Appendix B.

National Fishing Enhancement Act of 1984, Title II.
Artificial Reefs (P.L.98-623)

Memorandum of Understanding on the
National Artificial Reef Policy Among the
Department of the Army, Department of Commerce,
Department of the Interior, Department of Transportation,
and the Environmental Protection Agency

APPENDIX B

TITLE II—ARTIFICIAL REEFS

SEC. 201. SHORT TITLE.

This title may be cited as the "National Fishing En-
hancement Act of 1984".

SEC. 202. FINDINGS AND CONCLUSIONS.

(a) FINDINGS.—The Congress finds that—

(1) although fishery products provide an important
source of protein and industrial products for United
States consumption, United States fishery production
annually falls far short of satisfying United States
demand;

(2) overfishing and the degradation of vital fishery
resource habitats have caused a reduction in the abun-
dance and diversity of United States fishery resources;

(3) escalated energy costs have had a negative
effect on the economics of United States commercial
and recreational fisheries;

(4) commercial and recreational fisheries are a
prominent factor in United States coastal economies
and the direct and indirect returns to the United States
economy from commercial and recreational fishing ex-
penditures are threefold; and

(5) properly designed, constructed, and located ar-
tificial reefs in waters covered under this title can en-
hance the habitat and diversity of fishery resources; en-
hance United States recreational and commercial fishing opportunities; increase the production of fishery products in the United States; increase the energy efficiency of recreational and commercial fisheries; and contribute to the United States and coastal economies.

(b) PURPOSE.—The purpose of this title is to promote and facilitate responsible and effective efforts to establish artificial reefs in waters covered under this title.

SEC. 208. ESTABLISHMENT OF STANDARDS.

Based on the best scientific information available, artificial reefs in waters covered under this title shall be sited and constructed, and subsequently monitored and managed in a manner which will—

(1) enhance fishery resources to the maximum extent practicable;

(2) facilitate access and utilization by United States recreational and commercial fishermen;

(3) minimize conflicts among competing uses of waters covered under this title and the resources in such waters;

(4) minimize environmental risks and risks to personal health and property; and

(5) be consistent with generally accepted principles of international law and shall not create any unreasonable obstruction to navigation.
SEC. 204. NATIONAL ARTIFICIAL REEF PLAN.

Not later than one year after the date of enactment of this title, the Secretary of Commerce, in consultation with the Secretary of the Interior, the Secretary of Defense, the Administrator of the Environmental Protection Agency, the Secretary of the Department in which the Coast Guard is operating, the Regional Fishery Management Councils, interested States, Interstate Fishery Commissions, and representatives of the private sector, shall develop and publish a long-term plan which will meet the purpose of this title and be consistent with the standards established under section 203. The plan must include:

1. geographic, hydrographic, geologic, biological, ecological, social, economic, and other criteria for siting artificial reefs;
2. design, material, and other criteria for constructing artificial reefs;
3. mechanisms and methodologies for monitoring the compliance of artificial reefs with the requirements of permits issued under section 205;
4. mechanisms and methodologies for managing the use of artificial reefs;
5. a synopsis of existing information on artificial reefs and needs for further research on artificial reef technology and management strategies; and
(6) an evaluation of alternatives for facilitating the
transfer of artificial reef construction materials to per-
sons holding permits issued pursuant to section 205,
including, but not limited to, credits for environmental
mitigation and modified tax obligations.

SEC. 205. PERMITS FOR THE CONSTRUCTION AND MANAGE-
MENT OF ARTIFICIAL REEFS.

(a) SECRETARIAL ACTION ON PERMITS.—In issuing a
permit for artificial reefs under section 10 of the Rivers and
Harbors Act of 1899, section 404 of the Federal Water Pol-
lution Control Act, or section 4(e) of the Outer Continen
tal Shelf Lands Act, the Secretary of the Army (hereinafter in
this section referred to as the "Secretary") shall—

(1) consult with and consider the views of appro-
priate Federal agencies, States, local governments, and
other interested parties;

(2) ensure that the provisions for siting, construct-
ing, monitoring, and managing the artificial reef are
consistent with the criteria and standards established
under this title;

(3) ensure that the title to the artificial reef con-
struction material is unambiguous, and that responsibil-
ity for maintenance and the financial ability to assume
liability for future damages are clearly established; and
(4) consider the plan developed under section 204 and notify the Secretary of Commerce of any need to deviate from that plan.

(b) TERMS AND CONDITIONS OF PERMITS.—(1) Each permit issued by the Secretary subject to this section shall specify the design and location for construction of the artificial reef and the types and quantities of materials that may be used in constructing such artificial reef. In addition, each such permit shall specify such terms and conditions for the construction, operation, maintenance, monitoring, and managing the use of the artificial reef as are necessary for compliance with all applicable provisions of law and as are necessary to ensure the protection of the environment and human safety and property.

(2) Before issuing a permit under section 402 of the Federal Water Pollution Control Act for any activity relating to the siting, design, construction, operation, maintenance, monitoring, or managing of an artificial reef, the Administrator of the Environmental Protection Agency shall consult with the Secretary to ensure that such permit is consistent with any permit issued by the Secretary subject to this section.

(c) LIABILITY OF PERMITTEE.—(1) A person to whom a permit is issued in accordance with subsection (a) and any insurer of that person shall not be liable for damages caused
by activities required to be undertaken under any terms and conditions of the permit, if the permittee is in compliance with such terms and conditions.

(2) A person to whom a permit is issued in accordance with subsection (a) and any insurer of that person shall be liable, to the extent determined under applicable law, for damages to which paragraph (1) does not apply.

(3) The Secretary may not issue a permit subject to this section to a person unless that person demonstrates to the Secretary the financial ability to assume liability for all damages that may arise with respect to an artificial reef and for which such permittee may be liable.

(4) Any person who has transferred title to artificial reef construction materials to a person to whom a permit is issued in accordance with subsection (a) shall not be liable for damages arising from the use of such materials in an artificial reef, if such materials meet applicable requirements of the plan published under section 204 and are not otherwise defective at the time title is transferred.

(d) LIABILITY OF THE UNITED STATES.—Nothing in this title creates any liability on the part of the United States.

(e) CIVIL PENALTY.—Any person who, after notice and an opportunity for a hearing, is found to have violated any provision of a permit issued in accordance with subsection (a) shall be liable to the United States for a civil penalty, not to
exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation. The Secretary may compromise, modify, or remit with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

SEC. 206. DEFINITIONS.

For purposes of this title—

(1) The term "artificial reef" means a structure which is constructed or placed in waters covered under this title for the purpose of enhancing fishery resources and commercial and recreational fishing opportunities.

(2) The term "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, American Samoa, Guam, Johnston Island, Midway Island, and Wake Island.

(3) The term "waters covered under this title" means the navigable waters of the United States and the waters superjacent to the outer Continental Shelf as defined in section 2 of the Outer Continental Shelf
Lands Act (43 U.S.C. section 1331), to the extent such waters exist in or are adjacent to any State.

SEC. 207. USE OF CERTAIN VESSELS AS ARTIFICIAL REEFS.

The Act entitled "An Act to authorize appropriations for the fiscal year 1973 for certain maritime programs of the Department of Commerce and for other purposes", approved August 22, 1972 (16 U.S.C. 1220-1220c), is amended—

(1) by striking out "Liberty" each place it appears in sections 3, 4, 5, and 6 and inserting in lieu thereof "obsolete";

(2) by striking out "Commerce" in section 3 and inserting in lieu thereof "Transportation";

(3) by striking out "shall" in the matter preceding paragraph (1) in section 4 and inserting in lieu thereof "may", and

(4) by adding at the end thereof the following new section:

"Sec. 7. For purposes of sections 3, 4, 5, and 6, the term "obsolete ship" means any vessel owned by the Department of Transportation that has been determined to be of insufficient value for commercial or national defense purposes to warrant its maintenance and preservation in the national defense reserve fleet and has been designated as an artificial reef candidate."
SEC. 108. SAVINGS CLAUSES.

(a) TENNESSEE VALLEY AUTHORITY JURISDICTION.—Nothing in this title shall be construed as replacing or superseding section 26a of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831y-1).

(b) STATE JURISDICTION.—Nothing in this title shall be construed as extending or diminishing the jurisdiction or authority of any State over the siting, construction, monitoring, or managing of artificial reefs within its boundaries.