

MEMORANDUM OF ARRANGEMENT

**PURSUANT TO THE
NATIONAL MARINE SANCTUARIES ACT
16 U.S.C. 1435(c)**

BETWEEN THE

**U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL OCEAN SERVICE
OFFICE OF NATIONAL MARINE SANCTUARIES**

AND

**THE AUSTRALIAN GOVERNMENT DEPARTMENT OF
AGRICULTURE, WATER AND THE ENVIRONMENT,
HERITAGE, REEF AND OCEAN DIVISION
HERITAGE BRANCH
CULTURAL HERITAGE SECTION**

**FOR THE PURPOSE OF
COLLABORATION IN UNDERWATER CULTURAL HERITAGE
RESOURCE MANAGEMENT ACTIVITIES IN THE PACIFIC REGION**

NOS Agreement Code: MOA-2021-153/12300

I. PARTICIPANTS AND PURPOSE

- A. This Memorandum of Arrangement (Arrangement) is between the U.S. Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), Office of National Marine Sanctuaries (ONMS), and the Australian Government Department of Agriculture, Water and the Environment (DAWE), Heritage, Reef and Ocean Division (HROD), Heritage Branch, Cultural Heritage Section (CHS), herein referred to as the “Partner Organization.” Together, both ONMS and DAWE HROD CHS are referred to as the “Participants.”
- B. The purpose of this Arrangement is to facilitate cooperative underwater cultural heritage resource management activities, maritime archaeological research, education, and resource protection efforts between ONMS that administers NOAA's Maritime Heritage Program (MHP) and the CHS that administers the Australia Underwater Cultural Heritage Program (AUCHP). This Arrangement will support the ONMS mission to increase public awareness of the nation’s maritime heritage; undertake scientific research, monitoring, and exploration; and provide educational programs for the public and the objectives of the AUCHP to ascertain and locate historic shipwrecks and relics in Australian waters, conserve and protect historic shipwreck sites and associated material as a cultural resource and to inform the public of the results of research. Additionally, this Arrangement will support skill sharing and professional development opportunities, hands-on marine educational opportunities for learning and participating in maritime archaeology, maritime history, and maritime heritage preservation efforts with ONMS in Australia and the Pacific Region.

II. BACKGROUND

- A. The National Marine Sanctuary System was established pursuant to the National Marine Sanctuaries Act (NMSA) 16 U.S.C. 1431 et seq., which provides a process to identify and to designate as national marine sanctuaries areas of the marine environment that are of special national significance. Among the purposes and policies of the NMSA are to enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archaeological resources of the National Marine Sanctuary System.
- B. The category of maritime heritage resources includes sites and features of cultural, archaeological, or historical significance, such as shipwrecks, submerged aircraft, inundated prehistoric landscapes and locations of indigenous maritime technology. NOAA recognizes a need for further marine research and outreach to encourage and assist coastal and Great Lakes states in developing and sustaining underwater cultural heritage resources management programs..

- C. NOAA's Maritime Heritage Program was initiated by the Office of National Marine Sanctuaries in 2002. The Maritime Heritage Program supports maritime archaeology and heritage preservation efforts throughout the sanctuary system, focusing on the strategic goals of: 1) Developing a comprehensive inventory of our nation's maritime heritage resources; 2) Becoming an international leader in maritime heritage research and science; 3) Serving as a responsible steward for maritime heritage resources; and 4) Increasing public awareness and understanding of our nation's maritime heritage, and encouraging responsible stewardship through education and outreach.
- D. DAWE's Cultural Heritage Section administers the Australian *Underwater Cultural Heritage Act 2018* (Cth) (UCH Act). This Act automatically protects shipwrecks, submerged aircraft and their associated articles that are at least 75 years old but also protects other underwater cultural heritage individually declared as protected. The UCH Act applies differently to different kinds of underwater cultural heritage depending on the type and location. In relation to shipwrecks the UCH Act applies to all shipwrecks located in Australian waters that extend from the low tide mark to the end of the continental shelf, although consent from the States and the Northern Territory may be necessary in certain circumstances (apart from those automatically protected). For submerged aircraft that aren't automatically protected, and other underwater cultural heritage that can be individually declared, the UCH Act applies to those located seaward of three nautical miles from the low tide mark to the end of the continental shelf. The UCH Act is administered in collaboration between the Federal, State and Northern Territory Governments. The Federal Government also directly administers historic shipwrecks, submerged aircraft and other UCH in certain territories, which include the Coral Sea Islands Territories and Norfolk Island in the Pacific Region.
- E. The UCH Act is carried out through the Australian Underwater Cultural Heritage Program (AUCHP). Its objectives are to research, explore, document and protect Australia's underwater cultural heritage. Each State or Territory program offers different opportunities for the public to encourage community participation in heritage management and protection.
- F. The objectives of the AUCHP since 1992 are to: conserve and protect historic shipwreck sites and associated material as a cultural resource of the nation; develop a comprehensive register of historic shipwrecks and associated material; obtain the support of an informed public for historic shipwrecks as a cultural resource; and to promote the commitment by government authorities to the protection and preservation of historic shipwrecks and associated material.
- G. A key direction of DAWE's CHS is to develop policies and programs to support the Australian underwater cultural heritage, to provide national leadership, to

work closely with countries who have shared heritage values with shipwrecks in Australian waters and to contribute, where possible, internationally, particularly with capacity building in the Indo-Pacific Region. Linking with ONMS through this Arrangement provides a platform for collaborative work of an international character in the Pacific Region and establishes an appropriate communication pathway on matters of shared Australian and United States underwater cultural heritage.

III. AUTHORITIES

A. The legal authority for ONMS to enter into this Arrangement is the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1435(c), which allows the Secretary in consultation with the Secretary of State and other appropriate Federal agencies, to cooperate with other governments and international organizations in furtherance of the purposes and policies of the NMSA and consistent with applicable regional and multilateral arrangements for the protection and management of special marine areas.

B. The programmatic authority for ONMS to enter into this Arrangement is the NMSA, 16 U.S.C. 1431 et seq., which includes among its Purposes and Policies:

16 U.S.C. 1431(b)(4) to enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archaeological resources of the National Marine Sanctuary System;

16 U.S.C. 1431(b)(5) to support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas;

16 U.S.C. 1431(b)(6) to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;

16 U.S.C. 1431(b)(7) to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;

16 U.S.C. 1431(b)(8) to create models of, and incentives for, ways to conserve and manage these areas, including the application of innovative management techniques.

- C. The programmatic authority for the DAWE to enter into this Arrangement is by signature of the First Assistant Secretary, Heritage, Reef and Ocean Division, Department of Agriculture, Water and the Environment.

IV. PARTICIPANT UNDERTAKINGS

A. ONMS intends to:

1. Assist, when practical, with support and placement of CHS staff, AUCHP Practitioners and Australian based university masters and doctorate researchers at ONMS Pacific Islands region sites for the study and preservation of maritime heritage resources and cultural heritage management;
2. Encourage its staff to work with the CHS and AUCHP Practitioners on mutually determined projects, subject to the availability of funds;
3. Facilitate access to NOAA resources, when practical; and
4. Work with the CHS to seek financial and other support for jointly sponsored projects.

B. DAWE HROD CHS intends to:

1. Assist, when practical, with support and placement of ONMS staff at DAWE or Delegated agencies under the AUCHP for the study and preservation of maritime heritage resources and underwater cultural heritage management particularly in the Pacific Region;
2. Encourage its staff, AUCHP Practitioners and Australian based maritime archaeology masters and doctoral students to work with ONMS on mutually arranged projects, subject to the availability of funds;
3. Facilitate access to DAWE and Underwater Cultural Heritage Delegate resources, when practical; and
4. Work with ONMS to seek financial and other support for jointly sponsored projects.

C. Collaborative Efforts (Both Participants intend to):

1. Cooperate to establish and implement mutually arranged joint research and education programs to enhance public understanding and appreciation of Pacific maritime archaeology, history, heritage, resource preservation and underwater cultural heritage management, in support of ONMS and

NHHS mutual goals, consistent with NMSA and the UCH Act and other applicable laws, regulations, policies, and procedures;

2. Enter into cooperative arrangements, grants, other arrangements or contracts, subject to the availability of funds, and pursuant to DOC and other applicable procedures and requirements, as are necessary for the purpose of carrying out projects that will benefit the resources of the ONMS, DAWE and/or other States in the Pacific Region;
3. Promote awareness and understanding of underwater cultural heritage in the Pacific Region, fostering the development of underwater cultural heritage management capacity in Pacific States.

V. CONTACTS

A. The points of contact for activities under this Arrangement are:

<u>ONMS</u>	<u>DAWE HRWTD</u>
Joe Hoyt	James Barker
Manager MHP	Assistant Secretary
NOAA ONMS	Heritage Branch
1315 East West Highway	John Gorton Building
Silver Spring, MD 20910	GPO 858
(757) 805-3554	Canberra City, ACT 2601
Alt. (240) 533-0679	Australia
Fax (301) 713-0404	(+612) 6274-2099
Joe.Hoyt@noaa.gov	james.barker@environment.gov.au

B. The Participants mutually decide that if there is a change regarding the information in this section, the Participant making the change will notify the other Participant in writing of such change. Changes to the section will not require an amendment.

VI. DURATION OF ARRANGEMENT, AMENDMENTS, OR TERMINATION

- A. This Arrangement defines in general terms the basis on which the Participants intend to cooperate, and as such, does not constitute a financial obligation to serve as the basis for expenditures. Any activities involving reimbursement or transfer of funds between the Participants to this Arrangement will be handled in accordance with applicable laws, regulations, and procedures. Such activities will be documented in a separate legal instrument.
- B. This Arrangement will become effective upon execution by both Participants, and will expire on December 31, 2026.

- C. The Arrangement may be amended within its scope or renewed prior to the expiration date, through the written mutual consent of the Participants by way of an exchange of letters.
- D. The Arrangement may be terminated by (1) written mutual consent, (2) one Participant's written notice 60 days in advance, or (3) completion of the Terms and Conditions of this Arrangement.
- E. The Participants will review this Arrangement at least once every three years to determine whether it should be revised or terminated.

VII. DISPUTE RESOLUTION AND NO BUSINESS RELATIONSHIP

- A. The Participants are aware and mutually decide that this Arrangement is not legally binding under international law, but nevertheless intend to act in accordance with its terms.
- B. This Arrangement does not restrict the Participants from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
- C. This Arrangement does not obligate the Participants to expend funds or to enter into any other arrangements, contracts or other commitments.
- D. If the Participants disagree over how to interpret this Arrangement, they will present their differences to each other in writing, and they will discuss them. If the Participants fail to resolve their differences within thirty (30) days, then the Participants may terminate this Arrangement pursuant to section VI.D above.

VIII. SOVEREIGN IMMUNITY OF THE PARTICIPANTS

- A. Nothing in this Arrangement is intended to waive the sovereign immunity of either Participant.

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XIII. APPROVALS

ACCEPTED AND APPROVED FOR THE
U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
NATIONAL OCEAN SERVICE

ACCEPTED AND APPROVED FOR THE
DEPARTMENT OF AGRICULTURE,
WATER AND THE ENVIRONMENT,
HERITAGE, REEF AND OCEAN
DIVISION

BY: JOHN ARMOR
John Armor
Director
Office of National Marine Sanctuaries

BY: SIMON BANKS
Simon Banks
First Assistant Secretary
Heritage, Reef and Ocean Division

DATE: 8 December 2021

DATE: 7 January 2022