Memorandum of Understanding Between The State of Maryland And The United States Department of Defense

This Memorandum of Understanding is entered into this 8th day of May, 2013, to evidence and affirm the mutual understanding of the State of Maryland and the United States Department of Defense, the Parties to the Agreement herein, concerning the Federal consistency requirements of the Coastal Zone Management Act (16 U.S.C. § 1451 et seq) and the application and implementation of certain enforceable policies of Maryland's Coastal Zone Management Program.

WHEREAS, the Department of Defense and the State of Maryland are committed to using the Federal consistency process to protect coastal uses and resources within Maryland's Coastal Zone;

WHEREAS, the Coastal Zone Management Act was enacted by Congress on October 27, 1972 to encourage coastal States, Great Lakes States and U.S. territories and commonwealths to be proactive in managing natural resources for their benefit and for the benefit of the Nation with the main objectives of preserving, protecting, developing, and where possible, restoring or enhancing the resources of the Nation's Coastal Zone;

WHEREAS, the Department of Defense is required under the Coastal Zone Management Act to demonstrate consistency to the maximum extent practicable with the approved, enforceable policies of Maryland's Coastal Zone Management Program, as approved by the National Oceanographic and Atmospheric Administration, for all projects and activities having reasonably foreseeable effects on land or water use or natural resources of Maryland's Coastal Zone. The review of activities on Federal lands for consistency with Maryland's Enforceable Coastal Policies only applies to the extent that those activities have reasonably foreseeable effects on coastal uses or resources of the State. Federal lands subject solely to the discretion of the Federal Government, its officers or agents, are excluded from the Coastal Zone under the Coastal Zone Management Act (16 U.S.C. § 1453 (1));

WHEREAS, the State of Maryland first prepared its Coastal Zone Management Program in 1978 and, on November 19, 2010, submitted a Routine Program Change updating its Coastal Zone Management Program to the National Oceanic and Atmospheric Administration for approval. This Routine Program Change, approved by National Oceanic and Atmospheric Administration on March 18, 2011, updates, clarifies, and improves access to Maryland's Enforceable Coastal Policies;

WHEREAS, the Department of Defense participated in the public review of Maryland's November 2010 Routine Program Change, and this participation led to a series of discussions between the Parties and the National Oceanic and Atmospheric Administration Office of Ocean and Coastal Resource Management in which several agreements and understandings were reached on the application of Maryland's Coastal Zone Management Program to Department of Defense activities;

AND, WHEREAS, the parties agreed to reduce those agreements and understandings to writing;

NOW THEREFORE, the Parties agree as follows:

Article I: General

Section 1.01 Terminology: As used throughout this document, "Department of Defense" means components, subordinate services, commands, and installations and not necessarily Cabinet-level activities. Also as used throughout this document, "Policies" refers to Maryland's Enforceable Coastal Policies, effective April 8, 2011 and implemented pursuant to Maryland's Coastal Zone Management Program. "Policy" refers to a specific Maryland Enforceable Coastal Policy.

Section 1.02 State Permits: In general, the obligation of the Department of Defense under the Coastal Zone Management Act is to demonstrate consistency to the maximum extent practicable with the substantive requirements identified in Maryland's Enforceable Coastal Policies. Unless otherwise required under Federal law, the Department of Defense is not required to obtain State permits or comply with any specific State procedural requirements to demonstrate consistency with Maryland's Enforceable Coastal Policies. The Department of Defense may, at its discretion, take advantage of an existing State permitting process or existing State procedural requirement if it determines these processes or requirements are the most convenient and efficient way of demonstrating consistency. The act of the Department of Defense submitting a permit application in such cases does not expand the jurisdiction of any State agency over Department of Defense activities.

Section 1.03 Early Coordination: Prior to providing a consistency determination, the Department of Defense should confer with relevant Maryland agencies early in the planning process on the nature and expected complexity of planned Department of Defense projects and activities. Attachment 1 is appended hereto and lists the Maryland Federal Coastal Consistency

Review Points of Contact. The Department of Defense welcomes Maryland's assistance in determining which Policies are applicable to a given project or activity and developing strategies for achieving and demonstrating consistency with those Policies. At the earliest possible time, Maryland shall notify the Department of Defense of an action that the Department of Defense has not provided a consistency determination for, but which may have a reasonably foreseeable effect on Maryland's Coastal Zone.

Section 1.04 List of *de minimis* and Environmentally Beneficial Activities and General Consistency Determinations: The Department of Defense and Maryland agree to work together to develop a list of *de minimis* activities and a list of environmentally beneficial activities, as these terms are defined in 15 C.F.R. § 930.33. The List of *de minimis* and Environmentally Beneficial Activities will be appended hereto as Attachment 2 following completion of the procedures outlined in 15 C.F.R. § 930.33. Absent unusual circumstances, the projects and activities on these lists will require no individual consistency determination. Either Party may recommend revisions to this list at any time. Projects and activities can be added to this list with the agreement of both Parties through the process under 15 C.F.R. §930.33. Either Party can modify or remove an item from this list in accordance with Section 3.03 of this Memorandum of Understanding.

Section 1.05 Federal Consistency Determination Process: In accordance with 15 C.F.R. § 930.33(a), the Department of Defense shall determine which of its activities affect coastal uses or resources. For Federal agency projects and activities that have reasonably foreseeable effects on any coastal use or coastal resource on Maryland's Coastal Zone, the Department of Defense will submit a consistency determination in accordance with 15 C.F.R. § 930 et seq, identifying the relevant Maryland Enforceable Coastal Policies and demonstrating the consistency of the project or activity with those Policies. Attachments 1, 3 and 4 contain the Federal consistency submission and approval process.

Section 1.06 Exceptions: Any time the circumstances of a particular project or activity that would otherwise fall under Attachment 2 indicate that there may be adverse coastal effects, the Department of Defense will prepare and submit a Federal Coastal Consistency Determination for that individual project or activity.

Section 1.07 Options for Demonstrating Consistency: The Department of Defense and Maryland agree that Integrated Natural Resources Management Plans ("INRMPs") or consultation with Maryland may be appropriate options for demonstrating consistency. Consulting with Maryland or implementing an INRMP does not however relieve the Department of Defense of its obligation to submit a written consistency determination when required by the Coastal Zone Management Act. Rather, the Department of Defense may, where appropriate, point to relevant provisions of an INRMP or consultation with Maryland in a written consistency determination to demonstrate consistency with certain Maryland Enforceable Coastal Policies. Additionally, the Department of Defense may, at its discretion, utilize Maryland's administrative processes,

including but not limited to permits, to assist in demonstrating consistency with the substantive requirements of Maryland's Enforceable Coastal Policies. When resources are available and environmental benefits will accrue, the Department of Defense may, at its discretion and with Maryland concurrence, perform mitigation above and beyond that required to demonstrate consistency. These additional mitigation measures will be documented by the Department of Defense and Maryland, and may be used to meet mitigation requirements for future Department of Defense projects and activities.

Section 1.08 Mapping / Alternative Sites - Oyster Reefs, Trout Waters and Colonial Bird Nesting Sites: To address potential impacts to specific habitats that would have reasonably foreseeable effects to coastal uses or resources of Maryland and to provide greater specificity to the application of the policies, Maryland is creating a coastal atlas which will delineate the geographic areas of significance referred to in Maryland's Enforceable Coastal Policies B.1.1, B.2.1 and B.6.5. Maryland will make the coastal atlas available to the Department of Defense and the general public. The Department of Defense may share with Maryland any information previously collected and included in the INRMP that the State could use in creating the coastal atlas.

Article II. Specific Maryland Enforceable Coastal Policies for the Purpose of Federal Consistency Determinations:

Section 2.01 General Policies: Core Policies (Noise): The Department of Defense will demonstrate consistency with this Policy for new activities having a reasonably foreseeable effect on the Coastal Zone, other than aircraft operations. Compliance with internal Department of Defense and military service component noise abatement policies will be sufficient to demonstrate consistency with this Policy for such projects.

Section 2.02 General Policies: Water Quality (Pesticide Storage): The Department of Defense will demonstrate consistency with Maryland's Enforceable Coastal Policies regarding pesticide storage through compliance with Department of Defense Instruction 4150.07, "DoD Pest Management Program".

Section 2.03 General Policies: Water Quality (Toxic Discharges): The Department of Defense will continue to demonstrate consistency with this Policy by applying for and complying with permits required under the Clean Water Act and the relevant section of the Code of Maryland Regulations, currently 26.08.03.01.

Section 2.04 General Policies: Flood Hazards: The Department of Defense and Maryland agree that Policy A.3.2 does not establish absolute prohibitions against development on Department of Defense lands by Federal agencies.

Section 2.05 Coastal Resources: The Chesapeake and Atlantic Coastal Bays Critical Area: The Department of Defense and Maryland agree to continue discussing appropriate measures to demonstrate consistency with Maryland's Enforceable Coastal Policies related to the Chesapeake Bay and Atlantic Coastal Bays Critical Areas, including the development and maintenance of a List of *de minimis* and Environmentally Beneficial Activities, addressed in Section 1.04.

Section 2.06 Coastal Resources: Tidal and Non-Tidal Wetlands: The Department of Defense will consult with Maryland to ensure projects that may alter wetlands are consistent to the maximum extent practicable with the intent of this Policy. Maryland and the Department of Defense recognize that wetland impacts may be unavoidable due to mission requirements. In instances where adverse wetland impacts cannot be avoided, the Department of Defense and Maryland will work together to ensure any adverse effects to the Maryland Coastal Zone are minimized, any environmental benefits are maximized, and Department of Defense's operational flexibility is maximized. By submitting a Joint Permit Application under Clean Water Act Sections 404/401 to the appropriate regulatory agencies, the Department of Defense demonstrates consistency with the substantive requirements of Maryland's Enforceable Coastal Policies.

Section 2.07 Coastal Resources: Forests: The Department of Defense will demonstrate consistency with the underlying conservation goals of the Forest Conservation Act as embodied in Maryland's Enforceable Coastal Policies to the maximum extent practicable. An installation's INRMP may be sufficient for this purpose. For land-disturbing activities of 40,000 square feet or greater occurring on an installation, the Department of Defense will submit to Maryland either a negative determination with a finding of no effect to coastal uses or resources, or a consistency determination. If the Department of Defense proposes an action that will have reasonably foreseeable effects on uses or resources of Maryland's Coastal Zone, then the Department of Defense must be consistent to the maximum extent practicable with the substantive provisions of the Forest Conservation Act related to the reasonably foreseeable effects. The Department of Defense is not required to meet the procedural requirements of the Forest Conservation Act, such as creating and submitting forest conservation plans, forest stand delineation plans, or Long-Term Protective Agreements to Maryland. Likewise, the Department of Defense may not contribute to the State Forest Conservation Fund. However, the Department of Defense may, at its discretion and consistent with Federal fiscal legal requirements, follow Maryland's administrative process to assist in demonstrating consistency with the substantive requirements of Maryland's Enforceable Coastal Policies.

Section 2.08 Coastal Resources: Historical and Archaeological Sites: The Department of Defense will continue to use procedures in accordance with the requirements of the National Historic Preservation Act that are consistent with Maryland's Historical Preservation Program. Maryland agrees that meeting the consultation requirements under the National Historic

Preservation Act is sufficient to demonstrate consistency with Policies relating to historic preservation. In the event a tidal shore erosion project affects historical or archaeological resources, the Department of Defense will continue to use the consultation procedures under the National Historic Preservation Act that are consistent with Maryland's Historic Preservation Program.

Section 2.09 Coastal Resources: Living Aquatic Resources: Each INRMP maintains a relevant and updated baseline list of plant and animal species located at each installation for all pertinent taxonomic and regionally important groups, and may include State-listed endangered and threatened species. INRMPs are prepared, maintained, and implemented for all installations and ranges that contain significant natural resources for which the Department of Defense has authority for, or control of, natural resources management pursuant to the Sikes Act, 16 U.S.C. § 670 et seq. Maryland will continue to participate in the development and review of all INRMPs. Each Department of Defense component should ensure, to the extent practicable, that current and planned installation programs, plans, and projects that affect natural resources are integrated and compatible with INRMPs. Each INRMP requires that biologically or geographically significant or sensitive natural resources, such as ecosystems or species, are monitored and managed for their protection and long-term sustainability. The INRMP reflects the mutual agreement between Maryland Department of Natural Resources, the United States Fish and Wildlife Service and the Department of Defense concerning conservation, protection, and management of fish and wildlife resources, and it may be used to demonstrate consistency with Maryland's Enforceable Coastal Policies. If there are reasonably foreseeable effects on living aquatic resources as described in Maryland's Enforceable Coastal Policies, the Department of Defense and Maryland will work together to ensure any adverse effects are minimized, any environmental benefits are maximized, and the Department of Defense's operational flexibility is maximized.

Section 2.10 Coastal Uses: Tidal Shore Erosion Control (Living Shoreline): When, after consultation with Maryland, the Department of Defense determines that mission requirements or safety may be threatened by wildlife attracted to living shoreline habitats, less preferred alternatives for shoreline stabilization, such as hardened structures, should be considered consistent to the maximum extent practicable with this Policy. By submitting a Joint Permit Application under Clean Water Act Sections 404/401 to the appropriate regulatory agencies, the Department of Defense demonstrates consistency with the substantive requirements of Maryland's Enforceable Coastal Policies.

Article III. General Statements of Understanding

Section 3.01 Effective Date: This Memorandum of Understanding shall be effective as of the date of the last signature shown below and shall not expire.

Section 3.02 Pursuant to the Anti-Deficiency Act, 31 U.S.C. §§ 1341 and 1342, this Memorandum of Understanding makes no commitments of funds. Nothing in this Memorandum

of Understanding will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury.

Section 3.03 Amendment and Termination: This Memorandum of Understanding and attachments may be modified or amended upon written request of any Party hereto and the subsequent written concurrence of the other Party. Moreover, this Memorandum of Understanding may be terminated sixty (60) days after providing written notice of such termination to the other Party.

Section 3.04 This Memorandum of Understanding does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or Party against the United States, its agencies, its officers; or against the State of Maryland, its agencies, its officers; or against any other person. This Memorandum of Understanding is to be construed in a manner consistent with all existing laws and regulations.

Section 3.05 This Memorandum of Understanding neither expands nor is in derogation of those powers and authorities vested in the Parties by applicable law, statutes, regulations, or Executive Orders, nor is it intended to modify or supersede any other applicable interagency agreements existing as of the date of this Memorandum of Understanding. The Parties enter into this agreement in good faith and intend to fully carry out the terms of this Memorandum of Understanding.

Section 3.06 The Parties will meet at least every two years to discuss this Memorandum of Understanding and its Attachments.

Signed this 8th day of May, 2013.

For the State of Maryland:

John Griffin, Secretary
Maryland Department of Natural Resources

David Costello, Deputy Secretary
Maryland Department of the Environment

For the U.S. Department of Defense:

Donald R. Schregardus, Deputy Assistant Secretary of the Navy for Environment

Hershell E. Wolfe, Deputy Assistant Secretary of the Army for Environment, Safety and Occupational Health

Gerald F. (Fred) Pease Jr, Deputy Assistant Secretary of the Air Force for Environment, Safety and Occupational Health