at sunken military craft under the jurisdiction of the DON that may disturb, injure or remove a sunken military craft that are located outside of the NMSS

as part of its compliance with the NHPA and other applicable standards and requirements of the Federal archaeology program.

2. NOAA will continue to consult and cooperate with DON in advance regarding any NOAA activities that are directed at but do not disturb sunken military craft, such as non-intrusive research and monitoring where such NOAA activities are expected to be of mutual interest.

3. As provided in Section 303 of the NMSA (16 U.S.C. 1433), NOAA will consult with DON on any proposed establishment or modification of a national marine sanctuary that would affect the management of sunken military craft under the jurisdiction of the DON.

4. DON, at the request of a foreign government and in consultation with the Secretary of State, has responsibility for applying and enforcing the SMCA and administering its implementing regulations (e.g., for permitting activities related to sunken military craft) with regard to foreign sunken military craft located within U.S. internal waters, the 12 nm U.S. territorial sea and the 24 nm U.S. contiguous zone. NOAA, in consultation with the Department of State (DOS), is to continue to notify, consult and cooperate with foreign governments, agencies and institutions in regard to NOAA conducting surveys and research that may impact foreign sunken military craft located inside and outside of national marine sanctuaries and marine national monuments. Consistent with past practice, if such an arrangement is a non-binding Memorandum of Understanding (MOU), the consultation with DOS may be limited to ensuring that the MOU is not an "international agreement" subject to the C-175 process under the Case-Zablocki Act. In those instances where a legally binding "international agreement" is desired, DOS may elect to take the lead in negotiating the international agreement as well as the interagency process necessary to comply with the C-175 process.

Article IV – Effective Date

This Interagency Agreement takes effect on the later of the day after the last Participant signs the document, or the date that the Final Rule under the revised 32 CFR 767 comes into effect.

SIGNATURES

The Participants have signed this IA on the date(s) set forth below.

FOR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION:

Signature: _____

Name and Title: FOR DANIEL BASTA, DIRECTOR, NOAA OFFICE OF NATIONAL MARINE SANCTUARIES

Date: 6/10/2015

FOR THE DEPARTMENT OF NAVY:

Signature: _____

Name and Title: SAMUEL B. COX, DIRECTOR, NAVAL HISTORY AND HERITAGE COMMAND

Date: 9/2/15