



**U.S. Environmental Protection Agency**



**U.S. Maritime Administration**

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# **National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs**

## **Appendix A**

May 2006

## Appendix A

### *Federal Statutes Related to the Transfer of Obsolete MARAD and Navy Vessels for Use as Artificial Reefs*

#### **National Defense Authorization Act for Fiscal Year 2004**

The National Defense Authorization Act for Fiscal Year 2004 (PL 108-136) included two provisions relating to the use of vessels as artificial reefs. One such provision, § 3516 (PL 108-136, Div. C, Title XXXV, § 3516, Nov. 24, 2003, 117 Stat. 1795), amended the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (PL 107-314, Div. C, Title XXXV, § 3504(b), Dec. 2, 2002, 116 Stat. 2754; 16 U.S.C. 1220 note) to read in pertinent part as follows:

***Title XXXV – Maritime Administration***

***Subtitle A – Maritime Administration Reauthorization***

***Section 3516. AUTHORITY TO CONVEY OBSOLETE VESSELS TO UNITED STATES, TERRITORIES, AND FOREIGN COUNTRIES FOR REEFING***

**(b) Environmental Best Management Practices for Preparing Vessels for Use as Artificial Reefs.—**

(1) Not later than March 31, 2004, the Secretary of Transportation, acting through the Maritime Administration, and the Administrator of the Environmental Protection Agency shall jointly develop guidance recommending environmental best management practices to be used in the preparation of vessels for use as artificial reefs.

(2) The guidance recommending environmental best management practices under paragraph (1) shall be developed in consultation with the heads of other federal agencies, and State agencies, having an interest in the use of vessels as artificial reefs.

(3) The environmental best management practices under paragraph (1) shall --

(A) include recommended practices for the preparation of vessels for use as artificial reefs to ensure that vessels so prepared will be environmentally sound in their use as artificial reefs;

(B) promote consistent use of such practices nationwide;

(C) provide a basis for estimating the costs associated with the preparation of vessels for use as artificial reefs; and

(D) include mechanisms to enhance the utility of the Artificial Reefing Program of the Maritime Administration as an option for the disposal of obsolete vessels.

(4) The environmental best management practices developed under paragraph (1) shall serve as national guidance for federal agencies for the preparation of vessels for use as artificial reefs.

(5) Not later than March 31, 2004, the Secretary of Transportation, acting through the Maritime Administration, and the Administrator of the Environmental Protection Agency shall jointly establish an application process for governments of States, commonwealths, and United States territories and possessions, and foreign governments, for the preparation of vessels for use as artificial reefs, including documentation and certification requirements for that application process.

(6) The Secretary of Transportation shall submit to Congress a report on the environmental best management practices developed under paragraph (1) through the existing ship disposal reporting requirements in section 3502 of Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398; 1654A-492) [Pub.L. 106-398, Div. C, Title XXXV, § 3502, Oct. 30, 2000, 114 Stat. 1654A-492, which is not classified to the Code]. The report shall describe such practices, and may include such other matters as the Secretary considers appropriate.

The second such provision, § 1013 (PL 108-136, Div. A, Title X, § 1013, Nov. 24, 2003, 117 Stat. 1590), amended Title 10 of the United States Code by adding § 7306b. New § 7306b(a) authorizes the Secretary of the Navy to transfer vessels stricken from the Naval Vessel Register for use as an artificial reef. New § 7306b(c) requires the Secretary of the Navy to ensure that the preparation of a vessel transferred pursuant to 10 U.S.C. § 7306b(a) for use as an artificial reef is conducted in accordance with the environmental best management practices developed pursuant to 16 U.S.C. § 1220 note and applicable environmental laws. The complete text of Section 1013 of the National Defense Authorization Act for Fiscal Year 2004 is as follows:

*Title X – General Provisions*

*Subtitle B – Naval Vessels and Shipyards*

**Section 1013. TRANSFER OF VESSELS STRICKEN FROM THE  
NAVAL VESSEL REGISTER FOR USE AS ARTIFICIAL REEFS.**

(a) AUTHORITY TO MAKE TRANSFER- Chapter 633 of title 10, United States Code, is amended by inserting after section 7306a the following new section:

**Sec. 7306b. Vessels stricken from Naval Vessel Register: transfer by gift or otherwise for use as artificial reefs**

(a) AUTHORITY TO MAKE TRANSFER- The Secretary of the Navy may transfer, by gift or otherwise, any vessel stricken from the Naval Vessel Register to any State, Commonwealth, or possession of the United States, or any municipal corporation or political subdivision thereof, for use as provided in subsection (b).

(b) VESSEL TO BE USED AS ARTIFICIAL REEF- An agreement for the transfer of a vessel under subsection (a) shall require that--

(1) the recipient use, site, construct, monitor, and manage the vessel only as an artificial reef in accordance with the requirements of the National

Fishing Enhancement Act of 1984 (33 U.S.C. 2101 et seq.), except that the recipient may use the artificial reef to enhance diving opportunities if that use does not have an adverse effect on fishery resources (as that term is defined in section 2(14) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(14)); and

`(2) the recipient obtain, and bear all responsibility for complying with, applicable federal, State, interstate, and local permits for using, siting, constructing, monitoring, and managing the vessel as an artificial reef.

`(c) PREPARATION OF VESSEL FOR USE AS ARTIFICIAL REEF- The Secretary shall ensure that the preparation of a vessel transferred under subsection (a) for use as an artificial reef is conducted in accordance with--

`(1) the environmental best management practices developed pursuant to section 3504(b) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 16 U.S.C. 1220 note); and

`(2) any applicable environmental laws.

`(d) COST SHARING- The Secretary may share with the recipient of a vessel transferred under subsection (a) any costs associated with transferring the vessel under that subsection, including costs of the preparation of the vessel under subsection (c).

`(e) NO LIMITATION ON NUMBER OF VESSELS TRANSFERABLE TO PARTICULAR RECIPIENT- A State, Commonwealth, or possession of the United States, or any municipal corporation or political subdivision thereof, may be the recipient of more than one vessel transferred under subsection (a).

`(f) ADDITIONAL TERMS AND CONDITIONS- The Secretary may require such additional terms and conditions in connection with a transfer authorized by subsection (a) as the Secretary considers appropriate.

`(g) CONSTRUCTION- Nothing in this section shall be construed to establish a preference for the use as artificial reefs of vessels stricken from the Naval Vessel Register in lieu of other authorized uses of such vessels, including the domestic scrapping of such vessels, or other disposals of such vessels, under this chapter or other applicable authority.'

(b) CLERICAL AMENDMENT- The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 7306a the following new item:

`7306b. Vessels stricken from Naval Vessel Register: transfer by gift or otherwise for use as artificial reefs.'

### **Transfer of Obsolete Vessels by the Department of Transportation**

Public Law 92-402 (16 U.S.C. 1220, et. seq.) authorizes the U.S. Maritime Administration (MARAD), under the Department of Transportation, to transfer obsolete ships to any state for use as an artificial reef. In addition, MARAD's authority was amended by Public Law 107-314 section 3504, as amended by Public Law 108-136, to allow MARAD to provide financial assistance to states for environmental preparation, towing, and/or sinking and also allows MARAD to transfer obsolete vessels to U.S. territories and foreign countries for use as artificial reefs.

#### *Title XXVI – Conservation*

#### *Chapter 25B – Reefs for Marine Life Conservation*

#### **§ 1220. State applications for obsolete ships for use as offshore reefs**

##### (a) Conservation of marine life

Any State may apply to the Secretary of Transportation (hereafter referred to in this chapter as the "Secretary") for obsolete ships which, but for the operation of this chapter, would be designated by the Secretary for scrapping if the State intends to sink such ships for use as an offshore artificial reef for the conservation of marine life.

##### (b) Manner and form of applications; minimum requirements

A State shall apply for obsolete ships under this chapter in such manner and form as the Secretary shall prescribe, but such application shall include at least (1) the location at which the State proposes to sink the ships, (2) a certificate from the Administrator, Environmental Protection Agency, that the proposed use of the particular vessel or vessels requested by the State will be compatible with water quality standards and other appropriate environmental protection requirements, and (3) statements and estimates with respect to the conservation goals which are sought to be achieved by use of the ships.

##### (c) Copies to federal officers for official comments and views

Before taking any action with respect to an application submitted under this chapter, the Secretary shall provide copies of the application to the Secretary of the Interior, the Secretary of Defense, and any other appropriate federal officer, and shall consider comments and views of such officers with respect to the application.

#### **§ 1220a. Transfer of title; terms and conditions**

If, after consideration of such comments and views as are received pursuant to section 1220(c) of this title, the Secretary finds that the use of obsolete ships proposed by a State will not violate any federal law, contribute to degradation of the marine environment, create undue interference with commercial fishing or navigation, and is not frivolous, he may transfer without consideration to the State all right, title, and

interest of the United States in and to any obsolete ships which are available for transfer under this chapter if--

- (1) the State gives to the Secretary such assurances as he deems necessary that such ships will be utilized and maintained only for the purposes stated in the application and, when sunk, will be charted and marked as a hazard to navigation;
- (2) the State agrees to secure any licenses or permits which may be required under the provisions of any other applicable federal law;
- (3) the State agrees to such other terms and conditions as the Secretary shall require in order to protect the marine environment and other interests of the United States; and
- (4) the transfer would be at no cost to the Government (except for any financial assistance provided under section 1220(c)(1) of this title) with the State taking delivery of such obsolete ships and titles in an "as-is-- where-is" condition at such place and time designated as may be determined by the Secretary of Transportation.

**§ 1220b. Obsolete ships available; number; equitable administration**

A State may apply for more than one obsolete ship under this chapter. The Secretary shall, however, taking into account the number of obsolete ships which may be or become available for transfer under this chapter, administer this chapter in an equitable manner with respect to the various States.

**§ 1220c. Denial of applications; finality of decision**

A decision by the Secretary denying any application for a obsolete ship under this chapter is final.

**§ 1220c-1. Financial assistance to State to prepare transferred ship**

(a) Assistance authorized

The Secretary, subject to the availability of appropriations, may provide, to any State to which an obsolete ship is transferred under this chapter, financial assistance to prepare the ship for use as an artificial reef, including for--

- (1) environmental remediation;
- (2) towing; and
- (3) sinking.

(b) Amount of assistance

The Secretary shall determine the amount of assistance under this section with respect to an obsolete ship based on—

- (1) the total amount available for providing assistance under this section;
- (2) the benefit achieved by providing assistance for that ship; and
- (3) the cost effectiveness of disposing of the ship by transfer under this chapter and provision of assistance under this section, compared to other disposal options for that ship.

(c) Terms and conditions

The Secretary--

(1) shall require a State seeking assistance under this section to provide cost data and other information determined by the Secretary to be necessary to justify and document the assistance; and

(2) may require a State receiving such assistance to comply with terms and conditions necessary to protect the environment and the interests of the United States.

**§ 1220d. "Obsolete ship" defined**

For purposes of sections 1220, 1220a, 1220b, and 1220c of this title, the term "obsolete ship" means any vessel owned by the Department of Transportation that has been determined to be of insufficient value for commercial or national defense purposes to warrant its maintenance and preservation in the national defense reserve fleet and has been designated as an artificial reef candidate.