

**MEMORANDUM OF AGREEMENT**

**PURSUANT TO THE  
NATIONAL MARINE SANCTUARIES ACT  
16 U.S.C. § 1442(a)**

**BETWEEN THE**

**U.S. DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
NATIONAL OCEAN SERVICE  
OFFICE OF NATIONAL MARINE SANCTUARIES**

**AND THE**

**STATE OF MARYLAND**

**AND THE**

**CHARLES COUNTY, MARYLAND**

**FOR THE PURPOSE OF  
JOINT MANAGEMENT OF MALLOWS BAY - POTOMAC RIVER  
NATIONAL MARINE SANCTUARY**

**NOS Agreement Code: MOA-2019-092/11864**

## **I. PARTIES AND PURPOSE**

- A. The parties to this Memorandum of Agreement (Agreement) are: (1) the U.S. Department of Commerce (DOC), through the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), Office of National Marine Sanctuaries (ONMS) (collectively, NOAA); (2) the State of Maryland, through the Maryland Department of Planning (MDP) and the Maryland Department of Natural Resources (DNR) (collectively, the State); and (3) Charles County, Maryland (the County). NOAA, the State, and the County are, collectively, the Parties, or, individually, a Party.
- B. The purpose of this Agreement is to prescribe the terms and conditions for the joint management of the Mallows Bay--Potomac River National Marine Sanctuary (MPNMS or Sanctuary).

## **II. BACKGROUND**

- A. Mallows Bay--Potomac River, located within the Maryland waters of the Potomac River off the shores of the Nanjemoy Peninsula of Charles County, contains a nationally significant collection of shipwrecks and other maritime cultural heritage resources. These shipwrecks and maritime cultural heritage resources possess historical, cultural, recreational, educational, and research values of importance to the residents of the County, State, and Nation.
- B. Under a 25-year lease agreement between the County Commissioners of Charles County and DNR, dated February 15, 2006, the County leases from DNR and operates as Mallows Bay Park, 185 acres of land directly adjacent to Mallows Bay and the nationally significant collection of shipwrecks and other maritime cultural heritage resources. Mallows Bay Park is a day-use park and recreation area with a boat ramp allowing the general public to access the water and enjoy the shipwrecks and maritime cultural heritage and natural resources of the site. To further enhance community wellness and quality of life through optimization of the shipwrecks and maritime cultural heritage resources, and promote community sustainability, the County adopted Resolutions 2017-19 and 2014-10, which support the nomination and designation of MPNMS as a national marine sanctuary.
- C. In September 2014, the State submitted a nomination to ONMS for designation of Mallows Bay--Potomac River as a national marine sanctuary to conserve the fragile remains of the Mallows Bay shipwrecks and other maritime cultural

heritage resources, foster education and research partnerships, and increase public access, tourism, and economic development. In response to the State of Maryland's nomination to NOAA pursuant to 15 CFR Part 922, Subpart B (Sanctuary Nomination Process), NOAA added Mallows--Potomac River to the inventory in January 2015 and started the sanctuary designation process in October 2015.

- D. NOAA will publish sanctuary designation documents, including regulations at 15 C.F.R. Part 922, which would designate an approximately 18-square mile area of the Potomac River in and around Mallows Bay — including the submerged lands thereof — as MPNMS. The boundary of MPNMS tracks the Mallows Bay-Widewater Historic and Archeological District, which is listed by the National Park Service on the National Register of Historic Places. MPNMS protects over 120 historic shipwrecks and other maritime cultural heritage resources.
- E. The goals of MPNMS are to: (1) protect the Mallows Bay shipwrecks and other maritime cultural heritage resources located within the boundaries of the sanctuary; (2) educate and interpret for the public the shipwrecks and maritime cultural heritage resources of the Potomac River; (3) conduct research on sanctuary resources (*e.g.*, inventory and document the shipwrecks); (4) enhance recreational opportunities for the enjoyment by the public of sanctuary resources; and (5) ensure coordination and cooperation between NOAA and other relevant State, federal and local authorities.

### III. DEFINITIONS

- A. **Director** means the Director of the Office of National Marine Sanctuaries, NOAA, or the Director's designee.
- B. **Emergency** means a serious, often unexpected or unanticipated risk or event requiring immediate action to prevent or minimize the destruction of, or loss of a sanctuary resource, or injury to life, property, or the environment.
- C. **Sanctuary** means the 18-square mile area of the Potomac River in and around Mallows Bay that is designated as MPNMS.
- D. **Sanctuary Advisory Council** means a council established to advise the Sanctuary Superintendent on the management of MPNMS pursuant to 16 U.S.C. § 1445A.
- E. **Sanctuary Management Plan** means, as defined in Section 304(a)(2)(C) of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1434(a)(2)(C), the final

management plan (May 2019) for MPNMS, which includes: (1) the terms of designation; (2) mechanisms to coordinate existing regulatory and management authorities within MPNMS; (3) goals and objectives, management responsibilities, resource studies, and appropriate strategies for managing the shipwrecks and other maritime cultural heritage resources of MPNMS; (4) an evaluation of the advantages of cooperative State and Federal management of MPNMS; (5) an estimate of cost of MPNMS to the Federal Government; and (6) the final regulations.

- F. **Sanctuary Regulations** means the final rule governing MPNMS, which NOAA intends to publish at 15 C.F.R. Part 922, Subpart S.
- G. **Sanctuary Resources** means, as defined in 15 C.F.R. § 922.3 and the proposed MPNMS regulation 15 C.F.R. § 922.201(a)(1) currently published at 82 Fed. Reg. 2254, 2264, any resource possessing historical, cultural, archaeological or paleontological significance, including sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people (e.g., American Indians), cultures, maritime cultural heritage, and human activities and events. For MPNMS, the definition includes, but is not limited to, any sunken watercraft and any associated rigging, gear, fittings, trappings and equipment; the personal property of the officers, crew, and passengers, and any cargo; and any submerged or partially submerged prehistoric, historic cultural remains, such as docks, piers, fishing-related remains (e.g., weirs or fish traps) or other cultural heritage materials.
- H. **Sanctuary Superintendent** means the federal employee or designee appointed by NOAA, who will be responsible for the daily operations and activities of MPNMS.
- I. **Terms of Designation** means the written document developed in accordance with Section 304(a)(4) of the NMSA, 16 U.S.C. § 1434(a)(4), that describes: (1) the geographic area proposed to be included within the sanctuary; (2) the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and (3) the types of activities that will be subject to regulation by the Secretary of Commerce, acting through NOAA to protect those characteristics.

#### IV. AUTHORITIES

- A. The legal and programmatic authority for NOAA to enter into this Agreement is the NMSA, 16 U.S.C. §§ 1431 *et seq.* The NMSA provides the Secretary of Commerce, acting through NOAA, with authority to: (1) identify and designate as

national marine sanctuaries areas of the marine and Great Lakes environment which are of special national significance; (2) manage these areas as the National Marine Sanctuary System; (3) provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities; (4) enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archaeological resources of the National Marine Sanctuary System; (5) support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas; (6) facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities; (7) develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas; (8) create models of, and incentives for, ways to conserve and manage these areas, including the application of innovative management techniques; and (9) cooperate with global programs encouraging conservation of marine resources.

- B. Section 311 of the NMSA, 16 U.S.C. § 1442, provides NOAA with authority to enter into cooperative agreements, grants, contracts, or other agreements with any state, local government, regional agency, interstate agency, or other person to carry out the purposes or policies of the NMSA. Under this same provision, NOAA may also enter into agreements with any state or other Federal agency to use the personnel, services, or facilities of such agency on a reimbursable or non-reimbursable basis, to carry out the purposes and policies of the NMSA.
- C. As an inherent attribute of its sovereignty, the State has the authority to enter into agreements with other parties. Lands owned by the State, which include the State's navigable waters, submerged lands, and bottomlands, are held by the State for the use and benefit of the People of Maryland. The State, through DNR, is charged with conservation and protection of the State's natural resources. The State, through MDP, is also charged with preserving submerged historic and archaeological resources located within the State. Specifically:
1. Pursuant to § 8-202(a) of the Natural Resources Article, Annotated Code of Maryland, DNR is responsible for planning, development, management, and conservation of the Chesapeake Bay and any other tidal waters of the State, including shoreline areas, submerged lands, and any natural

resources associated with these waters. DNR may: (a) plan and develop public recreational facilities in or on the waters of the Chesapeake Bay and other tidal waters; (b) assist other State units to plan public recreational facilities for the Chesapeake Bay and other tidal waters; (c) cooperate with other units to carry out measures to protect tidal waterfronts and waterways of the State against erosion and deposit; and (d) act for the State to develop further navigation aids and improvement of waterways in the Chesapeake Bay and other tidal water areas of the State; and

2. Pursuant to Title 5A of the State Finance and Procurement Article, Annotated Code of Maryland, MDP has authority to ensure the preservation of submerged archaeological resources located within the lands of the State.

D. As a body politic and corporate of the State of Maryland, the County Commissioners of Charles County, Maryland has legal and programmatic authority to enter into this Agreement through the following State laws and County Resolutions:

1. Section 12-901(b) of the Local Government Article, Annotated Code of Maryland, which provides the County with authority to provide, maintain and operate community, social and recreational services that promote the health and welfare of residents;
2. Section 1-610 of the Local Government Article, Annotated Code of Maryland, which provides the County with authority to join or cooperate with a Federal or State unit to maintain a park or recreational facility, or provide recreational activity; and
3. Resolution Number 2016-06, which provides the President of the County Commissioners, as Chief Executive Officer, with authority to execute all legal documents and contracts in accordance with County Code, regulations, and policies, State law, and Federal law.

## V. ROLES AND RESPONSIBILITIES

A. NOAA, the State, and the County will:

1. Jointly manage MPNMS and the maritime cultural heritage resources located within its boundaries in a manner consistent with the NMSA, Maryland law governing the protection of maritime cultural heritage resources, the Sanctuary Management Plan, this Agreement, and any other

agreements entered into by any Party to assist or further the management of MPNMS.

2. Include within all communications with the public (e.g., public presentations, documents for public use, and communications with media) a statement that references the joint management arrangement established by this Agreement. This statement shall read in substance and form as follows: "Mallows Bay--Potomac River National Marine Sanctuary is a joint endeavor between NOAA, the State of Maryland, and Charles County." Use of a Party's agency logo on printed or electronic material shall be in accordance with U.S. Department of Commerce and State of Maryland use policies, and may be subject to advance approval.
3. Collaborate in planning and conducting joint research, education, and outreach activities throughout MPNMS.
4. Consult in the development, implementation, and review of sanctuary-related management plan activities, and meet at least once annually to address issues related to operation and management of MPNMS.
5. Immediately notify the other Parties upon learning of an Emergency and provide those Parties an opportunity to participate in the development of an appropriate response to the Emergency.

B. NOAA will:

1. Appoint Federal staff, who will be responsible for the daily operations and activities of MPNMS.
2. Establish procedures, mechanisms, and/or separate agreements, as may be necessary, to coordinate the issuance of sanctuary-related permits, certifications, or authorizations to allow regulated activities to be conducted within MPNMS.
3. Establish procedures, mechanisms, and/or separate agreements with the State and Federal regulatory, management and/or enforcement agencies, as may be necessary, to carry out the joint enforcement of sanctuary regulations.
4. Pursuant to Section 315 of the NMSA, 16 U.S.C. § 1445(a), establish and manage a Sanctuary Advisory Council to provide recommendations to the Sanctuary Superintendent, ONMS, NOAA, or DOC, as appropriate, regarding the management of MPNMS. This advisory council may be

comprised of up to fifteen (15) members. Members of the advisory council may include: (a) persons employed by Federal and/or State agencies with expertise in management of sanctuary resources; and (b) representatives of local user groups (such local user groups may include, but are not limited to, local fishing interests), conservation and other public interest organizations, scientific organizations, educational organizations, or other organizations or persons interested in the protection and multiple use management of sanctuary resources. In its establishment, NOAA will strive to achieve a balanced advisory council composition that best represents the primary sanctuary users and interests. In determining the composition of the advisory council, NOAA will consult with the State and the County in accordance with section 6.3 of the proposed Sanctuary Management Plan.

C. The State will:

The Secretary of MDP, or that Secretary's designee, and the Secretary of DNR, or that Secretary's designee, shall serve as liaisons responsible for all coordination with the Sanctuary Superintendent and County on all matters related to management of MPNMS.

D. Charles County will:

Appoint a representative from the County to serve as a liaison responsible for all coordination with the Sanctuary Superintendent and the State on all matters related to management of MPNMS.

## VI. OTHER TERMS AND CONDITIONS

- A. MPNMS management is focused on the protection and preservation of Sanctuary Resources. The boundary, description of the Sanctuary Resources, and activities subject to regulation for MPNMS will be set forth in the Terms of Designation. Pursuant to Section 304 of the NMSA, 16 U.S.C. § 1434, the Terms of Designation may be modified only by the same procedures by which the original designation was made. In such an event, the Governor of Maryland may certify to NOAA that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.
- B. Activities carried out in MPNMS shall be conducted in a manner that is consistent with the Sanctuary Regulations promulgated at 15 C.F.R. Part 922, Subpart S, and such activities shall not destroy, cause loss of, or injure Sanctuary



Resources. Any amendments (except editorial or technical corrections) to the Sanctuary Regulations at 15 C.F.R. Part 922, Subpart S, require the approval of the Governor of Maryland.

C. This Agreement does not:

1. Convey title of the State-owned navigable waters, submerged lands, bottomlands, subsurface resources, or maritime cultural heritage resources included in MPNMS to NOAA, nor does the State relinquish sovereignty over any of these State-owned navigable waters, submerged lands, bottomlands, subsurface resources, or maritime cultural heritage resources that are included in MPNMS.
2. Interfere with the February 2006 lease agreement between the Commissioners of Charles County and DNR for the operation of Mallows Bay Park. Any future development proposed by Charles County on land subject to the lease shall continue to be reviewed and approved by DNR in accordance with the terms of the lease agreement.
3. Interfere with the authority of any State or local permitting or zoning authorities regarding development along the Potomac River shoreline areas of MPNMS, including, but not limited to, the authority of either the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays or the Maryland Department of Environment.
4. Restrict commercial and/or recreational fishing, boating, hunting, or trapping within MPNMS, or along the Potomac River shoreline areas of MPNMS. Such activities continue to be regulated by the State of Maryland and/or the Potomac River Fisheries Commission.

- D. Pursuant to 15 C.F.R. § 922.204, the imposition, extension, or renewal of Emergency regulations governing MPNMS shall not become effective unless approved by the Governor of Maryland, or the Governor's designee or designated agency.

## VII. REVIEW OF THE MANAGEMENT PLAN

- A. Section 304(e) of the NMSA, 16 U.S.C. § 1434, requires the Secretary of Commerce to review the Sanctuary's Management Plan and implementing regulations every five (5) years from the date of Sanctuary designation, evaluate the substantive progress made toward implementing the management plan and goals for the sanctuary, and revise the Management Plan and regulations if deemed necessary. The MPNMS management plan review process is also

intended to provide the State of Maryland with: 1) an opportunity to evaluate the management and regulations of MPNMS; and 2) a mechanism through which to resolve any concerns the State may have regarding MPNMS, its management plan, or implementing regulations.

- B. Since (a) protection of the historic shipwrecks within the sanctuary is the primary objective of MPNMS; (b) the sanctuary is relatively small (approximately 18 square miles) and located entirely within the State waters of a narrow portion of the Potomac River; and, (c) the State has concerns about the potential impacts of sanctuary designation to commercial and recreational fishing activities within the sanctuary, the following process shall apply only to the MPNMS five- and ten-year management plan reviews:
1. Within 60 days before the five- and ten-year anniversary date of the designation, the Governor of Maryland may submit to the Secretary of Commerce written findings that the designation of the sanctuary is having measurable negative impacts on the State's commercial and/or recreational fishing industry. The written findings shall include descriptions of:
    - i. The fishing activity or class of fishing activities that have been negatively impacted;
    - ii. The manner and extent of the impact;
    - iii. How the sanctuary has caused these impacts;
    - iv. How the impacts have been measured; and,
    - v. Proposed MPNMS changes to address the concerns.
  2. If the Governor submits the written findings described in Section VII.B.1., the Secretary of Commerce shall propose re-designation of MPNMS, and make available to the public all elements of the sanctuary designation documents as set forth in NMSA Section 304(a)(2), 16 U.S.C. § 1434(a)(2) (hereafter "re-designation documents"). Any proposed changes to address the concerns raised by the Governor in the written findings shall be included in the re-designation documents. If the Governor determines that the re-designation documents do not adequately address the concerns raised in the written findings, the governor may, during NMSA Section 304(b)(1), 16 U.S.C. § 1434(b)(1), 45-day period of continuous session of Congress review period, certify to the Secretary that the designation or any of its terms are unacceptable. Following such certification, by operation of the NMSA, the designation or any unacceptable term(s) shall not take effect in Maryland waters.

## **VIII. ALLOCATION OF MONETARY AWARDS**

NOAA agrees that any amounts recovered as civil penalties for violations of the NMSA and its implementing regulations that occur in MPNMS shall be allocated in accordance with Section 307 of the NMSA, 16 U.S.C. § 1437(f)(1)(C), which guarantees first priority to the management and improvement of MPNMS, where the violation occurred. In addition, any monetary recovery for response cost and damages or injuries to sanctuary resources of MPNMS shall be allocated in accordance with section 312(d) of the NMSA, 16 U.S.C. § 1443(d).

## **IX. FUNDING, PROGRAMMING, PAYMENT, AND REIMBURSEMENT ARRANGEMENTS**

This Agreement is not a fiscal or funds obligation document, and cannot be used to obligate, commit, or establish the basis for the transfer of funds among the Parties. Support of MPNMS, implementation of the sanctuary management plan, and implementation of annual work plans shall be subject to the availability of funds. Any activities involving reimbursement or transfer of funds among the Parties will be handled in accordance with applicable law, regulations, and procedures. Such activities will be documented in a separate legal instrument.

## **X. CONTACTS**

- A. The points of contact for written notices and other administrative activities under this Agreement are:

NOAA

Matt Brookhart

Eastern Region Director

NOAA Office of National Marine Sanctuaries

1305 East West Hwy

Silver Spring MD 20910

State of Maryland

Maryland Department of Planning

Susan Langley

State Underwater Archaeologist

Maryland Historical Trust  
100 Community Place, 2nd Floor  
Crownsville, MD 21032

Maryland Department of Natural Resources  
Nita Settina  
Superintendent, Maryland Park Service  
Department of Natural Resources  
580 Taylor Avenue, E-3  
Annapolis, MD 21401

Charles County  
Eileen B. Minnick  
Director, Recreation Parks and Tourism  
8190 Port Tobacco Road  
Port Tobacco, MD 20677

- B. The Parties agree that if a Party intends to change a point of contact as identified in this section, the Party making the change shall notify the other Parties in writing of such change. A change to this section shall not require an amendment to this Agreement.

#### **XI. DURATION OF AGREEMENT, AMENDMENTS, OR TERMINATION**

- A. **Effective Date.** Pursuant to section 304(b) of the NMSA, 16 U.S.C. § 1434(b), this Agreement shall take effect on the date in which the MPNMS designation and implementing sanctuary regulations take effect and become final. NOAA will publish a notice of the effective date of the final sanctuary regulations in the Federal Register.
- B. **Amendments/Renewals.** An amendment to or renewal of this Agreement shall be in writing and shall not be effective unless properly executed by every Party to the Agreement.
- C. **Withdrawal.** The County may withdraw from participating in this Agreement by providing written notice to the other Parties, and such withdrawal shall be effective sixty (60) days following receipt of such notice. The County's withdrawal shall not affect the MPNMS designation or impair the validity and continued effectiveness of this Agreement as applied to NOAA and the State.

- D. **Termination.** This Agreement may only be terminated by: (1) the written mutual consent of all Parties; or (2) written notice by more than one Party. Such termination shall be effective six (6) months following the date of the written mutual consent or the latest date of written notice. Termination of this Agreement, in and of itself, does not rescind the MPNMS Terms of Designation or affect any regulations promulgated under the NMSA.
- E. **Relationship Among the Parties.** The Parties are agencies of the federal, State, or local government. No Party is an employee, agent, partner, franchise or joint venture of another Party. No Party shall have the right to bind the other Parties to any agreement with a third party or to incur any obligation or liability on behalf of another Party that stems or results from that Party's conduct under or to further this Agreement.
- F. **No Assignment or Delegation.** No Party may assign any rights or interest, nor delegate duties under this Agreement to a third party without the express prior written permission of the other Parties to this Agreement; any attempted assignment or delegation shall be wholly void and totally ineffective for all purposes.
- G. **Entire Agreement.** This Agreement constitutes the entire understanding among the Parties with respect to its subject matter and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written.
- H. **Counterparts.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which, together shall constitute one document. Original signatures delivered by means of facsimile or other electronic communication shall be considered to be original signatures.
- I. **Review of Agreement.** As part of the management plan review process described in Section VII, the Parties intend to review this Agreement to determine whether it should be revised or terminated.


## **XII. RESOLUTION OF DISAGREEMENTS**

Should disagreement between the State and/or the County and NOAA arise on any matter regarding joint management of MPNMS, the State and County shall make reasonable efforts to seek consensus before submitting a written position concerning the area(s) of disagreement to NOAA. If NOAA disagrees on any matter regarding joint management of MPNMS, NOAA will submit a written position concerning the area(s) of disagreement to the State and County. The Parties shall discuss and make reasonable efforts to promptly resolve the disagreement. If, within thirty (30) days of the exchange of written

positions, the Parties fail to resolve the disagreement, the Parties may refer the matter to a higher level of authority within the Parties' respective organizations. Ultimate resolution of the disagreement shall be consistent with the NMSA, 16 U.S.C. §§ 1431 *et seq.*, and shall not impair the care and management of the sanctuary resources.


### XIII. APPROVALS

ACCEPTED AND APPROVED FOR THE  
U.S. DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND  
ATMOSPHERIC ADMINISTRATION  
NATIONAL OCEAN SERVICE


BY:   
\_\_\_\_\_  
John Armor  
Director  
Office of National Marine Sanctuaries

DATE: 6/6/2019

ACCEPTED AND APPROVED FOR THE  
STATE OF MARYLAND

BY:   
\_\_\_\_\_  
Secretary  
Department of Natural Resources


DATE: 6/17/19

BY:   
\_\_\_\_\_  
Secretary  
Maryland Department of Planning

DATE: 17 June 2019

ACCEPTED AND APPROVED FOR  
CHARLES COUNTY, MARYLAND

BY: \_\_\_\_\_

  
Reuben B. Collins, II, Esq.  
President  
Board of Charles County  
Commissioners

DATE: \_\_\_\_\_

