

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**

The Marine Protection, Research, and Sanctuaries Act of 1972 (P.L. 92-532)

APPENDIX B

1 TITLE II—ARTIFICIAL REEFS

2 SEC. 201. SHORT TITLE.

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

5 SEC. 202. FINDINGS AND CONCLUSIONS.

6 (a) FINDINGS.—The Congress finds that—

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

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

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

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

23 (5) properly designed, constructed, and located ar-
24 tificial reefs in waters covered under this title can en-
25 hance the habitat and diversity of fishery resources; en-

1 hance United States recreational and commercial fish-
2 ing opportunities; increase the production of fishery
3 products in the United States; increase the energy effi-
4 ciency of recreational and commercial fisheries; and
5 contribute to the United States and coastal economies.

6 (b) PURPOSE.—The purpose of this title is to promote
7 and facilitate responsible and effective efforts to establish ar-
8 tificial reefs in waters covered under this title.

9 SEC. 203. ESTABLISHMENT OF STANDARDS.

10 Based on the best scientific information available, artifi-
11 cial reefs in waters covered under this title shall be sited and
12 constructed, and subsequently monitored and managed in a
13 manner which will—

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

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

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

21 (4) minimize environmental risks and risks to per-
22 sonal health and property; and

23 (5) be consistent with generally accepted princi-
24 ples of international law and shall not create any un-
25 reasonable obstruction to navigation.

1 **SEC. 204. NATIONAL ARTIFICIAL REEF PLAN.**

2 Not later than one year after the date of enactment of
3 this title, the Secretary of Commerce, in consultation with
4 the Secretary of the Interior, the Secretary of Defense, the
5 Administrator of the Environmental Protection Agency, the
6 Secretary of the Department in which the Coast Guard is
7 operating, the Regional Fishery Management Councils, inter-
8 ested States, Interstate Fishery Commissions, and represent-
9 atives of the private sector, shall develop and publish a long-
10 term plan which will meet the purpose of this title and be
11 consistent with the standards established under section 203.

12 The plan must include—

13 (1) geographic, hydrographic, geologic, biological,
14 ecological, social, economic, and other criteria for
15 siting artificial reefs;

16 (2) design, material, and other criteria for con-
17 structing artificial reefs;

18 (3) mechanisms and methodologies for monitoring
19 the compliance of artificial reefs with the requirements
20 of permits issued under section 205;

21 (4) mechanisms and methodologies for managing
22 the use of artificial reefs;

23 (5) a synopsis of existing information on artificial
24 reefs and needs for further research on artificial reef
25 technology and management strategies; and

1 (6) an evaluation of alternatives for facilitating the
 2 transfer of artificial reef construction materials to per-
 3 sons holding permits issued pursuant to section 205,
 4 including, but not limited to, credits for environmental
 5 mitigation and modified tax obligations.

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

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

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

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

21 (3) ensure that the title to the artificial reef con-
 22 struction material is unambiguous, and that responsibil-
 23 ity for maintenance and the financial ability to assume
 24 liability for future damages are clearly established; and

1 (4) consider the plan developed under section 204
2 and notify the Secretary of Commerce of any need to
3 deviate from that plan.

4 **(b) TERMS AND CONDITIONS OF PERMITS.**—(1) Each
5 permit issued by the Secretary subject to this section shall
6 specify the design and location for construction of the artifi-
7 cial reef and the types and quantities of materials that may be
8 used in constructing such artificial reef. In addition, each
9 such permit shall specify such terms and conditions for the
10 construction, operation, maintenance, monitoring, and man-
11 aging the use of the artificial reef as are necessary for compli-
12 ance with all applicable provisions of law and as are neces-
13 sary to ensure the protection of the environment and human
14 safety and property.

15 (2) Before issuing a permit under section 402 of the
16 Federal Water Pollution Control Act for any activity relating
17 to the siting, design, construction, operation, maintenance,
18 monitoring, or managing of an artificial reef, the Administra-
19 tor of the Environmental Protection Agency shall consult
20 with the Secretary to ensure that such permit is consistent
21 with any permit issued by the Secretary subject to this sec-
22 tion.

23 **(c) LIABILITY OF PERMITTEE.**—(1) A person to whom
24 a permit is issued in accordance with subsection (a) and any
25 insurer of that person shall not be liable for damages caused

1 by activities required to be undertaken under any terms and
2 conditions of the permit, if the permittee is in compliance
3 with such terms and conditions.

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

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

13 (4) Any person who has transferred title to artificial reef
14 construction materials to a person to whom a permit is issued
15 in accordance with subsection (a) shall not be liable for dam-
16 ages arising from the use of such materials in an artificial
17 reef, if such materials meet applicable requirements of the
18 plan published under section 204 and are not otherwise de-
19 fective at the time title is transferred.

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

22 (e) **CIVIL PENALTY.**—Any person who, after notice and
23 an opportunity for a hearing, is found to have violated any
24 provision of a permit issued in accordance with subsection (a)
25 shall be liable to the United States for a civil penalty, not to

1 exceed \$10,000 for each violation. The amount of the civil
2 penalty shall be assessed by the Secretary by written notice.
3 In determining the amount of such penalty, the Secretary
4 shall take into account the nature, circumstances, extent, and
5 gravity of the violation. The Secretary may compromise,
6 modify, or remit with or without conditions, any civil penalty
7 which is subject to imposition or which has been imposed
8 under this section. If any person fails to pay an assessment of
9 a civil penalty after it has become final, the Secretary may
10 refer the matter to the Attorney General for collection.

11 **SEC. 206. DEFINITIONS.**

12 For purposes of this title—

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

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

21 (3) The term "waters covered under this title"
22 means the navigable waters of the United States and
23 the waters superjacent to the outer Continental Shelf
24 as defined in section 2 of the Outer Continental Shelf

1 Lands Act (43 U.S.C. section 1331), to the extent
2 such waters exist in or are adjacent to any State.

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

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

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

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

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

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

18 "SEC. 7. For purposes of sections 3, 4, 5, and 6, the
19 term "obsolete ship" means any vessel owned by the Depart-
20 ment of Transportation that has been determined to be of
21 insufficient value for commercial or national defense purposes
22 to warrant its maintenance and preservation in the national
23 defense reserve fleet and has been designated as an artificial
24 reef candidate."

1 SEC. 208. SAVINGS CLAUSES.

2 (a) TENNESSEE VALLEY AUTHORITY JURISDIC-
3 TION.—Nothing in this title shall be construed as replacing
4 or superseding section 26a of the Tennessee Valley Author-
5 ity Act of 1933, as amended (16 U.S.C. 831y-1).

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