



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, DC 20350-1000

SECNAVINST 4000.35A
ASN (I&E)
9 April 2001

SECNAV INSTRUCTION 4000.35A

From: Secretary of the Navy

Subj: DEPARTMENT OF THE NAVY CULTURAL RESOURCES PROGRAM

- Ref:
- (a) National Historic Preservation Act of 1966, as amended (16 U.S.C. 470-470x)
 - (b) Protection of Historic Properties (36 CFR Part 800)
 - (c) Native American Graves Protection and Repatriation Act (25 U.S.C. 3001-3013)
 - (d) American Indian Religious Freedom Act (42 U.S.C. 1996 and 1996a)
 - (e) Curation of Federally-Owned and Administered Archeological Collections (36 CFR Part 79)
 - (f) Archeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa-mm)
 - (g) DOD Instruction 4715.3, "Environmental Conservation Program" of 3 May 96 (NOTAL)
 - (h) Executive Order 13007, "Indian Sacred Sites"
 - (i) Memorandum for the Heads of Executive Departments and Agencies, 29 Apr 94, "Government-to-Government Relations with Native American Tribal Governments"
 - (j) Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments"
 - (k) Department of Defense American Indian and Alaska Native Policy, 20 Oct 98 (NOTAL)
 - (l) SECNAVINST 11010.14, "Department of the Navy Policy for Consultation with Federally Recognized Indian Tribes"
 - (m) National Environmental Policy Act of 1969 (42 U.S.C. 4321)
 - (n) Chief Financial Officers Act of 1990 (PL 101-576)
 - (o) Antiquities Act of 1906 (16 U.S.C. 431-433)
 - (p) SECNAVINST 5212.5D, "Navy and Marine Corps Records Disposition Manual"

Encl: (1) Additional amplifying legislation, regulations, directives, and guidance
(2) Department of the Navy contacts for cultural resources inquiries

1. Purpose. To establish policy and assign responsibilities within the Department of the Navy (DON) for fulfilling requirements of references (a) through (p) and the references listed in enclosure (1).

2. Cancellation. SECNAVINST 4000.35

3. Scope. This instruction applies to all components of the DON with custody of or management responsibility for cultural resources.

4. Definitions. The following definitions are provided to clarify terminology used in this instruction:

a. Advisory Council on Historic Preservation (ACHP). The independent Federal agency charged by Congress to advise the President, Congress and federal agencies regarding historic preservation and to administer Section 106 of reference (a). Reference (b) provides ACHP procedures for compliance with Section 106.

b. Cultural Resources. Buildings, structures, sites, districts, and objects eligible for or included in the National Register of Historic Places; "cultural items" as defined in reference (c); American Indian, Eskimo, Aleut, or Native Hawaiian sacred sites for which access is protected under reference (d); "archeological artifact collections and associated records" defined under reference (e); and "archeological resources" as defined by reference (f).

c. Cultural Resources Professional. A person who meets professional qualifications in anthropology, archeology, history, architecture, preservation planning or other preservation specialties set forth in Section 112 of reference (a) and the Secretary of the Interior's Professional Qualifications Standards.

d. Cultural Resources Manager. A person appointed by a commander or commanding officer, on a primary or collateral duty basis, to manage the command's cultural resources program.

e. Department of the Navy Federal Preservation Officer (DON FPO). An official appointed by the Secretary of the Navy in accordance with Section 110 of reference (a) to direct the DON Cultural Resources Program. The DON FPO is supervised and supported by the Assistant Secretary of the Navy (Installations and Environment).

f. Integrated Cultural Resources Management Plan (ICRMP). A plan that defines the process for the management of cultural resources on DoD installations – required of all DoD installations by reference (g).

g. National Register of Historic Places (National Register). The Federal government's official list of buildings, structures, districts, sites and objects that are significant in American history, architecture, archeology, engineering, or culture, and are thereby worthy of consideration for preservation. Significance may be local, State, or national in scope. The Secretary of the Interior maintains the National Register.

h. National Register Resource or Historic Property. Any resource that meets eligibility criteria for the National Register of Historic Places, whether or not it has been formally registered, identified or acknowledged as "eligible." "Historic property" is used synonymously with "National Register resource."

i. Principal Technical Advisor. A commander or director who has been assigned department-wide cultural resources advisory responsibilities. Also see enclosure (2).

j. State Historic Preservation Officer (SHPO). The official appointed by the Governor in each state and territory in accordance with reference (a) to administer the State Historic Preservation Program. SHPO duties include providing advice and assistance to federal agencies in carrying out their historic preservation responsibilities.

k. Tribal Historic Preservation Officer (THPO). The official appointed by a federally recognized Indian tribe in accordance with reference (a) to administer the Tribal Historic Preservation Program and assume the duties and functions of the State Historic Preservation Officer on tribal lands.

l. Undertaking. Any project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to state or local regulation administered under a delegation or approval by a Federal agency.

m. Undertaking proponent. The commander, commanding officer, or civilian director of a unit, activity, or organization who initiates a proposal for an undertaking, who has command and control authority over the undertaking once it is authorized, and who has the legal and financial authority to commit DON to agreements undertaken in compliance with cultural resources laws and regulations.

5. Policy

a. The DON is a large-scale owner of historic buildings, structures, districts, archeological sites and artifacts, ships, aircraft and other cultural resources. Protection of these components of the nation's heritage is an essential part of the defense mission; the DON is committed to responsible cultural resources stewardship. Ownership of archeological and historic artifacts recovered on property under control of the DON remains in DON by law.

b. Preservation considerations will be incorporated into routine DON management of historic buildings, structures, districts, sites, ships, aircraft and other cultural resources. Compliance with cultural resource protection requirements will be incorporated as appropriate into other DON planning processes, including but not limited to master planning, environmental planning, budgeting/programming, and facilities management. When functionally appropriate and economically prudent, DON will give preference to the rehabilitation or

adaptive use of historic properties over new construction or leasing.

c. The appropriate consultation will be initiated with SHPOs/THPOs, ACHP, Native Americans, Native Hawaiians, and other interested agencies and publics whenever the DON conducts or supports undertakings that may affect any National Register resource, whether DON-owned or not. Because there is no formal leadership structure for the Native Hawaiian community, the Undertaking Proponents for matters that may require consultation with that community in the state of Hawaii may designate a number of leadership representatives of that community for consultation, making available to the population generally the names of those selected and the issues presented for discussion. Undertaking proponents, commanders or commanding officers as appropriate are responsible for initiating timely consultation at the earliest planning stages of an undertaking before any final decisions are made, following procedures specified in reference (b). This is an imperative required by Section 106 of reference (a) and is an integral part of DON policy.

d. References (a) through (p) and the references cited in enclosure (1) impose specific legal obligations on the DON regarding its management of cultural resources. These requirements include, but are not limited to, establishing a program to locate and inventory all cultural resources under DON control and to evaluate them against National Register eligibility criteria for possible nomination to the National Register. Additional requirements include consultation with preservation agencies whenever a DON undertaking may affect eligible resources, and to ensure that eligible resources are not transferred, sold, demolished, substantially altered or allowed to deteriorate without first satisfying the requirements of Section 106 of reference (a).

e. Cultural resources management, including consultation, will take place at the lowest appropriate level of the chain of command, except that the decision to formally terminate consultation in accordance with section 7 of reference (b) is reserved to the Secretary of the Navy. Agreement documents resulting from consultation may be signed at the lowest appropriate level of the chain of command with the legal and financial authority to commit the DON to agreement provisions.

f. Archeological sites under the control of DON should be excavated only to the extent required for evaluation and identification, unless scientific or programmatic considerations (including other planned uses of a site), or concerns about the integrity or security of a site, make more extensive excavation necessary or advisable. The use of noninvasive or minimally invasive identification and evaluation techniques is encouraged when practical. Archeological site excavations will be supervised and conducted only by appropriately qualified personnel. Appropriate measures should be taken to ensure protection of sites against disturbance by unauthorized persons. Archeological collections as defined by reference (e) will be properly curated and accounted for, using as appropriate cooperative agreements with qualified institutions and experts. Information about archeological sites and collections must be entered into the designated data systems, and periodic command review should occur to ensure that data is accurate and current.

g. DON policy is to respect the interests and beliefs of Federally recognized tribes and to enter into consultation with them on matters that may affect those interests and beliefs in accordance with references (a), (b), (h) through (k) and other DoD policy and guidance as directed by reference (l). DON will take effective measures to ensure that the location and existence of sacred sites and other matters of tribal concern will be protected in accordance with tribal concerns as permitted by applicable law.

h. DON policy is to integrate to the fullest extent possible the procedures of Section 106 of reference (a) and of reference (m). This will be determined by the command conducting the reference (a) consultation based on the complexity of the undertaking and on the results of prior notification to and consultation with the SHPO/THPO and ACHP, as appropriate.

6. Responsibilities

a. The Assistant Secretary of the Navy (Installations and Environment) shall:

(1) Provide policy direction and oversight for DON cultural resources programs, the DON FPO, and the Principal Technical Advisors;

(2) Serve as proponent for Navy and Marine Corps historical programs, including those addressed by references (n), (o); and

(3) Convene and chair a standing DON Historic Preservation Board representing Navy and Marine Corps offices with cultural resources responsibilities. This Board will meet at least twice each year to consider common problems, seek to avoid duplication of effort, and identify measures to improve DON's management of its cultural resources.

b. The DON FPO shall:

(1) At his or her discretion, designate deputy FPOs if desired for more effective management of the cultural resources program. The DON FPO may delegate any of the FPO's authority or responsibilities that are not fixed elsewhere by law, regulation, or policy to Deputy FPOs.

(2) Develop DON cultural resources policy consistent with cultural resources legislation and DON operations;

(3) Provide guidance on implementation of cultural resources policy and advise all levels of the DON regarding compliance with cultural resources legislation and its applicability to DON programs;

(4) Monitor DON compliance with cultural resources legislation;

(5) Direct the DON cultural resources awareness and training program and participate in the Interservice Environmental Education Review Board process;

(6) Coordinate policy and procedures for complying with reference (n) as it relates to cultural resources;

(7) Maintain liaison with the Office of Legislative Affairs (OLA) to coordinate with Congress concerning legislative initiatives that may affect DON cultural resources policy;

(8) Maintain liaison and encourage cultural resources program cooperation with other DON agencies whose missions involve Navy and Marine Corps history or heritage;

(9) Represent DON interests on DoD and interservice bodies that may affect cultural resources;

(10) Be the DON point-of-contact to represent Navy and Marine Corps interests in cultural resource matters with the Department of the Interior, the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, other Department of Defense components, Federal and State agencies, Native American groups, and private preservation interest groups, as appropriate;

(11) Have final signature authority for nominations to the National Register, and for terminations of consultation in accordance with section 7 of reference (b), on behalf of the Secretary of the Navy.

(12) Have the authority to exempt from the requirement to prepare ICRMPs installations without cultural resources, or small installations with so few cultural resources that individual resource management plans are as effective and more efficient;

(13) Represent the Secretary in cultural resource compliance agreements among the DON, States, Federal agencies, Indian tribes, and Native Hawaiian organizations. This authority is delegated to the Chief of Naval Operations and Commandant of the Marine Corps, and may be further delegated to undertaking proponents, commanders, and commanding officers as required. Undertaking proponents, commanders or commanding officers contemplating agreements of service-wide or nationwide scope will keep the DON FPO informed on the progress of consultation;

(14) Provide leadership and direction to DON cultural resources programs at all levels of command;

(15) Actively encourage full and appropriate use and treatment of DON's cultural resources;

(16) Serve as the department's Federal Land Manager for purposes of reference (f) and issue archeological permits in accordance with references (f), (g), and (o). These responsibilities are delegated to the Chief of Naval Operations and the Commandant of the Marine Corps, and may be further delegated to commanders or commanding officers as required;

(17) Periodically review the cultural resources program with the ASN (I&E) or designee and the DON Historic Preservation Board.

(18) Recommend such modifications to reference (p) as may be necessary to preserve appropriately cultural resources records with continuing reference or historical value.

c. The Chief of Naval Operations (CNO) and the Commandant of the Marine Corps (CMC) shall:

(1) Be responsible for compliance with cultural resources legal and policy requirements within their respective services, and issue specific instructions and orders to implement cultural resources programs;

(2) Designate a cultural resources professional to coordinate their cultural resources programs;

(3) Ensure that resources are programmed and budgeted for qualified personnel, surveys, plans and other requirements for proper management and statutory compliance;

(4) Provide cultural resources awareness and/or technical training for all levels of command;

(5) Maintain current information about cultural resources under their control or affected by their undertakings;

(6) Ensure that, prior to acquiring, constructing or leasing buildings for purposes of carrying out DON responsibilities, historic properties available to the DON are used to the maximum extent feasible;

(7) Provide qualified cultural resources managers at all levels of command;

(8) Engage in joint planning and coordination of cultural resource matters that affect components of both the Navy and the Marine Corps, such as reference (o) Heritage Assets tracking and standardized record-keeping;

(9) Enter into cooperative agreements for the curation of archeological artifacts, consistent with guidance from the Department of Defense; and

(10) Administer the issuance of archeological permits.

d. The principal technical advisors for the DON are Commander, Naval Facilities Engineering Command, for matters related to historic buildings, structures, sites, districts, Native American issues and terrestrial archeology; Director, Naval Historical Center, for matters related to historic naval vessels, shipwrecks, Navy aircraft, underwater archeology, and Navy archives; and Director, Marine Corps History and Museums Division for matters related to historic Marine Corps aircraft and other vehicles, and Marine Corps archives. They shall:

(1) Support the DON FPO and the DON Cultural Resources Program as required;

(2) Maintain technical currency in the management and protection of the resources for which they are the advisors;

(3) Provide technical advice to commanders, commanding officers and Cultural Resources Managers at all levels of command as required; and

(4) Assist CNO and CMC in data management and reporting as appropriate.

(5) Participate in the proceedings of the DON Historic Preservation Board.

e. The General Counsel and Judge Advocate General shall provide legal advice and counsel as appropriate.

f. Commanders and commanding officers responsible for cultural resources shall:

(1) Ensure cost-effective stewardship of cultural resources under their control. Commanders and commanding officers may arrange for other commands or organizations to perform particular cultural resources tasks but retain ultimate responsibility for successful compliance, except to the extent relieved from such responsibility by higher authority;

(2) Prepare, maintain, and execute installation-specific ICRMPs in accordance with reference (g) and applicable DON planning guidelines;

(3) Plan, program, and budget for compliance with cultural resources requirements; and

(4) Issue archeological permits, if delegated the authority to do so, prior to excavation of sites or removal of artifacts.

g. Undertaking proponents shall:

(1) Plan, program, and budget for compliance with required cultural resources legislation in project development for undertakings;

(2) Comply with cultural resources planning and consultation requirements when executing undertakings. Undertaking proponents may arrange for other commands or organizations to perform particular cultural resources tasks but retain ultimate responsibility for successful compliance, except to the extent relieved from such responsibility by higher authority.

h. Cultural Resources Managers shall:

(1) Locate, inventory, evaluate and protect historic buildings, structures, districts, archeological sites, ships, aircraft and other cultural resources in accordance with Section 110 of reference (a) and DON/service policy;

(2) Prepare or supervise the preparation of installation-specific ICRMPs in accordance with reference (g) and applicable DON planning guidelines;

(3) Manage cultural resources consistent with professional standards, and provide technical oversight for contractors engaged in cultural resources activities on behalf of DON;

(4) Formulate preservation alternatives for consideration when cultural resources are proposed for demolition, deactivation, reactivation, rehabilitation, transfer or disposal;

(5) Perform timely interagency consultation and compliance with Section 106 of reference (a) whenever a DON-funded, licensed, permitted or assisted undertaking may affect historic properties;

(6) Disseminate technical guidance regarding maintenance, storage and protection of cultural resources and proper procedures for interagency consultation; and

(7) Maintain cultural resource records, with data retrieval capabilities, to assure that accurate information regarding DON cultural resources can be provided to Congress, the DON FPO, and other interested parties when required.

(8) Provide National Register nominations as required through the appropriate chain of command for final signature by the DON FPO; and

(9) Provide copies of executed compliance agreement documents and implemented ICRMPs to the DON FPO, or to a repository designated by the DON FPO.

i. DON commands, activities and other components in foreign countries shall take into consideration the host country's cultural resources regulations in accordance with section 402 of reference (a), international agreements, Admiralty Law, and status of forces agreements.

7. Delegation of Authority

a. Responsibility for the conduct of consultation with Federally recognized tribes is delegated to the CNO and CMC and may be further delegated as appropriate.

b. The responsibilities of the ASN(I&E), CNO and CMC may be delegated in writing, with a copy for the record to the FPO.

8. Action. The Chief of Naval Operations and the Commandant of the Marine Corps shall issue implementing instructions within 120 days.

Robert B. Pirie, Jr.
Secretary of the Navy
Acting

Distribution:

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| A3 | (CNO) (N09, N09B, N09BF, N09BH, N4, N43, N44, N45, N7, only) |
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| FKA1C | (COMNAVFACENCOM) |
| FKA1G | (COMNAVSEASYSYSCOM) |
| FT1 | (CNET) |

**OTHER APPLICABLE LEGISLATION, REGULATIONS, INSTRUCTIONS, AND
GUIDANCE**

Legislation:

- (a) Abandoned Shipwreck Act of 1987 (43 U.S.C. 2101-2106).
- (b) Archeological and Historic Data Preservation Act of 1974
(16 U.S.C. 469-469cc)
- (c) Cooperative Agreements for Management of Cultural Resources
(10 U.S.C. 2684)
- (d) Federal Records Act of 1950 (44 U.S.C. 3101)
- (e) Historic Sites Act of 1935 (16 U.S.C. 461-467)

Regulations:

- (f) 32 CFR 229, "Protection of Archeological Resources: Uniform Regulations, Department of Defense"
- (g) 36 CFR 60, "National Register of Historic Places"
- (h) 36 CFR 63, "Determinations of Eligibility for Inclusion in the National Register of Historic Places"
- (i) 36 CFR 65, "National Historic Landmarks Program"
- (j) 36 CFR 66, "Recovery of Scientific, Prehistoric, Historic and Archeological Data"
- (k) 36 CFR 78, "Waiver of Federal Agency Responsibilities, Under Section 110 of the National Historic Preservation Act"
- (l) 40 CFR 1500-1508, "Council on Environmental Quality, Regulations Implementing the National Environmental Policy Act"

- (m) 43 CFR 3, "Department of the Interior, Preservation of American Antiquities"
- (n) 43 CFR 10, "Department of the Interior, Native American Graves Protection and Repatriation Act"

Executive Orders:

- (o) Executive Order 11593, "Protection and Enhancement of the Cultural Environment"
- (p) Executive Order 13006, "Locating Federal Facilities on Historic Properties in Our Nation's Central Cities"

Guidance:

- (q) 36 CFR 67, "The Secretary of the Interior's Standards for Rehabilitation"
- (r) 36 CFR 68, "The Secretary of the Interior's Standards for the Treatment of Historic Properties"
- (s) 48 FR 22716, "The Secretary of the Interior's Professional Qualification Standards"
- (t) 53 FR 4742, "Guidelines for Federal Agency Responsibilities, Under Section 110 of the National Historic Preservation Act"
- (u) 62 FR 33707, "The Secretary of the Interior's *Proposed* Historic Preservation Professional Qualification Standards"

DEPARTMENT OF THE NAVY CONTACTS FOR CULTURAL RESOURCES INQUIRIES

- (a) HISTORIC BUILDINGS, STRUCTURES, DISTRICTS, TERRESTRIAL
ARCHEOLOGICAL RESOURCES and PERMITS:

Navy Cultural Resources Office
Commander Naval Facilities Engineering Command (BDD)
1322 Patterson Avenue SE Suite 1000
Washington Navy Yard DC 20374-5065

- (b) UNDERWATER ARCHEOLOGY (E.G. SHIPWRECKS AND SUNKEN AIRCRAFT)
and HISTORIC NAVY AIRCRAFT:

Director Naval Historical Center
805 Kidder Breese SE
Washington Navy Yard DC 20374-5060

- (c) MEMORIAL SHIPS / MUSEUM SHIPS:

Ship Donation Office
Program Executive Office Expeditionary Warfare
Navy Ship Donation Program Office (PMS 334)
2531 Jefferson Davis Highway
Arlington VA 22242-5160

- (d) MARINE CORPS BUILDINGS, STRUCTURES, DISTRICTS, and
ARCHEOLOGY:

Commandant of the Marine Corps
Installations and Logistics (LFL)
2 Navy Annex
Washington DC 20830-1775

- (e) MARINE CORPS HISTORIC AIRCRAFT:

Director Marine Corps History and Museums Division
1254 Charles Morris Street SE
Washington Navy Yard DC 20374-5040

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(f) LEGAL ISSUES:

Department of the Navy
Office of General Counsel
1000 Navy Pentagon
Washington DC 20350-1000

Department of the Navy
Office of the Judge Advocate General
1322 Patterson Avenue SE Suite 3000
Washington Navy Yard DC 20374-5066

Enclosure (2)