



DEPARTMENT OF THE NAVY

NAVAL SEA SYSTEMS COMMAND
1333 ISAAC HULL AVENUE
WASHINGTON NAVY YARD DC 20376

IN REPLY REFER TO

5090

Ser 21I/097

10 Dec 2015

MEMORANDUM FOR THE RECORD

Subj: CATEGORICAL EXCLUSION (CATEX) FOR DISPOSAL OF DS BARRY
(DD 933)

- Ref:
- (a) Title 10 U.S.C. § 7305, Vessels Stricken from Naval Vessel Register: Sale
 - (b) OPNAVINST 4770.5H, General Policy for the Inactivation, Retirement and Disposition of Navy Vessels
 - (c) Navy/Defense Logistics Agency (DLA) Memorandum of Agreement (MOA) for dismantling of stricken Navy combatant ships, of 7 Mar 2014
 - (d) 42 U.S.C. § 4321, National Environmental Policy Act of 1969 (NEPA), as implemented by 40 C.F.R. Part 1500 et seq.
 - (e) 32 C.F.R. §775, Policies and Responsibilities for Implementation of the National Environmental Policy Act within the Department of the Navy
 - (f) OPNAVINST 5090.1D, Environmental Readiness Program
 - (g) SECNAVINST 5090.6A, Environmental Planning for Department of the Navy Actions
 - (h) Request to the National Marine Fisheries Service (NMFS) for informal consultation under Section 7(a)(2) of the Endangered Species Act (ESA) regarding U.S. Navy Naval Sea Systems Command Inactive Ships Office proposed contracted towing and dismantling of inactive U.S. Navy vessels (Ser. SEA21I/43, 13 May 2015)
 - (i) Letter from the NMFS in response to reference (h) to Naval Sea Systems Command Inactive Ships Office, 9 July 2015
 - (j) Advisory Council on Historic Preservation, "Program Comment for the Disposition of Historic Vessels," 5 March 2010
 - (k) DC State Historic Preservation Office, Federal Section 106 Review Form, Removal of the Display Ship BARRY from the Washington Navy Yard, 17 June 2015
 - (l) National Priorities List for Uncontrolled Hazardous Waste Sites, 64 *Federal Register* 40182 et seq., 28 July 1998.

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1. Proposed Action: Under the authority of references (a) and (b), the Navy proposes to dispose of DS BARRY (DD 933) by dismantling in the United States. Pursuant to reference (c), the DLA will be the Navy's agent for soliciting and contracting the sale of these ships for dismantling in the United States.

Per reference (c), DLA will contract with a technically acceptable domestic ship dismantling company to dismantle DS BARRY. Language requiring full compliance with applicable Federal, state and local environmental and occupational safety laws and regulations will be included in the sales contract for ship towing and dismantling. The Navy will conduct surveillance of the work conducted by the contractor during contract execution.

The Proposed Action is needed to execute Chief of Naval Operations (CNO) direction to the Navy Inactive Ships Office on vessels stricken from the Naval Vessel Register and designated for disposal, to reduce the Navy's inactive ship inventory, and eliminate costs associated with continuing to maintain the deteriorating ship in safe stowage conditions.

In the event that DLA is unable to enter into a contract with a domestic ship dismantling company to tow and dismantle DS BARRY, she would be towed to the Naval Inactive Ship Maintenance Facility in Philadelphia, PA, where she would be maintained in safe stowage.

2. Background: Pursuant to reference (a), the Secretary of the Navy has authorized disposal of stricken vessels by dismantling (e.g., for recycling as scrap material). The Department of the Navy has entered into a MOA with DLA. The intent of this MOA is to utilize the sales contracting expertise. Per an evaluation conducted by the Navy in compliance with reference (j), BARRY is not eligible for listing in the National Register of Historic Places (NRHP) (see <http://www.navsea.navy.mil/Portals/103/Documents/TeamShips/SEA21/InactiveShips/Historic/2014/BARRY-FINAL-DOI-DD933-9-2-14.pdf>). In a separate National Historic Preservation Act Section 106 review conducted by the District of Columbia State Historic Preservation Office (DC SHPO), the DC SHPO concluded that removal of DS BARRY from the Washington Navy Yard will have no adverse effect on historic properties (reference k).

3. Applicable CATEX: Pursuant to references (d) and (e), the Navy established categorical exclusions for actions determined

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not to have a significant effect on the human environment individually or cumulatively under normal circumstances and, therefore, do not require preparation of an environmental assessment (EA) or an environmental impact statement (EIS). In accordance with reference (e), and as agreed upon by Naval Sea Systems Command (NAVSEA), Naval District Washington (NDW), Naval Facilities Command (NAVFAC) and Naval Support Activity (NSAW) Washington, DC (Environmental Specialist), the proposed action is excluded from further NEPA analysis because the following CATEX applies: (22) Decommissioning, disposal, or transfer of Navy vessels, aircraft, vehicles, and equipment when conducted in accordance with applicable regulations, including those regulations applying to removal of hazardous materials.

Prohibition on Use of a CATEX: References (d) and (e) prohibit reliance on a CATEX if any of the following five circumstances exist. None of these circumstances are present with regard to the proposed action. Each circumstance, and an explanation as to why it does not apply, is described below.

a. The proposed action "would adversely affect public health or safety." This prohibition does not apply because the locations for implementing the proposed action would have restricted public access, and the proposed action would be conducted in accordance with applicable Federal, state, and local health and safety laws. Any disturbance of sediments during the removal of DS BARRY from her berth at WNY would be minimal. It is very unlikely that such minimal disturbance would alter the water quality to the extent that there would be a significant adverse effect on public health or safety. The proposed action will have no adverse effect on public health or safety.

b. The proposed action "involve[s] effects on the human environment that are highly uncertain, involve unique or unknown risks, or which are scientifically controversial." This prohibition does not apply because ship disposal by dismantling has been conducted previously and does not involve unknown risks, and there is no scientific controversy associated with this project. Although PCBs and heavy metals are known to be present in the sediments of the Anacostia River in the vicinity of DS BARRY, turbidity following removal of DS BARRY from her berth is expected to be minor and temporary, with a return to previous conditions. No significant release of PCBs or heavy metals into the ambient environment is expected. Further, no dredging will be required to remove DS BARRY from her berth at

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the Washington Navy Yard or to tow her to a dismantling facility.

The Washington Navy Yard is on the National Priorities List as a Superfund site (EPA ID number DC9170024310; reference 1); however, the proposed action will not affect the Superfund designation, nor will the proposed action affect existing EPA agreements or actions being taken to remediate environmental conditions at the site.

c. The proposed action "establish[es] precedents or makes decisions in principle for future actions that have the potential for significant impacts." This prohibition does not apply because transfer of this vessel for dismantling does not establish precedents for future transfers of vessels generally nor will this transfer make a decision for future actions with the potential for significant impacts.

d. The proposed action "threaten[s] a violation of Federal, state, or local environmental laws applicable to the Department of the Navy." The proposed action is in compliance with applicable Federal, state and local laws and regulations. DLA and its contractor will be required to follow applicable Federal, state and local laws during the towing and dismantling of DS BARRY. The proposed action may require removal and disposal of regulated PCB-containing materials which remain on DS BARRY. However, the removal of the materials will not constitute an unlawful distribution in commerce of a regulated substance, PCBs, because there is an exemption within the Toxic Substances Control Act and its implementing regulations (16 U.S.C. 2601 et seq.) allowing distribution of PCB-containing materials in commerce when this action is for the sole purpose of disposal.

e. The proposed action "involve[s] actions that, as determined in coordination with the appropriate resource agency, may: 1) have an adverse effect on federally-listed endangered/threatened species or marine mammals; 2) have an adverse effect on coral reefs or on federally-designated wilderness areas, wildlife refuges, marine sanctuaries, or parklands; 3) have an adverse effect on the size, function or biological value of wetlands and is not covered by a nationwide or regional permit; 4) have an adverse effect on archaeological resources or resources (including but not limited to ships, aircraft, vessels and equipment) listed or determined eligible for listing on the NRHP ; or 5) result in an uncontrolled or

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unpermitted release of hazardous substances, or require a conformity determination under the standards of the Clean Air Act General Conformity Rule."

Addressing each of the above conditions:

- (1) Pursuant to Section 7 of the ESA and references (g), (h) and (i), the Navy has determined, and NMFS has concurred, that implementing the towing portion of the Proposed Action may affect, but is not likely to adversely affect, certain threatened and endangered species under NMFS' jurisdiction that may be encountered en route to the dismantling facility. In addition, the Navy has determined, and NMFS has concurred, that:
 - (a) the likelihood of biofouling organisms affecting ESA-listed species and critical habitats along the tow routes covered by this CATEX is sufficiently low as to be considered discountable.
 - (b) the risk of oil or chemical discharge from potentially sunken vessels is sufficiently low to be discountable.
 - (c) ship tow routes are unlikely to pass through designated critical habitat and any vessels moving through critical habitat will do so temporarily; important features of critical habitat traversed by towed vessels are not expected to be significantly or permanently affected.
 - (d) The likelihood that infrequent towing events would result in strikes is low as to be discountable given implementation of minimization measures identified in reference (i) and the minimal time that a vessel would be in any given location.
- (2) Coral reefs, federally-designated wildlife refuges, and marine sanctuaries are known to occur in coastal waters of the United States. However, during towing, effects would be prevented by avoidance of these areas as practicable and by implementing the requirements of applicable Federal, state, and local laws during towing. Per reference (i), the Navy determined, and NMFS concurred that during transit it is unlikely that

invasive fouling species would be dislodged into suitable hard substrates resulting in colonization. NMFS concluded that the likelihood of biofouling species resulting in direct or indirect effects to ESA-listed species is so low as to be discountable. DS BARRY is berthed at the Washington Navy Yard in the Anacostia River, a freshwater environment, and no invasive species are known to be present on her hull.

- (3) The proposed action will not adversely affect the size, function or biological value of wetlands. The project does not require any construction and would not disturb any wetlands.
- (4) The proposed action will not have an adverse effect on archaeological resources or resources listed or determined eligible for listing in the NRHP. The Navy found DS BARRY to be ineligible for listing in the NRHP, as determined in accordance with reference (j); and the DC SHPO concluded that removal of DS BARRY from the Washington Navy Yard will have no adverse effect on historic properties (reference k).
- (5) The proposed action will not have an adverse effect on air resources. According to 40 C.F.R. § 93.153(c), the Proposed Action qualifies as an action which would result in no emissions increase or an increase in emissions that is clearly *de minimis*: "(viii) Routine Movement of mobile assets such as ships and aircraft in homeport assignments and stations ... for repair or overhaul." The towing operation would result in a minor but temporary increase of marine vessel emissions from tug boats. No long-term increases in emissions would occur as no new stationary sources are to be constructed. The proposed action will not result in an airborne release of hazardous substances and thus does not require a conformity determination under standards of the Clean Air Act General Conformity Rule. Therefore, in accordance with NEPA, the Proposed Action would have no significant impact on air quality.

Because none of the five circumstances apply to the proposed action, reliance on a CATEX is not prohibited. Therefore, the proposed action is categorically excluded from the NEPA requirement to prepare either an EA or an EIS.

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4. Mitigation: Sea conditions will dictate tow speed, but the tug and tow will normally travel at speeds of between 6 and 8 knots in the open ocean, several knots below the 10 knots designated for protection of right whales in seasonal management areas. Towing will follow the U.S. Navy Towing Manual. When marine mammals or sea turtles are sighted, the tug crew will increase vigilance and take reasonable and prudent actions to avoid collisions. Actions may include changing speed and/or direction as dictated by environmental and other conditions (e.g., safety, weather). The Navy will be responsible to ensure crew are adequately trained to spot and identify marine mammals and sea turtles.

5. Conclusion: The disposal of DS BARRY (DD 933) by dismantling in the United States will not significantly affect the human environment and will not result in any significant changes from existing conditions. CATEX (22) applies to the proposed action. None of the prohibitions on the use of categorical exclusions under references (d)-(f) apply. Therefore, neither an EA nor an EIS will be prepared. This MEMORANDUM constitutes the documentation for a CATEX pursuant to the requirements of NEPA.

6. POC for this memorandum is Jim Poles, Environmental Project Manager, james.poles@navy.mil at (202) 781-0149.


W. BOOZER
Acting Director, SEA 21I
Navy Inactive Ships Office