HI 96822–2396; phone (808) 943–1221; fax (808) 943–1240.

FOR FURTHER INFORMATION CONTACT: Lynne Barre or Trevor Spradlin, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The overall objective of the proposed research is to determine aspects of the population dynamics and behavior of small cetaceans around Hawaii and California, focusing on the spinner dolphin (*Stenella longirostris*) as a model. The applicant is requesting authorization for genetic sampling and suction-cup tagging to investigate population structure, genetic variability, dispersal patterns, social structure, foraging behavior, and diving behavior. Tissue samples for genetic analyses will be obtained by skin-swabbing techniques, or if this technique does not yield sufficient amounts of DNA, by biopsy sampling. The applicant is also requesting authorization to conduct behavioral observations and photo identification to supplement genetic and tagging data. The permit is requested for five years.

The applicant is requesting authorization to take spinner dolphins (*Stenella longirostris*) both in the Eastern Tropical Pacific (ETP) and in other Pacific waters. For the ETP, the applicant is requesting the following number of animals to be taken annually: 300 for behavioral observations and photo identification; 3 for suction cup tagging; and 50 for tissue sampling. The applicant also requests annual takes of 300 animals incidental to suction tagging, 300 animals incidental to tissue sampling and 300 animals incidental to behavioral observations and photo identification.

Outside the ETP, the applicant is requesting the following number of spinner dolphins to be taken annually: 2000 for behavioral observations and photo identification; 15 for suction cup tagging; and 150 for tissue sampling. The applicant also requests annual takes of 400 animals incidental to suction tagging, 1000 animals incidental to tissue sampling and an unlimited number of animals incidental to behavioral observations and photo identification.

The applicant is also requesting authorization to take the following species of small cetaceans: short-finned pilot whale (*Globicephala macrorhynchus*), melon-headed whale (*Peponocephala electra*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), pantropical spotted dolphin (*Stenella attenuata*), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), Risso's dolphin (*Grampus griseus*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops spp.*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), dwarf sperm whale (*Kogia simus*), and pygmy sperm whale (*Kogia breviceps*).

For each species listed above, the applicant is requesting the following number of animals to be taken annually: 300 for behavioral observations and photo identification; 3 for suction cup tagging; and 50 for tissue sampling. The applicant also requests annual takes of 400 animals incidental to suction tagging, 1000 animals incidental to tissue sampling and an unlimited number of animals incidental to behavioral observations and photo identification.

The applicant is currently conducting bioacoustic and behavioral research on spinner dolphins, spotted dolphins, bottlenose dolphins, pilot whales and rough-toothed dolphins pursuant to General Authorization Letter of Confirmation No. 707–1478, and has requested that these activities be incorporated into the requested permit if issued.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 6, 2001.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–9103 Filed 4–11–01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000526158–1016–02]

RIN 0648–XA52

Guidelines for Research, Exploration and Salvage of *RMS Titanic*

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Response to comments; final guidelines.

SUMMARY: These final guidelines have been developed for future research on, exploration of, and if appropriate, salvage of *RMS Titanic*. As directed by the *RMS Titanic* Maritime Memorial Act of 1986 (Act), the guidelines were developed in consultation with the United Kingdom, France, Canada and others. The broad and diverse public interest in *RMS Titanic* was also considered in developing the guidelines. While the guidelines set forth a preferred policy of *in-situ* preservation of *RMS Titanic*, they also set forth the parameters for the research, recovery and conservation of *RMS Titanic* artifacts for the benefit of the public.

DATES: These guidelines are effective April 12, 2001.

ADDRESSES: The final guidelines will be available at the following address: NOAA, 1315 East-West Highway, SSMC III, Silver Spring, MD 20910; attention *RMS Titanic* guidelines.

FOR FURTHER INFORMATION CONTACT: CDR Craig McLean, (301) 713–2427 ext. 132.

SUPPLEMENTARY INFORMATION: These final guidelines are issued under the authority of the RMS Titanic Maritime Memorial Act of 1986 (Act). Section 5(a) of the Act directs the National Oceanic and Atmospheric Administration (NOAA) to enter into consultations with the United Kingdom, France, Canada and others to develop international guidelines for research on, exploration of, and if appropriate, salvage of *RMS Titanic*. The guidelines are to (1) be consistent with the national and

international scientific, cultural, and historical significance of *RMS Titanic* and the purposes of the Act, and (2) promote the safety of individuals involved in such operations.

The purposes of the Act are to: (1) Encourage international efforts to designate *RMS Titanic* as an international maritime memorial to those who lost their lives aboard the ship in 1912; (2) direct the United States to enter into negotiations with other interested nations to establish an international agreement that provides for designation of *RMS Titanic* as an international maritime memorial, and protects the scientific, cultural, and historical significance of *RMS Titanic*; (3) encourage, in those negotiations or in other fora, the development and implementation of international guidelines for conducting research on, exploration of, and if appropriate, salvage of *RMS Titanic*; and (4) express the sense of the United States Congress that, pending such international agreement or guidelines, no person should physically alter, disturb, or salvage *RMS Titanic*.

The Act directs NOAA to consult with the Secretary of State (DOS) and promote full participation by other interested Federal agencies, academic and research institutions, and members of the public with respect to how exploration and research should be conducted, and whether and under what conditions salvage of *RMS Titanic* should occur. NOAA and DOS have consulted with representatives of these interested groups in the course of developing these guidelines.

Section 6 of the Act directs DOS to enter into negotiations with the United Kingdom, France, Canada and other nations to develop an international agreement that provides for: (1) Designation of *RMS Titanic* as an international maritime memorial; and (2) research on, exploration of, and if appropriate, salvage of *RMS Titanic* consistent with the international guidelines developed pursuant to the purposes of the Act. The final guidelines are consistent with the draft rules annexed to the January 5, 2000 draft international agreement that has been negotiated by the U.S., Canada, France and the United Kingdom.

Response to Comments

On June 2, 2000, NOAA published the proposed *Guidelines for Research, Exploration, and Salvage of the RMS Titanic* in the **Federal Register** (65 FR 35326, June 2, 2000). NOAA requested comments on the proposed guidelines from the general public and specifically from members of academia and research institutions. The comment period was from the date of publication through July 3, 2000. NOAA received a total of 64 written comments during the open comment period. Twenty-six common statements or positions were found repeatedly throughout the 64 comments received. NOAA offers the following responses:

NOAA Should Not Be Persuaded by ''Mass Mailings''

Comment 1. One commentor felt that NOAA should not be swayed by a ''mass mailing'' of letters in support of the guidelines that he observed circulating on the Internet.

Response: NOAA views every comment that is received from a different source as separate despite similarities in their wording. When multiple letters are received from the same source but via different media (e.g. fax, email, US Postal Service) the comments are attached to one another and counted as one comment. NOAA appreciates the effort put forth by every person that responded to the **Federal Register** notice regardless of the similarity in some of the comments and the position or views of the commentor. Below, preceding each paraphrased comment, the number and percent of total for each comment is given. This, in no way, is meant to insinuate that the comments received were tallied as votes in a referendum. The percentages are provided merely to give the reader a sense of the level of intensity the pool of commentors felt about the comment. As the reader will see below, NOAA took into account every comment received on the guidelines regardless of how many there were for each position.

Support Implementation of the Guidelines

Comment 2. Thirty-two of the 64 (50%) commentors stated that NOAA should immediately adopt the guidelines as they are currently written.

Response: The guidelines represent the most widely accepted principles in archaeology and are both appropriate and applicable to a Memorial Site. As previously noted, the guidelines are based on such widely accepted international and domestic professional archaeological standards, including the International Council on Monuments and Sites (ICOMOS) International Charter on the Protection and Management of Underwater Cultural Heritage and the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.

Support Implementation of the Guidelines With Modification

Comment 3. Five of the 64 (8%) commentors were generally in support of the guidelines but offered some minor suggestions for improvement.

Response: NOAA has taken into consideration the accuracy and appropriateness of every suggestion made by these individuals as they relate to the guidelines. All of the items indicated by these commentors have been addressed in this notice through individual responses and some have resulted in slight alterations to the proposed guidelines that are reflected in the final guidelines.

Oppose Implementation of the Guidelines

Comment 4. Twenty of the 64 (31%) commentors were opposed to the implementation of the guidelines in any form.

Response: NOAA acknowledges the controversial nature of putting forth the guidelines, and that there are many people that feel they will adversely affect their livelihood or that government should generally not interfere with private enterprise. However, after carefully evaluating the costs and benefits of putting forth such guidelines, NOAA has determined that it is clearly in the public interest to do so. Those commentors that opposed the guidelines generally elaborated on their reasons for doing so. Their specific concerns are addressed individually below.

Sale or Trade of Artifacts

Comment 5. Thirty-four of the 64 (53%) commentors were opposed to the sale of artifacts from *RMS Titanic* in one form or another. Another commentor suggested inserting ''Underwater cultural heritage is not to be traded as items of commercial value'' at the end of paragraph 30.

Response: Basic professional archaeological standards dictate that artifacts recovered or salvaged from a wreck site should be kept intact as a collection. Such collections should not be dispersed through the sale of individual artifacts to private collectors such as through auction house sales. The guidelines, consistent with Article 3 of the draft international agreement to protect *RMS Titanic*, provide that all artifacts recovered from *RMS Titanic* should be kept together and intact as project collections. Although not expressly delineated, following these guidelines would mean that individual artifacts would not be sold. However, this would not necessarily preclude the

sale, transfer or trade of an entire collection to a museum or other qualified institution, provided that this commercial transaction does not result in the dispersal of artifacts. As long as the collection is kept together and maintained for research, education, viewing and other use of public interest, there should not be restrictions on commercial transactions which are intended to further these public purposes. This guideline is consistent with the *RMS Titanic* Maritime Memorial Act of 1986, as well as the admiralty court orders in the in rem action against *RMS Titanic*. It is also consistent with agreements that the company with salvage rights to *RMS Titanic* entered into with the French Institute IFREMER for salvage of the artifacts from the wrecksite and with the British National Maritime Museum for the display of such salvaged artifacts.

NOAA has decided not to include the referenced sentence at the end of paragraph thirty in the final guidelines. This language is taken from the ICOMOS Charter, and is not warranted for these guidelines for several reasons. First, the final guidelines adequately protect *RMS Titanic* artifacts from sale. Second, the statement appears to go beyond the scope of the guidelines and apply to sites other than the wreckage of the *RMS Titanic*. Finally, the ICOMOS Charter term ''commercial value'' appears overly broad and subject to possible mis-interpretation. Commercial transactions between museums, such as loans and sales of collections, would appear to be prohibited by this language even though such transactions may further the primary objective of protecting the resource. Since the guidelines already require that the collection be kept together and intact in a manner that provides for research, education and other public access, the suggested additional language does not appear necessary or appropriate.

Deaccession of Artifacts

Comment 6. One commentor (2%) expressed that deaccessioning is not as commonplace as it may have been implied in the **SUPPLEMENTARY INFORMATION** section of the June 2, 2000 **Federal Register** notice.

Response: The issue of deaccessioning was raised in the context of the sale of coal taken from the wreck site and current professional museum practices. It was noted that the professional museum community policies for keeping the collection together do not preclude such museums from deciding to exclude certain objects from a collection, or from subsequently determining that a certain object in a collection should no longer be maintained as part of the collection and is therefore deaccessioned. There is little information available as to the amount and frequency of deaccessioning of artifacts by professional museums. However, there was no intent to imply that such deaccessioning occurs on a frequent basis. To the contrary, it is NOAA's understanding that it only occurs after a rigorous process has proved that an artifact no longer holds historical or archaeological significance to a collection. Only then can an artifact be deaccessioned. Once an artifact is deaccessioned it may be disposed of in a variety of ways without violating the general goal of keeping the collection together.

Titanic as a Grave Site

Comment 7. Eight of the 64 commentors (13%) felt that NOAA should not allow further disturbance of the *RMS Titanic* because it is a gravesite for those who died on the ship.

Response: NOAA acknowledges the intense controversy and disagreement over whether the *RMS Titanic* should be considered a gravesite. Most who feel that it is not a gravesite base this view on the fact that no bodies have been found on or near the wreck and that human bone dissolves into seawater at the depth at which the wreck lies. While it is true that no bodies have been found and are not likely to be found on or near the wreck of the *RMS Titanic*, others feel that the wreckage of the *RMS Titanic* should be considered a gravesite. Many people died on the *RMS Titanic* the night it sank and while their actual bodies may not today be on or near the wreckage, the site is their final resting place and should be respected as such. Congress recognized the symbolism of the *RMS Titanic* wreckage to the memory of the victims in its direction to the U.S. State Department to enter into international negotiations to declare the *RMS Titanic* an international maritime memorial. 16 USCS 450rr-4. In the treatment of *RMS Titanic* as a maritime memorial, NOAA has determined that it is appropriate to treat *RMS Titanic* as a gravesite. The scientific and archaeological approach advocated by these guidelines is applicable to a Maritime Memorial as it is consistent with the Congressional intent to recognize the scientific, cultural, and historical significance of the site.

Relevant National Authority

Comment 8. Two commentors (3%) requested clarification as to who exactly is a ''relevant national authority'' as mentioned in paragraphs 17, 26, and 32 of the guidelines.

Response: The phrase ''relevant national authority'' has been deleted from the guidelines to reflect the non-binding nature of the guidelines and to make it clear that NOAA, or any other agency, is not requesting submission of any information from persons conducting activities in relation to the *RMS Titanic*.

Technical Corrections

Comment 9. Three commentors (5%) pointed out some grammatical, spelling or other errors in the June 2, 2000 **Federal Register** notice.

Response: One commentor pointed out that the name of Jean Luc Michel, who accompanied Dr. Robert Ballard on the expedition that discovered the wreck of *RMS Titanic*, was spelled incorrectly. The name should be spelled Jean Louis Michel. This commentor also pointed out that the fourth expedition to the *RMS Titanic* in 1996 was omitted from the notice. There was an expedition to the wreck in 1996, which would make the expedition in 1998 the fifth expedition. NOAA also notes that there was a sixth expedition to the *RMS Titanic* after the FR notice was published on June 2, 2000.

Two commentors stated that NOAA should replace paragraph seventeen with the following statement from the ICOMOS Charter; ''All intrusive investigations of underwater cultural heritage will only be undertaken under the direction and control of a named underwater archaeologist with recognized qualifications and experience appropriate to the investigation.'' NOAA believes that, as written, paragraph seventeen provides adequate assurances that operations to the *RMS Titanic* will be undertaken and supervised by people with ample experience in the field. Whether the experience comes from archaeology or salvage, if the qualified technical and/or professional experts have experience related to the goals of the operation they should be qualified to undertake that operation.

One commentor also indicated that the word ''provenance'' in paragraph 22 should be replaced with the word ''provenience''. According to the Merriam-Webster Collegiate Thesaurus the words provenance and provenience are both synonymous with the word source. That is, both terms refer to ''where an object or artifact came from'' within the ship. This is what was intended by paragraph 22. Either word is appropriate in this situation. It is worth noting at this point that the

proposed guidelines in the June 2, 2000 **Federal Register** notice were the product of an international consultation and the best of attempts were made to ensure consistent wording considering the language differences among the consulting parties.

Scope and Definitions

Comment 10. Three commentors (5%) wanted clarification, modification, or deletion of the terms ''significant threat'', ''qualified institution'', and ''*RMS Titanic*.''

Response: The proposed guidelines did not include a ''scope and definitions'' section. Instead, such a section was added to the ''Supplementary Information'' portion of the June 2, 2000 **Federal Register** notice. NOAA has determined that it would be more appropriate to include an expanded version of this within the final guidelines themselves. In addition to being defined and explained below, two of those terms, as well as some others are defined in the newly added ''scope and definitions'' section in the final guidelines.

The phrase ''qualified institution'' as mentioned in first paragraph of the ''Sale of Artifacts'' section is any facility where the collection is kept together and maintained for the benefit of the public consistent with these guidelines and the Act. This will typically be a museum, but not always. This definition has been added to the final guidelines.

Three commentors requested either deletion or clarification of the phrase ''significant threat'' in paragraph one, the *in-situ* preservation policy, because it is overly vague. If an artifact is subject to a significant threat of loss, its recovery would generally be necessary to preserve it for education, science, or culture. Since the assessment of risk of loss is already a necessary part of the *in-situ* preservation policy and the determination of the public's interest in the recovery of an artifact, the additional phrase ''significant threat'' does not appear necessary. The phrase has been struck from the final guidelines. For further clarification, a definition of the *in-situ* preservation policy has been added. Representatives from NOAA recently visited museum exhibits displaying artifacts salvaged from *RMS Titanic*. NOAA realizes and acknowledges that it is in the public's interest to salvage some of these artifacts. To balance this value with the Congressional intent to manage the site as a Maritime Memorial, NOAA has concluded that the recovery of many of the artifacts from the debris field (with certain exceptions) to be consistent with these final guidelines, including the *in-situ* preservation policy. However, NOAA has also determined that recovery of artifacts from the hull is not consistent with the purposes of a Maritime Memorial.

One person suggested that NOAA insert the statutory definition of the *RMS Titanic* in the guidelines. The *RMS Titanic* Maritime Memorial Act of 1986 (16 U.S.C. 450rr to 450rr-6) defines ''R.M.S. Titanic'' to mean the shipwrecked vessel *RMS Titanic*, her cargo or other contents, including those items which are scattered on the ocean floor in her vicinity (16 U.S.C. 450 rr-1(c)). These guidelines are based primarily on the rules annexed to the January 5, 2000 draft international agreement, particularly the annexed rules for activities aimed at *RMS Titanic*. The guidelines define ''*RMS Titanic*'' and ''artifacts'' separately to better conform to the draft international agreement. The combination of these two definitions is similar to that found in the Act.

In-situ Preservation

Comment 11. Sixteen of the 64 commentors (25%) opposed the application of an ''*in-situ*'' preservation approach to *RMS Titanic.*

Response: Most of the commentors that oppose the concept of *in-situ* preservation do so because they feel that the wreck is decaying at a rapid rate, and that this approach would disallow anyone from the salvage, recovery and viewing of artifacts from the wreck in the future. *In-situ* preservation is simply a precautionary management approach and is not intended to create any legal presumption to preclude recovery or salvage. This is a current professional practice for managing heritage resources in place when the disruption of the site could lead to its destruction. In identifying ''*in-situ*'' preservation as the preferred alternative, NOAA acknowledges the multiple thousands of artifacts that have been recovered from the site prior to the development of these guidelines and that adequate planning for research, recovery and salvage can protect the artifacts, their context, and their interpretation.

Decisions to excavate sites or remove artifacts are made on a case by case basis when the proposed activity: (1) Will meet objective management criteria; (2) will be done in accord with professional standards; and (3) is justified by either educational, scientific or cultural interests, including for mitigatory, protection or preservation purposes. This scientific and archaeological approach is applicable to a Maritime Memorial as it is consistent with the Congressional intent to recognize the scientific, cultural, and historical significance of the site.

NOAA has done an extensive literature review on this topic and has found little, and at times contradictory, information on the rate of decay of the vessel. While a few reliable, peer-reviewed sources of information are available on the subject, most of the support for the claim that the ship is decaying very rapidly is anecdotal and has not yet been peer-reviewed or published. NOAA would be willing to review any additional pertinent literature to the contrary.

Based on the available information on the rate of deterioration, NOAA understands that the wreckage of the *RMS Titanic* is in a state of decay and expects that the hull and structure of the ship may collapse to the ocean floor within the next 50 years, perhaps sooner. The intent of the guidelines, in keeping with the intent of the Act, is to discourage activities that would accelerate the ship's deterioration. Such activities include cutting holes in the ship's hull to access artifacts in the interior of the wreckage. Consistent with an *in-situ* preservation approach, it is also the intent of the guidelines to preserve the wreckage of the *RMS Titanic* as a memorial for those who perished when the ship sank and thus to preserve the integrity of the wreckage.

While the concept of *in-situ* preservation promotes and encourages maintaining the wreckage as it currently exists, it will not prevent recovery or salvage that is determined to be in the public interest. Nor does this approach detract from the educational value of the ship or inhibit the public access to the wrecksite or to any recovered or salvaged artifacts by the general public. If followed correctly, the guidelines will help salvors and archaeologists plan and execute their recovery of artifacts that have educational, scientific, or cultural importance in such a manner so that they are properly preserved and consequently properly displayed for the general public. Furthermore, the guidelines do not discourage the use of remotely operated vehicles (ROVs) within the hull of the ship. Videos and photographs taken from ROVs are as valuable as artifact recovery, if not more so, in exposing the public to the wreckage and educating them about it. As a result of the apparent misconception of the *in-situ* preservation principle, NOAA has made some slight changes to the wording of the guidelines. The final guidelines are conceptually the same as the previously published proposed guidelines, however the re-wording is intended to

more clearly express the intent of the Act and of the guidelines.

Authority of NOAA

Comment 12. Fifteen of the 64 commentors (23%) stated that NOAA has no legal authority to adopt or enforce these guidelines because they are unconstitutional and they unnecessarily contradict the finding of the U.S. Admiralty Court in Norfolk, Virginia.

Response: Congress provided NOAA the authority to develop these guidelines in the *RMS Titanic* Maritime Memorial Act of 1986. The guidelines were developed consistent with the U.S. Constitution, the 1986 Act, and international maritime law.

Regulation of the Salvage Industry

Comment 13. Four of the 64 commentors (6%) felt that NOAA should not regulate the recovery of artifacts from the *RMS Titanic* or impede salvage or scientific research of the wreckage in any way.

Response: As stated in the June 2, 2000 **Federal Register** notice the guidelines are advisory only and are not legally enforceable. All four commentors felt that guidelines would restrict the public from viewing recovered artifacts and learning about the *RMS Titanic.* NOAA does not feel that the guidelines restrict the public viewing of recovered artifacts. To the contrary, the guidelines will facilitate education in that they will assist salvors and researchers in maintaining the historical context of each recovered artifact. The intent of the guidelines is not to regulate the salvage or scientific community working on the wreckage of the *RMS Titanic,* rather to provide them with guidance on how to maintain the ships cultural, social, and historical integrity, in accordance with 16 USCS 450rr–3, while performing operations at the wreckage.

Comment 14. Nine of the 64 comments (14%) stated that NOAA will adversely impact the salvage industry by putting forth these guidelines.

Response: The traditional salvage community is engaged in assisting with the recovery of property associated with recent air and marine casualties and thus will not be impacted by these guidelines. There is a smaller component of the overall ocean industry that search for and recover shipwrecks and the potentially valuable artifacts found there. As the guidelines are advisory in nature and they apply only to the wreckage of the *RMS Titanic,* they are not expected to impact this small sector of the ocean industry either. Should salvors of the *RMS Titanic* or any other submerged cultural resource choose voluntarily to follow these guidelines, NOAA feels that impacts to them financially will be minimal. Salvors may take extra time in formulating and adhering to a well thought out project design, writing and publishing their findings, ensuring that their design will have adequate funding, and securing the appropriate qualified professionals. NOAA believes, however, that in the long term these will actually help salvors save time and money during their expeditions. A small investment of time and money initially could yield large dividends in the form of fewer days at sea, properly catalogued artifacts, and decreased costs.

Public Interest

Comment 15. Three of the 64 commentors (5%) stated that the proposed guidelines are not in the public interest.

Response: The guidelines, based on domestic and international standards as reflected in the draft international agreement on the protection of the *RMS Titanic,* represent the most widely accepted public and professional archaeological and historical preservation principles currently known. Following these guidelines is in the public interest because artifacts will be preserved and recorded so that historical information can be extracted from the wreck without destroying it or compromising the ship's integrity. Not following the guidelines may cause artifacts to be sold individually, historical information to be lost forever, and the deterioration of the ship to be accelerated. These are in all likelihood contrary to the public interest.

UNESCO Treaty

Comment 16. Two commentors (3%) stated their opposition to the United Nations Educational, Scientific and Cultural Organization (UNESCO) treaty and did not want the United States to enter into the agreement.

Response: The commentors did not directly refer to the proposed guidelines, as they are separate and apart from the UNESCO treaty. They felt that the agreement would negatively impact them as members of the salvage community. The guidelines refer only to operations at the wreck of the *RMS Titanic* and will not negatively impact salvors as discussed above.

Artifact Status of Coal

Comment 17. Three of 64 commentors (5%) felt that coal from the wreck of the Titanic is not an artifact of historical or archaeological interest. Eight of the 64 commentors (13%) felt that coal from the wreck is an artifact of historical and archaeological interest.

Response: NOAA recognizes that the current salvor in possession of the *RMS Titanic* has been engaged in the sale of coal specimens recovered from the wreck site.

The Archaeological Resources Protection Act of 1979 defines the term ''archaeological resource'' as ''any material remains of past human life or activities which are of archaeological interest, as determined under the uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.''

NOAA has determined that no definitive study has yet been conducted to indicate whether coal from the *RMS Titanic* has any cultural information to impart. As a bulk-loaded natural material, the coal might not be expected to contain cultural information. However, it is conceivable that coal could have marks that might provide information on activities such as mining technique, modification for loading (ex. broken up to a proscribed size or shape, etc.) or transfer of the coal from the mine to the point where it now rests. Under such conditions, it is conceivable that the *RMS Titanic*'s coal might have some moderate cultural or archaeological value or interest. Such information might provide insight into previously undocumented aspects of maritime or mining culture.

Therefore, NOAA holds the opinion that while the coal may have potential for a low level of cultural information, it does not conform to the definition of ''archaeological resource'' as defined within ARPA. The coal is not likely to be of much historical interest. Though the level of historical or archaeological interest may change over time. Therefore, NOAA recommends that a representative sample of any recovered coal be retained for study should new processes develop, but be allowed for deaccession.

Paperwork Reduction Act (PRA)

Comment 18. Three of the 64 commentors (5%) indicated that the estimate of public reporting burden is too low.

Response: These commentors felt that it would take hundreds of hours to plan, execute and do the proper reports for an expedition, as opposed to just 12 hours for a project design and 12 hours to submit a report. The PRA statement provided with the proposed guidelines was not intended to estimate the entire time required for a professional expedition. Instead, it was intended to estimate the additional time and paperwork burden for those individuals if they voluntarily seek the review and approval of NOAA, or other relevant national authority, as stipulated in the guidelines. Therefore, the difference between NOAA's PRA analysis and this public comment was most likely a misunderstanding as to what exactly the estimate entailed. The PRA analysis was intended to address the additional amount of time that following these guidelines would entail. That is the time over and beyond what professional explorers, salvors, and archaeologists take under current practices. The estimates appear reasonable when compared with PRA estimates made by NOAA for compliance with its archeological guidelines and with Department of Interior/National Park Service estimates for compliance with their archeological guidelines. However, to address the objections raised regarding the application of the PRA, NOAA has removed requests for information.

Public Involvement

Comment 19: One commentor (2%) felt that NOAA did not fully involve the public, interested federal agencies, academia and research institutions in its development of the guidelines, and the international conferences from 1995–2000 allowed limited public involvement.

Response: NOAA did have extensive involvement of interested parties in the development of these guidelines. First, though not required, NOAA published the proposed guidelines in the **Federal Register** on June 2, 2000 (65 FR 35326, June 2, 2000). In that notice, NOAA invited and encouraged public comment on and suggestions for improvement for the proposed guidelines. Sixty-four comments were received. Furthermore, on June 15, 2000, NOAA held a public meeting at which people testified providing their views on the proposed guidelines. All comments were taken into account and the guidelines have been revised in response to these comments. Prior to drafting the proposed guidelines NOAA met with many interested parties including RMS Titanic, Inc. (as the salvor in possession of the *RMS Titanic*), other members of the professional salvage community, and members of the archaeological community to gather information about the wreckage of the *RMS Titanic,* current salvage practices and other information relevant to the preparation of the guidelines. In addition, NOAA participated in seven meetings between 1997 and January of 2000 with delegates from the United Kingdom of Great Britain and Northern Ireland, Canada, and France. RMS Titanic, Inc., as well as various experts in law, science, history, archaeology and salvage were periodically consulted prior to and throughout these meetings.

NAFTA Analysis/International Implications

Comment 20. One commentor (2%) felt that NOAA must consider international trade implications of promulgating the Guidelines. They felt that NOAA must do an analysis of the impact on trade between US, Canada and Mexico under NAFTA.

Response: The guidelines are non-binding. Therefore, there is no government action to be challenged. The NAFTA prohibits NAFTA governments from maintaining or taking measures that violate certain basic principles set out in the agreement, most importantly non-discrimination with respect to foreign goods, service providers and investors (between domestic and foreign, and between foreign). In addition, the NAFTA investment chapter requires that governments do not expropriate or take measures tantamount to expropriation unless they are for a public purpose, non-discriminatory, in accordance with due process and compensated. The commentor did not clearly state what exactly would be the trade implications of guidelines. In addition, there is an exception to the government's services and investment commitments for current and future measures related to water transportation. The exception lets the U.S. Government preserve existing measures and take new measures that would otherwise be inconsistent with the agreement. This maritime exception is found in NAFTA Annex II, and explicitly covers marine salvage (under SIC 4499, Water Transportation Services, not elsewhere classified).

Executive Order 12630

Comment 21. Two commentors (3%) felt that NOAA's analysis of the takings implications of the Guidelines under Executive Order 12630 is incorrect.

Response: As indicated in the Executive Order 12630 analysis found in the Miscellaneous Requirements section below, the guidelines are not mandatory and therefore could not constitute a regulatory taking. To fully demonstrate the non-binding nature of the guidelines, NOAA has altered the wording of the guidelines slightly. Specifically, the word ''shall'' has been replaced by the word ''should'' so that compliance with the guidelines is more clearly voluntary.

Recording Scheme for Artifacts

Comment 22. Two commentors (3%) felt that NOAA's Guidelines indicate a too-strict requirement for recording coordinates of every single artifact recovered—an unnecessary burden.

Response: While the guidelines do not specifically state such a requirement, such recording is reasonable and appropriate. The most widely accepted archaeological principles including the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation require such rigorous documentation of locational data. The goal of the guidelines is to ensure that any disturbance of *RMS Titanic* artifacts be preceded by complete documentation of an artifact's location and any artifacts surrounding it. This data is likely to preserve the provenience of recovered artifacts. If an entity does not have the ability or willingness to record such data, that entity should be discouraged from operating at the wreck of the *RMS Titanic* under these guidelines.

Background Studies

Comment 23. One commentor (2%) was unsure as to who would perform the studies referred to in Section VII (Preliminary Work) of the guidelines that call for ''backgrounds studies'' in the project assessment.

Response: The salvor or operator at the wreck site should perform the background studies.

Disposition of Artifacts

Comment 24. One commentor (2%) felt that the Guidelines should require that the final stage of the *RMS Titanic* exploration project design should involve establishing a permanent public repository for artifacts.

Response: The guidelines encourage that artifacts should be displayed as a collection for the public and not sold individually and suggests what artifacts should be included in such a collection. However, the guidelines do not suggest creating a permanent public repository for these artifacts. NOAA does not

believe it is within the scope or intent of the guidelines to create such a repository. It might be appropriate to consider that those recovering the artifacts from the wreck create such a permanent repository in binding regulations related to these guidelines.

Comment 25: One commentor (2%) stated that since the Code of Ethics of the International Council of Museums (ICOM) prevents display or acquisition of shipwreck artifacts recovered during private-sector salvage activities, one wonders who, exactly, will step up to curate this collection if not the private-sector.

Response: NOAA recognizes that professional salvors have had difficulty in the past finding a museum to exhibit or curate recovered artifacts. While this is generally true, NOAA nonetheless also acknowledges that *RMS Titanic,* Inc. has had considerable success in professionally displaying artifacts from the *RMS Titanic* at several qualified institutions worldwide including the Chicago Museum of Science and Industry and the British National Museum.

Comment 26. One commentor (2%) felt that recovery from artifacts from *RMS Titanic's* hull, as well as care of artifacts and decisions on their exhibition, should be under the control of a panel of recognized experts.

Response: NOAA has the technical expertise to properly implement these final guidelines and advocate the professional scientific approach to manage the Maritime Memorial. Therefore, such a panel of experts is unnecessary. When involved with a situation that requires expertise beyond that of this agency, NOAA will, as a matter of common practice, solicit the advice of experts outside the agency.

Miscellaneous Requirements

Executive Order 12866

This order requires that in deciding whether and how to regulate, federal agencies assess the costs and benefits of proposed regulations upon society, including individuals and business. While the final guidelines are non-binding, NOAA has considered the costs and benefits upon society arising from following the approach described in them. For those already using the professional scientific approach to research, recovery and conservation of artifacts, NOAA does not expect that there will be any additional significant costs from following these final guidelines. However, those explorers or salvors who do not as a matter of practice follow professional scientific standards and policies may have to expend additional costs in order to properly follow the guidelines. These costs could result in the expenditure of tens of thousands of dollars. Since a *RMS Titanic* salvage expedition can costs hundreds of thousands of dollars per day for ships, equipment and personnel, the additional costs for following the guidelines are not expected to be significant. Although using the guidelines may result in additional costs in the careful planning of the expedition, the application of the scientific approach generally results in a more efficient execution of the project and thus may save money in the end. The costs for compliance with the guidelines should also be weighed against the potential benefits to the society from protecting *RMS Titanic* and preserving the artifacts and research for present and future generations. Adherence to proper scientific methodology and approach is in the interest of the public because it preserves the integrity of the site, the artifacts recovered and the story contained at the wrecksite. Following the guidelines may also be viewed as an investment by those that have not followed the scientific standards in the past. The proper recording of information and conservation of artifacts increases the value of the collection to the salvors, researchers, museums and the general public. As a result, the additional costs involved in following the scientific approach are often offset by increased revenue from documentaries, films, and museum receipts. RMST has reported millions of dollars in annual revenues from the display of artifacts in museums. Some argue that keeping the collection together and intact is not as profitable as selling individual artifacts. It is difficult, however, if not impossible, to quantify the cost to society if the artifacts are sold such that the collection is no longer kept together for public use for research, education and viewing by the general public, or how such sale and distribution might denigrate a Maritime Memorial site.

Executive Order 12630

Under this Order, Federal agencies assess the takings implications of proposed policies and actions on private property protected by the Fifth Amendment. The goal is to better inform the agency decision-makers about the potential agency activities. To the extent permitted by law, consistent with their statutory obligations, agencies are then better informed on how to minimize the impacts of such activities on constitutionally protected property rights. As these guidelines are non-binding in nature, they should not raise any regulatory takings implications under the Just Compensation Clause of the Fifth Amendment to the U.S. Constitution.

Executive Order 12114

The purpose of this Order is to enable responsible officials to be informed of pertinent environmental considerations and to take such consideration into account in agency decision-making with regard to major federal actions significantly affecting the environment outside the United States, its territories and possessions. While based on independent authority, this Order furthers the National Environmental Policy Act (''NEPA'') and other laws consistent with the foreign policy and national security policy of the United States. The guidelines are not a ''major federal action'' as defined in DOC DAO 216–12 (Environmental Effects Abroad of Major Federal Actions), because they are advisory in nature. In addition, compliance with the guidelines would not have any significant adverse effects on the environment. However, compliance with the guidelines would further the purposes of NEPA and other laws. Conservation of the environment was carefully considered in developing the guidelines. Compliance with the guidelines would preserve *RMS Titanic* and would correspondingly further preservation of the surrounding natural environment.

A primary objective of the guidelines is preservation of *RMS Titanic* and its surrounding natural environment. In addition, activities that would harm or destroy *RMS Titanic* are discouraged in the guidelines. Since intrusive archaeological research, recovery or salvage can often harm the natural environment, compliance with the guidelines would correspondingly preserve the surrounding natural environment. The guidelines encourage non-destructive and non-intrusive research. Since non-intrusive research inherently avoids destruction of the surrounding natural environment, this guideline would also protect the natural environment. In the event that activities to be conducted may harm *RMS Titanic* and the surrounding natural environment, the guidelines provide for an assessment of environmental consequences. Thus, the guidelines would further the purposes of NEPA, other laws and Executive Order 12114 by conserving *RMS Titanic* and the surrounding natural environment.

National Historic Preservation Act (16 U.S.C. 470)

Compliance with the guidelines will not adversely affect *RMS Titanic*. To the contrary, compliance with the guidelines will fulfill the public's interest in conserving the national and international historical significance of *RMS Titanic* as directed in the Titanic Maritime Memorial Act of 1986. The Advisory Council on Historic Preservation was consulted in developing the guidelines and fully endorses NOAA in putting forth these guidelines.

Paperwork Reduction Act (16 U.S.C. 3541)

There is no requirement or request for the collection-of-information. Therefore, it is not subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

Ted I. Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Guidelines for Research, Recovery and Salvage of *RMS Titanic*

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Authority: 16 U.S.C. 450rr to 450rr–6.

Introduction

It is the sense of Congress that research and limited exploration activities concerning the *RMS Titanic* should continue for the purpose of enhancing public knowledge of its scientific, cultural, and historical significance, Provided, That, pending the adoption of the international agreement or implementation of international guidelines, no person should conduct any such research or exploration activity which would physically alter, disturb, or salvage the *RMS Titanic*.

Scope and Definitions

Scope and applicability: These final guidelines are intended to guide the planning and conduct of activities aimed at *RMS Titanic*, including exploration, research, and if appropriate, salvage. As guidelines, they are advisory in nature. For the purposes of these guidelines the term—

(a) ''artifacts'' means the cargo of the *RMS Titanic* and other contents, including those associated objects that are scattered in its vicinity and any portion of the hull;

(b) ''collection'' means artifacts and records pertaining to a project;

(c) ''project'' means all activities aimed at *RMS Titanic* and/or its artifacts carried out in accordance with these guidelines;

(d) ''*in-situ* preservation'' means that the preservation of *RMS Titanic* at the site of the wreck should be considered as the first option for protection. It is a precautionary approach to management of *RMS Titanic* consistent with the character of a Maritime Memorial. It is not intended as a legal presumption against the recovery or salvage of artifacts conducted in a manner consistent with these guidelines. Recovery or salvage of the artifacts may be justified by educational, scientific or cultural interests;

(e) ''qualified institution'' means any facility where the collection is kept together and maintained for the benefit of the public consistent with these guidelines and the Act. This will typically be a museum, but not always; and

(f) ''*RMS Titanic*'' means the wreck of the *RMS Titanic*.

I. General Principles

1. The preferred policy for the preservation of *RMS Titanic* and its artifacts is *in-situ* preservation. Recovery or excavation aimed at *RMS Titanic* and/or its artifacts should be granted only when justified by educational, scientific, or cultural interests. All artifacts recovered from *RMS Titanic* should be conserved and curated consistent with these guidelines and kept together and intact as project collections.

2. Activities should avoid disturbance of human remains. In particular, entry into the hull sections of *RMS Titanic* should be avoided so that they, other artifacts and any human remains are not disturbed.

3. Activities utilizing non-destructive techniques and non-intrusive surveys and sampling should be preferred to those involving recovery or excavation aimed at *RMS Titanic* and/or its artifacts.

4. Activities should have the minimum adverse impact on *RMS Titanic* and its artifacts.

5. Activities should ensure proper recording and dissemination to the public of historical, cultural and archaeological information.

II. Project Design

6. Activities that should be the object of a project design include:

(a) The objectives of the project;

(b) A general description of the methodology and techniques to be employed;

(c) A description of the anticipated funding;

(d) A provisional timetable for completion of the project;

(e) The composition, qualifications and responsibilities of the anticipated team;

(f) The proposal for or results of all preliminary work;

(g) If applicable, plans for post-fieldwork;

(h) If applicable, a conservation and curation plan;

(i) A documentation program;

(j) A safety policy;

(k) If applicable, arrangements for collaboration with museums and other institutions;

(l) Report preparation, contents, and dissemination;

(m) If applicable, the anticipated disposition of archives, including artifacts; and

(n) if applicable, a program for publication.

7. If unexpected discoveries are made or circumstances change, the project design should be reviewed and amended.

8. Each project should be carried out in accordance with its project design.

III. Funding

9. Projects should be designed to ensure adequate funding in advance to complete all stages of the project including the curation, conservation and documentation of any recovered artifacts, and the preparation and dissemination of the report.

10. The project design should include contingency plans that will ensure conservation of recovered artifacts and supporting documentation in the event of any interruption of anticipated funding.

11. The project design should demonstrate an ability to fund the project through completion.

12. Project funding should not require the sale of artifacts or other material recovered or the use of any strategy that will cause artifacts and supporting documentation to be irretrievably dispersed.

IV. Duration—Timetable

13. Adequate time should be assured in advance to complete all stages of the

project, including the curation, conservation and documentation of any recovered artifacts, and the preparation and dissemination of the report.

14. The project design should include contingency plans that will ensure conservation of artifacts and supporting documentation in the event of any interruption in the anticipated timetable.

V. Objectives, Methodology and Techniques

15. The project design should include the objectives, proposed methodology and techniques.

16. The methodology should comply with the project objectives and with the general principles in section I.

VI. Professional Qualifications

17. Projects should only be undertaken under the guidance of and in the presence of qualified technical and/or professional experts with experience appropriate to the objectives.

18. All persons on the project team should be:

(a) qualified and have demonstrated experience appropriate to their project roles; and

(b) fully briefed and understand the work required.

VII. Preliminary Work

19. The project design should include:

(a) An assessment that evaluates the vulnerability of *RMS Titanic* and artifacts to damage by the proposed activities; and

(b) A determination that the benefits of the project outweigh the potential risk of damage.

20. The assessment should also include background studies and relevant bibliography of available historical and archaeological evidence, and environmental consequences of the proposed project for the long-term stability of *RMS Titanic* and artifacts.

VIII. Documentation

21. Projects should be thoroughly documented in accordance with professional archaeological standards current at the time the project is to be undertaken.

22. Documentation should include, at a minimum, the systematic and complete recording of the provenance of artifacts moved or removed in the course of the project, field notes, plans, sections, photographs and recording in other media.

IX. Artifact Conservation

23. The project design should include a conservation plan that provides for treatment of the artifacts in transit and in the long term.

24. Conservation should be carried out in accordance with professional standards current at the time the project is to be undertaken.

X. Safety

25. All persons on the team should work according to a safety policy prepared according to professional standards and set out in the project design.

XI. Reporting

26. Interim reports should be made available according to a timetable set out in the project design.

27. Reports should include:

(a) An account of the objectives;

(b) An account of the methodology and techniques employed;

(c) An account of the results achieved; and

(d) Recommendations concerning conservation of any artifacts removed during the course of the project.

XII. Curation of Project Collection

28. The project collection, including any artifacts recovered during the course of the project and a copy of all supporting documentation, should be kept together and intact in a manner that provides for public access, curation and its availability for educational, scientific, cultural and other public purposes.

29. Arrangements for curation of the project collection should be agreed before any project commences, and should be set out in the project design.

30. The project collection should be curated according to professional standards current at the time the project is to be undertaken.

XIII. Dissemination

31. Projects should provide for public education and popular presentation of the results.

32. A final synthesis should be made available to the public as soon as possible, having regard to the complexity of the project.

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration; Notice of a Cooperative Agreement with EDUCAUSE for Management of .edu Domain Name Space

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of a cooperative agreement with EDUCAUSE.

SUMMARY: The National Telecommunications and Information Administration (NTIA) announces that it intends to enter into a cooperative agreement for the management of the .edu domain name space with EDUCAUSE, an association whose mission is to represent the policy, strategy, and operations interests for networking and information technology needs of higher education institutions. This cooperative agreement will facilitate policy development and technical operations of the .edu domain by a single responsible entity and provide a framework for the administration of the .edu domain.

The transition of operational and policy implementation functions for the .edu domain through a cooperative agreement to a single entity with strong ties to the education community is intended to constitute the selection of a successor registry for the .edu domain as described in Amendment 21 of Cooperative Agreement NCR 92–18742 [1] and is consistent with policies outlined in the Department of Commerce's Statement of Policy, often referred to as the White Paper.[2]

Authority: National Science Foundation Act of 1950, as amended, 42 U.S.C. 1861–75, and specifically 42 U.S.C. 1870(c), (j); National Telecommunications and Administrative Organization Act, 47 U.S.C. 901 *et seq.*; and Presidential Memorandum of Electronic Commerce, A Framework for Global Electronic Commerce, 33 Weekly Comp. Presidential Documents 1006 (July 1, 1997), which directs the Secretary of Commerce to transition Domain Name System management to the private sector.

Background

The .edu domain is the top level domain (TLD) of the Internet domain name system (DNS) that was established for use by educational institutions. Currently, it is generally restricted to use by four-year degree granting higher education institutions. Community and two-year colleges are not currently eligible for a .edu domain, although through the award of this cooperative agreement EDUCAUSE intends to implement a policy more responsive to the needs of this community. Also, higher educational institutions are

[1] Cooperative Agreement, as amended, NCR–9218742, see especially Amendment 21, available at www.ntia.doc.gov/ntiahome/domainname/agreements/amendment21.htm.

[2] See Management of Internet Names and Addresses, Statement of Policy, National Telecommunications and Information Administration, Department of Commerce, 63 FR 31741 (June 10, 1998).