

APPENDIX D
COASTAL ZONE MANAGEMENT ACT CONSISTENCY
DETERMINATION

Coastal Zone Management Act (CZMA) Consistency Determination

This document provides the Commonwealth of Virginia with the U.S. Department of Transportation, Maritime Administration's (MARAD) Consistency Determination under Coastal Zone Management Act section 307(c)(1) and 15 CFR Part 930, sub-part C, for the Removal of National Defense Reserve Fleet Vessels for Dismantling/Recycling. The information in this Consistency Determination is provided pursuant to 15 CFR Section 930.39.

Ms. Ellie Irons
Department of Environmental Quality
Virginia Coastal Program, Room 631
629 East Main Street
Richmond, Virginia 23219

Subject: Federal Coastal Consistency Determination for dismantling, recycling, and scrapping nine obsolete vessels from the JRRF.

Dear Ms. Irons:

Pursuant to Section 307 of the Coastal Zone Management Act, 16 U.S.C. § 1456, as amended, and its implementing regulations at 15 C.F.R. Part 930, this is a Federal Consistency Determination for dismantling, recycling, and scrapping nine obsolete vessels from the James River Reserve Fleet (JRRF). Please see Appendix B in the Preliminary Draft EA for project area figures.

Proposed Federal Agency Action:

The Proposed Action is to transfer approximately nine obsolete vessels from the JRRF to contractor facilities (Able U.K.) in Teesside, U.K., for the purposes of dismantling, recycling, and scrapping the vessels. See Section 2.1 (*Proposed Action*) of the Environmental Assessment for Removal of National Defense Reserve Fleet Vessels for Dismantling/Recycling (December, 2003) for a more detailed description of the Proposed Action.

MARAD has determined that the Proposed Action will not affect the land or water uses or natural resources of Virginia as described in the Environmental Assessment provided.

The Virginia Coastal Resources Management Program contains the following enforceable policies:

- ***Fisheries Management.*** The program stresses the conservation and enhancement of finfish and shellfish resources and the promotion of commercial and recreational fisheries to maximize food production and recreational opportunities.

The Proposed Action is not expected to adversely affect fisheries. Numerous safeguards and approvals are required prior to tow of the proposed vessels. The U.S. Coast Guard and other agencies will review and approve tow procedures.

The removal of obsolete vessels will have a beneficial long-term impact on the aquatic biota of the Lower James River. If left in place, the vessels would continue to age and corrode and could pose potentially increasing environmental risks over time due to deterioration of their hulls, hull breaches, and/or vessel sinkings that could permit some hazardous materials to be released to the James River environment.

- ***Subaqueous Lands Management.*** The management program for subaqueous lands establishes conditions for granting or denying permits to use state-owned bottomlands based on considerations of potential effects on marine and fisheries resources, wetlands, adjacent or nearby properties, anticipated public and private benefits, and water quality standards established by the Department of Environmental Quality, Water Division.

The proposed action does not involve encroachments in, on or over state-owned submerged lands. A subaqueous bed encroachment permit from the Virginia Marine Resources Commission pursuant to Code of Virginia § 28.2-1200 thru 28.2-1213 will not be required for the proposed action.

- ***Wetlands Management.*** The purpose of the wetlands management program is to preserve tidal wetlands, prevent their despoliation, and accommodate economic development in a manner consistent with wetlands preservation.

No impacts to tidal, intertidal, or freshwater wetlands occurring along shorelines and tributaries to the James River along the proposed tow route are expected as a result of implementing the proposed action. MARAD vessels to be towed have been inspected to ensure that they are safe for towage. Towing practices will be implemented to minimize potential for collision or grounding of the vessels during transport. A Tactical Response Plan has been developed for the fleet and would be implemented if a leak were to occur as a result of collision, grounding, or tank or hull rupture and leakage. As a component of the Tactical Response Plan, Level A Sensitive Areas, which include wetlands, would be protected by placing booms around the habitats in the area of potential effect in addition to placing booms around the spill area.

- ***Dunes Management.*** Dune protection is carried out pursuant to the Coastal Primary Sand Dune Protection Act and is intended to prevent destruction or alteration of primary dunes.

The proposed action does not involve an encroachment upon or the destruction or alteration of coastal primary sand dunes as defined by the Coastal Primary Sand Dune Protection Act, Virginia Code §28.2-1400 to §28.2-1420.

- ***Non-point Source Pollution Control.*** Virginia's Erosion and Sediment Control Law requires soil-disturbing projects to be designed to reduce soil erosion and to decrease inputs of chemical nutrients and sediments to the Chesapeake Bay, its tributaries, and other rivers and waters of the Commonwealth.

According to the Department of Conservation and Recreation, the following activities are regulated by the Erosion and Sediment Control Law (Virginia Code section 10.1-567) and its implementing regulations if the activities involve 2,500 square feet or more of land disturbance: clearing and grading activities; installation of staging areas, parking lots, roads, buildings, utilities, or other structures; activities in soil/dredge spoil areas; related land conservation activities.

The proposed action does not involve land disturbance or the disturbance of soils.

- ***Point Source Pollution Control.* The point source program is administered by the State Water Control Board pursuant to Code of Virginia § 62.1-44.15. Point source pollution control is accomplished through the implementation of the National Pollutant Discharge Elimination System permit program established pursuant to Section 402 of the federal Clean Water Act and administered in Virginia as the Virginia Pollutant Discharge Elimination System permit program.**

No impacts to water resources resulting from point source pollution are expected along the proposed tow route as a result of implementing the proposed action. A number of agencies involved in approving or regulating the proposed action have plans and procedures in place that are related to the management of hazardous materials. These include MARAD, the U.S. Coast Guard, the U.S. Army Ft. Eustis installation, and the JRRF.

MARAD follows U.S. Department of Transportation environmental regulations and procedures, including DOT Order 5610.1C and MARAD Order 600-1. In addition, MARAD has a Maritime Environmental Program Manual and provides periodic reports to Congress on its environmental activities.

The U.S. Coast Guard has an Area Contingency Plan (ACP) for the Virginia Coastal Area. This plan was developed to meet requirements of the Oil Pollution Act of 1990, and describes procedures for response to oil spill incidents or the release of a hazardous substance. The ACP also includes activities and precautions designed to minimize the threat of releases of hazardous substances. Together (spill response and prevention) these activities include coordination among agencies, cleanup measures, and identification and protection of environmentally sensitive areas.

JRRF is a tenant organization at the U.S. Army Ft. Eustis facility. Army installations are governed by U.S. Department of Defense (DoD) environmental directives, and by service environmental regulations, which can be found in Army Regulation (AR) AR-200 series documents, AR 420-47, and AR-700 series regulations. In addition, Ft. Eustis has a number of installation specific guidance and procedure documents related to hazardous materials, including PCB handling and storage standard operating procedures, a comprehensive Installation Restoration Program, a Pollution Prevention Plan, and a number of specific standard operating procedures that govern hazardous materials handling and movement.

The JRRF maintains a number of plans, regulations, and procedural documents that are related to management of risks associated with hazardous materials. These include a Severe Weather Plan, PCB Program Plan, Hazardous Materials Contingency Plan, and a Tactical Response Plan. The Severe Weather Plan directs activities and planning for hurricanes and other severe weather events. The PCB Program Plan documents procedures and regulations for the handling of PCBs. The Hazardous Materials Contingency Plan describes emergency response procedures. The Tactical Response Plan details response procedures and activities in the event of an oil spill. JRRF is required to have an identified Qualified Individual (QI) that is an approved and licensed spill response party. Gallagher Marine Systems is the QI for oil spills and releases.

MARAD vessels to be towed have been inspected to ensure that they are safe for towage. Towing practices will be implemented to minimize potential for collision or grounding of the vessels during transport. A Tactical Response Plan has been developed for the fleet and would be implemented if a leak were to occur as a result of collision, grounding, or tank or hull rupture and leakage.

- ***Shoreline Sanitation.*** The purpose of this program is to regulate the installation of septic tanks, set standards concerning soil types suitable for septic tanks, and specify minimum distances that tanks must be placed away from streams, rivers, and other waters of the Commonwealth.

The proposed project does not involve the installation of septic tanks or associated drainfields.

- ***Air Pollution Control.*** The program implements the federal Clean Air Act to provide a legally enforceable State Implementation Plan for the attainment and maintenance of the National Ambient Air Quality Standards.

Implementation of the proposed action is not expected to adversely affect air quality.

- ***Coastal Lands Management.*** This program is a state-local cooperative program administered by the Chesapeake Bay Local Assistance Department and 84 localities in Tidewater, Virginia established pursuant to the Chesapeake Bay Preservation Act; Code of Virginia § 10.1-2100 thru § 10.1-2114 and Chesapeake Bay Preservation Area Designation and Management Regulations; Virginia Administrative Code 9 VAC 10-20-10 *et seq.*

Activities associated with implementation of the proposed action will not occur on or within 100 feet of a Resource Protection Area or Resource Management Area as designated by the Chesapeake Bay Preservation Act, Virginia Code 10.1-2100 *et seq.* and its implementing Chesapeake Bay Preservation Area Designation and Management Regulations, 9 VAC 10-20-10 *et seq.* No impacts to tidal, intertidal, and freshwater wetlands occurring along shorelines and tributaries to the James River along the proposed tow route are expected as a result of implementing the proposed action. MARAD vessels to be towed will have been inspected to ensure that they are safe for towage. Towing

practices will be implemented to minimize potential for collision or grounding of the vessels during transport. A Tactical Response Plan has been developed for the fleet and would be implemented if a leak were to occur as a result of collision, grounding, or tank or hull rupture and leakage. As a component of the Tactical Response Plan, Level A Sensitive Areas, which include wetlands, would be protected by placing booms around the habitats in the area of potential effect in addition to placing booms around the spill area.

POLICIES OF THE VIRGINIA COASTAL RESOURCES MANAGEMENT PROGRAM ADVISORY

Although not required for the purposes of Federal Consistency, in accordance with 15 C.F.R. § 930.30(c), MARAD has considered the following advisory policies of Virginia's Coastal Resources Management Program:

- **Natural Heritage and Wildlife Resources**

Correspondence with the United States Fish and Wildlife Service and the National Marine Fisheries Service is being conducted as part of the National Environmental Policy Act compliance for the proposed action. Any additional information or concerns not currently addressed in the Environmental Assessment regarding rare, threatened, or endangered species or critical habitats received as a result of agency correspondence will be fully considered and addressed prior to implementation of proposed action.

Implementation of the proposed action is not expected to adversely affect wildlife species under the jurisdiction of the Department of Game and Inland Fisheries.

- **Historic Structures and Archeological Resources**

Under the Proposed Action, MARAD will conduct reviews of the vessels proposed for towing and recycling to determine whether any vessel has historical significance that would warrant additional research and coordination with the Virginia State Historic Preservation Officer (SHPO). The MARAD historian will review individual ship files to identify any ships that might be eligible for listing on the National Register or otherwise be subject to the National Historic Preservation Act. Final determination on individual ship eligibility will be made in coordination with the Virginia SHPO. Under this approach, the Proposed Action is not expected to have any adverse effects on resources of historical or cultural significance.

- **Solid and Hazardous Wastes**

Hazardous and toxic materials are often found throughout older ships. Such materials may include polychlorinated biphenyls (PCBs), asbestos, ozone-depleting substances (ODS), mercury, lead, fuel, oils, and lubricants. These materials were widely used throughout the U.S. and world-wide in a variety of industrial, shipbuilding, and materials applications. A

number of approvals, inspections, licenses, and other procedures are required prior to separating a vessel from the JRRF and towing it to an approved ship dismantling and recycling facility. These procedures are dictated by MARAD, the U.S. Coast Guard, the U.S. EPA, foreign authorities, private insurers, and local governments to ensure that vessels proposed for towing meet appropriate maritime standards in full compliance with safety, navigation, environmental, and other safeguards.

The safety and environmental checks, reviews, and approvals – by the U.S. Coast Guard, MARAD, the U.S. EPA, the U.K M&CA, and the U.K. EPA - that would occur prior to implementation of the Proposed Action ensure that no inordinate risks would be evident for the tow of the identified JRRF obsolete vessels. These agencies have review and approval over a number of steps in the Proposed Action and provided recommendations and requirements which, when met, would allow for the approval of the vessels tows. Based on the professional experience and judgment of the agencies listed, we conclude that potential environmental effects of the Proposed Action – specifically, the potential for release of hazardous materials into the environment during tow activities - are negligible and have been adequately considered, mitigated, and planned for.

- **Pesticides and Herbicides**

This project does not involve the use of pesticides and herbicides.

- **State Scenic Rivers and Scenic Byways**

This project will not cause any adverse impacts to any streams on the National Park Service Nationwide Inventory, Final List of Rivers, or existing or potential State Scenic Rivers or State Scenic Byways.

- **Tree Protection**

This project will not cause the removal of any trees.

- **Recreation Resources**

The proposed project will not likely cause any adverse impacts to any existing or planned recreational facilities.

- **Pollution Prevention**

MARED implements principals of pollution prevention in the management of the JRRF and minimizes the potential for environmental impacts by incorporating best management practices to minimize potential adverse effects resulting from release of pollutants into the natural environment.

- **Energy Conservation**

The Proposed Action does not require the renovation of existing buildings or construction of new buildings.

CONCLUSION

Based on its review, MARAD has determined that none of the Advisory Policies for Geographic Areas of Particular Concern or Advisory Policies for Shorefront Access Planning and Protection are applicable for the proposed project.

Based upon the information, data, and analysis provided in the attached Environmental Assessment, MARAD finds that the Removal of National Defense Reserve Fleet Vessels for Dismantling/Recycling is consistent to the maximum extent practicable with the enforceable policies of the Virginia Coastal Resources Management Program.

Pursuant to 15 CFR § 930.41, the Virginia Coastal Resources Management Program has 60 days from the receipt of this letter in which to concur with or object to this Consistency Determination, or to request an extension under 15 CFR § 930.41(b). Virginia's concurrence will be presumed if its response is not received by MARAD on the 60th day from receipt of this determination. The State's response should be sent to:

Ms. Deborah Aheron
U.S. Department of Transportation, Maritime Administration
400 7th Street SW
Room 7209
Washington, D.C. 20590
Phone: (202) 366-1254
Fax: (202) 493-2180
Email: deborah.aheron@marad.dot.gov

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