

Okeanos Explorer Operations

Maritime Archaeology Background Information

The mission of NOAA's Office of Ocean Exploration and Research (OER) is to explore the world's largely unknown oceans for the purpose of discovery and advancement of knowledge through innovative explorations, development of advanced undersea technology, undersea research, and outreach/education. OER's Marine Archaeology Program activities support the initial phases of exploration, discovery, and site characterization of underwater cultural heritage (UCH), - referring to traces of human existence historically and prehistorically that are totally or partially underwater - often through multidisciplinary investigations. This is done by systematically surveying, locating and evaluating sites for archaeological or historical significance, and properly documenting any information. Traditionally, these are non-disturbance activities that do not include site excavation and extensive artifact conservation.

OER accomplishes cultural resource work through the Ocean Exploration Marine Archaeology Grant Program, through partnerships (internal and external federal, state and academic - ONMS, BOEM, NPS, Navy, URI), and more recently through NOAA's ship of exploration the *Okeanos Explorer*. The National Undersea Research Program managed by OER also plays a part in the activities, past and present, through some of the National Undersea Research Centers and Cooperative Institute; HURL, UNCW, CIOERT, UCONN, NIUST.

OER supports the standards for conducting marine archaeological activities enumerated in the Annex Rules of the [UNESCO Convention on the Protection of the Underwater Cultural Heritage \(UCH\)](#). While OER and OER-supported exploration activities have no potential to directly cause impacts to UCH, project data and information may contain site location information that could lead to adverse impacts. The primary concern with UCH is potential harm that may be inflicted on the resource by revealing its location. Information about UCH obtained from OER-supported projects will be used to: identify the resources; determine origin where possible; evaluate sites for their archaeological or historical significance; work with federal, state and foreign governments to determine whether such sites merit protection under pertinent state, national or international legislation, treaties, or executive orders; or identify whether additional information is required to make such determinations.

NOAA adheres to the policies of the Federal Archaeology Program and has responsibility under Federal law to preserve and protect historically significant, or potentially significant, cultural resources. The agency must take into account the effects its activities have on cultural

resources to prevent harm from actions it permits. Information relating to the location or character of cultural resources encountered by our operations must be kept strictly confidential, and the location of these sites should not be disclosed to any third party. Information already available in the public domain (e.g. websites) can be shared.

Project Planning

A goal of pre-cruise planning is to provide an opportunity to talk with agencies that have a legal or management interest in potential UCH in the survey area. Potential risks to cultural resources should be weighed and a decision made as to whether or not sites with potential historical or cultural significance should have information about their location restricted from public release. This decision will be made by the lead archaeologist for the cruise or by OER's Marine Archaeologist in coordination with other agencies as necessary. Agencies that may be consulted include NOAA ONMS Maritime Heritage Program, U.S. Navy History and Heritage Command, Bureau of Ocean Energy Management (BOEM), State Historic Preservation Officers, and others. While planning expeditions in any foreign country the host government should be made aware of the potential to discover UCH. Included below are five (but not all) agencies and entities with legal responsibilities for UCH:

1. State Historic Preservation Officer for UCH within state waters
2. Office of National Marine Sanctuaries for UCH within a National Marine Sanctuary
3. National Park Service for UCH within National Parks
4. Branches of the U. S. Department of Defense for sunken military craft (primarily naval aircraft and vessels)
5. Bureau of Ocean Energy Management enforces historic preservation law for energy and mineral development on the Outer Continental Shelf
6. Foreign countries for sovereign state vessels

PIs supported by grants or NOAA Ship Okeanos Explorer Expedition Coordinators are responsible for obtaining all necessary state, federal and international permits and approvals where necessary for the proposed work to be conducted. Projects involving UCH in a foreign country should involve an agency from the foreign country either directly or through oversight.

The OER data management team should carry out a consultation process with the agencies and entities with legal responsibilities for UCH, in collaboration with the OER marine archaeologist, as part of the data management protocols when a UCH mission occurs in any of these areas of

responsibility. The expedition coordinator is responsible for the overall execution of the data management plan.

Relevant NOAA Operating Procedures

NOAA's Office of Coast Survey (OCS) is another field operations branch within NOAA with responsibilities under section 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. 470 et seq.) to take into account the effects of its undertakings on historic properties. OCS has established procedures laid out in its [2014 Field Procedures Manual](#) pertaining to the planning, collection, and disclosure of historic, or potentially historic underwater cultural heritage (UCH). Special consideration is given to all features which appear to be of cultural or historical significance, and appear anthropogenic in origin, during the hydrographic surveying process. All newly discovered uncharted shipwrecks are treated as significant and vulnerable historic resources. Data and information from these features are always protected and are only released in accordance with OCS policies and procedures, which include consultation with the designated local, state or federal management authorities. Specific information received during the consult period prior to, or after the survey, may prevent the public release of all or part of the survey data and products, following review.

Pertinent Legislation and Executive Orders

UNITED STATES WATERS

As a federal agency, NOAA adheres to the Federal Archaeology Program (FAP). The program encompasses the archaeological activities of federal agencies as well as archaeological activities that are federally financed, licensed or permitted. FAP is guided by a collection of legislation, regulations and executive orders. Some but not all of the most relevant legislation is summarized below. Appendix A lists the National Register Criteria for determining the historical significance of prehistoric and historic sites. Cruise planning procedures include identifying and working with the State Historic Preservation Officer (SHPO) or relevant Historic/Archaeology contact at NOAA's Office of National Marine Sanctuaries (NMS) to request information on historical or potentially historic man-made features located within the survey area.

National Historic Preservation Act of 1966 as Amended (16 U.S.C. 470 et seq.)

*See appendix A

Section 1: The Congress finds and declares that –

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and the individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Section 2: It shall be the policy of the Federal government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to –

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

(4) contribute to the preservation of non-federally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;

(6) assist State and local governments, Indian tribes and Native Hawaiian organizations and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Section 106: The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking (see definition below) in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register.

Section 110:

(a)(1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency.

(a)(2) Each Federal agency shall establish ..., in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure –

(A) that historic properties under the jurisdiction or control of the agency, are identified, evaluated, and nominated to the National Register;

(C) that the preservation of properties not under the jurisdiction or control of the agency, but subject to be potentially affected by agency actions are given full consideration in planning;

(E) that the agency's procedures for compliance with section 106 of this Act –

(ii) provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered.

Title III, General and Miscellaneous

Section 301: As used in this Act, the term –

(7) “**Undertaking**” means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including –

- (A) those carried out by or on behalf of the agency;
- (B) those carried out with Federal financial assistance;
- (C) those requiring a Federal permit license, or approval; and
- (D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

(8) “**Preservation**” or “**historic preservation**” includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities, or any combination of the foregoing activities.

Section 304:

(a) The head of a Federal agency or other public official receiving grant assistance pursuant to this Act, after consultation with the Secretary, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary and the agency determine that disclosure may –

- (1) cause a significant invasion of privacy;
- (2) risk harm to the historic resources; or
- (3) impede the use of a traditional religious site by practitioners.

(b) When the head of a Federal agency or other public official has determined that the information should be withheld from the public pursuant to subsection (a) of this section, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this Act.

(c) When the information in question has been developed in the course of an agency's compliance with section 106 or 110(f) of this Act, the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b) of this section.

Archaeological Resource Protection Act of 1979 (16 U.S.C. 470aa-mm)

Section 2:

(a) The Congress finds that –

- (1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;
- (2) these resources are increasingly endangered because of their commercial attractiveness;
- (3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and
- (4) there is a wealth of archaeological information which has been legally obtained by private individuals for non-commercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before October 31, 1979 [the date of the enactment of this Act].

Section 3: As used in this Act –

(1) The term “**archaeological resource**” means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

(2) The term “**Federal land manager**” means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior.

(3) The term “**public lands**” means –

(A) Lands which are owned and administered by the United States as part of –

(i) The national park system,

(ii) The national wildlife refuge system, or

(iii) The national forest system; and

(B) All other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution.

Section 9:

(a) Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 [of the United States Code] or under any other provision of law unless the Federal land manager concerned determines that such disclosure would–

(1) further the purposes of this Act or the Act of June 27, 1960 [the Reservoir Salvage Act, as amended, 16 U.S.C. 469-469c-1] and

(2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Notwithstanding the provisions of subsection (a) of this section, upon the written request of the Governor of any State, which request shall state –

(3) the specific site or area for which information is sought,

(4) the purpose for which such information is sought,

(5) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation, the Federal land manager concerned shall provide to the governor information concerning the nature and location of archaeological resources within the State of the requesting Governor.

National Marine Sanctuary Act

(a) Findings - The Congress finds that -

(1) this Nation historically has recognized the importance of protecting special areas of its public domain, but these efforts have been directed almost exclusively to land areas above the high-water mark; certain areas of the marine environment possess conservation, recreational, ecological, historical, scientific, educational, cultural, archeological, or esthetic qualities which give them special national, and in some cases international, significance;

(2) while the need to control the effects of particular activities has led to enactment of resource-specific legislation, these laws cannot in all cases provide a coordinated and comprehensive approach to the conservation and management of special areas of the marine environment; and

(3) a Federal program which establishes areas of the marine environment which have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities as national marine sanctuaries managed as the National Marine Sanctuary System will

(A) improve the conservation, understanding, management, and wise and sustainable use of marine resources;

(B) enhance public awareness, understanding, and appreciation of the marine environment; and

(C) maintain for future generations the habitat, and ecological services, of the natural assemblage of living resources that inhabit these areas.

(b) Purposes and policies - The purposes and policies of this chapter are -

(1) to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance and to manage these areas as the National Marine Sanctuary System;

(2) to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;

(3) to maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes;

(4) to enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archeological resources of the National Marine Sanctuary System;

(5) to support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas;

(6) to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;

(7) to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;

(8) to create models of, and incentives for, ways to conserve and manage these areas, including the application of innovative management techniques; and

(9) to cooperate with global programs encouraging conservation of marine resources.

(c) Establishment of system - There is established the National Marine Sanctuary System, which shall consist of national marine sanctuaries designated by the Secretary in accordance with this chapter.

Marine Protected Areas Executive Order (E.O. 13158)

The Marine Protected Areas (MPA) Executive Order (E.O. 13158) was created to help protect the significant natural and cultural resources within the marine environment for the benefit of present and future generations by strengthening and expanding the Nation's system of MPAs. Under E.O. 13158, the MPA Center is charged (Sec. 4(d)) to carry out, in cooperation with the Department of the Interior, the requirements of subsection 4(a) of this order. Section 4(a) directs the Department of Commerce and the Department of the Interior, in consultation with pertinent Federal agencies to develop a national system of MPAs. In addition, they shall coordinate and share information, tools, and strategies, and provide guidance to enable and encourage the use of the following in the exercise of each agency's respective authorities to further enhance and expand protection of existing MPAs and to establish or recommend new MPAs as appropriate, including:

- (1) science-based identification and prioritization of natural and cultural resources for additional protection;
- (4) an assessment of threats and gaps in levels of protection currently afforded to natural and cultural resources, as appropriate;
- (5) practical, science-based criteria and protocols for monitoring and evaluating the effectiveness of MPAs;
- (6) identification of emerging threats and user conflicts affecting MPAs and appropriate, practical, and equitable management solutions, including effective enforcement strategies, to eliminate or reduce such threats and conflicts.

The MPA Executive Order also specifically states that the E.O. is in furtherance of the purposes of the National Marine Sanctuaries Act, National Wildlife Refuge System Administration Act of 1966, National Park Service Organic Act, the National Historic Preservation Act, and many other laws.

Sunken Military Craft Act (H.R. 4200, Title XIV)

The purpose of the [Sunken Military Craft Act](#) is to provide protection to U.S. sunken military craft from disturbance wherever they are located. Any activities that disturb a military craft require a permit from the relevant branch. By their nature, maritime archaeology activities of the Okeanos Explorer Program are designed to document cultural resources through imaging without touching or impacting sites. These activities do not cause disturbance and are not

restricted in any way by the Act. The statute provides the following (From the Navy Historical Center website):

- Protection of sunken U.S. military ship and aircraft wherever located.
- Protection for the graves of lost military personnel.
- Protection of sensitive archaeological artifacts and historical information
- Codifies existing case law, which supports Federal ownership of sunken U.S. military ship and aircraft wrecks.
- Provides a mechanism for permitting and civil enforcement to prevent unauthorized disturbance.
- Encourages the Secretary of State, in consultation with the Secretary of Defense, to enter into bilateral and multilateral agreements with foreign countries for the protection of sunken military craft.
- Does not affect salvage of commercial merchant shipwrecks, or recreational diving.
- Does not impact commercial fishing, or the laying of submarine cables.
- Does not relate to the routine operation of ships.

National Environmental Policy Act

Sec. 101 [42 USC § 4331]

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential

considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may

4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

Appendix A:

National Register of Historic Places, Criteria for Evaluation

Criteria for Evaluation

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- a. That are associated with events that have made a significant contribution to the broad patterns of our history; or
- b. That are associated with the lives of significant persons in or past; or
- c. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- d. That have yielded or may be likely to yield, information important in history or prehistory.

Criteria Considerations

Ordinarily cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

- a. A religious property deriving primary significance from architectural or artistic distinction or historical importance; or
- b. A building or structure removed from its original location but which is primarily significant for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

- c. A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building associated with his or her productive life; or
- d. A cemetery that derives its primary importance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or
- e. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or
- f. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or
- g. A property achieving significance within the past 50 years if it is of exceptional importance.