



**MEMORANDUM OF UNDERSTANDING BETWEEN**  
**UNITED STATES ARMY CORPS OF ENGINEERS**  
**AND**  
**UNITED STATES COAST GUARD**  
  
**REGARDING**  
**THE MITIGATION OF OBSTRUCTIONS TO NAVIGATION**

- 1. PARTIES:** The parties to this Memorandum of Understanding (MOU) are the U.S. Coast Guard (USCG) and the U.S. Army Corps of Engineers (USACE).
- 2. PURPOSE:** The purpose of this MOU is to improve the efficiency and effectiveness of the USCG and the USACE's routine responses under each agency's respective authorities for mitigating obstructions to navigation. This MOU also provides procedures on coordination to determine whether an obstruction is a hazard to navigation and procedures to determine the appropriate corrective actions to be taken by both agencies. This MOU replaces the Memorandum of Agreement between Department of Army and US Coast Guard SUBJECT: Coast Guard and Department of Army Responses to Marking and Removal of Sunken Vessels and Other Obstructions to Navigation, signed by USCG October 16, 1985.
- 3. OBJECTIVES:** The following are the objectives of this MOU:
  - a. Promote close coordination and cooperation between the USCG and the USACE leading to prompt and decisive action to mitigate obstructions declared to be hazards to navigation.
  - b. Provide guidance on the parameters and procedures for making mutual decisions for determining when an obstruction should be declared a hazard to navigation.
  - c. Identify the corresponding Chain-of-Command relationships for resolving differences of opinion between the USCG and the USACE as to the appropriate corrective action to initiate for hazards to navigation.
  - d. Assure timely and effective action to provide safe navigation to the maritime community.
  - e. Develop individual USCG and USACE agency instructions to implement this MOU.
- 4. AUTHORITY:** The parties to this MOU are authorized to act under the following provisions:
  - a. 14 U.S.C. § 93(d)
  - b. Rivers and Harbors Act of 1899, 33 U.S.C §§ 401, 403, 407, 409, 414, and 415.
  - c. Specific Authorized Federal Navigation Project language regarding obstruction removals.
  - d. Ports and Waterways Safety Act, 33 U.S.C. 1231.



- e. Marking of Obstruction, 14 U.S.C. 86.
  - f. Abandoned Barge Act of 1992, 46 U.S.C. 4701-4705.
- 5. APPLICABILITY:** This MOU addresses routine (non-Federally declared emergency) responses to obstructions to navigation and applies to the navigable waters of the United States. This MOU specifically does not apply to the following:
- a. Federal disaster response activities conducted under the Robert T. Stafford Disaster Relief and Emergency Act.
  - b. Federal on-scene coordinated directed response activities conducted under the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. Part 300).
  - c. Activities that involve bridges or causeways over navigable waters that are covered under the existing Memorandum of Agreement between the USCG and USACE signed in 1973.
- 6. DEFINITIONS:** For the purpose of this MOU, the following definitions apply:
- a. Obstruction: Anything that restricts, endangers, or interferes with navigation.
  - b. Hazard to Navigation: An obstruction, usually sunken, that presents sufficient danger to navigation so as to require expeditious, affirmative action such as marking, removal, or redefinition of a designated waterway to provide for navigational safety.
  - c. Navigable Waters: Both USACE and the USCG have defined navigable waters in their regulations. The applicable USACE definition is at 33 C.F.R. Part 329 and the applicable USCG regulation is at 33 C.F.R. § 2.36(a).
  - d. Responsible Offices and Field Units:
    - (1) USACE:
      - i. Director of Civil Works, Headquarters, USACE (HQUSACE).
      - ii. Chief, Operations and Regulatory, Headquarters, USACE (HQUSACE).
      - iii. Division Commander, USACE Divisions (Field Unit).
      - iv. District Commander, USACE Districts (Field Unit).
    - (2) USCG:
      - i. Assistant Commandant for Prevention Policy, USCG Headquarters (USCG HQ).
      - ii. Director of Marine Transportation Systems, USCG Headquarters (USCG HQ).
      - iii. District Commander, USCG Districts (Field Unit).
      - iv. Sector Commander, USCG Sectors (Field Unit).
- 7. ROLES AND RESPONSIBILITIES:** Upon receiving reports of obstructions to navigation, each agency, through its field units, will take the following actions:



- a. Initial Notification:** Upon receiving a report of an obstruction to navigation, each agency shall immediately notify their counterpart and relay any corrective actions that have been taken.
- b. Determination of Hazard:** Determine through joint consultation and agreement between agency field units if an obstruction is a hazard to navigation using the following factors for determination.
  - (1) Determination Factors:** Factors are not all inclusive, but should be considered in determining if an obstruction creates a hazard to navigation and, if so, the acceptable level of response and corrective action(s) appropriate to alleviate or reduce the impact of the hazard to navigation.
    - i.** The degree to which the obstruction currently restricts, endangers, or interferes with navigation on the navigable waters of the United States.
      - (a)** Location with respect to the Federally Maintained Channel.
      - (b)** Location with respect to other navigational traffic patterns.
      - (c)** Navigational difficulty in the vicinity of the obstruction.
      - (d)** Clearance or depth of water over obstruction.
      - (e)** Fluctuation of water level and other hydraulic characteristics.
    - ii.** Physical characteristics of the obstruction, including cargo (if any exists).
    - iii.** Potential for possible movement of the obstruction.
    - iv.** Marine activity in the vicinity of the obstruction including:
      - v.** Draft of vessel traffic.
      - vi.** Type of vessel traffic including commercial, Federal, and recreational.
      - vii.** Density of vessel traffic including commercial, Federal, and recreational.
      - viii.** Other marine activity or trends of waterway use.
    - ix.** Location of the obstruction with respect to existing aids to navigation.
    - x.** Prevailing and historical weather conditions.
    - xi.** Length of time the obstruction has been in existence.
    - xii.** History of vessel accidents involving obstruction.
- c. Determine Lead Agency:** As part of the joint consultation and if a determination of a hazard to navigation is made, decide which agency shall act as lead agency for executing corrective action(s) and for contacting the owner, lessee, or operator, if one can be identified, of the obstruction to execute the corrective actions. See Paragraph 8.d, below.
- d. Corrective Actions:** After considering the above factors in Paragraph 7.b., along with any other relevant factors, the lead agency will decide upon the appropriate corrective action(s) to reduce the danger (posed by the hazard) to navigation to an acceptable level.



**(1) Options to consider in formulating appropriate corrective action(s):**

- i.** No action.
- ii.** Broadcasting and publication of navigational safety information.
- iii.** Marking.
- iv.** Removal.
- v.** Charting.
- vi.** Redefinition of navigational area, channel fairway, anchorage, etc.
- vii.** Combination of the above.

**(2)** Field level units of both agencies shall periodically review the status of existing obstructions to determine the adequacy of corrective action(s), to determine if a resurvey of the obstruction's location is necessary, to revise appropriate records, and to update public notification records. Periodic review shall be at least once per year but may be more frequently based on local conditions and risk associated with the obstruction.

**8. DECISION MAKING GUIDANCE:**

- a.** Personal contacts between agency field units should be established to facilitate decision-making.
- b.** Decisions should be made at the field unit level when possible in order to maintain timely response.
- c.** Decisions concerning corrective actions shall be supported by records appropriate to the specific case.
- d.** Lead Agency Determination:

**(1) USACE:**

- i.** The owner, lessee, or operator is responsible for the removal of the sunken vessel. When no pollution is involved, USACE shall be the lead agency for dealing with parties responsible for the removal of the sunken vessel. USACE will be the lead agency if federal removal of the sunken vessel is warranted. Typically, USACE will use its discretionary authority to remove sunken vessels that are located in a federally maintained navigable channel and are determined to be a hazard to navigation under 33 C.F.R. § 245.20.
- ii.** USACE is the lead agency to effect the removal of other obstructions by responsible parties in navigable waters. If a responsible party is not available, the USACE will evaluate factors supporting removal in conjunction with general authorities and any authorities applicable to the specific geographic location of the obstruction to determine whether USACE removal is feasible.

**(2) USCG:**



- i. The Coast Guard shall be lead for marking obstructions, should the USCG determine marking is required, and may have authority to remove obstructions in scenarios not addressed within the scope of this MOU.

**(3) Change of Lead Agency Determination:**

- i. The lead agency for resolving an obstruction to navigation may change after consultation between the agencies.
  - e. **Broadcasting and publication of navigational safety information:** The USCG has authority to disseminate and maintain navigational safety information pertaining to obstructions and is the lead agency responsible for this type of information. This mission is complemented by related services offered and required to be provided by other sources, including the USACE. Each agency's field units will immediately notify their counterpart of any reported obstructions and will maintain close coordination to ensure that navigational safety information is disseminated in a timely and effective manner. Free exchange of information related to obstructions, including owner's name and address, will be made between agencies, subject to the requirements of the Privacy Act, 5 U.S.C. § 522a.
  - f. **Marking:** It shall be the responsibility of the owner, lessee, or operator to mark an obstruction to navigation. In the event that the owner, lessee, or operator, cannot be identified, refuses to mark the obstruction, inadequately marks the obstruction, or is otherwise unable to properly mark it, the USCG has authority to mark obstructions to navigation. When necessary, the USACE, as the lead agency, may request for an obstruction to be marked by the USCG and may assist in locating and marking obstructions.
  - g. **Removal:** If a determination is made that removal is the appropriate course of action, but the lead agency can not complete the removal action under its authority or funding, every effort shall be made to coordinate the removal process between agencies and/or with state and local officials.
  - h. **Conflicts over Corrective Actions:** Conflicts regarding actions taken under this MOU should be resolved at the field unit level. Conflicts that cannot be resolved shall be forwarded to the next level in each agency's Chain of Command for resolution. The USCG District Commander and USACE Division Commander will document the area(s) of conflict and present them to each other for consideration at least 7 days before forwarding of the issue to higher authority. If resolution cannot be achieved, the conflict shall be forwarded to the next higher level in the each agency's Chain of Command where a similar exchange of reviews shall be made in the same timeframe. Paragraph 9 delineates each agency's Chain of Command for the purposes of this MOU.
- 9. CHAIN-OF-COMMAND RELATIONSHIPS FOR RESOLUTION OF DIFFERENCES:** The listed chain-of-command relationships are applicable to most regions but where differences apply, the appropriate chain-of-command alignment will be used by each agency.
- a. Sector Commander, USCG Sector / District Commander, USACE District.



- b. District Commander, USCG District / Division Commander, USACE Division.
- c. Director, Marine Transportation Systems, USCG HQ / Chief, Operations and Regulatory, HQUSACE.
- d. Assistant Commandant for Prevention Policy, USCG HQ / Deputy Commanding General for Civil and Emergency Operations, HQUSACE.

**10. AMENDMENT, DURATION, AND TERMINATION:**

- a. This MOU may be modified or amended upon the mutual written consent of the signatories to this MOU or their designees.
- b. This MOU as modified with the mutual written consent of both parties will remain in effect for as long as it continues to serve the purpose and objectives defined herein.
- c. Either agency may terminate this MOU six months after giving formal written notice of intent to terminate.

**11. REPORTING AND DOCUMENTATION:** Not applicable.

**12. OTHER PROVISIONS:**

- a. All activities conducted pursuant to this memorandum are subject to, and will be carried out in compliance with, all applicable laws, regulations, and other legal requirements. Nothing in this MOU is intended to diminish, modify, conflict with, or otherwise affect statutory or regulatory authorities, the directives of the USCG, the Department of Homeland Security, the USACE, the Department of the Army or the Department of Defense. If a term of this MOU is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect.
- b. This MOU is neither a fiscal nor a funds obligation document. Nothing in this MOU authorizes or is intended to obligate the Agencies to expend, exchange, or reimburse funds, services, or supplies, or transfer or receive anything of value. Subject to the availability of funding, each Participant intends to assume responsibility for its respective costs arising from any activity related to this MOU.
- c. Information shared under this MOU may be subject to the Privacy Act, 5 U.S.C. § 522a. Each agency should refer to their appropriate policy or their servicing legal office for guidance on how the Privacy Act applies to sharing information on individuals.
- d. This MOU is strictly for internal management purposes for each of the parties. It is not legally enforceable and shall not be construed to create any legal obligation on the part of any of the Agencies. This MOU shall not be construed to provide a private right or cause of action for or by any person or entity.

**13. EFFECTIVE DATE:** This MOU is effective 120 days after execution by the Commandant, USCG, and the Commanding General, USACE.

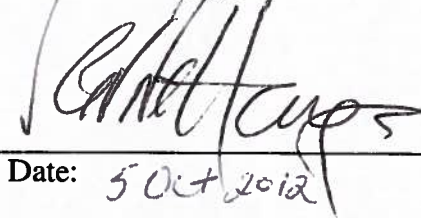
**14. POINTS OF CONTACT:**



- a. USCG  
Director, Marine Transportation Systems  
U.S. Coast Guard Headquarters (CG-5PW)  
2100 Second Street, SW Washington, DC 20593-7580  
202-372-1504
- b. USACE  
Chief, Operations and Regulatory Community of Practice  
United States Army Corps of Engineers  
441 G. Street, NW Washington, DC 20314-1000  
202-761-1983

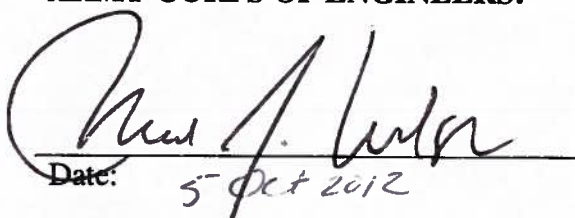
**SIGNED:**

**FOR THE UNITED STATES  
COAST GUARD:**

  
Date: 5 Oct 2012

Peter V. Neffenger  
Vice Admiral, U.S. Coast Guard  
Deputy Commandant for Operations

**FOR THE UNITED STATES  
ARMY CORPS OF ENGINEERS:**

  
Date: 5 Oct 2012

Michael J. Walsh  
Major General, USA  
Deputy Commanding General  
for Civil and Emergency Operations