

Federal Register notice (published January 22, 2010)

ADVISORY COUNCIL ON HISTORIC PRESERVATION
Draft Program Comment for the Department of the Navy for the Disposition of Historic Vessels

AGENCY: Advisory Council on Historic Preservation

ACTION: Notice of Intent to Issue Program Comments for the Department of the Navy for the Disposition of Historic Vessels.

SUMMARY: The Advisory Council on Historic Preservation is considering issuing a Program Comment for the Department of the Navy setting forth the way in which it will comply with Section 106 of the National Historic Preservation Act with regard to the determination of National Register of Historic Places eligibility of its vessels and the treatment of adverse effects that may result from their disposition.

DATES: Submit comments on or before February 12, 2010.

ADDRESSES: Address all comments concerning this proposed Program Comment to Dr. Tom McCulloch, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, N.W., Suite 803, Washington, DC 20004. Fax (202) 606-8647. You may submit electronic comments to: tmcculloch@achp.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Tom McCulloch, (202) 606-8554, tmcculloch@achp.gov.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act requires federal agencies to consider the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued the regulations that set forth the process through which Federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (Section 106 regulations).

Under Section 800.14(e) of those regulations, agencies can request the ACHP to provide a “Program Comment” on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.4 through 800.7. An agency can meet its Section 106 responsibilities with regard to the effects of particular aspects of those undertakings by taking into account ACHP’s Program Comment and following the steps set forth in that comment.

I. Background

The ACHP is now considering issuing a Program Comment to the Department of the Navy (Navy) that would set forth the way in which it will comply with Section 106 of the National Historic Preservation Act with regard to the determination of National Register of Historic

Places (National Register) eligibility of its vessels and the treatment of adverse effects that may result from their disposition.

As explained in the Program Comment itself, naval vessels are the ships and service craft built by and for the Navy, used in furthering the Navy's military mission, and listed in the Naval Vessel Register (NVR). Naval vessels are an unusual type of historic property. They are mobile assets that are put into harm's way and remain in active service for typically less than fifty years. Because naval vessels have a limited useful life, the Chief of Naval Operations undertakes a Ship Disposition Review (SDR) each year to determine whether any vessels should be decommissioned from active service. The total number of vessels to be decommissioned varies from year to year, but currently averages eight per year.

Upon the decommissioning of a vessel, the Secretary of the Navy is authorized to strike the vessel from the NVR. By the authority of the Secretary of the Navy, stricken Navy vessels may be: 1) sold; 2) dismantled; 3) transferred, by gift or otherwise, to any State, Commonwealth, or possession of the U.S., the District of Columbia, or non-profit entity; 4) used for experimental purposes, including Navy sink exercises (SINKEXes); 5) transferred, by gift or otherwise, to any State, Commonwealth or possession of the U.S. for use as an artificial reef; or 6) disposed to a foreign nation by sale, lease, grant, loan, barter, transfer or otherwise. These six methods of final disposition, which are "undertakings" under Section 106, are available to the Navy because it is neither cost effective nor consistent with the Navy's mission to retain vessels that have surpassed their useful life.

Under the Program Comment, the Navy would apply the National Register criteria to vessels in active service and decommissioned vessels. That process would include input from the public and various historic preservation stakeholders. The Program Comment would establish a type of treatment that would begin immediately from the time a vessel is determined eligible, and thus, well before a Navy decision to dispose of the vessel. Finally, the Program Comment would clarify that the Navy will not need to conduct Section 106 reviews regarding effects to active vessels.

Once the public comments resulting from this notice are considered, and edits are incorporated as deemed appropriate, the ACHP will decide whether to issue the Program Comment. The ACHP expects to make that decision at its upcoming quarterly meeting currently scheduled on February 24, 2010 in Washington, DC, or shortly thereafter.

II. Text of the proposed Program Comment

The following is the text of the proposed Program Comment, without the Guideline appendices:

PROGRAM COMMENT PURSUANT TO 36 C.F.R. § 800.14(e) IMPLEMENTING SECTION
106 OF THE NATIONAL HISTORIC PRESERVATION ACT FOR THE
EVALUATION OF VESSELS FOR ELIGIBILITY FOR LISTING IN THE
NATIONAL REGISTER OF HISTORIC PLACES AND THE TREATMENT OF ELIGIBLE
VESSELS TO RESOLVE ADVERSE EFFECTS THAT MAY RESULT FROM CERTAIN
METHODS OF FINAL DISPOSITION

I. Introduction

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to “take into account the effect of [an] undertaking on any...structure...eligible for inclusion in the National Register” and to “afford the Advisory Council on Historic Preservation . . . a reasonable opportunity to comment with regard to such undertaking.” Regulations promulgated by the Advisory Council on Historic Preservation (ACHP) and codified at 36 C.F.R. Part 800 describe the procedures Federal agencies must follow to meet their Section 106 obligations. Under 36 C.F.R. § 800.14, the ACHP provides Federal agencies with “a variety of alternative methods . . . to meet their Section 106 obligations,” thereby allowing agencies “to tailor the Section 106 process to their needs.” (65 FR 77698-01).

The following Program Comment was proposed by the Navy, and issued by the ACHP on (date to be determined), pursuant to 36 C.F.R. § 800.14(e). The Program Comment benefits the Navy and the historic preservation stakeholders by providing the Navy with a process for evaluating vessels to determine eligibility for listing in the National Register of Historic Places (NRHP) for Section 106 and Section 110 purposes. The Program Comment also provides a Section 106 method of treatment of eligible vessels to resolve adverse effects that result from certain methods of final disposition. The Program Comment will enable Navy decision-makers to apply the eligibility criteria as defined by the National Park Service (NPS) at 36 C.F.R. Part 60 to vessels in active service and decommissioned vessels. Furthermore, the Program Comment will give the public and various historic preservation stakeholders opportunities to provide input regarding a vessel’s eligibility for listing in the NRHP. The Program Comment will establish a type of treatment (i.e., collecting documentation in accordance with Section IV of this Program) that will begin immediately from the time a vessel is determined eligible, and thus, well before a Navy decision to dispose of the vessel. Finally, the Program Comment will clarify that the Navy will not need to conduct Section 106 reviews regarding effects to active vessels.

By implementing the Program Comment, the Navy will no longer be required to follow the standard Section 106 process for each final disposition decision affecting inactive vessels. In addition to satisfying the Navy’s obligations under Section 106 of the NHPA for vessels, the Program Comment enables the Navy to fulfill its responsibility under Section 110 of the NHPA to manage and maintain vessels that may be eligible for listing in the NRHP in a way that considers the preservation of their historic value.

II. Background

Naval vessels are the ships and service craft built by and for the Navy, used in furthering the Navy’s military mission, and listed in the Naval Vessel Register (NVR). Naval vessels are an unusual type of historic property. They are mobile assets that are put into harm’s way and remain in active service for typically less than fifty years. Because naval vessels have a limited useful life, the Chief of Naval Operations undertakes a Ship Disposition Review (SDR) each year to determine whether any vessels should be decommissioned from active service. The total number of vessels to be decommissioned varies from year to year, but currently averages eight per year.

Upon the decommissioning of a vessel, the Secretary of the Navy is authorized, under 10 U.S.C. § 7304, to strike the vessel from the NVR. By the authority of the Secretary of the Navy under 10 U.S.C. §§ 7305-7307, stricken Navy vessels may be: 1) sold; 2) dismantled; 3) transferred, by gift or otherwise, to any State, Commonwealth, or possession of the U.S., the District of Columbia, or non-profit entity; 4) used for experimental purposes, including Navy sink exercises (SINKEXes); 5) transferred, by gift or otherwise, to any State, Commonwealth or possession of the U.S. for use as an artificial reef; or 6) disposed to a foreign nation by sale, lease, grant, loan, barter, transfer or otherwise. These six methods of final disposition, which are “undertakings” as defined by 36 C.F.R. § 800.16(y), are available to the Navy because it is neither cost effective nor consistent with the Navy’s mission to retain vessels that have surpassed their useful life.

III. Determining Eligibility for Listing in the NRHP

A. Criteria

The Secretary of the Interior, through the NPS, established four criteria pursuant to its authority under the NHPA for determining whether property is eligible for listing in the NRHP. The four evaluation criteria are codified at 36 C.F.R. § 60.4 and listed below. The Navy is required to evaluate vessels for eligibility for listing in the NRHP using the four evaluation criteri

- i. are associated with events that have made a significant contribution to the broad patterns of our history;
- ii. are associated with the lives of persons significant in our past;
- iii. embody the distinctive characteristics of a type, period, or method of construction, or
- iv. have yielded, or may be likely to yield, information important in prehistory or history.

Navy vessels that meet one or more of these criteria, and that continue to possess integrity of (as appropriate) design, materials, workmanship, feeling and/or association are eligible for listing in the NRHP.

Recognizing that vessels have a limited useful life of typically less than fifty years, the Navy has determined that, for Section 106 and Section 110 purposes, vessels possessing any of the following characteristics at any time, including during active service, are of exceptional importance and meet the listing eligibility criteria established by the NPS and codified at 36 C.F.R. § 60.4:

- i. The vessel was awarded an individual Presidential Unit Citation. (A Presidential Unit Citation is awarded to military units that have performed an extremely meritorious or heroic act, usually in the face of an armed enemy.)
- ii. An individual act of heroism took place aboard the vessel such that an individual was subsequently awarded the Medal of Honor or the Navy Cross. (The Medal of Honor is awarded for valor in action against an enemy force. The Navy Cross is awarded for extraordinary heroism in action not justifying an award of the Medal of Honor.)

- iii. A President of the United States was assigned to the vessel during his or her naval service.
- iv. The vessel was the first to incorporate engineering, weapons systems, or other upgrades that represent a revolutionary change in naval design or warfighting capabilities, or other special and unique considerations.
- v. Some other historic or socially significant event occurred on the vessel.

B. Process

Each year, qualified Navy historians with knowledge about Navy vessels will review each vessel in active service to determine which, if any, possess any of the characteristics described above, and integrity, and therefore, will be determined eligible for listing in the NRHP.

Upon decommissioning, those vessels that have not already been determined eligible for listing in the NRHP will be evaluated by qualified Navy historians with knowledge about Navy vessels in accordance with the listing eligibility criteria established by the NPS, including whether the vessels possess integrity, and informed by the above, and thus, prior to making any final disposition decision with the potential to adversely affect historic property.

Depending on the availability of funds, the Navy may also develop type-specific context studies to determine NRHP listing eligibility of classes of vessels. Context studies shall be consistent with the eligibility criteria noted above and with the NPS publications "*How to Apply the National Register Criteria for Evaluation*," "*How to Complete the National Register Multiple Property Documentation Form*," and "*Nominating Historic Vessels and Shipwrecks to the National Register of Historic Places*." Vessels will be analyzed by class and the appropriate historic preservation stakeholders will be consulted on appropriate application of the National Register criteria. In the event that context studies are developed, they will be made available to the public in accordance with Section IV of this Program.

C. Participation by Historic Preservation Stakeholders

The Navy encourages historic preservation stakeholders, including but not limited to the ACHP, the NPS, State Historic Preservation Officers (SHPO), the National Conference of State Historic Preservation Officers (NCSHPO), the National Trust for Historic Preservation (National Trust), and the public to participate in the process for determining whether a vessel meets the eligibility criteria for listing in the NRHP. Through its existing public outreach programs the Navy will invite the public and historic preservation stakeholders to provide written comments and justification that support determining a vessel eligible for listing in the NRHP.

After the annual SDR, the Navy provides a list of vessels planned to be decommissioned over the next five years in a Report to Congress on the Annual Long-Range Plan for Construction of Naval Vessels. Subsequent to the release of the annual report to Congress, the Navy will provide statements of eligibility or ineligibility for listing in the NRHP on its website for those vessels to be decommissioned in the forthcoming year. The Navy will then solicit written comments on those statements of eligibility or ineligibility for listing in the NRHP from historic preservation stakeholders via its website. Historic preservation stakeholders will have sixty days from the

time of publication of the list of vessels to be decommissioned to provide their comments. The Navy will notify historic preservation stakeholders, including the Historic Naval Ships Association (HNSA) and other Veterans-affiliated organizations, of the beginning of the sixty-day period. All written comments should be mailed to the Naval History and Heritage Command (NHHC) or submitted electronically via the NHHC's website. The Navy will consider all written comments received before making a final determination as to whether a vessel is eligible for listing in the NRHP. If the Navy determines no question exists as to whether a vessel is eligible for listing in the NRHP, then the Navy will publish its final determination of listing eligibility for each vessel on its website. If the Navy determines that a question exists as to whether a vessel is eligible for listing in the NRHP, or if the ACHP or the Secretary of the Interior so request, the Navy will seek a formal determination of eligibility from the Keeper. Upon review, the Keeper's determination of listing eligibility shall be final.

An historic preservation stakeholder may also comment on a vessel's eligibility or ineligibility for listing in the NRHP in writing while the vessel is in active service. These comments should be mailed to the NHHC or submitted electronically via the NHHC's website. The NHHC will acknowledge receipt of the comments in writing, and retain the comments for consideration when preparing the statement of eligibility or ineligibility for the vessel prior to the vessel's scheduled decommissioning.

D. Effect of Eligibility Determination on Active Vessels

A determination that a vessel in active service is eligible for listing in the NRHP shall not affect the vessel's availability for routine operations, combat operations, and modernization to keep the vessel battle-worthy, safe, and habitable, as required by the Navy's military mission. Specifically, the Navy shall employ, deploy, activate, inactivate, repair, modify, move and decommission such vessels without regard to their eligibility and without needing to consider effects to them under Section 106 of the NHPA.

IV. Treatment of Vessels Determined to be Eligible for Listing in the NRHP

The Navy will take the following steps regarding vessels determined to be eligible for listing in the NRHP during active service or upon decommissioning:

- i. Annotate the vessel's entry in the NVR to reflect listing eligibility and include the basis for eligibility (the public can access the NVR at <http://www.nvr.navy.mil>); and
- ii. Make available a documentation package consisting of historically significant records such as command operation reports, war diaries, and deck logs, as they are submitted (the public would be able to access the documentation package at the NHHC; unclassified command operation reports will be available at <http://www.history.navy.mil>).

The Navy will also strongly consider making the vessel available for donation only upon decommissioning and striking from the NVR pursuant to 10 U.S.C. § 7306 for up to two years unless:

- i. The vessel is designated for Foreign Military Sales (FMS) transfer;
- ii. There are other Navy requirements for its continued use;
- iii. The material condition of the vessel precludes donation;
- iv. National security or other restrictions preclude donation; or
- v. The vessel is nuclear powered. (Additional coordination with the Director, Naval Nuclear Propulsion Program is required to determine donation feasibility.)

The Navy's Ship Donation Program is described at <http://peoships.crane.navy.mil/donation/>. Donation application requirements include submission of acceptable curatorial/museum and maintenance plans among other plans for the preservation of the vessel in a condition satisfactory to the Secretary of the Navy. If a qualified donee is not identified within two years, the Navy may remove the vessel from donation hold status and proceed with another method of final disposition. Contracts between the Navy and qualified donees include provisions that address historic preservation of the vessel.

The Navy will publish a list of vessels available for donation in the Federal Register and at <http://peoships.crane.navy.mil/donation/>. The list will include any NRHP eligible vessel initially precluded from donation that, due to a change in status, becomes available for donation.

The Navy will take the following steps regarding decommissioned vessels determined eligible for listing in the NRHP before final disposition by a method other than donation:

- i. Give priority to compiling histories of these eligible vessels when preparing entries in the *Dictionary of American Naval Fighting Ships*;
- ii. Retain and, depending on classification, provide public access to historical documentation from NRHP eligible vessels such as command operation reports, war diaries, and ship deck logs at the NHHC (deck logs that are more than thirty years old are transferred to the National Archives and Records Administration (NARA) for permanent retention);
- iii. In addition to the standard curator items removed from the vessel upon decommissioning in accordance with required Navy policy, including citations, correspondence of significant historical value, ship histories, paintings, ship silver services, and photographs selected to best display the physical characteristics of the vessel, the Navy would make the vessel available to the Navy Curator and eligible non-profit organizations for removal of additional equipment, parts of the vessel, etc. that contribute to the historical significance of the vessel. Items removed by the Navy Curator will be maintained and considered for loan to qualified U.S. non-profit organizations in accordance with 10 U.S.C. §§ 2572, 4575; and
- iv. Within three years of designating a NRHP-eligible vessel for final disposition, deposit with the NARA documentation consisting of archivally stable media of the following items:
 - a. A Booklet of General Plans; and
 - b. The last report of the Board of Inspection and Survey describing the material condition of the vessel.

Note that accessibility to the public will depend on the document's classification and NARA policies.

V. Reports

The Navy will submit an annual report to the NCSHPO and the ACHP on the progress of this Program Comment on 1 December, annually. The report will include the following information:

- i. The names and status of active vessels identified as eligible for listing in the NRHP, and the basis for their eligibility;
- ii. The names and status of decommissioned vessels identified as eligible for listing in the NRHP, and a copy of the statement of eligibility;
- iii. The names and status of decommissioned vessels identified as ineligible for listing in the NRHP, and a copy of the statement of ineligibility; and
- iv. The names of the vessels eligible for listing in the NRHP whose final disposition occurred during the reporting period, along with the status of the documentation supporting final disposition.

The annual report will also be made available to the public on the Navy's donation website.

VI. Effect of the Program Comment

By following this Program Comment, the Navy will meet its responsibilities for compliance with Section 110, in part, and Section 106 of the NHPA concerning the evaluation of vessels for eligibility for listing in the NRHP and the final disposition of eligible vessels. Accordingly, the Navy will no longer be required to follow the standard Section 106 process for each final disposition decision affecting inactive vessels, except as provided in this Program Comment.

Vessels already determined eligible for listing in the NRHP that are not subject to an existing agreement established through the Section 106 consultation process will be subject to this Program Comment as if their eligibility had been established as a result of this Program Comment. Vessels that are the subject of an existing agreement established pursuant to the Section 106 regulations will continue to be subject to that existing agreement.

The Program Comment described herein will remain in effect for twenty years, unless and until the Navy decides to terminate its application or the ACHP "determines that the consideration of historic [vessels] is not being carried out in a manner consistent with the program comment" and withdraws the comment. (36 C.F.R. § 800.14(e)(6)).

Upon either event, the Navy shall comply with the requirements of 36 C.F.R. Part 800 for each undertaking within the scope of this Program Comment. The Navy shall inform historic preservation stakeholders of the Program Comment's termination.

The Navy shall reexamine the Program Comment's effectiveness after the first year of implementation and every five years thereafter within the context of its annual report or by convening a meeting with historic preservation stakeholders. In reexamining the Program

Comment's effectiveness, the Navy shall consider any written recommendations for improvement submitted by historic preservation stakeholders to the NHHC.

Once in effect, the Program Comment may be amended when such an amendment is agreed to in writing by the Navy and the ACHP. The amendment will be effective on the date a copy of the amended Program Comment signed by the Navy and the ACHP is filed with the ACHP.

Appendix A

Definitions

- a. Command Operation Report, formerly Command History Report means a report that covers the operational and administrative actions of the command for each calendar year and usually consists of a chronology, a narrative, and enclosures. Some Command Operation Reports are classified for a set period of time.
- b. Decommission means to remove a vessel from active service.
- c. Documentation package means a compilation of historically significant records including, but not limited to, command operation reports, war diaries, and deck logs.
- d. Effect means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.
- e. Historic Preservation Stakeholder means the ACHP, the NPS, SHPOs, NCSHPO, the National Trust, any other agency or organization specifically concerned with historic preservation issues, and the public.
- f. Naval Vessel Register means the official inventory of ships and service craft titled to or in the custody of the U.S. Navy. It includes information about vessels from the time of their authorization through their life cycle and final disposition.
- g. Ship deck log means a daily chronology of particular events for administrative and legal purposes, as set forth by the Office of the Chief of Naval Operations Instruction 3100.7 series.
- h. Ship disposition review means an annual review of vessels in active service conducted by the Chief of Naval Operations to determine which vessels will be decommissioned from active service and retained for potential reactivation or stricken from the Naval Vessel Register and designated for disposal.
- i. Stricken vessel means a decommissioned vessel that has been removed from the Naval Vessel Register.
- j. Undertaking means a 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; and those requiring a Federal permit, license or approval.
- k. Vessel means the ships and service craft built by and for the Navy, used in furthering the Navy's military mission, and listed in the Naval Vessel Register. Vessel does not include those vessels retained in Navy custody for public display (i.e., USS CONSTITUTION, NAUTILUS (SSN 571), ex-BARRY (DD 933)).
- l. War diary means a ship's recounting of wartime operations. Some war diaries are written in a cursory fashion. Others are works of literary art. War diaries for combat actions are included with the Command Operations Report.

Authority: 36 CFR 800.14(e)

Dated: January ____, 2010

John M. Fowler,
Executive Director