

MEMORANDUM OF UNDERSTANDING

**PURSUANT TO
THE ECONOMY ACT**

THROUGH WHICH

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE**

IS PURCHASING

INSPECTION AND CERTIFICATION SERVICES

FROM

U.S. COAST GUARD

1. PARTIES AND PURPOSE

This Memorandum of Understanding (MOU), which includes two attached annexes, establishes an agreement between the National Oceanic and Atmospheric Administration (NOAA), Systems Acquisition Office (SAO), and the United States Coast Guard (USCG), through which the SAO will pay the USCG for the inspection and certification of one new Fisheries Research Vessel (and the MOU may be amended to include up to three more) being constructed and delivered to NOAA.

2. BACKGROUND

Public vessels, as defined in 46 U.S.C. 2101, are legally exempt from mandatory USCG inspection as per section 2109 of the statute, however, both NOAA and the USCG agree that Coast Guard inspection and certification of new NOAA Fisheries Research Vessels should be accomplished as a matter of policy to assure that vessel construction is accomplished in accordance with the contract's commercial standards, and the vessels comply with the minimum safety standards.

3. AUTHORITY

The authorities for NOAA and the USCG to enter into this agreement are:

(1) 14 U. S.C. 141 (a), which authorizes the Coast Guard to utilize its personnel and facilities to assist any Federal agency to perform any activity for which such personnel and facilities are especially qualified, and allows the Coast Guard to accept reimbursement for such activities.

(2) The Magnuson-Stevens Fishery Conservation and Management Act (as amended by the Sustainable Fisheries Act), 16 U.S.C 1801, et seq., the Marine Mammal Protection Act, 16 U.S.C 1389, et seq., and the Endangered Species Act, 16 U.S.C. 1531 et seq.

(3) The Fiscal Year 2000 Conference Report H.R. 3194 and Fiscal Year 2001 Conference Report H.R. 5548.

4. TERMS AND CONDITIONS

NOAA is purchasing inspection and certification services from the USCG to provide a Certificate of Inspection (COI) on one new Fisheries Research Vessel (FRV). This NOAA vessel will be built to commercial standards, including international conventions as applicable. NOAA has issued a solicitation for the lead FRV vessel with options for three additional vessels. Options will be exercised on a planned schedule of one vessel a year, subject to the availability of appropriations. This MOU will cover the lead vessel COI funded by the FY00 and FY01 appropriations. As optional ships are funded by

future appropriations, and ship options are exercised under the FRV contract, the MOU can be amended to include those ship certifications.

a. Certificate of Inspection (COI)

NOAA's intent is to have each of the four new construction NOAA vessels delivered with a valid COI. Each COI will indicate that the vessel complies with USCG regulations at the time the vessel is delivered to the NOAA Fleet. The USCG will specify the minimum manning requirements for each new NOAA vessel on its COI. To accomplish this intent, up to two USCG Full-Time Equivalents (FTEs) will be required, one at the shipyard that is awarded the new construction contract, the other at Coast Guard headquarters for program management duties. Both are for the duration of the ship construction, test and delivery activities.

b. Applicable Regulations

Regulations governing inspection and certification of vessels are contained in Titles 33, 46, and 49, U.S. Code of Federal Regulations (CFR). Modifications to these regulations applicable to NOAA vessels are outlined in Annex I and Annex II

c. Plan Approval

The USCG will review changes to the design and construction documentation of the FRV contract to ensure compliance with USCG rules and regulations, and with international convention where applicable.

d. Amount of Reimbursed USCG Services

The reimbursed effort will encompass pre-delivery inspection and certification efforts.

5. TRANSFER OF FUNDS

The appropriations out of which NOAA will pay for services on the lead ship is the FY 2000 Consolidated Appropriations Act PL 106-113, dated Nov 29, 1999, and FY 2001 Consolidated Appropriations Act, PL 106-553, dated Dec 21, 2000. NOAA appropriations are no year funds.

NOAA intends to transfer funds to the USCG on an annual basis. See Annex II.

6. CONTACTS

The agency contacts for this agreement are:

NOAA Systems Acquisition Office, Ellen M. Herrburger; phone: (301) 713-0115, fax: (301) 713-4149, e-mail: Ellen.Herrburger@noaa.gov]

USCG Office of Compliance, John Hannon; phone: (202) 267-0492, fax: (202) 267-4394, e-mail jhannon@comdt.uscg.mil

The parties agree that if there is a change regarding the information in this section, the party making the change will notify the other party in writing of such change.

7. TERMINATION AND AMENDMENTS

This agreement will become effective when signed by all parties. The agreement will terminate upon the USCG certification of the lead ship, but may be extended or otherwise amended by mutual written consent of the parties. This agreement may be terminated by mutual written agreement or by 90 days advance written notice by either party. This agreement is subject to the availability of funds.

8. RESOLUTION OF DISAGREEMENTS

Nothing herein is intended to conflict with current NOAA or USCG directives. If the terms of this agreement are inconsistent with existing directives of either of the agencies entering into this agreement, then those portions of this agreement which are determined to be inconsistent shall be invalid, but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, all necessary changes will be accomplished either by an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both parties.

Should disagreement arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days, the parties shall forward the written presentation of the disagreement to their respective higher officials for appropriate resolution.

Richard C. Brooks dated 6/7/01

Richard Brooks

Director, Systems Acquisition Office
NOAA/SAO

P. J. Pluta, dated 5/25/2001

P. J. Pluta

Rear Admiral, U.S. Coast Guard
Assistant Commandant for Marine Safety
and Environmental Protection

ANNEX I

Modification of Standards for USCG Certificated NOAA Vessels

1. Military Standards. USCG may accept material and equipment which meet the requirements of Military and/or other Federal specifications and standards. NOAA requests for approval of same shall be submitted to the appropriate USCG Headquarters Office. A copy of the USCG document citing acceptance of the material and equipment shall be held by the ships affected, USCG HQ and NOAA HQ and shall be recorded as an Inspection Note in the USCG Marine Safety Information System (MSIS) or any replacement for MSIS.
2. Vessels of Special Design. USCG may, in individual cases, permit variations from the regulations as deemed necessary for NOAA vessels of special design. Variations shall, to the maximum extent possible, achieve an equivalent level of safety to the requirements of the regulations.
3. Lifesaving Equipment. Shall meet the requirements of International Convention for the Safety of Life at Sea (SOLAS) and Coast Guard regulations. The USCG may accept the use of alternative lifesaving appliances or arrangements based on an equivalent level of safety to its rules and regulations and the requirements of SOLAS.
4. Damage Control/ Firefighting Equivalency. USCG may accept alternative damage control or firefighting appliances or arrangements if NOAA can demonstrate that internal training programs and shipboard organization provides an equivalent level of safety to specific items required by USCG regulations.
5. International Conventions. NOAA vessels are subject to the mandatory provisions of the SOLAS and the International Loadline Convention, when engaged in an international voyage. Upon completion of construction and Coast Guard certification, the applicable mandatory convention certificates for SOLAS may be issued either by the Coast Guard or by an authorized classification society. For those international conventions to which the vessel(s) is exempt by virtue of its governmental ownership and non-commercial operations (e.g. MARPOL, STCW), an authorized class society may issue statements of voluntary compliance as appropriate. Mandatory compliance with the International Safety Management Code (ISM Code) is required starting on July 1, 2002.

ANNEX II

Reimbursement for USCG Support Activities

1. General Provisions. This annex establishes general guidance on reimbursement by NOAA for the support effort provided and cost incurred by the USCG. Additionally, this agreement sets forth the circumstances under which such costs will be incurred and the procedures for coordination of payment.
2. USCG Support Requirements. The USCG is authorized to administer laws and promulgate and enforce regulations for the promotion of the safety of life and property at sea and the protection of the marine environment. For financial and program planning purposes, the Coast Guard must view additional work in terms of USCG FTEs per year. Since no previous data exists for NOAA vessel inspections by the Coast Guard, initial estimates for reimbursement shall be based on man hours consumed with vessels of similar size and type. Included in this total FTE estimate shall be actual inspectors' contact hours aboard the vessel, travel, administrative hours for reports of inspection and issuance of certificates, plan review hours by the Marine Safety Center or the local Marine Safety Office and Program Management hours at USCG Headquarters. If NOAA elects to continue USCG involvement after the four new NOAA vessels are constructed and delivered to the NOAA Fleet, the FTE requirement may be adjusted up or down as circumstances require.
3. Billing and Reimbursement. Following execution of this MOU, and not later than 1 January of each fiscal year, NOAA will submit a list of vessels for which USCG inspection is desired during the upcoming fiscal year. This information will be used by USCG to determine whether or not an adjustment is needed to either the cost estimate or the number of marine inspectors, and/or other USCG personnel required to support NOAA.

Personnel support costs will be billed on the basis of USCG annual standard personnel costs, adjusted annually. Coast Guard personnel in the amount of two FTEs are required to support NOAA inspections and related marine safety programs as contemplated in the FRVs pre-delivery program.

The USCG will submit a cost estimate to NOAA for budget purposes not later than 15 March of each year. The cost estimate will cover the next fiscal year and the following fiscal year.

Reimbursement for expenses associated with any foreign travel of USCG personnel to conduct inspections are not included under this MOU. If foreign travel is required, these costs will be reimbursed under a separate standard billing process initiated by the USCG Marine Safety Offices conducting the inspection.

For the purposes of this agreement, NOAA will warrant that amounts are available each time it completes Optional Form (OF) 347, Order for Supplies or Services, showing a specific amount of funds authority for supplies or services. This form will also serve as the funds obligating document.

NOAA currently receives appropriations that are not subject to fiscal year limitation. It is expected that this multi-year acquisition of goods and services from the USCG will be from such funds. As such, the USCG will make its best efforts upon completion of the project to return any remaining funds to NOAA as quickly as possible. However, in the unforeseen case that NOAA should receive and use funds with fiscal year limitations attached to them, the unobligated funds will be returned to NOAA before the end of the period of availability of such funds, or completion of the project.

4. Billing Procedures. Requests for inspection services and the applicable NOAA lines of accounting shall be initiated and funded via OF-347. Coast Guard Headquarters (Commandant (G-MRP)) will bill NOAA annually at the beginning of the fiscal year. Funding will be transferred using appropriate lines of accounting.

USCG will bill NOAA using the On Line Payment and Collection (OPAC) System. USCG will provide quarterly cost status data to NOAA, itemizing funds utilization and balances available.

5. Billing Contacts. The NOAA/SAO point of contact for obligation and payments is Jon Randle, (301) 713-0105, ext. 203, jon.randle@noaa.gov. The USCG point of contact for billings and cost reporting is LCDR David Fish, G-MRP-2. (202) 267-6982, or dfish@comdt.uscg.mil.