



DEPARTMENT OF THE NAVY
NAVAL HISTORY AND HERITAGE COMMAND
805 KIDDER BREESE STREET SE
WASHINGTON NAVY YARD DC 20374-5060

IN REPLY REFER TO
5000
Ser CMD/0376
May 12, 2014

Bob L. Harris
Messer Caparello, P.A.
2618 Centennial Place
PO Box 15579 (32317)
Tallahassee, FL 32308-0572

Dear Mr. Harris:

Thank you for your letter of April 16, 2014 requesting clarification on the proposed Department of the Navy (DoN) rule that was published in the Federal Register on January 6, 2014. I am replying for Dr. Robert Neyland.

You are seeking clarification of the definition of a sunken military craft, as stated in the proposed rule, whether the term applies to artificial reefs, and whether dives that penetrate into the structure of sunken military craft would constitute disturbance under the proposed regulations. The definition of "sunken military craft" in the proposed rule remains unchanged from that present in the Sunken Military Craft Act (SMCA) of 2004. That definition includes all sunken warships, all sunken naval auxiliaries, as well as other vessels that were owned or operated by a government on military noncommercial service at the time of their sinking, as forming part of the collection of sunken military craft (Section 1408 (3)).

DoN, through its regulations, does not intend to restrict access to those DoN craft purposely sunk to establish artificial reefs or to other sunken former Navy vessels of which United States' title has been expressly divested. The final rule will explicitly clarify this matter. Indeed, only two former DoN vessels have been sunk as artificial reefs as part of the DoN artificial reefing program, the ex-*Oriskany* in the Gulf of Mexico and the ex-*Radford* in waters off of the coast of Delaware. In both instances, title to the vessels was transferred to the respective state authorities and, therefore, both of these vessels will not be considered sunken military craft subject to SMCA and DoN regulations.

Similarly, United States' title to ex-*Vandenberg* and ex-*Spiegel Grove* was transferred to local governments in Florida and the ships were sunk for the purpose of establishing artificial reefs in the National Oceanic Atmospheric Administration (NOAA) Florida Keys National Marine Sanctuary (FKNMS). While they are no longer subject to SMCA and DoN regulations, they are under the jurisdiction of NOAA and remain subject to NOAA FKNMS regulations. DoN and NOAA plan to enter into a Memorandum of Understanding to make clear to the regulated public the roles and responsibilities of the two agencies with respect to sunken military craft that are also National Marine Sanctuary and Monument resources.

As for your second area of concern, whether or not a penetrating dive on what might or might not be a sunken military craft would constitute a violation of the Act, Section 1406 of the SMCA states:

"Except to the extent that an activity is undertaken as a subterfuge for activities prohibited by this Act, nothing in this Act is intended to affect - (1) any activity that is not directed at a sunken military craft."

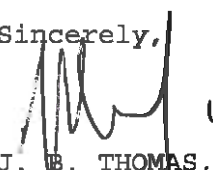
DoN interprets this to mean that in order to find a person who disturbs, removes, or injures a wreck site to have violated a prohibition of the Act, that person must have known, or should have known, that the activities in question were directed at a sunken military craft.

Additionally, DoN does not consider responsible diving and snorkeling on sunken military craft, including penetration of said craft, an activity that is prohibited by SMCA. A permit relieving persons from the stated prohibitions is only necessary when there is intent to disturb, remove, or injure a sunken military craft or terrestrial military craft. Only intentional or negligent actions that disturb the craft will be considered violations of SMCA. Through its regulations, DoN has gone further to accommodate various stakeholders by introducing a "Special Use Permit" in the proposed regulations in order to facilitate the permitting of minimally intrusive activities. DoN has received other public comments regarding the clarity of the definition of disturbance which it is presently considering.

The diving and snorkeling communities by and large have served as effective ambassadors for the protection and preservation of underwater resources, including cultural resources and sunken military craft. DoN views responsible members of diving and snorkeling communities as partners in a common preservation effort and does not intend to impose unreasonable restrictions on diving or dive operators.

I would like to thank you for seeking clarification on DoN interpretation of SMCA and on the proposed rule. Please do not hesitate to direct any questions or concerns you may have to the NHHC Underwater Archeology Branch Head, Dr. Robert Neyland, at comm: (202) 685-0897 or email: robert.neyland@navy.mil.

Sincerely,



J. B. THOMAS, JR., PhD.
Assistant Director for
Collection Management
By direction