

**Environmental Assessment
Appendix F:
Cultural Resources**



**U.S. Army Corps of Engineers
New York District**

January 2004

AMENDED
PROGRAMMATIC AGREEMENT
AMONG
THE U. S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT,
THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICER
AND
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER
REGARDING
NEW YORK AND NEW JERSEY HARBOR NAVIGATION PROJECT
KINGS, QUEENS AND RICHMOND COUNTIES, NEW YORK
ESSEX, HUDSON, MONMOUTH AND UNION COUNTIES, NEW JERSEY

WHEREAS, a Programmatic Agreement (PA) was executed on 12 April 2000 among the United States Army Corps of Engineers, New York District (New York District), the New Jersey State Historic Preservation Officer (NJSHPO) and the New York State Historic Preservation Officer (NYSHPO), for the New York and New Jersey Harbor Navigation Study (Study) (Appendix 1) authorized by Section 435 of the Water Resources Development Act of 1996;

WHEREAS, the New York District, completed the Study and is now authorized to undertake the construction of the New York and New Jersey Harbor Navigation Project (Project) by Section 101(a)(2) of the Water Resources Development Act of 2000;

WHEREAS, the New York District and its non-Federal sponsors intend to execute a Project Cooperation Agreement to formalize the roles and responsibilities of the Federal and State governments in the implementation of the Project;

WHEREAS the Project will be implemented in phases anticipated over a period of years;

WHEREAS, the New York District will implement the provisions of this Amended PA as funding for the Project is appropriated in future years;

WHEREAS, the New York District defined the "Area of Potential Effects" (APE) for the Study to include all areas within and adjacent to the Ambrose, Anchorage, Port Jersey, Kill Van Kull, Arthur Kill (to Howland Hook), Newark Bay, Elizabeth, South Elizabeth, and Bay Ridge Navigation Channels. In locations where blasting will be undertaken the APE will also encompass nearshore and on-shore areas within zones anticipated to experience a certain force from the blast;

WHEREAS, the New York District will amend the "Area of Potential Effects" for this undertaking to include all areas defined in the "Area of Potential Effects" detailed in the PA plus all areas impacted by activities required to construct all environmental mitigation measures;

WHEREAS, all parties have determined that additional measures shall be carried out;

NOW, THEREFORE, the New York District, the NJSHPO, and the NYSHPO agree that the undertaking shall be administered in accordance with the following stipulations to satisfy the New York District's responsibilities under Section 106 of the National Historic Preservation Act of 1966, as amended.

STIPULATIONS

I. The New York District shall ensure that the stipulations put forth in the PA executed on 12 April 2000 will be executed for the revised Area of Potential Effects.

II. The Area of Potential Effects shall include all areas defined in the "Area of Potential Effects" detailed in the PA plus all areas impacted by activities required to construct all environmental mitigation measures for this Project, as they are developed.

III. TERMINATION

Any signatory to this Amended PA may terminate it by providing thirty days notice to the other parties, provided that the parties will consult during the period prior to termination by certified mail to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the New York District will comply with 36 CFR Parts 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

IV. SUNSET CLAUSE.

This Amended PA will continue in full force and effect until the construction of the Project is complete and all terms of this Amended PA are met, unless the Project is terminated or authorization is rescinded.

Execution and implementation of this Amended PA evidences that the New York District has satisfied its Section 106 responsibilities for all individual undertakings of the Project, and that the New York District has afforded the Council and the SHPO an opportunity to comment on the undertaking and its effects on historic properties.

NEW JERSEY STATE HISTORIC PRESERVATION OFFICE

By: Dorothy P. Guzzo Date: 2/5/03
Dorothy P. Guzzo, Deputy State Historic Preservation Officer

NEW YORK STATE HISTORIC PRESERVATION OFFICE

By: Bernadette Castro Date: 4/21/03
Bernadette Castro, Deputy Commissioner for Historic Preservation

U.S. ARMY CORPS OF ENGINEERS

By: J. B. O'Dowd Date: 28 January 2003
John B. O'Dowd
Colonel, Corps of Engineers
District Engineer

Appendix 1. Programmatic Agreement

PROGRAMMATIC AGREEMENT
 AMONG
 THE U. S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT,
 THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICER
 AND
 THE NEW YORK STATE HISTORIC PRESERVATION OFFICER
 REGARDING
 NEW YORK AND NEW JERSEY HARBOR NAVIGATION STUDY
 KINGS, QUEENS AND RICHMOND COUNTIES, NEW YORK
 ESSEX, HUDSON, MONMOUTH AND UNION COUNTIES, NEW JERSEY

WHEREAS, the U.S. Army Corps of Engineers, New York District, (New York District), has been authorized to conduct a feasibility study to evaluate the federal participation in navigation improvements in New York and New Jersey Harbor (Harbor). The New York and New Jersey Harbor Navigation Study (Study), authorized by Section 435 of the Water Resources Development Act of 1996, addresses improvements, including deepening of existing channels to 50 feet or greater, to provide economically efficient and environmentally sound navigation to meet current and future requirements;

WHEREAS, the National Economic Development Plan provides for navigation improvements to nine channels in the Harbor, which will permit access by larger, deeper-draft vessels to four main container terminals. Navigation improvements consist of channel deepening, widening and realignment. Selected for improvement are the Ambrose, Anchorage, Port Jersey, Kill Van Kull, Arthur Kill (to Howland Hook), Newark Bay, Elizabeth, South Elizabeth, and Bay Ridge Navigation Channels;

WHEREAS, the New York District has defined the "Area of Potential Effect" for this undertaking to include all areas within and adjacent to the Ambrose, Anchorage, Port Jersey, Kill Van Kull, Arthur Kill (to Howland Hook), Newark Bay, Elizabeth, South Elizabeth, and Bay Ridge Navigation Channels (Appendix 1). In locations where blasting will be undertaken the APE will also encompass nearshore and on-shore areas within zones anticipated to experience a certain force from the blast;

WHEREAS, the New York District has determined that properties listed and/or eligible for listing on the National Register of Historic Places (National Register) may be adversely affected by implementation of the navigation improvements recommended in the Study;

WHEREAS, the New York District is applying the National Register Criteria (Criteria) to properties identified within the "Area of Potential Effect" on a phased basis, and to date has completed initial geomorphological and archaeological surveys in the Ambrose, Anchorage, Kill Van Kull, Arthur Kill, Newark Bay, Elizabeth, Port Jersey, Bay Ridge Channels;

WHEREAS, the New York District has identified locations within and adjacent to the Anchorage, Kill Van Kull, Newark Bay and Bay Ridge Channels and the Jersey Flats at Port Jersey to be sensitive locations for prehistoric materials but has acknowledged that traditional archaeological techniques are not feasible for use in submerged areas;

WHEREAS, additional data is required to make an assessment of geomorphological and archaeological sensitivity in the Ambrose Channel;

WHEREAS, the New York District has identified National Register eligible vessels and structures in the nearshore area of the Arthur Kill, Kill Van Kull and Bay Ridge through the New York District's Collection and Removal of Drift Project. Signed MOAs are available for Shooters Island in the Arthur Kill, and for nearshore resources along the Brooklyn, NY waterfront on the Bay Ridge Channel, and for certain nearshore resources along the Bayonne, NJ shoreline on the Kill Van Kull and Newark Bay Channels. A draft MOA has been coordinated for nearshore resources along the Kill Van Kull. An amended MOA has been coordinated to include additional nearshore resources along the Bayonne shore of the Kill Van Kull and the Newark Bay shoreline. The stipulations contained in the existing MOAs will be implemented for any individual resources that will be impacted by this Study;

WHEREAS, the New York District, in consultation with the NJSHPO and NYSHPO has determined that there are no submerged historic period resources within the existing navigation channels;

WHEREAS, the New York District, in consultation with the appropriate State Historic Preservation Office (SHPO), will identify and develop treatment plans for any cultural resources that are identified and determined to be significant. These treatment plans, once implemented, will ensure that study plans will not adversely affect these properties;

WHEREAS, the New York District has identified several interested parties to participate in the Section 106 consultation process and study planning, to include the New York City Landmarks Preservation Commission, New Jersey Historical Society and other local municipalities, historical societies and organizations (Appendix 2);

WHEREAS the New York District is coordinating, and shall continue to coordinate a public outreach program for this undertaking which in the past has consisted of a number of public meetings and the circulation of cultural resource and environmental documents related to the Section 106 review process;

WHEREAS, the New York District shall continue to consult with appropriate SHPO(s) regarding plans and surveys to identify, evaluate and treat historic properties as the New York District and its agents implement all phases of the Study;

WHEREAS, the New York District shall provide the appropriate SHPO(s) all plans and reports, including but not limited to all comments, notifications, and scope of works by certified mail; and

NOW, THEREFORE, the New York District, the Council, NJSHPO and the NYSHPO agree that the Study shall be administered in accordance with the following stipulations to satisfy the New York District's Section 106 and Abandoned Shipwreck Act of 1987 (Appendix 3) responsibilities for all individual undertakings of the Study.

Stipulations

The New York District shall ensure that the following measures are carried out:

I. IDENTIFICATION AND EVALUATION

A. The New York District shall conduct remote sensing surveys along the channel edge of the Ambrose, Anchorage, Kill Van Kull, Arthur Kill and Newark Bay Channels and in the area of proposed channel realignment at the Jersey Flats to identify potential shipwrecks or submerged historic resources.

B. The New York District shall conduct a cultural resource evaluation for both prehistoric and historic resources within and adjacent to the South Elizabeth Channel.

C. The New York District shall conduct architectural surveys within areas anticipated to experience a force of 0.5 peak particle velocity or greater where blasting is proposed along the Kill Van Kull, Arthur Kill, Bay Ridge and Newark Bay shorelines.

D. The New York District shall consult with the appropriate SHPO(s) to develop plans to complete the identification of historic properties within the remaining portion of the Study's Area of Potential Effect. The appropriate SHPO(s) will provide comments on the scope of work and final Plans within 30 days of receipt.

E. The New York District shall revise Plans to address comments and recommendations provided by the appropriate SHPO(s) prior to proceeding with identification and evaluation activities.

F. The New York District shall ensure that qualified professionals meeting the National Park Service professional qualifications for the appropriate discipline [National Park Service Professional Qualification Standards, Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44738-39)] are used to complete all identification and evaluation plans related to this undertaking, to include archaeological surveys and testing, historic structure inventories, and documentation.

G. The New York District and the appropriate SHPO(s) shall consider the views of the public or interested parties in completing its identification and evaluation responsibilities.

H. The New York District shall maintain records of all decisions it makes related to the National Register eligibility of properties.

II. TREATMENT OF HISTORIC PROPERTIES.

The New York District shall adhere to the following treatment strategies in order to avoid adverse effect to historic properties.

A. The New York District shall excavate a limited number of borings in locations determined by a qualified geomorphologist within or adjacent to the Ambrose, Anchorage, Kill Van Kull, Arthur Kill, Newark Bay, South Elizabeth and Bay Ridge Channels as well as in the Jersey Flats at Port Jersey. These sediments will be subject to foraminifera, pollen and Carbon-14 analysis. The results of this work will be incorporated into a sensitivity model of now inundated former prehistoric occupation areas. This work will be entered into a Geographic Information System (GIS) compatible with other GIS data developed for the Study.

B. The New York District shall notify appropriate institutions and organizations of the availability of the prehistoric sensitivity model on GIS. A list of appropriate institutions and organizations will be developed by the New York District and will be submitted to the SHPO(s) for review. If the New York District does not receive a response from the SHPO(s) within 45 days of receipt the New York District will notify availability to the institutions and organizations on the list submitted for review.

C. The New York District, in consultation with the SHPO, shall develop appropriate treatment plans for historic properties identified within the unsurveyed portion of the "Area of Potential Effect" which may be affected by the implementation of the navigation improvements recommended by the Study. Unless the SHPO objects within 30 days of receipt of any plan, the New York District shall ensure that treatment plans are implemented by the New York District or its representative(s). The New York District shall revise Plans to address comments and recommendations provided by the SHPO.

D. The New York District shall ensure that qualified professionals meeting the National Park Service professional qualifications for the appropriate discipline [National Park Service Professional Qualification Standards, Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44738-39)] are used to develop and implement all treatment plan.

E. Avoidance. The preferred treatment is avoidance of effects to historic properties. The New York District shall, to the extent feasible, avoid historic properties through design changes. The New York District, and the SHPO shall consult to develop plans for avoiding impacts to historic properties. The New York District shall incorporate feasible avoidance measures into study activities as part of the implementation of the navigation improvements recommended in the Study. If, in consultation with the SHPO, avoidance

is determined to be infeasible, the New York District shall develop and implement treatment/mitigation plans.

III. RESOLUTION OF ADVERSE EFFECTS

A. When the New York District, in consultation with the SHPO, determines that Study related activities would have an adverse effect, the New York District shall:

1. Develop a Standard Mitigation Agreement (SMA) with the SHPO; or
2. Consult with the Council to develop a Memorandum of Agreement (MOA) in accordance with 36 CFR Part 800.6 (c).

B. The New York District shall invite the Council to participate in consultation when:

1. The New York District and SHPO determine that an agreement or a SMA cannot be reached;
2. a National Historic Landmark is involved;
3. human remains have been identified; or
4. there is widespread public interest in a historic property or properties.

C. The New York District and the SHPO, and interested parties as appropriate, shall consult to develop alternatives to mitigate or minimize adverse effects. The analysis of alternatives shall consider program needs, cost, public benefit and values, and design feasibility.

D. Development of Standard Mitigation Agreements (SMA).

1. The New York District, in consultation with the SHPO and interested parties, as appropriate, shall develop SMAs for historic properties which will be adversely affected by the implementation of the navigation improvements recommended in the Study. The New York District shall submit the SMA to the SHPO for review and approval by certified mail. The SHPO shall have 30 days from receipt of adequate information in which to review and comment on the SMA(s). If the SHPO fails to respond within 30 days, or if there is disagreement, the New York District shall notify the Council and consult to develop the proposed SMA into an MOA and submit copies of background information and the proposed SMA to facilitate consultation to develop an MOA in accordance with 36 CFR Part 800.

2. After signing by the New York District and SHPO, the New York District shall file all SMAs with the Council.

E. Standard Mitigation Agreements (SMA)

1. SMAs developed between the New York District and the SHPO, may include one or more of the following stipulations which address routine adverse effects that may occur to historic properties as a result of Study implementation.

2. Recordation. The New York District shall consult with the SHPO or Historic American Building Survey/Historic American Engineering Record (HABS/HAER) to determine the appropriate level and type of recordation for affected resources. For historic properties with state and/or local significance, recordation shall be consistent with the requirements and standards of the Department of the Interior (October 1997). All documentation must be submitted to SHPO and HABS/HAER for acceptance, prior to the initiation of Study activities, unless otherwise agreed to by the SHPO or NPS.
3. Salvage and Donation of Significant Structural Elements. Prior to removal, partial removal, or substantial alteration of historic properties, the New York District, in consultation with the SHPO, shall develop a salvage and donation plan to identify appropriate parties willing and capable of receiving and preserving the salvaged significant structural elements. The New York District shall submit the plans to the SHPO for review and approval.
4. Data recovery for archaeological sites eligible under the National Register of Historic Places Eligibility Criterion D and others and data recovery and treatment of archaeological sites where data recovery will not result in a finding of no adverse effect. The New York District shall conduct data recovery on archaeological sites following agreement on the perspective data recovery and treatment plans between the New York District and the SHPO when the archaeological sites are eligible for National Register inclusion under additional Criteria than Criterion D (for the information which they contain) or when the full informational value of the site cannot be substantially preserved through the conduct of appropriate research to professional standards and guidelines. To the maximum extent feasible, data recovery and treatment plans shall be developed to take into account and mitigate for the fullest range of archaeological site values and significance. Prior to construction, the New York District shall develop a data recovery plan for archaeological sites eligible under Criterion D and others. The New York District shall submit the plans to the SHPO for review and approval.
5. A blast plan will be developed in coordination with the appropriate SHPO in areas where blasting is proposed. This plan will include provisions to limit vibrations experienced at historic properties resulting from any proposed blasting and will include a pre-blast and post-blast monitoring plan.

IV. UNANTICIPATED DISCOVERY

A. If previously unidentified and unanticipated properties are discovered during Study implementation, the New York District shall cease all work in the vicinity of the discovered historic property until it can be evaluated pursuant to the guidelines in Stipulation I of this MOA. If the property is determined to be eligible, the New York District shall consult with the SHPO to develop a treatment plan or SMA in accordance with Stipulations II and III of this MOA.

B. The New York District shall implement the treatment or SMA once approved by the SHPO.

V. COORDINATION OF REVIEWS FOR STUDY ACTIVITIES

A. All plans, documents, reports, and materials shall be submitted by the New York District (or its representative) to the appropriate SHPO(s) by certified mail, for a 30 day review period unless otherwise stipulated in this MOA. If the SHPO(s) fails to comment within the specified time, the New York District must request the Council's comments unless the MOA provides for the New York District to assume the SHPO's concurrence when the 30-day review period has elapsed.

B. When interested parties are participating in the review of activities or actions outlined in this MOA the New York District shall ensure that all interested parties are provided documentation at the time it is forwarded to the SHPO and afforded a 30 day review period. As appropriate, the New York District shall submit the comments of interested parties to the SHPO to facilitate further consultation.

C. If after consulting with the SHPO and interested parties for a period of 90 days on any action or activity provided for in this MOA, the New York District or SHPO concludes there is no progress in developing treatment/mitigation plans or other documents required by this MOA, the New York District or SHPO may notify the Council and request the Council's involvement to expedite completion of the consultation process.

D. The New York District shall ensure that all submissions to the SHPO, interested parties, and the Council include all relevant information to facilitate their review. The New York District shall provide all additional information requested by SHPO, interested parties, or Council within a timely manner unless the signatories to this MOA agree otherwise.

E. The New York District shall ensure that all draft and final reports resulting from actions pursuant to the Stipulations of this MOA will be provided to the SHPO, and upon request, to other interested parties and will identify the Principal Investigator responsible for the report. All reports will be responsive to contemporary standards, and as appropriate to the Department of the Interior's Format Standards for Final Reports of Data Recovery Programs (42 FR 5377-79) and HPO report standards. Precise locational data may be provided only in a separate appendix if it appears that its release could jeopardize archaeological sites consistent with National Register Bulletin Number 29, Guidelines for Restricting Information about Historic and Prehistoric Resources.

G. If the District proposes revisions or addenda to SHPO approved treatment/ mitigation plans or other documents, the New York District and SHPO shall consult to determine whether additional conditions or mitigation measures are appropriate.

H. The New York District shall certify in writing that all requirements for identification and evaluation, and the implementation of treatment/mitigation plans have been satisfactorily completed prior to the initiation of construction activities for a specified portion of the navigation improvements recommended in the Study. The New York District shall submit a copy of this certification to the SHPO by certified mail. The

SHPO shall have 30 days to object to the certification based on the SHPO's finding of incomplete compliance or inadequate compliance with the terms of this MOA. If the SHPO does not object, the District may proceed with construction for the specified segment of the Study.

VI. DISPUTE RESOLUTION

A. The SHPO shall have 30 days to object to determinations, evaluations, plans, and documents submitted by the New York District. The New York District and SHPO shall attempt to resolve any disagreement arising from implementation of this MOA. If there is a determination that the disagreement cannot be resolved, the New York District shall request the Council's recommendations or request the comments of the Council in accordance with 36 CFR Part 800.6(b).

B. Any Council recommendations or comments provided in response will be considered in accordance with 36 CFR Part 800.6(c)(2), with reference only to the subject of the dispute. The New York District shall respond to Council recommendations or comments indicating how the New York District has taken the Council's recommendations or comments into account and complied with same prior to proceeding with Study activities that are subject to dispute. Responsibility to carry out all other actions under this MOA that are not the subject of the dispute will remain unchanged.

VII. PUBLIC INVOLVEMENT

A. In consultation with the SHPO, the New York District shall develop a plan to inform the interested public of the existence of this Agreement, and the New York District plan for meeting the terms of this MOA. Copies of this Agreement and relevant documentation prepared pursuant to the terms of this MOA shall be made available for public inspection (information regarding the locations of archaeological sites will be withheld in accordance with the Freedom of Information Act and National Register Bulletin 29, if it appears that this information could jeopardize archaeological sites). Any comments received from the public under this Agreement shall be taken into account by the New York District.

B. Public Objections. The New York District shall review and resolve timely substantive public objections. Public objections shall be considered timely when they are provided within the review periods specified in Appendix 4 of this MOA public participation plan specified. The New York District shall consult with the SHPO, and as appropriate with the Council, to resolve objections. Study actions which are not the subject of the objection may proceed while the consultation is conducted.

VIII. MONITORING

A. Upon execution of the Project Cooperation Agreement, the New York District shall prepare annual reports summarizing the status of compliance with the terms of this MOA and a summary of the completed activities and the exempt activities for the past year and

proposed activities for the next fiscal year to the SHPO, Council, and interested parties by the New York District. Reports shall be submitted by January 31 of every year. The Annual Reports shall be provided to Council, SHPO, and interested parties until the Study-related activities are complete.

B. The Council and the SHPO may request a site visit to follow up information in the annual Report or to monitor activities carried out pursuant to this MOA. The Council and the SHPO shall provide the New York District with 30 days written notice when requesting a site visit unless otherwise agreed. The New York District may also schedule a site visit with the SHPO and the Council at its discretion.

IX. AMENDMENTS

Any signatory to this MOA may request that it be amended, whereupon all the parties will consult in accordance with 36 CFR Part 800.6(b)(7) to consider such amendment.

X. TERMINATION

Any signatory to this MOA may terminate it by providing thirty days notice to the other parties, provided that the parties will consult during the period prior to termination by certified mail to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the New York District will comply with 36 CFR Parts 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

XI. SUNSET CLAUSE.

This MOA will continue in full force and effect until the construction of the Study is complete and all terms of this MOA are met, unless the Study is terminated or authorization is rescinded.

Execution and implementation of this MOA evidences that the New York District has satisfied its Section 106 responsibilities for all individual undertakings of the Study, and that the New York District has afforded the Council and the SHPO an opportunity to comment on the undertaking and its effects on historic properties.

NEW JERSEY STATE HISTORIC PRESERVATION OFFICE

By: Dorothy P. Guzzo Date: 3/8/00
Dorothy P. Guzzo, Deputy State Historic Preservation Officer

NEW YORK STATE HISTORIC PRESERVATION OFFICE

By: W. Aldrich Date: 12 April '00
Wint Aldrich, Deputy Commissioner for Historic Preservation

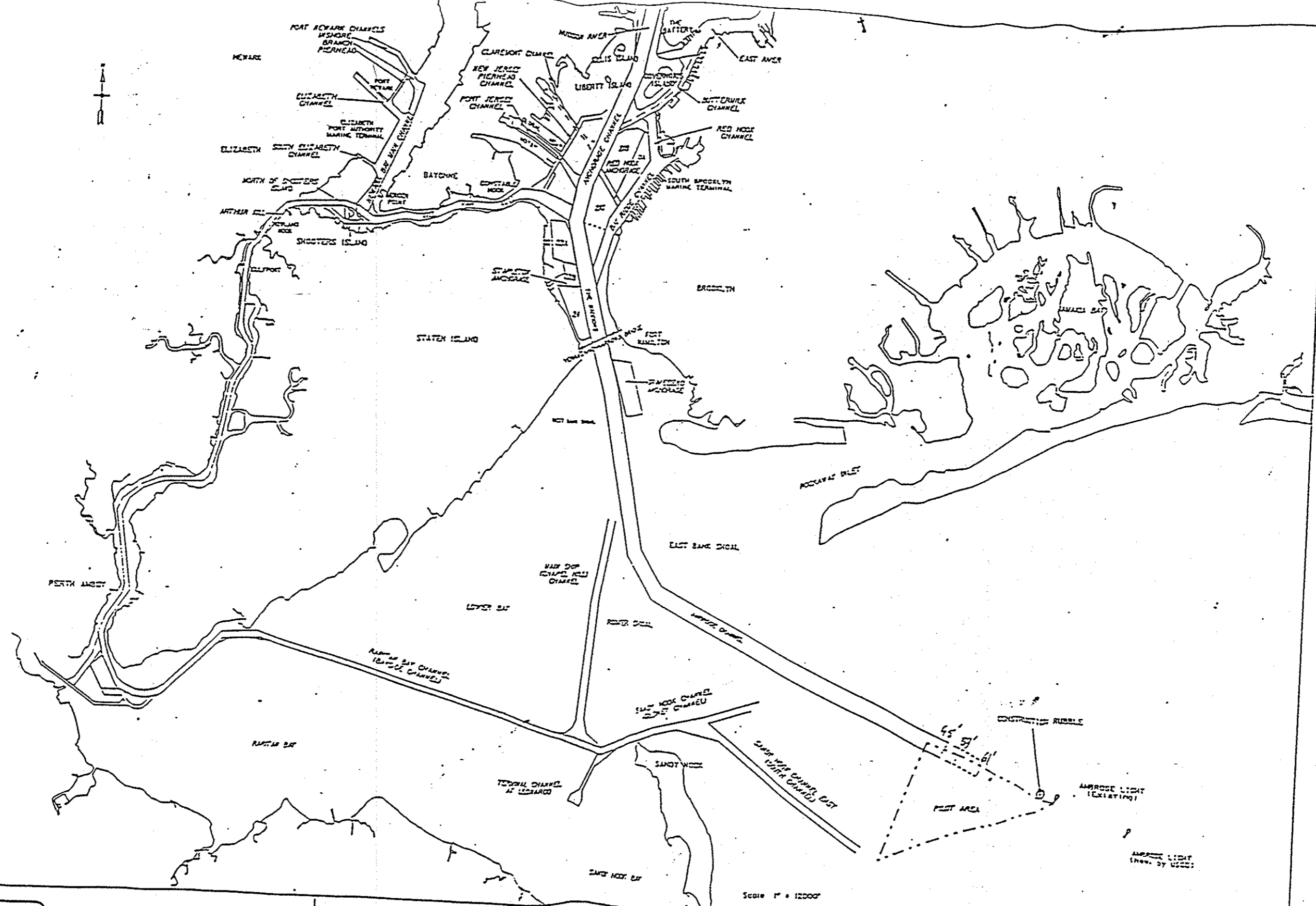
U.S. ARMY CORPS OF ENGINEERS

By: William H. Pearce Date: 4 Feb 00
William H. Pearce
Colonel, Corps of Engineers
District Engineer

Appendix 1. Area of Potential Effect

Appendix 2. Public Coordination for the Harbor Navigation Study

Appendix 3. Abandoned Shipwreck Act of 1987



U. S. ARMY ENGINEER DISTRICT
CORPS OF ENGINEERS
NEW YORK, NEW YORK

NEW YORK AND NEW JERSEY HARBOR
NAVIGATION STUDY
CHANNEL DESIGN APPENDIX

FIGURE 1
EXISTING NAVIGATION CHANNELS
NEW YORK HARBOR

APPENDIX 2
Public Coordination for the Harbor Navigation Study

A series of public meetings were held in May and June of 1998 which provided a forum for public discussion of cultural resources. Poster boards explaining various facets of the Harbor Navigation Project and the National Environmental Policy Act (NEPA) review process were on display. A poster board which discussed the potential for prehistoric and historic cultural resources and the Section 106 process was included at each session. The USACE project archaeologist was available to discuss any issues or answer any questions from the public.

Letters were sent in October 1998 to over 20 state and local historical, maritime and archaeological societies and museums as well as municipal historical commissions notifying them of the Harbor Navigation Project. Seven organizations responded and indicated their interest in being included in the Section 106 process as interested parties. Letters were later sent as part of a NEPA required mailing to notify the interested parties of the availability of the Draft EIS. Further coordination with the interested parties will be undertaken as the project proceeds.

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Union County Office of Cultural & Heritage Affairs
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Elizabeth, New Jersey 07202

Paul Kuchynskas
445 State Street
Brooklyn, N.Y. 11217

Friends of Liberty State Park
c/o Sam Pesin, President
P.O. Box 3407
New Jersey City, New Jersey 07303-3407

New Jersey Marine Educator Association
c/o Warren Marcioni, President
35 Brookside Drive
Caldwell, New Jersey 07006

Twin Lights Historical Society
c/o Richard Scheuing
Lighthouse Road
Highlands, New Jersey 07732

New Jersey Coastal Heritage Trail
c/o Janet Wolf, Project Director
P.O. Box 568
Newport, New Jersey 08345

Director
Preservation New Jersey
The Proprietary House
149 Kearny Avenue, 2nd Floor
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Cultural programs, historic preservation, environment, protection 42 USC 2104

Public Law 100-298 100th Congress

An Act

To establish the title of States in certain abandoned shipwrecks, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Abandoned Shipwreck Act of 1987".

SEC. 2. FINDINGS.

The Congress finds that-- (a) States have the responsibility for management of a broad range of living and nonliving resources in State waters and submerged lands; and (b) included in the range of resources are certain abandoned shipwrecks, which have been deserted and to which the owner has relinquished ownership rights with no retention.

SEC. 3. DEFINITIONS.

For purposes of this Act-- (a) the term "embedded" means firmly affixed in the submerged lands or in coralline formations such that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof; (b) the term "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the National Historic Preservation Act (16 U.S.C. 470aa); (c) the terms "public lands", "Indian lands", and "Indian tribe" have the same meaning given the terms in the Archaeological Resource Protection Act of 1979 (16 U.S.C. 470aa-470bb); (d) the term "shipwreck" means a vessel or wreck, its cargo, and other contents; (e) the term "State" means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and (f) the term "submerged lands" means the lands-- (1) that are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301); (2) of Puerto Rico, as described in section 3 of the Act of March 2, 1917, as amended (48 U.S.C. 1495); (3) of Guam, the Virgin Islands and American Samoa, as described in section 1 of Public Law 93-135 (43 U.S.C. 1705); and (4) of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Public Law 94-241 (46 U.S.C. 1681).

SEC. 4. RIGHTS OF ACCESS.

(a) ACCESS RIGHTS.—In order to-- (1) clarify that State waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups, as well as irreplaceable State resources for tourism, biological sanctuaries, and historical research; and (2) provide that reasonable access by the public to such abandoned shipwrecks be permitted by the State holding title to such shipwrecks pursuant to section 6 of this Act, it is the declared policy of the Congress that States carry out their responsibilities under this Act to develop appropriate and consistent policies as to-- (A) protect natural resources and habitat areas; (B) guarantee recreational exploration of shipwreck sites; and (C) allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites.

(b) PARKS AND PROTECTION AREAS.—In managing the resources

subject to the provisions of this Act, States are encouraged to create underwater parks or areas to provide additional protection for such resources. Funds available to States from grants from the Historic Preservation Fund shall be available, in accordance with the provisions of title 1 of the National Historic Preservation Act, for the study, interpretation, protection, and preservation of historic shipwrecks and properties.

SEC. 5. PREPARATION OF GUIDELINES.

(a) In order to encourage the development of underwater parks and the administrative cooperation necessary for the comprehensive management of underwater resources related to historic shipwrecks, the Secretary of the Interior, acting through the Director of the National Park Service, shall within nine months after the date of enactment of this Act prepare and publish guidelines in the Federal Register which shall seek to-- (1) maximize the enhancement of cultural resources; (2) foster a partnership among sport divers, fishermen, archeologists, salvors, and other interests to manage shipwreck resources of the States and the United States; (3) facilitate access and utilization by recreational interests; (4) recognize the interests of individuals and groups engaged in shipwreck discovery and salvage.

(b) Such guidelines shall be developed after consultation with appropriate public and private sector interests (including the Secretary of Commerce, the Advisory Council on Historic Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archeologists, historic preservationists, and fishermen). (c) Such guidelines shall be available to assist States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under this Act.

SEC. 6. RIGHTS OF OWNERSHIP.

(a) UNITED STATES TITLE.—The United States asserts title to any abandoned shipwreck that is-- (1) embedded in submerged lands of a State; (2) embedded in coralline formations protected by a State on submerged lands of a State; or

Apr. 28, 1988 [S. 858]

Abandoned Shipwreck Act of 1987. Maritime Affairs. 43 USC 2101 43 USC 2101.

43 USC 2102.

43 USC 2101 National park monuments. Federal Register. Publication.

43 USC 2105.

(c) on submerged lands of a State and is included in or determined eligible for inclusion in the National Register.

(b) The public shall be given adequate notice of the location of any shipwreck to which title is asserted under this section. The Secretary of the Interior, after consultation with the appropriate State Historic Preservation Officer, shall make a written determination that an abandoned shipwreck meets the criteria for eligibility for inclusion in the National Register of Historic Places under clause (a)(2).

(c) TRANSFER OF TITLE TO STATES.—The title of the United States to any abandoned shipwreck asserted under subsection (a) of this section is transferred to the State in or on whose submerged lands the shipwreck is located.

(d) EXEMPTION.—Any abandoned shipwreck in or on the public lands of the United States is the property of the United States Government. Any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands.

(e) RESERVATION OF RIGHTS.—This section does not affect any right reserved by the United States or by any State (including any right reserved with respect to Indian lands) under—

- (1) section 3, 5, or 6 of the Submerged Lands Act (43 U.S.C. 1311, 1313, and 1314); or
- (2) section 19 or 20 of the Act of March 3, 1899 (33 U.S.C. 414 and 415).

SEC. 4. UNLAWFULNESS TO OTHER LAWS.

(a) LAW OF SALVAGE AND THE LAW OF FINDS.—The law of salvage and the law of finds shall not apply to abandoned shipwrecks to which section 6 of this Act applies.

(b) LAWS OF THE UNITED STATES.—This Act shall not change the laws of the United States relating to shipwrecks, other than those to which this Act applies.

(c) EFFECTIVE DATE.—This Act shall not affect any legal process brought prior to the date of enactment of this Act.

Approved April 23, 1988.