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Deliberative Process Privilege

NOAA Response to Information Requested by NTSB and USCG MBI Investigators

NOAA GC website with Titanic information: https://www.noaa.gov/rms-titanic

Federal Register Notice re: Section 113: https://www.govinfo.gov/content/pkg/FR-2019-08-05/pdf/2019-16635.pdf

NOAA Administrative Order 209-115 regarding NOAA Employees Aboard Non-NOAA Vessels: https://www.noaa.gov/organization/administration/nao-209-115-noaa-employees-aboard-non-noaa-vessels

Office of National Marine Sanctuary Regulations at 15 CFR Part 922: https://www.ecfr.gov/current/title-15/subtitle-B/chapter-IX/subchapter-B/part-922

What process does ONMS go through when deciding whether to put its employees on non-NOAA vessels and/or submersibles?

- See NAO 209-115 above regarding employees participating on non-NOAA vessels.
- ONMS typically uses the UNOLS Safety Standards for HOVs as a guideline for evaluating whether employees can participate in operations using non-NOAA human occupied vehicles.

Expeditions to Titanic (proposed and/or conducted)

2018

- StoryTech Immersive: communicated with NOAA but no decisions made regarding Section 113 because plans were postponed.

- OceanGate: communicated with NOAA but no decisions made regarding Section 113. Titan submersible reportedly had issues during testing so the expedition was postponed.
  - January 2018: NOAA learned of expedition plans.
  - March 2018: NOAA communicated with OceanGate about their expedition plans (ie, a series of “citizen science” missions to the wreck over the course of several weeks during summer 2018).
    - See May 7, 2018, letter from USG/NOAA to the U.S. District Court for the Eastern District of Virginia (EDVA), which summarizes communications with OceanGate regarding their plans for 2018 expedition.
  - Our understanding is that the submersible had issues during testing so the expedition was postponed.

- Woods Hole Oceanographic Institute, AIVL, and Marine Imaging Technologies: communicated with NOAA but no decisions made regarding Section 113 because plans were postponed.

- EYOS: NOAA issued a Section 113 authorization. Ship had to turn around due to weather, so no submersible dives were conducted.

2019

- OceanGate: communicated with NOAA but no decisions made regarding Section 113 because plans were postponed.
  - April 5, 2019: OceanGate filed a letter (dated April 1, 2019) with the Court proposing to conduct six, week-long manned dives to survey the wreck and to

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return to the site over the course of "several years" to fully document and model the wreck. OceanGate claims its activities will not disturb the wreck or interfere with RMST's salvage rights. In its letter, OceanGate states that it will conduct its activities consistent with the NOAA Titanic Guidelines but that it "agrees with RMST and the recent comments of [the] Court that Section 113 is unconstitutional and usurps the exclusive jurisdiction of [the] Court to supervise activities at the Titanic wreck site."

- April 18, 2019: NOAA sent letter to OceanGate re: need to provide additional information to NOAA so NOAA could determine whether a Section 113 authorization is required.
- April 29, 2019: OceanGate letter to Monitor National Marine Sanctuary Superintendent Dave Alberg. OceanGate took the position that it "has already provided more information than is legally required" to both the EDVA and NOAA.
- May 20, 2019: NOAA sent OceanGate a letter concluding the agency lacks sufficient information to determine whether a Section 113 authorization is required.
- May 21, 2019: NOAA filed a periodic report with the EDVA, updating the Court and RMST on the status of three potential expeditions to *Titanic* in 2019 (i.e., EYOS, RMST, Inc., and OceanGate). ECF No. 549.
- July, 2019: NOAA learned via OceanGate's website that expedition plans were postponed due to "the last-minute withdrawal of the surface support vessel by the ship operator."

- EYOS: NOAA issued Section 113 authorization and Court issued order. EYOS conducted an expedition with a NOAA observer aboard and completed five dives at the wreck site. EYOS originally proposed to recover rusticle samples and research trays but did not end up conducting either of those activities.

- RMS Titanic, Inc.: communicated with NOAA about a potential expedition but no decisions were made regarding Section 113 because RMST postponed its plans.

2020

- RMST: refused to request a Section 113 authorization for planned salvage operations and scientific testing at *Titanic*, but ultimately postponed its plans before the question was fully litigated.

- SEARCH, Inc.: NOAA determined no Section 113 authorization was required. Plans were postponed.

2021

- OceanGate: NOAA determined no Section 113 was required. OceanGate conducted an expedition consisting of five week-long "missions," each with multiple dives of *Titan* to the wreck-site.
  - May 5, 2021: RMST filed a periodic report that included an entry on a planned summer 2021 expedition to the wreck by OceanGate.
  - May 11, 2021: NOAA sent a letter to OceanGate to inform the company that Section 113 may apply to Oceangate's planned 2021 expedition to the wreck.
  - May 18, 2021: OceanGate filed a letter with EDVA identifying its plans to conduct a series of week-long crewed submersible operations aboard *Titan* to survey the *Titanic* wreck and wreck site, taking paying customers as "mission specialists." OceanGate characterized its expedition as "look don't touch."

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- May 21, 2021: EDVA responded to OceanGate to say that it has no objections to OceanGate's expedition absent any objection from RMST or NOAA.
- June 2, 2021: NOAA sent a letter to OceanGate requesting specific information to determine whether a Section 113 authorization was necessary for OceanGate's 2021 expedition.
- June 3, 2021: OceanGate provided the information that NOAA requested.
- June 14, 2021: NOAA informed OceanGate that a Section 113 authorization was not necessary for its summer 2021 expedition.
- June 16, 2021: NOAA filed a status report with EDVA to inform the court of its determination regarding Section 113.
- Nov. 4, 2021: OceanGate filed an update with EDVA to report on its completed summer 2021 expedition.

2022

- OceanGate: NOAA determined no Section 113 authorization was required. OceanGate conducted an expedition consisting of five week-long "missions," each with multiple dives of *Titan* to the wreck site.
  - May 20, 2022: NOAA sent a letter to OceanGate to inform them that Section 113 may apply to Oceangate's planned 2022 expedition to the wreck.
  - May 20, 2022: OceanGate filed a letter with EDVA identifying a plan to conduct an expedition to the wreck in 2022 that would be similar to its 2021 expedition. OceanGate attached a draft science plan for the expedition to its letter.
  - June 6, 2022: EDVA responded to OceanGate to say the court had no objections to OceanGate's expedition absent any objection from RMST or NOAA.
  - June 13, 2022: NOAA informed OceanGate that a Section 113 authorization was not necessary for its summer 2022 expedition.
  - June 15, 2022: NOAA filed status report with EDVA to inform the court of its determination regarding Section 113.
  - Nov. 10, 2022: OceanGate filed an update with EDVA to report on its completed summer 2022 expedition.

- Magellan: Magellan Ltd., a company registered in Guernsey,[1] conducted a survey expedition from August 20 - 25, 2022, using two ROVs to acquire detailed laser and photogrammetric data of the bow and stern sections of *Titanic*. NOAA learned of the expedition through court filings after it was underway, and Magellan has stated that it did not disturb or interfere with the wreck or wreck site and did not recover any artifacts during its expedition. NOAA did not have jurisdiction over Magellan's expedition under Section 113 since the company was registered in Guernsey (a self governing British Crown dependency) (and, to our knowledge, no other jurisdictional hooks existed).

2023

- OceanGate: NOAA determined no Section 113 authorization was required. OceanGate conducted an expedition to the wreck that was aborted after the loss of the *Titan* submersible on June 18, 2023.

[1] The Bailiwick of Guernsey is a self-governing British Crown dependency that is not part of the United Kingdom. However, the UK Government is constitutionally responsible for its defense and international representation. The Bailiwick of Guernsey consists of the main island of Guernsey and a number of smaller islands. *See* CIA World Factbook, *Guernsey*, available at https://www.cia.gov/the-world-factbook/countries/guernsey.

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- April 20, 2023: OceanGate filed a letter with EDVA identifying a plan to conduct an expedition to the wreck in 2023 that would be similar to its 2021 and 2022 expeditions.
- May 5, 2023: NOAA informed OceanGate that a Section 113 authorization was not necessary for its summer 2023 expedition.
- May 9, 2023: NOAA filed status report with EDVA to inform the court of its determination regarding Section 113.
- June 22, 2023: RMST filed a letter with EDVA regarding the loss of the *Titan* submersible.

2024

- RMST: RMST has stated its intent to conduct a summer 2024 survey and artifact recovery expedition to the wreck. NOAA has moved to intervene in the admiralty action to (1) seek declaratory judgment that RMST must comply with Section 113 and (2) enjoin any RMST activities that would alter or disturb the wreck or wreck site unless a Section 113 authorization is issued. As of February 16, 2024, the EDVA has not ruled on the motion to intervene.