

APPENDIX B

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY AND THE U.S. COAST GUARD

SUBJECT: Coast Guard and Department of Army Responses to Marking and Removal of Sunken Vessels and Other Obstructions to Navigation

1. Purpose. The purpose of this memorandum of agreement (MOA) is to improve the efficiency and effectiveness of the Coast Guard and the Department of Army responses under each agency's respective authorities for the marking and removal of sunken vessels and other obstructions to navigation.

2. Provision of Agreement. This agreement provides procedures on coordination to determine whether an obstruction is a hazard to navigation and procedures to determine the appropriate corrective actions to be taken by both agencies.

3. Definitions. For the purpose of this agreement, the following definitions apply:

a. Obstruction: Anything that restricts, endangers, or interferes with navigation. Obstructions can be authorized man-made structures such as bridges, pierheads, offshore towers, etc., or unexpected interferences which must be addressed as to their effect on navigation.

b. Hazard to Navigation: An obstruction, usually sunken, that presents sufficient danger to navigation so as to require expeditious, affirmative action such as marking, removal, or redefinition of a designated waterway to provide for navigational safety.

c. Responsible Field Officers Are:

(1) Department of Army:

(a) District Engineer, Army Corps of Engineers District, and

(b) Division Engineer, Army Corps of Engineers Pacific Ocean and New England Divisions.

(2) Coast Guard: Chief, Operations Division, Coast Guard District.

4. Objectives.

a. Promote close coordination and cooperation between the Department of Army and the Coast Guard leading to prompt and decisive action in marking or removal of obstructions declared to be hazards to navigation.

b. Provide guidance on the parameters and procedures for making multi-agency decisions for determining when an obstruction should be declared a hazard to navigation.

c. Provide the chain-of-command relationships for resolving differences of opinion

between the Department of Army and the Coast Guard as to the appropriate corrective action to initiate for hazards to navigation.

d. Assure timely and effective action to provide safe navigation to the maritime community.

5. Required Actions. Upon receiving reports of sunken vessels or other obstructions to navigation, each agency through its field office will take the following actions:

a. Assess the impact upon navigation of each reported obstruction and expeditiously identify appropriate corrective actions. In emergency situations, the agency first on the scene should initiate immediate actions to mitigate the hazardous situation.

b. Decide through joint consultation and agreement between agency field offices if an obstruction is a hazard to navigation, agree upon appropriate corrective action(s) to reduce the danger to navigation to an acceptable level, and decide which agency shall act as lead agency for contacting the owner, if one exists, of the obstruction and executing corrective actions.

(1) Personal contacts between agency field offices are encouraged to facilitate decision-making.

(2) Timely response dictates that decisions be made at the field office level whenever possible.

(3) Decisions concerning corrective actions shall be supported by records appropriate to the specific case.

(4) Marking Issues. In every case where an obstruction is declared to be a hazard to navigation, the location will be marked immediately by the owner. In the event that the owner cannot be identified, refuses to mark the obstruction, inadequately marks the obstruction, or is otherwise unable to properly mark it, the Coast Guard has authority under 14 USC 86 to take appropriate action. When necessary the Department of Army will assist the Coast Guard in locating and marking hazards to navigation. Marking of an obstruction determined to be a hazard to navigation does not by itself remove the "hazard to navigation" status of the obstruction; however, under some circumstances it can be an acceptable alternative to other corrective actions.

(5) Removal Issues.

(a) Where an obstruction is declared to be a hazard to navigation and removal is the agreed appropriate corrective action, the respective Army Corps of Engineers District Engineer may take the initiative in accordance with 33 CFR 209.190(h) wherein removal of an obstruction under the provisions of Section 19 of the River and Harbor Act of 1899 (33 USC 414) may be undertaken without prior approval of the Chief of Engineers if the obstruction has been in existence over 30 days or its abandonment by the owner can be legally established in a shorter period, the cost of removal will not exceed \$100,000 for each incident, and all reasonable efforts to require the owner to remove the wreck himself within a reasonable period have been exhausted. If an emergency condition exists, the district engineer may undertake removal under Section 20 of the River and Harbor Act of 1899 (33 USC 414) which eliminates the necessity to establish abandonment. The district engineers' authority under Section 20 is limited to those

removal incidents costing less than \$100,000. For all incidents costing more than \$100,000, prior approval from the Chief of Engineers must be obtained under either Section 19 or Section 20.

(b) The Coast Guard has authority for the alteration or removal of obstructive bridges under 33 CFR 114 and has authority to remove sunken vessels when they create a substantial pollution threat to the public health or welfare under 33 CFR 153.

c. The Coast Guard has authority to disseminate and maintain navigational safety information pertaining to obstructions and is the lead agency responsible for this type of information. This mission is complemented by related services offered by other sources, including the Army Corps of Engineers. Each agency's field offices will immediately notify their counterpart of any reported obstructions and will maintain close coordination to ensure that navigational safety information is disseminated in a timely and effective manner. Free exchange of information related to obstructions, including owner's name and address, will be made between agencies, subject to the requirements of the Privacy Act, 5 USC 522a.

d. Disagreements arising over the resolution of problems raised by hazards to navigation. The district engineer and the Chief of Operations will document the area(s) of disagreement and present them to each other for consideration at least 14 days before forwarding of the issue to higher authority. If resolution cannot be achieved, the problem should be forwarded to the next higher level of authority. At the next higher level, a similar exchange of views should be made in the same time frame. If resolution cannot be reached here, a similar referral process should be made until resolution is achieved or the highest referral possible is made. Paragraph 8 delineates the chain-of-command for the purposes of this agreement.

e. The Coast Guard and Department of Army shall develop individual agency instructions to implement the MOA.

f. Field level offices of both agencies shall periodically review the status of existing obstructions to determine the adequacy of corrective action(s), to determine if a resurvey of the obstruction's location is necessary, to revise appropriate records, and to update public notification records.

6. Applicability. This agreement applies to the navigable waters of the United States, as defined in Title 33 CFR 2.05-25.

7. Decision-making Guidance.

a. Options to consider in formulating appropriate action(s):

- (1) No action.
- (2) Charting.
- (3) Broadcasting and publication of navigational safety information.
- (4) Marking.

- (5) Redefinition of navigational area, e.g., channel fairway, anchorage, etc.
- (6) Removal.
- (7) Combination of the above.

b. Factors (not to be taken as all inclusive) to be considered in determining if a sunken vessel or other obstruction is a hazard to navigation and in determining which course of action(s) listed in paragraph 7.a. is appropriate to increase safety to an acceptable level:

- (1) The degree to which the obstruction restricts, endangers, or interferes with the navigability of a body of water.
 - (a) Location with respect to navigational traffic patterns.
 - (b) Navigational difficulty at the site of the obstruction.
 - (c) Clearance or depth of water over obstruction.
 - (d) Fluctuation of water level and other hydraulic characteristics.
- (2) Physical characteristics of the obstruction, including cargo (if any exists).
 - (3) Possible movement of the obstruction.
 - (4) Marine activity in the vicinity of the obstruction.
 - (a) Type of commercial and recreational vessel traffic.
 - (b) Density of commercial and recreational vessel traffic.
 - (c) Trends of waterway use.
- (5) Location of obstruction with respect to existing aids to navigation.
- (6) Prevailing and historical weather conditions.
- (7) Length of time the obstruction has been in existence.
- (8) History of vessel accidents involving obstruction.

8. Chain-of-command Relationships for Resolution of Differences.

a. Chief, Operations Division, Coast Guard District/ District Engineer, Army Corps of Engineers District.

b. District Commander, Coast Guard District/Division Engineer, Army Corps of Engineers Division.

c. Chief, Office of Navigation, Coast Guard/Director of Civil Works, Office, Chief of

Engineers.

9. Amendment, Duration, and Termination.

a. This MOA may be modified or amended by mutual consent of the signatories to this agreement of their designees. All such changes will be documented by written agreement.

b. This MOA is intended to remain in effect for as long as it continues to serve the purpose and objectives defined herein.

c. Either agency may terminate this MOA six months after giving formal written notice of intent to terminate.

10. Effective Date. This MOA is effective 90 days after execution by the Chief, Office of Navigation, U.S. Coast Guard, and the Director of Civil Works, Department of the Army.

/s/

T.J. Wojnar
Rear Admiral, U.S. Coast Guard
Chief, Office of Navigation

Oct 16 1985

(Date)

/s/

H.J. Hatch
Major General, USA
Director of Civil Works

10 Oct 1985

(Date)