

Appendix B

Some Legal Authorities that may Apply to Vessel-to-Reef Projects

This appendix identifies certain statutes, regulations, and executive orders that may apply to artificial reef projects. It is not an exhaustive list.

Clean Water Act ' 404 (33 U.S.C. 1344)

Placement of fill material (including structures such as those used to create artificial reefs) in inland waters and the territorial sea require a Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers (Corps). In issuing these permits, the Corps must determine that the permit would not cause or contribute to violations of applicable water quality standards or cause or contribute to significant degradation of waters of the United States. EPA may prohibit, withdraw, or restrict the use of a site if EPA determines that the placement of the artificial reef will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

Clean Water Act ' 401 (33 U.S.C. 1341)

Under Section 401 of the Clean Water Act, Section 404 permits for proposed discharges of dredged or fill material are subject to State certification as to compliance with applicable State water quality standards. No such permit may be issued unless State certification is obtained or is waived under Section 401.

Rivers and Harbors Act of 1866 ' 10 (33 U.S.C. 403)

Section 10 of the Rivers and Harbors Act (RHA) requires a permit from the U.S. Army Corps of Engineers for the construction of any structure (including artificial reefs) in or over any “navigable water of the United States” (see 33 CFR Part 329), the excavation from or deposition of material in such waters, or any obstruction or alteration in a navigable waters of the United States. Structures or work outside the limits of navigable waters of the United States also require a Section 10 permit if the structure or work affects the course, location, or condition of the waterbody in such a manner as to impact on its navigable capacity. Under the Outer Continental Shelf Lands Act (43 U.S.C. 1333(e)), Section 10 permit requirements also apply to the creation of structures on the Outer Continental Shelf of the United States, including artificial reefs. 33 C.F.R. 322.(3)(b).

Liberty Ship Act (16 U.S.C. ' ' 1220, et seq.)

This Act allows States to apply to the Secretary of the Department of Transportation (DOT) for the use of DOT owned obsolete vessels as an artificial reef for the conservation of marine life. This Act requires that the State application to DOT include a certification from EPA that the proposed use of the vessel will be compatible with “applicable water quality standards and other appropriate environmental protection requirements” (16 U.S.C. ' ' 1220 (b)).

National Fishing Enhancement Act of 1984 (33 U.S.C. ' ' 2101, et seq.)

This Act applies to artificial reefs in waters of the United States or on the Outer Continental Shelf for the purpose of enhancing fishery resources. The Act obligates NOAA to issue a national artificial reef plan that addresses issues such as siting and design criteria. This Act also amends the Liberty Ship Act by moving responsibility for Liberty Ships from the Department of

Commerce to the Department of Transportation, as well as moving responsibility of all obsolete vessels owned by the Department of Transportation to States that apply for and acquire them. In addition, this Act establishes further requirements to be applied by the Corps in the exercise of its permitting authority over artificial reefs.

Coastal Zone Management Act of 1972 (16 U.S.C. ' ' 1452, et seq.)

The Coastal Zone Management Act establishes a Federal/State partnership to provide for the comprehensive management of coastal resources. States develop management programs based on enforceable policies and mechanisms to balance resources protection and coastal development needs. The Federal consistency provisions require that all Federal activities (including direct Federal actions and Federal financial assistance to state and local governments) be consistent to the maximum extent practicable with the enforceable policies of a state’s Federally-approved coastal management program. Any applicant for a Federal license or permit must be consistent with the enforceable policies of a State’s coastal management program.

Toxic Substance Control Act (15 U.S.C. ' ' 2601, et seq.)

The Toxic Substance Control Act bans the manufacture, processing, use, and distribution in commerce of PCBs and directs the EPA to set regulations for the disposal of PCBs. The PCB program has historically used a limit of ≥50 ppm for the disposal of PCBs. PCBs ≥50 ppm are regulated for disposal at 40 CFR 761. The sinking of ships containing PCBs at regulated levels (≥50 ppm) is considered PCB disposal and requires approval under §761.62(c) from the U.S. EPA. PCBs may be found in a variety of shipboard materials but the location and concentration may vary from item to item and within classes of items. There are two ways to determine regulatory status of items suspected to contain PCBs: 1) assume “worst case” (≥50 ppm) and remove the suspect item(s), or 2) sample and analyze the items for PCB concentration.

Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1988 (7 U.S.C. 136-1367)

EPA has used its authority under FIFRA to regulate antifoulant paints, including those containing organotins, copper, and other compounds. Such paints which make antifoulant claims are pesticides under FIFRA. As part of the partial conclusion of the TBT Special Review, EPA used its FIFRA authority to impose requirements, such as certification and training for applications and other label requirements dealing with TBT applications and disposal.

Organotin Antifouling Paint Control Act of 1988 (33 U.S.C. 2401-2410)

Organotin-based antifoulant systems are also regulated pursuant to OAPCA, which presently prohibits use of organotin-antifouling paints on vessels under 25 meters in length (excluding aluminum hulls, outboard motors, and external drive units), and restricts the leaching rate of organotin antifoulant paints used on larger vessels.

Additional Legal Authorities that may Apply to Vessel-to-Reef Projects

- Endangered Species Act (16 U.S.C. 1531)
- Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, et seq.)

- DRAFT DRAFT DRAFT
- Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2901-2912, et seq.)
- Marine Mammal Protection Act of 1972 (16 U.S.C. 1361, 1371-1384 note, 1386-1389, 1401-1407, 1411-1418, 1421-1421h)
- Migratory Bird Conservation Act (16 U.S.C. 715-715r)
- National Marine Sanctuaries Act (16 U.S.C. 1431, et seq.)

- DRAFT DRAFT DRAFT
- Fish and Wildlife Coordination Act (16 U.S.C. 661-666c)
- National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331-4335, 4341-4347)
- National Marine Sanctuary Program Regulations (15 C.F.R. Part 922)

Some Executive Orders that may Apply to Vessel-to-Reef Projects

- Executive Order Number 12962 (60 FR 30769) - Recreational Fisheries
- Executive Order Number 11990 (42 FR 26961) - Protection of Wetlands