

DEPARTMENT OF DEFENSE**Department of the Navy****32 CFR Part 767**

RIN 0703-AA57

Application Guidelines for Underwater Archeological Research Permits on Submerged Cultural Resources Under the Jurisdiction of the Department of the Navy**AGENCY:** Department of the Navy, DOD.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Department of the Navy (DON) proposes to issue underwater archeological research permits to those applying for permission to recover and/or conduct research on any submerged cultural resource, ship or aircraft wreck, under the jurisdiction of the DON. This action will assist the Navy in managing and protecting its historic underwater cultural resources. This rule will provide clear guidance on the permit application requirements to recover and/or conduct research on submerged Navy properties.

DATES: Submit comments on or before January 18, 2000.

ADDRESSES: Address all comments concerning this rule to Department of the Navy, U.S. Naval Historical Center, Office of the Underwater Archeologist, Building 1, Washington Navy Yard, 805 Kidderbreeze Ave. SE, Washington DC 20374-5060. Telefax number: 202-433-2729. Please cite "Application Guidelines for Underwater Archeological Research Permits."

FOR FURTHER INFORMATION CONTACT: Dr. Robert S. Neyland, Underwater Archeologist, or Barbara A. Voulgaris, 202-433-2210.

SUPPLEMENTARY INFORMATION:**Background**

a. In 1993, DON initiated an archeological management program for its historic ship and aircraft wreck sites. This was aided in part by the U.S. Department of Defense (DoD) Legacy Resource Management Program that was established by Congress in 1991, 10 U.S.C. 114, to provide DoD with an opportunity to enhance the management of DoD stewardship resources. The U.S. Naval Historical Center's (NHC) Office of Underwater Archeology is the Navy command responsible for managing the Navy's submerged cultural resource properties under the guidelines of the Federal Archeological Program.

b. Under the National Historic Preservation Act of 1966 as amended

(NHPA), 16 U.S.C. 470 (1999), DON is obligated to protect historic properties, including ship and aircraft wrecks, for which it has custodial responsibilities. The NHPA directs federal agencies to manage their cultural resource properties in a way that emphasizes preservation and minimizes the impact of undertakings that might adversely affect such properties. Management of DON cultural resources such as ship and aircraft wrecks is not simply a matter of preservation. The issues of gravesites, unexploded ordnance, and potential military usage of recovered weapons systems must also be addressed in wrecksite management.

Custody and Management of Navy Shipwrecks and Aircraft Wrecksites

a. DON submerged shipwrecks and aircraft wrecks are government property in the custody of the Navy. These seemingly abandoned wrecks remain government property until specific formal action is taken to dispose of them. Navy custody of its wrecks is based on the property clause of the U.S. Constitution and international maritime law, and is consistent with Articles 95 and 96 of the Law of the Sea Convention. These laws establish that right, title, or ownership of Federal property is not lost to the government due to the passage of time. Navy ships and aircraft cannot be abandoned without formal action as authorized by Congress. Aircraft and ships stricken from the active inventory list are not considered formally disposed of or abandoned. Through the sovereign immunity provisions of admiralty law, DON retains custody of all its naval vessels and aircraft, whether lost in U.S., foreign, or international boundaries.

b. Divers may dive on Navy wrecks at their own risk; however, Federal property law dictates that no portion of a government wreck may be disturbed or removed. The Navy strongly encourages cooperation with other agencies and individuals interested in preserving our maritime and aviation heritage. Diving on sunken Navy ships and aircraft located in units of the national park system or the national marine sanctuary system may be prohibited unless authorized by a Federal land manager.

c. The diving public is encouraged to report the location of underwater ship and aircraft wrecksites to the NHC. Documentation of these wreck locations allows the Navy to evaluate and preserve important sites for the future. Under no circumstances will salvage of

Navy aircraft or shipwrecks be undertaken without prior and specific written approval by the NHC.

d. Wrecksites that are not entire aircraft or ships, but are parts strewn in a debris field, are considered potential archeological sites. Such sites still contain Navy property and must be managed by the Navy in accordance with the NHPA, the Secretary of the Interior's Standards and Guidelines on Archeology and Historic Preservation, 48 FR 44716 (1983), and departmental regulations. Permits for recovery of submerged Navy ship or aircraft wrecks will be considered only for educational or scientific reasons. It is unlikely DON will recommend the disposal and sale of a Navy ship or aircraft wreck that is eligible for listing on the National Register of Historic Places. The Navy maintains a policy of not disposing wrecked ships and aircraft for the following reasons:

1. Congress has mandated through the NHPA that the DON make every effort to preserve its historic cultural resources;

2. The remains of crewmembers, if any, deserve to be treated with honor and dignity and to be properly retrieved for burial if possible;

3. There is a possibility that live explosives or ordnance may still be associated with the vessel or aircraft;

4. The arbitrary disposal and sale of wrecks may foster commercial exploitation of cultural resources and;

5. The abandonment of wrecks could deplete a finite inventory of significant cultural resources.

e. Because of the large number of aircraft wrecks and because they are generally easier to recover and conserve than shipwrecks, DON does consider and encourage requests for loans of historic aircraft. Museums or other private parties interested in the recovery of Navy aircraft for educational or scientific purposes should contact the NHC for guidance.

List of Subjects in 32 CFR Part 767

Aircraft, Archeology, Educational research, Government property, Government property management, Historic preservation, Permit, Research, Scientific research, Vessel.

For the reasons stated in the preamble, the Department of the Navy proposes to add 32 CFR part 767 to read as follows:

**PART 767—APPLICATION
GUIDELINES FOR UNDERWATER
ARCHEOLOGICAL RESEARCH
PERMITS ON SUBMERGED
CULTURAL RESOURCES UNDER THE
JURISDICTION OF THE
DEPARTMENT OF THE NAVY**

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Authority: 5 U.S.C. 301; 16 U.S.C. 470.

**Subpart A—Regulations and
Obligations**

§ 767.1 Purpose.

(a) The purpose of this part is to establish the requirement and procedural guidelines for permits to recover and/or conduct research on Department of the Navy (DON) submerged cultural resources.

(b) The U.S. Naval Historical Center's (NHC) Office of Underwater Archeology is the Navy command responsible for managing Navy submerged cultural resource properties under the guidelines of the Federal Archeological Program. In order for the NHC's management policy to be consistent with the Federal Archeology Program, and the goals of the NHPA, the Navy has implemented a permitting process applicable to Navy property consistent with and applying the Archeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. 470aa–470ll (1999), permitting criteria. Navy policies regarding its submerged cultural resources, to include ship and aircraft wrecks are consistent with ARPA permitting requirements. Navy application of ARPA permitting criteria promotes consistency among federal agencies and meets the Navy's responsibilities under the NHPA, while allowing qualified non-federal and private individuals and entities access to Navy historic vessel and aircraft wrecks.

(c) To assist NHC in managing, protecting, and preserving DON submerged cultural resources.

§ 767.2 Definitions.

Aircraft wrecksite means the location where an aircraft has been crashed, ditched, damaged, or stranded. The wreck may be intact or scattered, may be on land or in water, and may be a structure or a site.

Archeological site means the location of a significant event, historic occupation or activity, or a building or structure including aircraft or shipwrecks, whether standing, ruined, or vanished, and its debris field where the location itself retains historical or archeological value regardless of the value of any existing structure.

Artifact means any object or assemblage of objects found in an archeological context that yields or is likely to yield information of significance to the scientific study of culture or human history.

Cultural resource means the remains or records of districts, sites, structures, buildings, networks, objects, and events from the past. They may be historic, archeological, or architectural in nature. Cultural resources are an irreplaceable and nonrenewable aspect of our national heritage.

Gravesite means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, where individual human remains are deposited.

Permit holder means any person authorized and given the exclusive right by the NHC to conduct any activity under these regulations.

Permitted activity means any activity that is authorized by the NHC under these regulations.

Research vessel means any vessel employed for scientific purposes under these regulations.

Shipwreck means the physical remains of a vessel, its cargo, and other contents.

Wrecksite means the location of a ship or aircraft that has been sunk, crashed, ditched, damaged, or stranded. The wreck may be intact or scattered, may be on land or in water, and may be a structure or a site. The site includes the physical remains of the wreck and all other associated artifacts.

§ 767.3 Policy.

(a) The NHC's policy has been to evaluate each Navy submerged cultural resource on an individual basis. In some cases, the removal of Navy submerged cultural resources may be necessary or appropriate to protect the resource and/or to fulfill other NHC goals, such as those encompassing research, education, public access, and appreciation. Recovery of Navy submerged cultural resources may be

justified in specific cases where the existence of a resource may be threatened. Therefore, recovery of some or all of a resource may be permitted for identification and/or investigation to answer specific questions; or the recovery presents an opportunity for public research or education.

(b) Generally, submerged Navy cultural resources will be left in place unless artifact removal or site disturbance is justified and necessary to protect Navy cultural resources, to conduct research, or provide public education and information that is otherwise inaccessible. While the NHC prefers non-destructive, in situ research on submerged Navy shipwrecks and aircraft wrecks, it recognizes that site disturbance and/or artifact recovery is sometimes necessary. At such times, site disturbance and/or archeological recovery may be permitted, subject to conditions specified by NHC.

Subpart B—Permit Guidelines

§ 767.4 Application for permit.

(a) To request a permit application form, please write to: Department of the Navy, U.S. Naval Historical Center, Office of the Underwater Archeologist, Building 1, Washington Navy Yard, 805 Kidderbreesse Ave. SE, Washington DC 20374–5060. Telefax number: 202–433–2729.

(b) Applicants must submit three copies of their completed application at least 90 days in advance of the requested effective date to allow sufficient time for evaluation and processing. Requests should be sent to the Underwater Archeologist of the U.S. Navy, Naval Historical Center, Washington Navy Yard, 805 Kidderbreesse Ave. SE, Washington, DC 20374–5060.

(c) If the applicant believes that compliance with one or more of the factors, criteria, or procedures in the guidelines contained in this part is not practicable, the applicant should set forth why and explain how the purposes of the NHC are better served without compliance with the specified requirements. Permits are valid for six months from the issue date.

§ 767.5 Evaluation of permit application.

(a) Permit applications for archeological research are reviewed for completeness, compliance with program policies, and adherence to these guidelines. Incomplete applications will be returned to the applicant for clarification. Complete applications are reviewed by NHC personnel and, when necessary, outside experts. In addition to the criteria set forth in § 767.6,

applications are also judged on the basis of: relevance or importance; archeological merits; appropriateness and environmental consequences of technical approach; whether the proposed effort would be more appropriately conducted outside of the NHC; and qualifications of the applicants.

(b) Under certain circumstances, it may be necessary to consult with the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) about the need to comply with section 106 of the NHPA. A section 106 review requires the NHC to consult with the appropriate SHPO and the ACHP. The ACHP review can take up to 60 days beyond the NHC's required 90-day review. Therefore, the entire review process may take up to 150 days.

(c) Applications for research at sites located in units of the National Park system, national wildlife refuge system, and national marine sanctuary system, shall be sent to the appropriate Federal land manager for review. Applications for research at sites located on state bottomlands should be sent to the appropriate state agency for review. The burden of obtaining any and all additional permits or authorizations, such as from a state or foreign government or agency, private individual or organization, or from another federal agency, is on the applicant.

(d) Based on the findings of the NHC evaluation, the NHC Underwater Archeologist will recommend an appropriate action to the NHC Director. If approved, the NHC will issue the permit; if denied, applicants are notified of the reason for denial and may appeal within 30 days of receipt of the denial. Appeals must be submitted in writing to: Director of Naval History, Naval Historical Center, 805 KidderBreese Ave. SE, Washington, DC 20374-5060.

§ 767.6 Credentials of principal investigator.

A resume or curriculum vitae detailing the professional qualifications and professional publications and papers of the principal investigator (PI) must be submitted with the permit application. The PI must have: a graduate degree in archeology, anthropology, maritime history, or a closely related field; at least one year of professional experience or equivalent specialized training in archeological research, administration or management; at least four months of supervised field and analytic experience in general North American historic archaeology and maritime history; the

demonstrated ability to carry research to completion; and at least one year of full-time professional experience at a supervisory level in the study of historic marine archeological resources. This person shall be able to demonstrate ability in comprehensive analysis and interpretation through authorship of reports and monographs.

§ 767.7 Conditions on permits.

(a) Upon receipt of a permit, permit holders must counter-sign the permit and return copies to the NHC and the applicable SHPO prior to conducting permitted activities on the site. Copies of countersigned permits should also be provided to the applicable federal land manager when the sunken vessel or aircraft is located within a unit of the national park system, the national wildlife refuge system, or the national marine sanctuary system.

(b) Permits must be carried aboard research vessels and made available upon request for inspection to regional preservation personnel or law enforcement officials. Only persons named in the permit may participate in permitted activities. Permits are non-transferable. Permit holders must abide by all provisions set forth in the permit as well as applicable state or Federal regulations. Permit holders should abide by applicable regulations of a foreign government when the sunken vessel or aircraft is located in foreign waters. To the extent reasonably possible, the environment must be returned to the condition that existed before the activity occurred.

(c) Upon completion of permitted activities, the permit holder is required to submit to the NHC a working and diving log listing days spent in field research, activities pursued, and working area positions.

(d) The permit holder must prepare and submit a final report as detailed in § 767.9, summarizing the results of the permitted activity.

(e) The permit holder must agree to protect all sensitive information regarding the location and character of the wreck site that could potentially expose it to non-professional recovery techniques, looters, or treasure hunters. Sensitive information includes specific location data such as latitude and longitude, and information about a wreck's cargo, the existence of armaments, or the knowledge of gravesites.

(f) All recovered DON cultural resources remain the property of the United States. These resources and copies of associated archaeological records and data will be preserved by a

suitable university, museum, or other scientific or educational institution.

§ 767.8 Requests for amendments or extensions of active permits.

(a) Requests for amendments to active permits (e.g., a change in study design or other form of amendment) should conform to these guidelines. All necessary information to make an objective evaluation of the amendment should be included as well as reference to the original application.

(b) Permit holders desiring to continue research activities must reapply for an extension of their current permit before it expires. A pending extension or amendment request does not guarantee extension or amendment of the original permit. Therefore, you must submit an extension request to the NHC at least 30 days prior to the original permit's expiration date. Reference to the original application may be given in lieu of a new application, provided the scope of work does not change significantly. Applicants may apply for no more than two six-month extensions.

(c) Permit holders may appeal denied requests for amendments or extensions to the appeal authority listed in § 767.5.

§ 767.9 Content of permit holder's final report.

The permit holder's final report shall include the following:

(a) A site history and a contextual history relating the site to the general history of the region;

(b) A master site map;

(c) Feature map(s) of the location of any recovered artifacts in relation to their position within the wrecksite;

(d) Photographs of significant site features and significant artifacts both in situ and after removal;

(e) A description of the conservation of artifact lists, laboratory conservation records, and before and after photographs of significant artifacts at the conservation laboratory;

(f) A written report describing the historical background, environment, archeological field work, results, and analysis;

(g) A summary of the survey and/or excavation process;

(h) An evaluation of the completed permitted activity that includes an assessment of the permit holder's success of his/her specified goals.

§ 767.10 Monitoring of performance.

Permitted activities will be monitored to ensure compliance with the conditions of the permit. NHC on-site personnel, or other designated authorities, may periodically assess

work in progress by visiting the study location and observing any activity allowed by the permit or by reviewing any required reports. The discovery of any potential irregularities in performance under the permit will be promptly reported and appropriate action will be taken. Permitted activities will be evaluated and the findings will be used to evaluate future applications.

§ 767.11 Violations of permit conditions.

The Director of the NHC, the Underwater Archeologist for DON, or his/her designee may amend, suspend, or revoke a permit in whole or in part, temporarily or indefinitely, if in his/her view the permit holder has acted in violation of the terms of the permit or of other applicable regulations, or for other good cause shown. Any such action will be communicated in writing to the permit holder and will set forth the reason for the action taken. The permit holder may appeal the action to the appeal authority listed in § 767.5.

§ 767.12 References for submission of permit application to conduct archeological research.

(a) National Historic Preservation Act of 1966, as amended (NHPA), 16 U.S.C. 470 *et seq.* (1999), and Protection of Historic Properties, 36 CFR part 800 (1999). These regulations govern the Section 106 Review Process established by the NHPA.

(b) Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, 48 FR 44716 (1983). This publication establishes standards for the preservation planning process with guidelines on implementation.

(c) Archeological Resources Protection Act of 1979, as amended (ARPA), 16 U.S.C. 470aa *et seq.* (1999), and the Uniform Regulations, ARPA, 43 CFR part 7 (1998). These regulations establish basic government-wide standards for the issuance of permits for archeological research, including the authorized excavation and/or removal of archeological resources on public lands or Indian lands.

(d) Secretary of the Interior's Curation of Federally-Owned and Administered Archeological Collections, 36 CFR part 79 (1999). This publication establishes standards for the curation and display of federally-owned artifact collections.

(e) Antiquities Act of 1906, Pub. L. No. 59-209, 34 Stat. 225 (codified at 16 U.S.C. 431 *et seq.* (1999)).

(f) Executive Order No. 11593, 36 FR 8291, 3 CFR, 1971-1975 Comp., p. 559 (Protection and Enhancement of the Cultural Environment).

(g) Department of Defense Instruction 4140.21M (DoDI 4120.21M, August

1998). Subject: Defense Disposal Manual.

(h) Secretary of the Navy Instruction 4000.35 (SECNAVINST 4000.35, 17 August 1992). Subject: Department of the Navy Cultural Resources Program.

(i) Naval Historical Center Instruction 5510.4. (NAVHISTCENINST 5510.4, 14 December 1995). Subject: Disclosure of Information from the Naval Shipwreck Database.

Christopher G. Carlson,

Major, USMC, Alternate Federal Register Liaison Officer.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Chapter I

[USCG-1998-4501]

RIN 2115-AF68

Improvements to Marine Safety in Puget Sound-Area Waters

AGENCY: Coast Guard, DOT.

ACTION: Notice of rescheduled meeting.

SUMMARY: The Coast Guard announces the rescheduling of the two meetings to describe the results of and solicit comments on the cost-benefit analysis of potential rules that could improve marine safety in Puget Sound-Area waters. These meetings, originally scheduled for Tuesday November 16, 1999 and Wednesday November 17, 1999 (64 FR 56286, October 19, 1999), will now be conducted on December 10, 1999. Under consideration are regulatory requirements for tug escorts and/or dedicated rescue tugs for certain vessels operating in the Strait of Juan de Fuca and adjacent waters.

DATES: The meetings will be held from 9:00 AM to 12:00 PM and from 2:00 PM to 5:00 PM on Friday December 10, 1999, with additional time for questions to the regulatory analysis study team from 12:00 PM to 1:00 PM. Comments to the docket for the advance notice of proposed rulemaking must reach the Docket Management Facility on or before January 31, 2000.

ADDRESSES: The public meeting will be held at the Jackson Federal Building Auditorium, 915 Second Avenue, Seattle, WA 98174-1067.

You may submit your written comments and related material by only one of the following methods:

(1) By mail to the Docket Management Facility, (USCG-1999-4501), U.S. Department of Transportation, room PL-

401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By hand to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this notice. Comments and documents, as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket for this notice on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: For questions on the public meeting, contact CDR Timothy M. Close, Human Element and Ship Design Division (G-MSE-1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, telephone 202-267-2997, fax 202-267-4816, email fldr-he@comdt.uscg.mil. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202-366-9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate by submitting comments and related material. If you do so, please include your name and address, identify the docket number [USCG-1998-4501], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.