

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

**R.M.S. TITANIC, INC.,
successor-in-interest to
Titanic Ventures, limited partnership,
Plaintiff,**

v.

Civil Action No. 2:93cv902

**THE WRECKED AND ABANDONED VESSEL,
ITS ENGINES, TACKLE, APPAREL,
APPURTENANCES, CARGO, ETC., LOCATED
WITHIN ONE (1) NAUTICAL MILE OF A POINT
LOCATED AT 41 43' 32" NORTH LATITUDE
AND 49 56' 49" WEST LONGITUDE,
BELIEVED TO BE THE R.M.S. TITANIC
in rem,**

Defendant.

STATUS REPORT

The United States, as *amicus*, and on behalf of its National Oceanic and Atmospheric Administration ("NOAA"), provides the following status update:

On April 20, 2023, David Concannon submitted a letter to the Court on behalf of OceanGate Expeditions, Ltd., advising of OceanGate's plans for its 2023 *Titanic* Survey Expedition. *See* ECF No. 683. Because OceanGate is not proposing to conduct any "research, exploration, salvage, or other activity that would physically alter or disturb the wreck or wreck site of the RMS *Titanic*," NOAA has determined and advised OceanGate that an authorization pursuant to Section 113 of the Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, 131 Stat. 192 (May 5, 2017), is not required. *See* Exhibit 1 (May 5, 2023, Letter from Dr. Richard W. Spinrad (NOAA Administrator) to David Concannon).

Respectfully submitted,

Jessica D. Aber
United States Attorney

By: /s/ Kent P. Porter
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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of May, 2023, I will electronically file the foregoing document with the Clerk of Court using the CM/ECF system, which will then send a notification of electronic filing (NEF) to the following:

| | |
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| Brian Andrew Wainger Ryan V.P. Dougherty William R. Poynter Kaleo Legal 4456 Corporation Lane Suite 135 Virginia Beach, VA 23462 Email: bwainger@kaleolegal.com E-Mail: rdougherty@kaleolegal.com E-Mail: wpoynter@kaleolegal.com | David G. Barger, VSB #21652 GREENBERG TRAUIG, LLP 1750 Tysons Boulevard, Suite 1200 McLean, Virginia 22102 Tel: (703) 749-1300 Fax: (703) 749-1301 E-Mail: Bargerd@gtlaw.com |
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UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary of Commerce
for Oceans and Atmosphere
Washington, D.C. 20230

May 5, 2023

Mr. David Concannon
Explorer Consulting
100 Sun Valley Road, Box 329
Sun Valley, ID 83353
E-mail: david@davidconcannon.com

Dear Mr. Concannon:

The National Oceanic and Atmospheric Administration (NOAA) has reviewed the information you provided via letter to the U.S. District Court for the Eastern District of Virginia and to NOAA on behalf of OceanGate Expeditions, Ltd. ("OceanGate"), as well as information available on OceanGate's website regarding its proposed 2023 *Titanic* Survey Expedition. See Letter from David Concannon, Legal and Operational Advisor to OceanGate, to the Honorable Rebecca B. Smith, U.S. District Court for the Eastern District of Virginia (April 20, 2023) ("April 20, 2023, Letter to the Court").

Based on this information and our understanding that the proposed 2023 Survey Expedition will be carried out in a manner consistent with OceanGate's 2021 and 2022 *Titanic* Expeditions, NOAA concludes that no authorization pursuant to section 113 of the Consolidated Appropriations Act, 2017, Public Law 115-31, 131 Stat. 135, 192 (2017), is required for this proposed 2023 expedition. Section 113 prohibits any person from conducting "... research, exploration, salvage, or other activities that would physically alter or disturb the wreck or wreck site of the R.M.S. Titanic, unless authorized by the Secretary of Commerce per the provisions of the [International Agreement]."

You stated in your April 20, 2023, Letter to the Court that OceanGate plans to conduct a series of eight-day "missions" to survey *Titanic* and the wreck site from early May until the end of June 2023. OceanGate's website indicates that the 2023 expedition will consist of five such missions. Each mission will include deployment of OceanGate's five-person deep sea submersible, *Titan*. You stated in your letter that "[n]o salvage or retrieval of artifacts, coal or rusticles will be collected" during the proposed 2023 expedition and that "[a]ll of the operations planned for the *Titanic* site will be 'look but don't touch.'" And you described characteristics of *Titan* and operational details to support this statement, including that *Titan* does not have manipulator arms or other means of retrieving artifacts from the sea floor and that *Titan* will always approach *Titanic* from a down-current position to reduce the submersible's speed and increase its navigability when near and over the wreck and wreck site. (April 20, 2023, Letter to the Court).

As outlined in the April 20, 2023, Letter to the Court, NOAA understands that OceanGate will be conducting a series of non-intrusive, human-occupied submersible dives at the *Titanic* to

THE ADMINISTRATOR



conduct citizen exploration as OceanGate has done for the past two summers. The science objectives for the missions are to:

- Supplement the work done on previous scientific expeditions to capture data and images for the continued scientific study of the ecology and archaeology of the site;
- Document the condition of the wreck with high-definition photographs and video; and
- Document and characterize the flora and fauna inhabiting the wreck site for comparison with data collected on prior scientific expeditions to better assess changes in the habitat and maritime heritage site.

Your letter further indicates that the proposed 2023 expedition is part of a multi-year project of continued observation to fully document and characterize the wreck and surrounding debris field, monitor changes to the structures and the natural site, and describe the ecology of the site. The stated intent of this project is to collect images, video, sonar data, and water samples to provide an objective basis for meaningful assessment of the decay of the wreck over time and to help document and preserve its submerged history. (April 20, 2023, Letter to the Court).

NOAA understands that OceanGate will conduct its proposed 2023 expedition in a manner that is consistent with the *Titanic* International Agreement, Section 113, the 1986 R.M.S. *Titanic* Maritime Memorial Act, the Guidelines for Research, Exploration, and Salvage of R.M.S. *Titanic* (66 Fed. Reg. 18905, Apr. 12, 2001), International Maritime Organization (IMO) Circular MEPC.1/Circ.799 (31 January 2012), and applicable orders of the U.S. District Court for the Eastern District of Virginia.

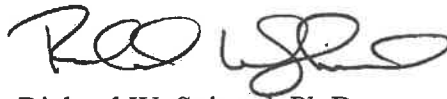
Based on the foregoing, NOAA understands that, as in previous years, OceanGate and any agent or contractor for the proposed 2023 expedition will:

- Not discharge garbage, blackwater, graywater, and any other discharges incidental to the operation of OceanGate's expedition vessel within 15 nautical miles of the wreck site;
- Avoid any activities that would physically alter or disturb the wreck or wreck site (including the seabed), including any contact with or landing on *Titanic*;
- Not install, attach, or place any plaques, memorials, or other temporary or permanent fixtures on *Titanic*;
- Not enter, or attempt to enter, with a submersible, ROV, or other devices, sensors, or probes either of the hull pieces;
- Maintain the submersible and its subsystems (*i.e.*, weights, drop weights, skids, appendage) as well as any ROV a sufficient distance from the wreck so as to avoid coming into contact with it on all dives or attempted dives in either normal or emergency operation modes and procedures; and
- Not drop or deposit intentionally or unintentionally any weights or equipment such that they would land on or near the wreck. In all cases, weight or items dropped will be done in accordance with International Maritime Organization Circular MEPC.1/Circ.779 (31 January 2012).

NOAA appreciates OceanGate's intent to share information, as expressed in your April 20, 2023, letter, and would appreciate receiving a copy of any expedition report that OceanGate submits to the U.S. District Court for the Eastern District of Virginia.

If you have any questions, please do not hesitate to contact Mitchell Tartt, Chief, Science & Heritage Division, Office of National Marine Sanctuaries (mitchell.tartt@noaa.gov). Thank you for your continued cooperation with NOAA.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Spinrad", written in a cursive style.

Richard W. Spinrad, Ph.D.

Under Secretary of Commerce for Oceans and
Atmosphere & NOAA Administrator