

## CHAPTER 23

### HISTORIC AND ARCHEOLOGICAL RESOURCES PROTECTION

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#### 23-1 Scope

**23-1.1 General.** This chapter states Navy policy regarding the protection of historic and archeological resources and establishes Navy responsibilities under pertinent legislation. It conforms with reference (a), which provides policy and assigns responsibilities for the management of historic and archeological resources under DON control.

**23-1.2 Applicability.** Historic and archeological resources protection requirements apply to all properties under the control of the Navy by ownership, lease, or similar instrument that are located in the United States, the District of Columbia, and the commonwealths, territories and possessions of the U.S. (reference (b)). Waters contiguous to land areas may contain archeological resources and historic Navy properties or may be significant due to a historic event; therefore, this instruction applies to land and water areas under direct control of the Navy and to submerged historic properties owned by the Navy. Activities in foreign countries shall manage their historic and archeological resources per Chapter 18.

**23-1.3 References.** Relevant references are:

- a. SECNAVINST 4000.35, Department of the Navy Cultural Resources Program; (NOTAL);
- b. 36 CFR 800, Protection of Historic and Cultural Properties;
- c. 32 CFR 229, Protection of Archeological Resources: Uniform Regulations;
- d. 53 Federal Register 4742, Guidelines for Federal Agency Responsibilities under section 110 of the National Historic Preservation Act;

e. 43 CFR 10, Native American Graves Protection and Repatriations Act Regulations;

f. 36 CFR 79, Curation of Federally-owned and Administered Archeological Collections;

g. DOD Instruction 4715.3 of 3 May 1996, Environmental Conservation Program (NOTAL).

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#### 23-2 Legislation

**23-2.1 American Indian Religious Freedom Act (AIRFA).** Requires Federal agencies to consult with native traditional religious leaders and to consider, but not necessarily defer to, Native American religious values. Agencies should permit access to religious sites, when possible.

**23-2.2 Antiquities Act of 1906.** Requires the issuance of permits for study, removal, or excavation of any ruins, sites, structures, or objects of historical or scientific interest.

**23-2.3 Archeological Resources Protection Act (ARPA).** Requires the issuance of permits for authorized professional excavation or removal of archeological resources. ARPA also imposes civil and criminal penalties for unauthorized excavation, removal, damage, alteration, or defacement of archeological resources or attempts to perform such unauthorized acts. Additional requirements include scheduling Phase 1 archeological surveys on 100 percent of Class I property to identify resources and scheduling phase 2 investigations of resources with most scientific value. ARPA also requires Federal agencies to create public awareness programs promoting resource protection. See reference (c).

**23-2.4 National Historic Preservation Act (NHPA).** Requires an expanded National Register of Historic Places (National Register) and estab-

lishes the Advisory Council on Historic Preservation (Advisory Council). Additionally, requires each Federal agency to designate a qualified Federal Preservation Officer who will coordinate that agency's activities under this Act. Section 106 of the Act requires Federal agencies to allow the Advisory Council an opportunity to comment whenever their undertakings may affect National Register resources or resources that are eligible for listing on the National Register. See reference (b). Section 110 of the Act requires Federal agencies to identify, evaluate, inventory, and protect National Register resources (or resources that are eligible for listing on the National Register) on properties that they control. NHPA imposes no absolute preservation requirement, as long as the Navy follows and documents mandated procedures for any Navy decision not to preserve. See reference (d).

**23-2.4.1 The National Register of Historic Places.** NHPA authorizes the Secretary of the Interior to maintain a National Register that lists sites, districts, buildings, structures, and objects of significance in American history, architecture, archeology, engineering, and culture. National Register resources may be of local, State, or national significance. Each Federal agency is authorized to include preservation costs of National Register resources as eligible project costs for all undertakings.

**23-2.5 Native American Graves Protection and Repatriation Act (NAGPRA).** Requires each Federal agency to summarize and inventory Native American human remains, funerary objects, sacred objects, and cultural items in their collections; to identify relationships of these objects with descendant Native Americans; and to

negotiate their repatriation in consultation with related, Federally recognized, culturally affiliated Indian tribes. Section 3 requires notification and consultation with descendant Native Americans regarding disposition of threatened archeological sites containing NAGPRA objects. See reference (e).

## **23-3 Terms and Definitions**

**23-3.1 Advisory Council on Historic Preservation.** An independent Federal agency charged with advising the President, Congress, and Federal agencies regarding historic and archeological resources protection.

**23-3.2 Archeological Resources.** Material remains of past human life that are capable of contributing to scientific or humanistic understanding of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques.

**23-3.3 Archeological Survey.** Phase 1 surveys (A) are characterized by intensive pedestrian surface inspection augmented by subsurface shovel testing in areas with high probability for intact archeological deposits. Phase 1 surveys include archeological testing sufficient to determine eligibility for inclusion on the National Register.

**23-3.4 Architectural Survey.** A survey to determine which real properties, sites, buildings, structures, works of engineering, industrial facilities, fortifications, and landscapes, are eligible for the National Register of Historic Places. (A)

**23-3.5 Cultural Resources.** A generic term commonly used to include buildings, structures, districts, archeological sites, historic landscapes, Traditional Cultural Places, Indian sacred sites, and objects of significance in history, architecture, archeology, engineering or culture. The term also includes associated documents and records.

**23-3.6 Cultural Resources Coordinator.** A staff person without the professional qualifications of a cultural resources professional who performs routine cultural resources compliance functions (often as a collateral duty), and contracts out for professional expertise as needed for specific projects.

**23-3.7 Cultural Resources Professional.** A qualified anthropologist, archeologist, architectural historian, historic architect, historian, or preservation planner with specialized training/experience in Federal preservation legislation compliance.

**23-3.8 Indian Tribe.** Any Tribe, band, nation, or other organized group or community, including any Alaska native village that is recognized by the Bureau of Indian Affairs as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**23-3.9 Memorandum of Agreement (MOA).** Written product of Section 106 consultation, signed by the Navy, the State Historic Preservation Officer (SHPO) and the Advisory Council that resolves incompatibilities between a Navy undertaking and preservation requirements by stipulating measures to reduce adverse effects or accepts adverse effects as being unavoidable and in the public interest.

**23-3.10 National Historic Landmark.** A National Register resource designated by the Secretary of the Interior as having exceptional significance in the nation's history and which is subject to the most stringent preservation requirements.

**23-3.11 National Register Resource.** Broad concept that includes all resources that meet National Register significance criteria, even if the resources have not been formally registered, identified or acknowledged as significant. Current Federal regulations use the term "historic property" as a synonym for National Register resource. Regulations set the criteria for definition of a historic property. Consider structures 50 years old or more as potentially eligible for listing on the National Register.

**23-3.12 Native American.** An Indian, Native Hawaiian, or Native Pacific Islander.

**23-3.13 Native Hawaiian.** Any descendant of the aboriginal people who, prior to 1778, occupied

and exercised sovereignty in the area that now constitutes the State of Hawaii.

**23-3.14 Overview.** Literature search and surface inspection, including inspection of erosion cuts, performed by a cultural resources professional, to determine the likelihood that any National Register resources may be present.

**23-3.15 Programmatic Agreement.** Written agreement among the Navy, the SHPO, and the Advisory Council that streamlines Section 106 consultation requirements and stipulates how an entire program or class of undertakings repetitive in nature or similar in effect will be carried out so as to avoid or mitigate adverse effects.

**23-3.16 Recordation.** Measured drawings, photographs and other techniques permanently recording National Register resources that must be destroyed or substantially altered. Recordation must meet the standards of the Historic American Buildings Survey/Historic American Engineering Record (HABS/HAER), as administered by the appropriate regional office of the National Park Service.

**23-3.17 Significance or Significant.** Those attributes or characteristics of a resource that make it valuable, usually determined by National Register eligibility criteria.

**23-3.18 (SHPO).** Official appointed by the governor of each State and territory, responsible for administering cultural resources programs within a given jurisdiction.

**23-3.19 Undertaking.** Any Federal, Federally assisted, or Federally licensed action, activity, or program, new or continuing, that may affect National Register resources and therefore triggers Section 106 consultation responsibilities.

## **23-4 Requirements**

### **23-4.1 Advisory Council Process; NHPA Section 106**

**23-4.1.1 General.** Prior to the approval of the expenditure of any Federal funds for an undertaking that may affect a National Register resource, the agency will initiate interagency consultation procedures by contacting the SHPO, explaining the undertaking, its area of potential effect, and a preliminary determination on whether or not National Register Resources will be affected. The possible outcomes are: No Effect, Adverse Effect, or No Adverse Effect.

**23-4.1.2 Determination of No Adverse Effect.** If the agency and SHPO concur that there will be an effect but it will not be adverse, the agency will send supporting documentation to the Advisory Council staff. The Advisory Council staff has 30 days in which to file an objection. If the Advisory Council staff does not object, the undertaking may proceed.

**23-4.1.3 Determination of Adverse Effect.** If the Advisory Council staff objects to a determination of no adverse effect, or if the SHPO or the agency determines that there is an adverse effect, then the agency will initiate formal consultation to consider alternatives. An MOA may be negotiated that allows the undertaking to proceed after specified mitigation actions are implemented.

**23-4.1.4 Failure to Agree.** In case of a failure to agree on conditions for accepting or mitigating the adverse effect, after all other procedures specified in current regulations have been followed and documented, the agency will afford the full Advisory Council an opportunity to comment. After taking the Advisory Council's comments into consideration, the Secretary of the Navy may formally notify the Advisory Council that the undertaking will proceed, in the public interest, without agreement having been reached regarding alterna-

tive courses of action or mitigation measures to be taken.

### **23-4.2 Managing National Register Resources; NHPA Section 110**

**23-4.2.1 General.** Per the NHPA, each Federal agency must establish a preservation program for the identification, evaluation, nomination, and protection of National Register resources. Federal agencies shall ensure that such resources are not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly. Agencies shall manage and maintain National Register resources in a way that considers the possible preservation of their historic, archeological, architectural and cultural values, in coordination with Section 106 and other preservation legislation. Agencies shall carry out related activities in consultation with other Federal, State and local agencies, Indian tribes, Native Hawaiian organizations engaged in historic preservation planning, and the private sector. Failure to identify resources that meet National Register criteria does not exempt an agency from any legal responsibilities.

**23-4.2.2 Phased Compliance.** A cultural resources professional will survey all military land holdings to locate National Register resources. Phase 1 is a historic structures overview and archeological survey of an entire installation or complex to delineate probable areas, if any, for the existence of cultural resources. Phase 2, usually carried out as part of Section 106 compliance, consists of detailed surveys to determine National Registry eligibility of resources that might be affected by an agency undertaking. Finally, as funds become available, complete detailed National Register nomination forms in coordination with the SHPO, and nominate resources to the Keeper of the National Register (via the appropriate Navy chain of command).

**23-4.2.3 Use of Historic Structures.** Federal agencies will use available historic buildings prior

to new construction, lease, or any acquisition of a building for the purpose of carrying out its responsibilities.

### **23-4.3 National Historic Landmarks**

**23-4.3.1 General.** NHPA Section 101(a)(1)(B) provides for inclusion of National Historic Landmarks in the National Register. Section 110(f) affords landmarks more stringent protection than other National Register resources. Federal regulations outline procedures for consultation with the SHPO and the Advisory Council, and possible National Park Service (NPS) review, in order to minimize harm to landmarks from Federal agency undertakings.

**23-4.3.2 Monitoring of National Historic Landmarks.** The NPS maintains a continuing relationship with owners of National Historic Landmarks. Agencies will cooperate in periodic visits or contacts with SHPOs and other appropriate means that the NPS uses to compile its annual report to Congress on threats to the integrity of landmarks, to advise agencies concerning accepted preservation standards, and to update administrative records on landmark properties. The Department of the Interior provides an annual report to Congress on damaged or threatened National Historic Landmarks.

**23-4.3.3 Landmark Designation Actions.** Although property owners and SHPOs may nominate National Historic Landmarks, designation ordinarily occurs after a study by the NPS. Preservation is not absolutely required, as long as mandated procedures are followed and documented in any decision not to preserve.

R) **23-4.4 Archeological Permits.** Any person proposing to study, remove, and/or excavate archeological resources from public lands will request a permit under the Antiquities Act and/or ARPA. Permit requests must explicitly address and ensure professional curation of removed artifacts in accordance with 36 CFR 79 (reference (f)).

COMNAVFACENGCOM, in consultation with affected commands and preservation agencies, will issue permits for archeological work on Navy lands. In cases where the Navy contracts with an archeologist (or a Navy contractor subcontracts with an archeologist) to perform archeological work for the Navy, consider a brief compliance statement in the contract or subcontract as the equivalent of a permit. In cases where employees of the Navy perform archeology on Navy lands, satisfy legal permitting requirements by ensuring that such employees are professionally qualified archeologists (as defined by current Federal regulations).

**23-4.5 Interagency Exchange of Information.** Every Federal land manager, when requested by State and Federal preservation agencies, is to supply such information as is necessary concerning programs and projects for historic and archeological resources protection. Keep records to facilitate responses to such requests for information. Note that ARPA and NHPA mandate caution, and in some cases confidentiality, regarding cultural resources information about archeological sites.

**23-4.6 Public Exchange of Information.** ARPA and NHPA authorize public officials to withhold disclosure of information from the public regarding the location and character of a historic or archeological resource if disclosure could mean risk of potential harm to the historic resource. The Freedom of Information Act (FOIA) Exemption b(3) (NHPA 16 U.S.C. 470w-3) permits the restriction of such information. Every command that manages an inventory of cultural resources will develop an explicit policy regarding released or restricted cultural resources information and who may have access to such information.

**23-4.7 Professional Standards and Qualifications; NHPA Section 112.** Each Federal agency will ensure that all preservation actions meet professional standards in archeology, architecture, conservation, curation, history, landscape architec-

ture, and planning. Agencies will ensure that agency personnel and contractors responsible for historic and archeological resources meet professional skills and expertise qualifications established by the Secretary of the Interior and professional societies of the disciplines involved.

## **23-5 Navy Policy**

### **23-5.1 Navy Policy is:**

a. Incorporate preservation considerations into routine Navy management of historic buildings, districts, sites, ships, aircraft, and other cultural resources. The Navy shall use preservation-specific materials and techniques to achieve cost-effective cultural resources stewardship.

b. Initiate timely consultation with SHPOs, the Advisory Council on Historic Preservation, Native Americans, Native Hawaiians, other interested agencies, and the public whenever the DON conducts or supports undertakings that may affect any National Register property. The Navy retains ultimate authority over treatment and use of its National Register properties.

### **23-5.2 Recordkeeping**

**23-5.2.1 Integrated Cultural Resource Management Plan (ICRMP) Implementation.** Navy installations shall have knowledge of National Register resources located on or adjacent to Navy lands and waters. Beginning with Phase 1 surveys and updating to include information gathered in Phase 2 and later survey work of phased compliance, shore installations shall implement ICRMP plans that:

a. Identify the areas of probability for National Register resources, based on overviews and surveys performed by cultural resources professionals.

b. Contain an evaluation and inventory of all known historic and archeological resources on Navy lands and waters or resources that are eligible for listing on the National Register.

c. Recommend priorities and describe applicable legal compliance strategies that avoid potential conflicts between Navy mission and preservation mandates.

d. Prescribe specific compliance actions to be taken if Navy undertakings affect National Register resources.

#### **23-5.2.2 Development of ICRMP.** Shore installations shall: (R)

a. Develop plans in consonance with State and Federal preservation programs and other Navy planning documents and processes.

b. Secure endorsement of draft and final ICRMP endorsed by the major claimants environmental office via the chain of command.

c. After endorsement by the major claimant environmental office, secure signatures of the installation commander, SHPO and supporting engineering Field Division (EFD) on the finalized ICRMP. Department of Defense planning guidance requires completion of all plans by FY 2001, with scheduled 5-year updates.

d. Forward a copy of the finalized signed ICRMP to the major claimant environmental office and the DON Federal Preservation Officer (FPO) in the Office of the Assistant Secretary of the Navy (Installations and Environment).

### **23-5.3 Training**

Navy installations shall ensure every person preparing, implementing, supervising, and managing cultural and historic resource programs receives comprehensive cultural resources training specific to his or her job assignment as outlined in the Navy Training Plan and Chapter 24 of this instruction; and is familiar with the provisions of this chapter.

### **23-6 Responsibilities**

#### **23-6.1 Deputy Chief of Naval Operations (DCNO) (Logistics) (N4) shall:**

a. Provide guidance for cultural resources programs related to historic and archeological resources at Navy shore installations, historic ships in the inactive fleet, and cultural resources aspects of Navy environmental programs (reference (g)). As resource sponsor, the DCNO (Logistics) provides fiscal support for qualified cultural resources staffing, training, surveys, plans, and other management requirements to achieve compliance with applicable statutes, regulations, and instructions.

b. Establish a Navy-wide Historic and Archeological Resources Protection (HARP) program.

c. Designate a qualified staff person to oversee and coordinate the Navy's cultural resources programs.

d. Identify Navy-wide priorities for historic and archeological resources surveys and other stewardship actions so as to achieve compatibility with Navy missions and budgets.

e. Provide guidance on implementation of cultural resources policy and advise all levels of command regarding compliance with cultural resources legislation, regulations, and professional standards.

f. Review interagency cultural resources agreements and National Register nominations, as

recommended by subordinate commands, and prepare nominations for DON FPO signature.

g. Coordinate interagency consultation concerning cultural resources: at shore installations, in the inactive fleet, underwater, or affected by Navy programs.

h. Ensure full coordination with Marine Corps and other military services to avoid duplication of effort.

i. Coordinate response(s) to Congressional inquiries and requests for cultural resources information from Federal, State or private interests.

#### **23-6.2 COMNAVFACENGCOM shall:**

a. Act as principal advisor for the Navy in matters related to historic buildings, structures (except ships, shipwrecks, and aircraft), sites, districts, archeological sites, Traditional Cultural Properties, Indian sacred sites, and disposition of archeological collections.

b. Designate and train specific qualified staff to perform historic and archeological resources protection functions.

c. Maintain a list of the Navy's National Register resources and a record of undertakings affecting them.

d. Provide technical assistance to identify, evaluate, inventory, nominate, plan, maintain, and protect historic and archeological resources under Navy control.

e. Cooperate with SHPOs and other preservation officials in their regions so as to expedite Navy projects and programs affecting historic and archeological resources.

f. Assist installations in negotiating MOAs and Programmatic Agreements that both protect

historic and archeological resources and facilitate Navy projects and programs.

g. Provide technical and legal support in resolving questions related to legal preservation requirements, as requested.

h. Provide preservation training opportunities and guidance concerning appropriate preservation procedures, techniques and material.

i. Process applications for and issue ARPA permits authorizing professional excavation and removal of archeological resources, as appropriate.

**23-6.3 COMNAVSEASYS COM shall:**

a. Manage certain shore installations, historic ships afloat, and historic ships in the inactive fleet, and coordinate with other commands.

b. Fully comply with the NHPA and other legislation applicable to stewardship of historic and archeological resources under COMNAVSEASYS COM control.

c. Coordinate with the Naval Historical Center for the protection, preservation, and management of historic ships afloat and historic ships in the inactive fleet and other historic artifacts under COMNAVSEASYS COM control.

d. Designate and train qualified staff responsible for compliance actions regarding historic and archeological resources.

**23-6.4 Major claimants, through subordinate commands, as applicable, shall:**

a. Program, budget, and allocate funds for qualified staffing, training, surveys, plans, and studies to facilitate the identification, evaluation, inventory, planning, maintenance, and protection of National Register resources and Indian sacred sites at installations under their cognizance.

b. Revise instructions and other appropriate documents, if necessary, to reflect requirements of this chapter.

c. Ensure subordinate commands and shore installations, as applicable, designate and train a cultural resources coordinator responsible for compliance with applicable cultural resources laws, regulations and policy.

**23-6.5 Director, Naval Historical Center shall:**

a. Act as principal advisor for the Navy in matters related to historic naval ships, shipwrecks, and aircraft.

b. Designate a qualified professional to oversee and coordinate the Navy's cultural resources programs related to historic ships, shipwrecks, and aircraft.

c. Designate and train qualified staff responsible for compliance actions regarding historic and archeological resources.

d. Identify priorities for historic ship and aircraft surveys, inventories, and other stewardship actions so as to achieve compatibility with missions and budgets.

e. Advise all levels of commands having historic ships and aircraft regarding compliance with cultural resources legislation, regulations, and professional standards.

f. Review interagency agreements and National Register nominations of historic ships, shipwrecks, and aircraft as recommended by subordinate commands, and prepare nominations for DON FPO signature.

g. Negotiate MOAs and Programmatic Agreements that protect, preserve, and manage naval shipwrecks and aircraft wrecks as historic properties or archeological resources.



h. Process applications for and issue ARPA permits authorizing professional excavation of historic naval shipwrecks and aircraft wrecks and removal of submerged archeological materials, as appropriate.

**23-6.6 Commanding officers of shore installations shall:**

a. Plan, program, and budget for adequate compliance with historic and archeological resources protection legislation that applies to resources under their control.

b. When warranted by the existence of historic and/or archeological resources, designate and train a staff person to serve as Cultural Resources Coordinator.

c. Provide cultural resources training to all staff persons who deal with cultural resources.

d. Provide for the professional identification, evaluation, inventory, nomination, and protection of resources under their control that appear to be eligible for the National Register.

e. Follow all legally mandated procedures if National Register resources under their control are to be transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly.

f. Develop, implement, and integrate a ICRMP plan with other planning documents and routine procedures applicable to activity projects and programs.

g. Consult with the SHPO and the Advisory Council whenever proposed undertakings may have an effect on National Register resources, and enter into MOAs regarding mitigation of such effects.

h. Consult with Native American tribes prior to any Navy action that may impact Native American interests regarding Environmental Conservation, Compliance, or access. (A)

i. Ensure that inadvertently discovered archeological resources are protected at the site of discovery. Within 24 hours of discovery, notify the cognizant COMNAVFACENGCOM Cultural Resource Professional for appropriate action and simultaneously notify the DON FPO. (R)

j. Use historic buildings when available and practical instead of new acquisition(s), construction, or leasing to satisfy mission requirements.

k. Provide for storage and professional curation of salvaged archeological resources. Provide for storage of records that might accrue in carrying out legal compliance actions.

**23-6.7 Navy commands, installations and other components in foreign countries shall:**

a. Take into account the effect of any Federal undertaking outside the United States that may directly or adversely affect a property that is on the World Heritage List or on the applicable country's equivalent of the National Register.

b. Take into account applicable provisions of status of forces agreements, international agreements, Admiralty law.