



NAVAL HISTORY AND HERITAGE COMMAND

SPECIAL USE PERMIT APPLICATION & REPORTING GUIDELINES

Pursuant to 32 CFR 767

Policy

As per the Sunken Military Craft Act (SMCA), the United States maintains right, title and interest in and to all of its sunken military craft regardless of location or time of loss, unless expressly divested. The Department of the Navy (DON) recognizes that its ship and aircraft wrecks represent a fragile collection of non-renewable resources that, in addition to their historical value, are often considered war graves, may carry public safety or environmental hazards, or contain classified information or materials. Accordingly, the policy of DON is to preserve its wrecked sunken or terrestrial military craft *in situ* [in place] unless site disturbance, removal, or injury is necessary or justified to protect a wrecksite or the environment, to address matters pertaining to human remains or public safety, to mitigate adverse effects, to conduct research or to provide for public education and information that is otherwise inaccessible. For such instances, the Secretary of the Navy has established a permitting program to allow for controlled site disturbance, specifically for archaeological, historical, or educational purposes, subject to the parameters identified in the SMCA and the conditions specified in 32 CFR 767.

As stewards of the Navy's sunken and terrestrial military craft, the Naval History and Heritage Command (NHHHC) is responsible for managing these irreplaceable resources for the continued education and appreciation of present and future generations. To ensure consistent and effective stewardship, NHHHC has developed a comprehensive program that encompasses preservation planning, wrecksite management, archaeological research, conservation and curation, and public interpretation and education. NHHHC serves as the permitting authority for activities directed at historic DON sunken and terrestrial military craft, non-historic DON sunken military craft, and foreign sunken military craft located in U.S. waters that have been included into the NHHHC permitting program through a formalized agreement with the respective foreign state.

What follows are guidelines for applicants seeking authorization to conduct activities directed at a sunken or terrestrial military craft that would result in the wrecksite's disturbance, but otherwise be minimally intrusive. A Special Use Permit, which places fewer requirements on an applicant compared to a full Permit, is issued in such cases or when activities are directed at non-historic sunken military craft. Minimally intrusive activities may include documenting a sunken military craft utilizing diving methods or remotely-operated or autonomously operated equipment, or collecting data or samples from a wrecksite. Unless specifically stipulated in the Special Use Permit, the recovery of artifacts associated with any wrecksite is prohibited and requires completion of the standard permit application. Please review the permit application guidelines or contact NHHHC's Underwater Archaeology Branch if you have questions about which permit application is appropriate for your proposed activity.

Permits will only be issued where there is a clear demonstrable benefit to the DON, and applicants must meet certain requirements and qualifications in order to demonstrate careful planning, professional credentials, and a long-term view of the effects of the proposed activities on the resource.

Permit Applications

Application forms are available on line at www.history.navy.mil/research/underwater-archaeology.html or by writing to:

Naval History and Heritage Command
Underwater Archaeology branch
805 Kidder Breese St., SE
Washington Navy Yard, DC 20374-5060

Applicants must submit a signed digital copy and two printed copies of their complete application at least 120 days in advance of the requested effective date to allow sufficient time for evaluation and processing. Depending on the complexity of the project, the permit evaluation may take more than 120 days, so applicants are encouraged to apply as early as possible. Send completed applications to NHHC via email (NHHCunderwaterarchaeology@navy.mil) and delivered to the same address as above.

If you have questions regarding the required contents of the Special Use permit application or the scope of your proposed activity, please contact NHHC Underwater Archaeology Branch at NHHCunderwaterarchaeology@navy.mil.

The Special Use permit application includes four (4) sections:

- 1) A statement, or research design, of the project's objectives and an explanation on how those objectives would serve the purposes of enhancing the management, appreciation, interpretation, and/or preservation of the wrecksite(s) under consideration.
- 2) A discussion of the methodology planned to accomplish the project's objectives. This should include a map showing the study location(s) and a description of the wrecksite(s) of particular interest, and, if applicable, any associated sites. The map should be an appropriate scale, with a north arrow, scale bar, and legend. For terrestrial military craft in US territory, a USGS 1:24,000 scale, 7.5 min topo map is preferred.
- 3) An analysis of the extent and nature of potential direct or indirect impacts from the proposed activities to the wrecksite(s) under consideration and the surrounding environment, as well as any proposed mitigation measures, if appropriate.
- 4) If appropriate a plan addressing wrecksite restoration and remediation, as well as wrecksite preservation measures such as protecting the location of the wrecksite from disclosure.

Depending on the nature and the extent of the proposed activities, additional information may be requested by NHHC to continue review of the application.

The NHHC Deputy Director, or his or her designee, may authorize a Special Use permit under the following conditions:

- The proposed activity is compatible with NHHC policies as stated in 32 CFR 767.5 and associated guidelines, and in the case of non-historic sunken military craft is not opposed by consulted DON parties. The referenced consultation will be initiated by NHHC upon receipt of your application.
- The activities carried out under the Special Use permit are conducted in a manner that is minimally intrusive and does not purposefully and significantly disturb, remove or injure the sunken or terrestrial military craft under consideration.

- The principal investigator must hold a graduate degree in archaeology, anthropology, maritime history, oceanography, marine biology, marine geology, other marine science, closely related field, or possess equivalent training and experience. This requirement may be waived by NHHC on a case by case basis depending on the activity stipulated in the application.
- When applicable, the pilot(s) of remotely-operated equipment involved in conducting operations holds a certificate of operation from a nationally-recognized organization.

If the applicant believes that compliance with one or more of the factors, criteria, or procedures in the guidelines, and as stipulated in 32 CFR 767, is not practicable, the applicant should state why and explain how the purposes for the SMCA, the regulations (32 CFR 767), and the policies of the DON are better served without compliance with the specified requirements. If NHHC determines that the policies of the Navy are better served without compliance with one or more of the factors, criteria, or procedures in the regulations, or determines that there is merit in an applicant's request and that full compliance is not required to meet these priorities, NHHC will provide a written waiver to the applicant.

Application Review Process

1. **Application submitted to NHHC Underwater Archaeology Branch.** Applicant receives confirmation of receipt.
2. **NHHC Preliminary Review Phase.** NHHC undertakes a preliminary review of the application to assess jurisdiction over the proposed activity, appropriateness of application track (standard permit or Special Use permit), and completeness, including fulfillment of the required PI credentials. Applicant is notified of application status and any requirements pending prior to a full review being initiated.
3. **NHHC Internal Review Phase.** NHHC evaluates application's content and begin DON consultation as necessary.
4. **Deputy Director Review & Determination.**
5. **Conditional Issuance of Permit.** Signed permit sent to applicant.
6. **Permit Validation.** Countersigned permit received by NHHC and sent to consulting parties (if applicable). Applicant notified of receipt of countersigned permit and issued permission to commence activities.

Evaluation of Permit Application

- Permit applications are reviewed for completeness, compliance with program policies, and adherence to the regulations 32 CFR 767. Incomplete applications will be returned to the applicant for clarification. Complete applications are reviewed by NHHC personnel who, when appropriate, may seek outside guidance or peer reviews.
- If there is an active permit application, permit, or pending report associated with a specific sunken or terrestrial military craft, NHHC, as a matter of course, will postpone consideration of additional applications associated with that craft. Activities that do not necessitate a permit or NHHC approval may continue unabated. In extra-ordinary circumstances, NHHC will consider permitting more than one activity to occur on the same site. If more than one applicant is interested in securing a NHHC permit for activities involving the same sunken or terrestrial military craft, NHHC will consider permit applications in the order they were received. If the first permit application received is deemed incomplete and the applicant does not proceed to address inadequacies within the prescribed time-frame, NHHC will initiate review of the next application to have been received.

- NHHC will engage in any necessary consultation with appropriate authorities. For example, NHHC will consult and coordinate with the appropriate federal resource manager when it receives applications for research at wrecksites located in areas that include units of the National Park Service System, National Wildlife Refuge System, National Marine Sanctuary System, Marine National Monuments, within lease blocks managed by the Bureau of Ocean Energy Management, or within areas of responsibility of other Federal Land Managers. Following coordination, the applicant may be required to provide additional information.
- NHHC will consult the appropriate State Historic Preservation Office (SHPO), state land or resource manager, or Tribal Historic Preservation Office (THPO) when it receives applications to conduct research at wreck sites located on state or tribal lands, including lands beneath navigable waters.
- NHHC will also take into consideration the historic, cultural, or other concerns of a foreign state when considering an application to disturb a foreign sunken military craft of that state located within U.S. waters, subsequent to an understanding or agreement with the foreign state. The same consideration may be applied to U.S. sunken military craft that are brought under the jurisdiction of the DON for permitting purposes.
- The applicant is responsible for obtaining any and all additional permits or authorizations, such as but not limited to those issued by another federal or state agency, or foreign government. As a general practice, NHHC will not delay consideration of permit applications or require that all other required permits, if any, are obtained prior to issuing a permit. The issuance of an NHHC permit does not alleviate the responsibility the applicant to fulfill all other applicable statutory or regulatory requirements prior to the initiation of an activity that has been authorized as per the NHHC permitting program.
- In the case of U.S. sunken or terrestrial military craft within foreign jurisdictions, NHHC may review and issue a conditional permit authorizing activities upon receipt of the appropriate permits and authorizations of the applicable foreign government by the applicant. The applicant must file a copy of the foreign government authorization with NHHC when submitting their preliminary and final reports. Failure to do so will be considered a permit violation.
- In accordance with section 1402(c)(2) of the SMCA, applicants of foreign origin, who are not a citizen, national, or resident alien of the United States, are not subject to the restrictions or permitting requirements of the SMCA, except in accordance with generally recognized principles of international law, in the case of an agreement between the United States and the foreign country of which the person is a citizen, or in the case of certain individuals on a foreign vessel or aircraft to which a state-to-state agreement applies. However, in order to gain access to, disturb, or otherwise impact government property in the form of U.S. Navy ship and aircraft wrecks, applicants who are not citizens, nationals, or resident aliens of the U. S. will be directed to seek U.S. Government permission and complete an NHHC permit application.
- NHHC reserves the right to deny an applicant a permit if the proposed activity does not meet the permit application requirements; is inconsistent with DON policy or interests; does not serve the best interests of the sunken or terrestrial military craft in question; is inconsistent with the desires of a foreign sovereign in the case of foreign sunken military craft; is inconsistent with an existing resource management plan; is directed towards a sunken military craft or terrestrial military craft upon which other activities are being considered or have been authorized; will be undertaken in such a manner as will not permit the applicant to meet final report requirements;

raises professional ethical conduct concerns or concerns over commercial exploitation; raises concerns over national security, foreign policy, environmental or ordnance issues; or out of respect for any human remains that may be associated with a wrecksite. NHHHC also reserves the right to deny an applicant a permit if the applicant has not fulfilled requirements of permits previously issued by NHHHC to the applicant.

- Based on the findings of NHHHC evaluation and any appropriate consultation, NHHHC personnel will recommend an appropriate action to the NHHHC Deputy Director. If approved, the NHHHC Deputy Director will issue the permit; if denied, applicants are notified of the reason for the denial and may request reconsideration from the NHHHC Director within 30 days of receipt of the denial. Requests for consideration must be submitted in writing to:

Director of Naval History
Naval History and Heritage Command
805 Kidder Breese St. SE
Washington Navy Yard, DC 20374-5060

Credentials of Principal Investigator

The principal investigator (PI) must hold a graduate degree in archaeology, anthropology, maritime history, oceanography, marine biology, marine geology, other marine science, closely related field, or possess equivalent training and experience. The PI is expected to serve as the permit holder, however, NHHHC will accept, on a case-by-case basis, a different individual than the PI to apply as the permit holder.

Please attach curricula vitae (CV) for the principal investigator and CVs and/or resumes for the primary research team members.

Conditions of Permits

- Permits are valid for one year from the date of issue.
- Upon receipt of a permit, permit holders shall counter-sign the permit and return a copy to NHHHC, as well as any applicable foreign government, prior to conducting permitting activities. NHHHC shall provide copy of the permit to consulting federal and/or state land or resource managers as appropriate. Upon NHHHC confirming receipt of the counter-signed permit, the permitted activities may commence, provided that any other federal or state regulatory and permitting requirements that apply are met.
- Permits must be carried on-site and made available upon request for inspection by federal or state law enforcement officials. Permits are non-transferable. The permit holder, or the activity's authorized principal investigator in the case where a permit holder is not concurrently the authorized principal investigator, is expected to remain on-site for the duration of operations prescribed in the permit. In the event a permit holder or the authorized PI is unable to directly oversee operations, the permit holder must nominate a suitable qualified representative who may only serve in that function upon written approval by NHHHC.
- Permit holders must abide by all provisions in the permit, as well as applicable state or federal regulations. Permit holders must abide by applicable regulations of a foreign government for

activities directed at a sunken military craft located in the waters of a foreign State. The applicant is responsible for obtaining any and all additional permits or authorizations, such as but not limited to those issued by another federal or state agency, or foreign government.

- The permit holder shall agree to protect all sensitive information regarding the location and character of a wrecksite that could potentially expose it to non-professional recovery techniques, looters, or unauthorized salvage. Sensitive information includes specific location data and information about the cargo of a sunken military craft or terrestrial military craft, the existence of armaments, munitions and other hazardous materials, or the presence of, or potential presence of, human remains.
- In the event that credible evidence for or actual human remains, unexploded ordnance, hazardous materials or environmental pollutants such as oil are discovered during the course of research, the permit holder shall cease all work and immediately notify NHHHC. Permitted work may not resume until permitted by NHHHC.
- The permittee must maintain sufficient property, casualty and comprehensive general liability insurance against any third party claims arising out of permitted activities throughout the period covered by a permit. The amount of such insurance should be consistent with generally accepted industry standards. Alternatively, the permittee may post an equivalent bond for the same purposes, in lieu of purchasing or maintaining insurance. The permittee will indemnify, defend, and hold harmless the U.S., its agencies, officers and employees, against any claims by the permittee, the permittee's employees or agents, or any third parties, arising from any actions or inactions related to the permitted activities.
- All sections of 32 CFR 767 subpart A and C shall apply to all Special Use permits.
- Submission Reports:
 - At least 30 days prior to the expiration of the original permit, the permit holder must submit to NHHHC a preliminary report. NHHHC will review preliminary reports for thoroughness, accuracy, and quality and will inform the permit holder of their formal acceptance in writing. In the case of one or more permit extensions, a preliminary report must be submitted at least 30 days prior to the renewed permit's expiration date.
 - The permit holder must prepare and submit a final report summarizing the results of the permitted activity to NHHHC, within an appropriate time frame as specified in the permit. NHHHC will forward the accepted final report to any applicable SHPO, THPO, federal or state resource manager, or foreign government official. Failure to submit a final report within the specified time-frame will be considered a permit violation.
 - If the final report is not due to be submitted within two years of commencement of a permitted activity, interim reports must be filed biennially, with the first interim report submitted within two years of commencement of the activity. The interim report must include information required in the final report to the maximum extent possible, and an account of both the progress accomplished and the objectives remaining. NHHHC will review interim and final reports for thoroughness, accuracy, and quality and will inform the permit holder of their formal acceptance in writing.

Requests for Amendments or Extensions of Active Permits

Requests for amendments or extensions to active permits (e.g., a change in study design or other form of amendment) should be directed to:

Deputy Director
Naval History & Heritage Command
805 Kidder Breese St., SE
Washington Navy Yard
Washington, DC 20374-5060

AMENDMENTS: All information deemed necessary by NHHC to make an objective evaluation of the amendment request must be included, as well as reference to the original application. A pending amendment request does not guarantee approval and proposed activities cannot commence until approval is granted. All requests for permit amendments must be submitted during the period within which an existing permit is active and at least 30 days prior to the desired effect date of the amendment. Time sensitive or non-substantive amendments must be submitted in writing to the point of contact included in the permit and will be considered and expedited on a case-by-case basis.

EXTENSIONS: In order to continue research activities beyond the original permit expiration date, permit holders must apply for an extension of a valid permit at least 30 days prior to the original permit's expiration date. A pending extension request does not guarantee an extension of the original permit. Reference to the original application may be given in lieu of a new application, provided the proposed scope of work does not change significantly. Applicants may apply for one-year extensions subject to annual review.

Permit holders may appeal denied requests for amendments or extensions to the appeal authority:

Director of Naval History
Naval History & Heritage Command
805 Kidder Breese St., SE
Washington Navy Yard
Washington, DC 20374-5060

Contents of Permit Holder's Preliminary Report

The permit holder's preliminary report(s) shall at minimum include:

- A summary of the activities undertaken that includes an assessment of the goals specified in the permit application;
- A fieldwork log and, where applicable, a diving log, listing days spent conducting field research, activities pursued, working area locations including precise coordinates.
- An inventory of artifacts observed or recovered.
- Preliminary results and conclusions.

Contents of Permit Holder's Final Report

The permit holder's final report shall at minimum include the following:

- A wrecksite history and a contextual history relating the wrecksite to the general history of the region.
- A master wrecksite map. A master wrecksite map. Excavated and/or recorded sites should be plotted on an appropriate scale, with a north arrow, scale bar, and legend. The site boundaries and areas of excavation should also be noted.
- Feature map(s) of any recovered artifacts showing their positions within the wrecksite.
- Where environmental conditions allow, photographs of significant wrecksite features and significant artifacts both in situ and after removal.
- If applicable, a section that includes an inventory of recovered artifacts, description of conserved artifacts, laboratory conservation records, documentation of analyses undertaken, photographs of recovered artifacts before and after conservation treatment, and recommended curation conditions.
- A description of the wrecksite's discovery, environment (including geological context), past and current archaeological fieldwork, results, and analysis.
- A summary of the survey and/or excavation process including methods and techniques employed an account of operational phases, copies of applicable logs, as well as thorough analysis of the recovered data.
- An evaluation of the completed permitted activity that includes an assessment of the project's degree of success compared to the goals specified in the permit application.
- Recommendations for future activities, if applicable.
- An account of how the public interpretation or dissemination plan described in the permit application has been or is being carried out.
- Identification of any sensitive information regarding the location and character of a wrecksite that could potentially expose it to non-professional recovery techniques, looters, or unauthorized salvage. Sensitive information includes specific location data and information about the cargo of a sunken or terrestrial military craft, the existence of armaments, munitions and other hazardous materials, or the presence of, or potential presence of, human remains.
- Complete and unedited copies of any and all documentation and data collected (photographs, video, remote sensing data, etc.) during the permitted activity and results of any subsequent analyses. When submitting data to NHHC, please provide a preferred credit line to be used for photos, video, and other outreach products.

Monitoring of Performance

Permitted activities will be monitored to ensure compliance with the conditions of the permit. In addition to remotely monitoring operations, NHHHC personnel, or other designated authorities, may periodically assess work in progress through on-site monitoring at the location of the permitted activity. The discovery of any potential irregularities in performance under the permit by NHHHC on-site personnel, other designated authorities, or the permit holder, must be promptly reported to NHHHC for appropriate action. Findings of unauthorized activities will be taken into consideration when evaluating future permit applications.

Amendment, Suspension, or Revocation of Permits

The NHHHC Deputy Director, or his/her designee, may amend, suspend, or revoke a permit in whole or in part, temporarily or indefinitely, if in their view the permit holder has acted in violation of the terms of the permit or of other applicable regulations, or for other good cause shown. Any such action will be communicated in writing to the permit holder or the permit holder's representative and will set forth the reason for the action taken. The permit holder may request that the Director of NHHHC reconsider the action by writing to:

Director of Naval History
Naval History & Heritage Command
805 Kidder Breese St., SE
Washington Navy Yard
Washington, DC 20374-5060

Violations of Permit Conditions

Violations of the SMCA or of the DON permitting program may result in civil penalties as outlined in the regulations 32 CFR 767, which can lead to fines not to exceed \$100,000 per violation, with each day of a violation counting as a separate incident, liability for damages, and the in rem confiscation of a vessel associated with committing the violation. See 32 CFR 767 Subpart C for further details on the enforcement provisions for violations of the SMCA and associated permit conditions.

Definitions

- **ARTIFACT** means any portion of a sunken military craft or terrestrial military craft that by itself or through its relationship to another object or assemblage of objects, regardless of age, whether in situ or not, may carry archaeological or historical data that yields or is likely to yield information that contributes to the understanding of culture or human history.
- **ASSOCIATED CONTENTS:**
 - (1) The equipment, cargo, and contents of a sunken military craft or terrestrial military craft that are within its debris field; and
 - (2) The remains and personal effects of the crew and passengers of a sunken military craft or terrestrial military craft that are within its debris field.
- **DEBRIS FIELD** means an area, whether contiguous or non-contiguous, that consists of portions of one or more sunken military craft or terrestrial military craft and associated artifacts distributed due to, or as a consequence of, a wrecking event and post-depositional site formation processes.

- ***DIRECTED AT*** means an intentional or negligent act that disturbs, removes, or injures a craft that the person knew or should have known to be a sunken military craft.
- ***DISTURB OR DISTURBANCE*** means to affect the physical condition of any portion of a sunken military craft or terrestrial military craft, alter the position or arrangement of any portion of a sunken military craft or terrestrial military craft, or influence the wrecksite or its immediate environment in such a way that any portion of a craft's physical condition is affected or its position or arrangement is altered.
- ***HISTORIC*** in the case of a sunken military craft or a terrestrial military craft means fifty (50) years have elapsed since the date of its loss and/or the craft is listed on, eligible for, or potentially eligible for listing on the National Register of Historic Places.
- ***INJURE OR INJURY*** means to inflict physical damage on or impair the soundness of any portion of a sunken military craft or terrestrial military craft.
- ***PERMIT HOLDER*** means any person authorized and given the right by NHHHC to conduct activities authorized under the regulations 32 CFR 767.
- ***PERMITTED ACTIVITY*** means any activity that is authorized by NHHHC under 32 CFR 767.
- ***REMOVE OR REMOVAL*** means to move or relocate any portion of a sunken military craft or terrestrial military craft by lifting, pulling, pushing, detaching, extracting, or taking away or off.
- ***SUNKEN MILITARY CRAFT*** means all or any portion of:
 - (1) Any sunken warship, naval auxiliary, or other vessel that was owned or operated by a government on military noncommercial service when it sank;
 - (2) Any sunken military aircraft or military spacecraft that was owned or operated by a government when it sank;
 - (3) The associated contents of a craft referred to in (1) or (2) of this definition;
 - (4) Any craft referred to in (1) or (2) of this definition which may now be on land or in water, if title thereto has not been abandoned or transferred by the government concerned.
- ***SUNKEN MILITARY CRAFT ACT*** refers to the provisions of 10 U.S.C. 113 note; Pub. L. 108-375, Title XIV, sections 1401 to 1408, Oct. 28, 2004, 118 Stat. 2094.
- ***TERRESTRIAL MILITARY CRAFT*** means the physical remains of all or any portion of a historic ship, aircraft, spacecraft, or other craft, intact or otherwise, manned or unmanned, along with all associated contents, located on land and under the jurisdiction of the DON. Terrestrial military craft sites are distinguished from sunken military craft by never having sunk in a body of water.
- ***UNITED STATES WATERS*** means United States internal waters, the United States territorial sea, and the United States contiguous zone.
- ***WRECKSITE*** means the location of a sunken military craft or terrestrial military craft. The craft may be intact, scattered or completely deteriorated, and may presently be on land or in water. The wrecksite includes any physical remains of the craft and all associated contents.