

5/29/02

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NAVSTA NEWPORT RI
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MEMORANDUM OF UNDERSTANDING
BETWEEN
THE COMMANDING OFFICER, NAVAL STATION NEWPORT,
PERTINENT FEDERAL AND STATE AGENCIES
AND
THE RHODE ISLAND LOBSTERMAN'S ASSOCIATION
AND
OCEAN STATE FISHERMAN'S ASSOCIATION

Subject: MEMORANDUM OF UNDERSTANDING

Ref: (a) 33 U.S. Code 1, Et seq.
(b) ACE Notice of Proposed Restricted Area-of 21 May 02
(c) 33 C.F.R. 334.4

1. Purpose: The purpose of this Memorandum of Understanding (MOU) is to establish the boundaries and area of access for lobster fisherman into Naval Station (NAVSTA) Newport's navigable waters and to comply with reference (a).

2. Situation: The Rhode Island Lobsterman's Association and the Ocean State Fisherman's Association (Association) on behalf of its members and any other lobster fisherman who become signatories to this MOU desire that lobstermen have access to the long established and demarcated restricted areas in the vicinity of NAVSTA Newport for the purpose of placing and retrieving lobster traps and related fishing equipment.

The situation is that NAVSTA must maintain proper security and force protection in the restricted areas proposed by reference (b) where lobsterman may wish to fish. The purpose of the proposed regulation is to create an area of separation between general navigation on the East Passage of Narragansett Bay and active military ships berthed at NAVSTA Newport. This would be to improve security for the ships and personnel on board and the safety of the public. The area would be marked off with a series of danger area marker buoys and may sometimes be boomed off. The proposed rule will be promulgated in the Federal Register per reference (c). A description of the area and the proposed regulation is contained in reference (b).

The signatories to this MOU and its members affirm their desire for access to the restricted area for the purpose of harvesting lobsters and similar fishing operations.

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3. Scope: This MOU shall apply to the restricted areas only when the current force protection condition (FPCON) is BRAVO or lower. Whenever NAVSTA is ordered by appropriate authority to a higher FPCON level, there shall be no entry by any lobsterman into a restricted area for any reason. NAVSTA will promptly notify the Associations' president, the Rhode Island Department of Environmental Management (DEM), and the U.S. Coast Guard in the event of a change in FPCON. Furthermore, in the event the NAVSTA is ordered by appropriate authority to place a barrier, buoyed or otherwise, around piers, berths and/or vessels, there shall be no entry beyond the barrier for any reason. NAVSTA will notify the Associations, the Rhode Island DEM, and the U.S. Coast Guard in advance of the placing of such a barrier. Likewise, whenever there is an active U.S. Navy warship in port, there shall be no entry by any lobsterman into a restricted area for any reason unless advised otherwise.

4. Agreement: The Commanding Officer (CO), NAVSTA Newport, members of the Rhode Island Lobsterman's Association and the Ocean State Fisherman's Association, upon their execution of this MOU, hereby agree that:

a. The CO, NAVSTA will permit the Associations' members and individual lobstermen (upon their execution of this MOU) to enter into the restricted waters in the vicinity of NAVSTA Newport for the sole purpose of placing and retrieving lobster traps and related fishing equipment (fish traps) incident to the harvesting of lobsters and fish and such entry is only authorized where fisherman will remain 100 feet away from any Navy or Coast Guard vessel, pier, or similar docking system where vessels are moored or can be moored.

b. The Association shall provide to the NAVSTA Security Department Head, or designated representative, a list of those lobstermen (Association members or individual lobstermen) who desire to harvest lobsters within a demarcated restricted area.

c. All lobstermen who desire to enter a restricted area shall provide the following information and documentation to the NAVSTA Security Department Head: his/her name, address, and telephone number; the name, address and telephone number of any crew member(s), a statement that he/she (and any crew member(s)) is (are) a United States citizen(s), the name of his/her boat; the hull or registration number; the color code and registration number of lobster/fishing buoys; and the vessel's radio channel

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and call sign. Furthermore, all captains of vessels that are lobstermen who desire to enter a restricted area shall obtain from the NAVSTA Security Department, at no cost to them, a recent color photograph of himself/herself; and four (4) recent color photographs of his/her boat (one (1) view of each side, the front and the rear of the vessel). In this regard, lobstermen will contact the NAVSTA Security Department Head at 401-841-4041, or his designated representative, to make arrangements for this prescribed photo taking requirement. Moreover, all captains of vessels that are lobstermen who desire to enter a restricted area must be ready to verify the identity of any crew member(s) with a valid photo identification card. The Associations' lobstermen, upon providing the above information and submitting to photograph, shall receive a chart of the waters surrounding the NAVSTA, with the restricted areas clearly demarcated, as well as a placard that will be affixed to the lobsterman's vessel for identification and registration purposes. This placard, which will be furnished by NAVSTA Security, will be colored-coded by year and shall be renewed annually. This information shall be presented to and registration shall take place at the NAVSTA Pass and Identification Office outside Gate Number 1.

d. Lobstermen shall contact NAVSTA Security using VHF Channel 16 at least fifteen (15) minutes before entering a restricted area and again upon departing a restricted area. NAVSTA Newport uses VHF Channel 10 as a working channel. Call signs are either "Newport Port Control," "Naval Station Security Boat," and/or "Naval Station Security." Lobstermen shall use one of these call signs when communicating with NAVSTA Newport. If any of these means of communication are ineffective, Lobstermen may contact NAVSTA Security at 401-841-4041 using a cell phone or similar means of communication.

IN NO INSTANCE SHALL ANY LOBSTER TRAP OR BUOY INSIDE A DEMARCATED RESTRICTED AREA BE PLACED WITHIN ONE HUNDRED (100) FEET OF ANY STRUCTURE, PIER, DOCK, BERTH, OR VESSEL.

e. The Associations' members and individual lobstermen recognize that in the event of terrorist action(s) (or attempted action(s)) within a restricted area lobstermen will be at grave risk of personal injury or loss of life and/or at risk of loss or damage to their property, either as a direct or indirect result of terrorist action(s) or as the result of the potential

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collateral effects of the U.S. Government's response to terrorist action(s) or attempted action(s). By entering a restricted area lobstermen knowingly assume any and all risks of: (1) terrorist action(s), attempted action(s) and (2) the appropriate response thereto by the United States including, but not limited to, the use of deadly force.

5. Effective Date: This MOU is effective immediately.

6. Penalties: Failure by a lobsterman to comply with any of the terms and conditions of this MOU shall result in the NAVSTA taking the following action(s) against such individual(s):

a. First offense - the lobsterman shall receive a written warning signed by the Commanding Officer. Violators will be placed in a probationary status for one (1) year.

b. Second Offense - the lobsterman's privilege to enter the restricted areas shall be rescinded immediately, the lobsterman shall surrender his/her registration placard, and the Rhode Island DEM shall be notified of the decision. Any captain of a vessel who enters NAVSTA Newport waters after losing their privileges shall be prosecuted for trespassing.

7. In connection with the implementation of this MOU, the Associations' members shall cooperate fully with representatives of NAVSTA Newport, the U.S. Coast Guard, the U.S. Army Corps of Engineers and the Rhode Island DEM.

8. The Associations' members further acknowledge the necessity of moving their lobstering equipment when notified of a ship movement. The Commanding Officer, NAVSTA Newport shall provide as much advance notification to the Associations' members as possible, consistent with security and force protection constraints. Information concerning ship movements will be furnished to the Newport Harbormaster, and to the extent possible, to the Associations' members.

9. FACSIMILE SIGNATURES: Any signatures sent through facsimile shall serve the same function and legality as an original signature.

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K. A. COOPER
COMMANDING OFFICER
NAVAL STATION NEWPORT

 5/29/02
PRESIDENT, RHODE ISLAND LOBSTERMAN'S
ASSOCIATION


PRESIDENT, OCEAN STATE FISHERMAN'S
ASSOCIATION

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE COMMANDING OFFICER, NAVAL STATION NEWPORT,
PERTINENT FEDERAL AND STATE AGENCIES
AND
THE RHODE ISLAND LOBSTERMAN'S ASSOCIATION
AND
OCEAN STATE FISHERMAN'S ASSOCIATION

Subject: Acknowledgement of Memorandum of understanding

Ref: Memorandum of Understanding between the Commanding Officer, Naval Station Newport, Pertinent Federal and State Agencies, and The Rhode Island Lobsterman's Association, and Ocean State Fisherman's Association

I acknowledge that I have been given a copy of the Memorandum of Understanding between the Commanding Officer, Naval Station Newport, Pertinent Federal and State Agencies, and The Rhode Island Lobsterman's Association, and Ocean State Fisherman's Association and agree to abide by all of the requirements within.

PRINT NAME

SIGNATURE

DATE

WITNESS PRINT NAME

WITNESS SIGNATURE

