



## Protecting Our Underwater Cultural Heritage



# Protecting Our Underwater Cultural Heritage: International, National and State

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## What are Submerged Cultural Resources?



- ❖ Historical and archaeological remains that are located underwater;
- ❖ Shipwrecks are the best known, but there are also artifacts, refuse, sunken remains of docks, landings, piers and wharves, and even whole towns;
- ❖ Also included are inundated Native American sites, such as villages and hunting camps;
- ❖ The United Nations uses the term Underwater Cultural Heritage

## Why are Submerged Cultural Resources Important?



- ❖ They are non-renewable
- ❖ They can give us unique information about our past
- ❖ They provide exciting opportunities for recreational and educational experiences



# What are the Problems Affecting Submerged Cultural Resources?



- ❖ “Looting” and Salvage – intentional artifact removal and site damage
- ❖ “Souvenir collecting” – removal of “just a keepsake to remind me of this wonderful dive”
- ❖ Inadvertent human impact – anchor damage, dangling gear, poor buoyancy control, resting on or hanging onto a wreck, etc.
- ❖ Erosion – from current, waves, runoff, and boat and ship wake
- ❖ Development – construction, dredging, draining, etc.



## Historic Preservation Law & Underwater Cultural Heritage -- a Global Perspective



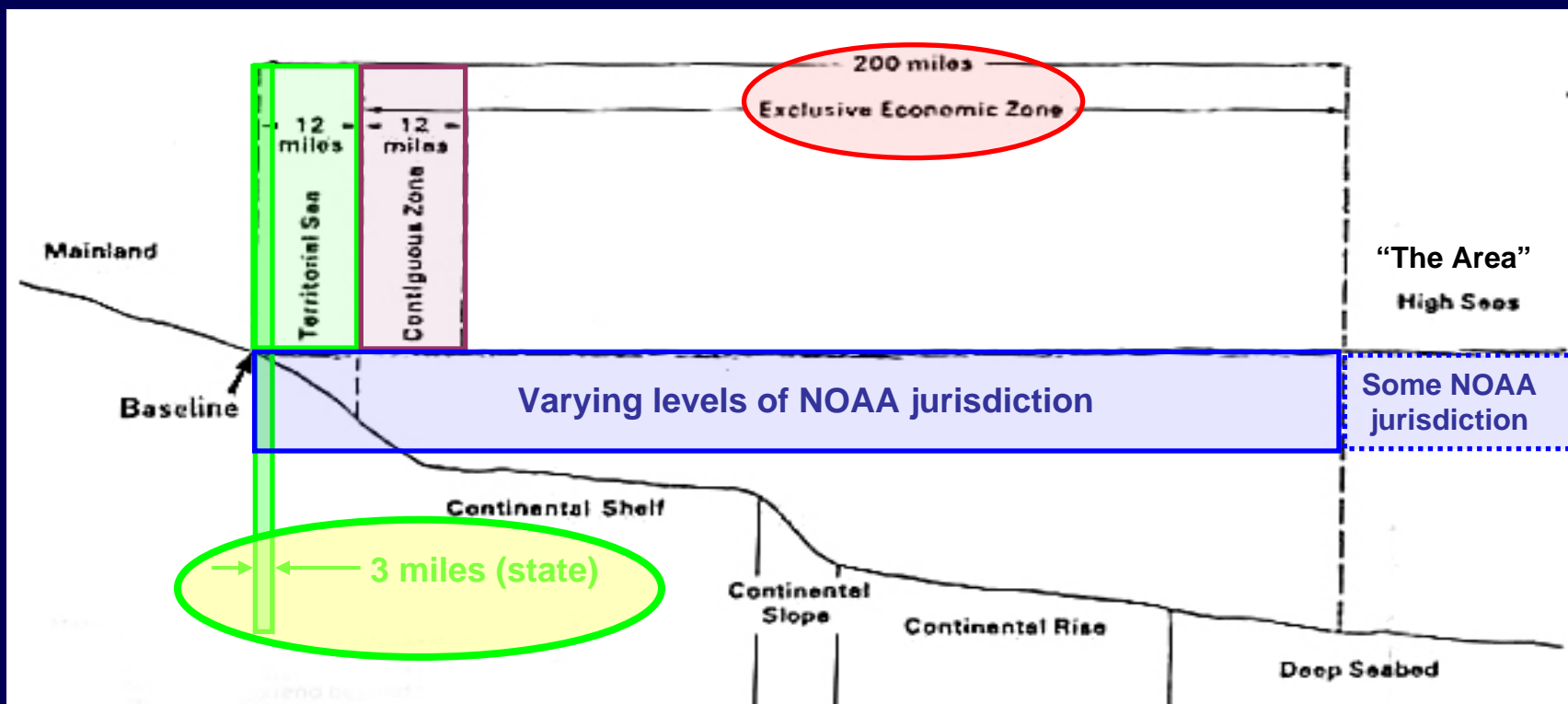
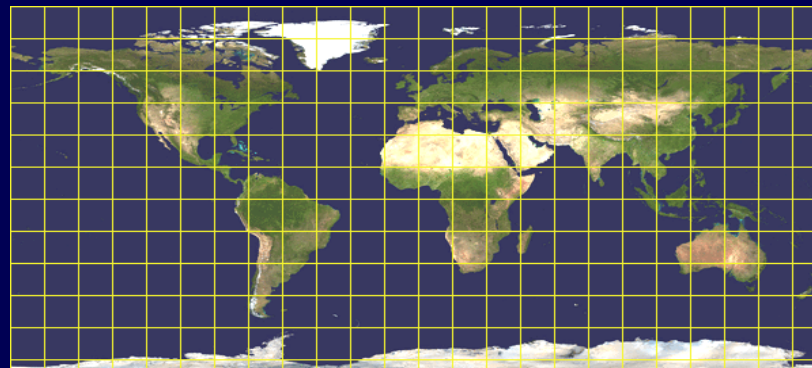
- Law of the Sea Convention — LOSC (1982)
- UNESCO Convention on the Protection of Underwater Cultural Heritage (2001)
- U.S. Antiquities Legislation (1906 – 2005)
- International Law of Salvage (Admiralty Law)
- U.S. Multi-lateral International Agreements



## Note on U.S. International Policy:

- U.S. has not signed the Law of the Sea Convention or UNESCO Underwater Cultural Heritage (UCH) Convention;
- However, U.S. laws and policy are consistent with those Conventions.

## Law of the Sea – Zones



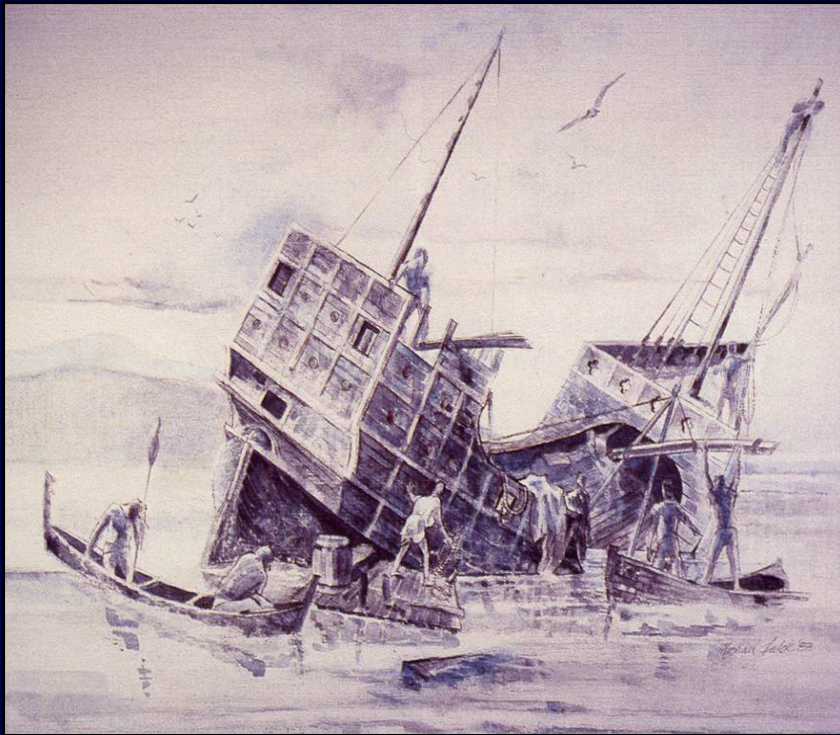


## Legal protections for shipwrecks in U.S. Waters

- Admiralty Law
- Federal Laws
  - Antiquities Act (1906)
  - National Historic Preservation Act (1966)
  - Archaeological Resources Protection Act (ARPA)
  - National Marine Sanctuaries Act (1972)
  - Abandoned Shipwreck Act (1987)
  - Sunken Military Craft Act (2005)
- State Laws



## Admiralty Law



- Historically, *Admiralty Law* was intended to encourage the rescue of vessels in peril, in order to save lives and property.
- Recently, the law has been used to gain control over shipwrecks and their cargo.
- Today, *Admiralty Law* can only be applied to historic shipwrecks outside of state owned or controlled submerged bottomlands.



## Antiquities Act

- President Bush recently used the Antiquities Act to designate the largest marine protected area in the world: the Papahānāmokuākea Marine National Monument.
- This is the first underwater National Monument ever designated.
- There is speculation that this type of designation may be used for more marine areas in the future.





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## National Historic Preservation Act

- Section 106 - Mitigate potential damage -- regulation-permits
- Section 110 - Inventory and Assess -- management-research





## Archaeological Resources Protection Act

- Applies to archaeological resources that are 100 years or older and are located on public (federally owned) or tribal lands
- Prohibited practices include excavation, removal, damage, alteration, or defacement of any archaeological resource without or in violation of a permit
- It is a violation to transfer resources across state lines if such resources obtained in violation of a state law
- Provides archaeological and permit guidelines
- Provides for penalties under the law



## Abandoned Shipwreck Act of 1987

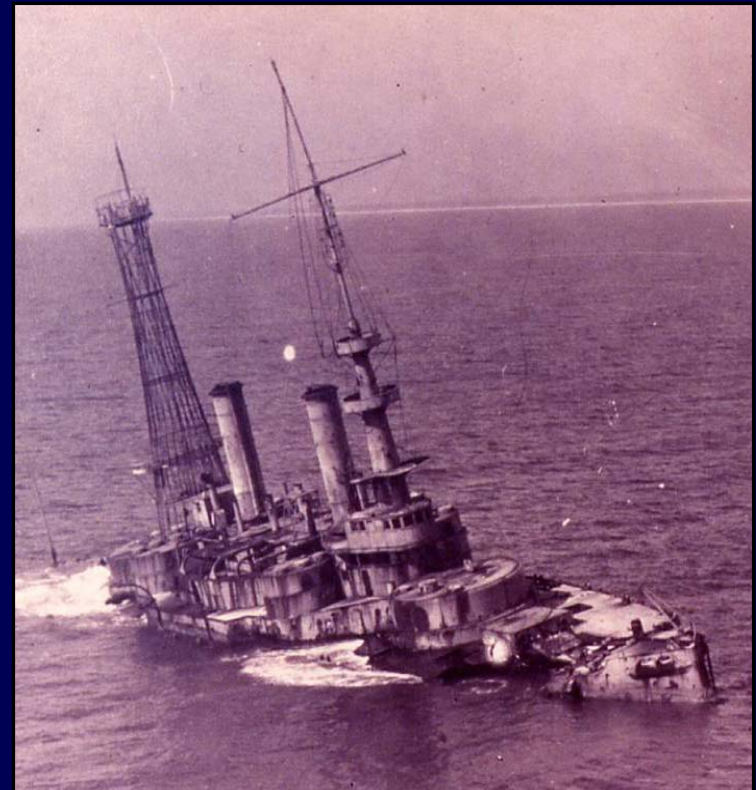


- **“Umbrella” law for the states**
- Confirms state title to historic shipwrecks imbedded and abandoned in state owned or controlled submerged bottomlands
- Prohibits Admiralty Law claims on historic shipwrecks located in state bottomlands



## Sunken Military Craft Act of 2005

- Confirms right, title, and interest of the U.S. in and to any U.S. sunken military craft anywhere in the world
- Includes military aircraft
- Provides the same right and protection for state craft from another country that lie on U.S. controlled bottomland
- Encourages development of international agreements to protect sunken State craft
- Regulations to be issued in 2007 (?)
- **Federal law – “trumps” state law**



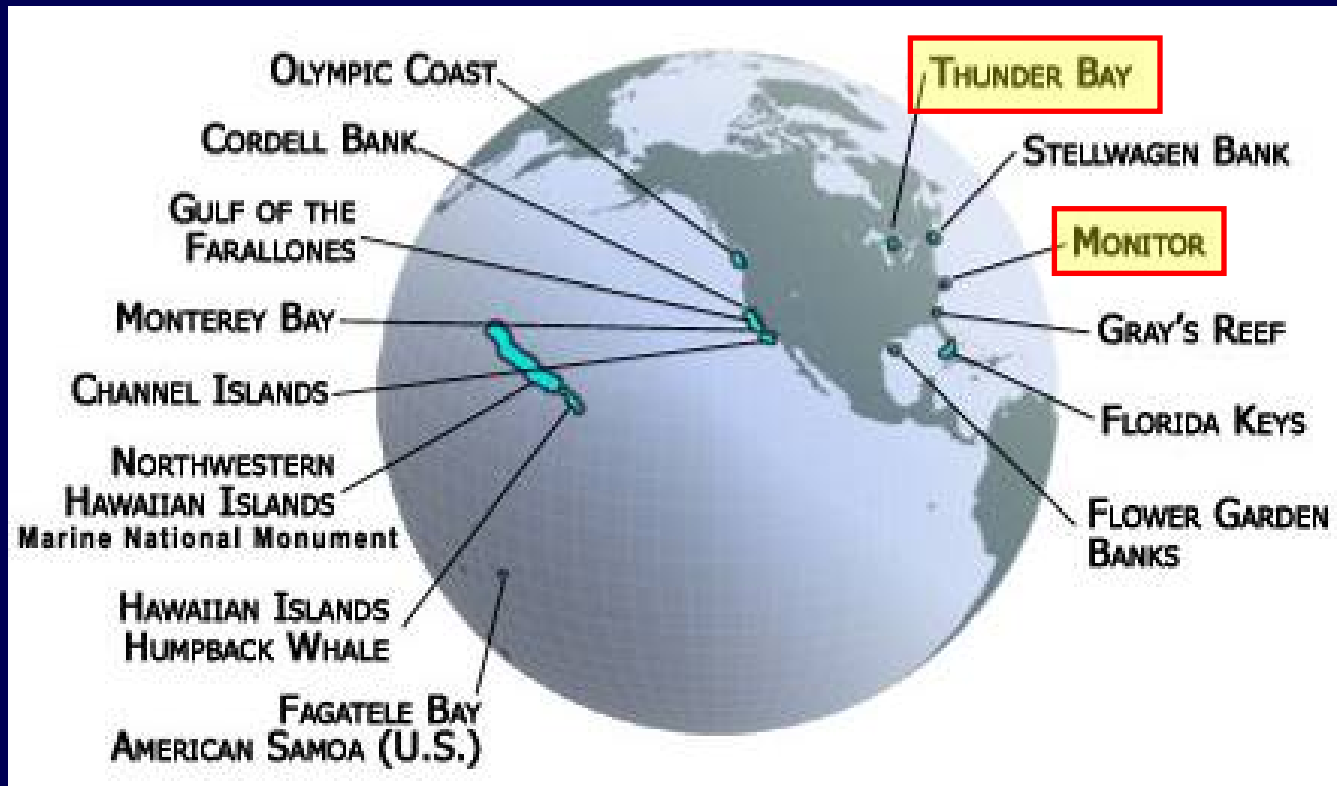


# National Marine Sanctuary Regulations Regarding UCH

- Prohibit removal or injury of UCH without permit
- Prohibit alteration of the seabed (has been used to penalize digging into seabed for UCH salvage)
- Enforcement of regulations upheld in Admiralty Court superceding any right to salvage
- No Law of Finds, because UCH not abandoned
- **This is another protective tool available to states**

# NOAA's National Marine Sanctuaries MARITIME HERITAGE PROGRAM

## National Marine Sanctuary System



- 13 Sanctuaries and a Marine National Monument
- Some offshore, others within state waters



## UCH Laws Applied to U.S. Multi-lateral Agreements

- Laws respect ownership rights and interests of foreign sovereign nations over their sunken warships
- U.S. Multi-lateral International Agreements
  - RMS *Titanic* (Private craft in High Seas)
  - CSS *Alabama* (U.S. Sunken State Craft in French Territorial Sea)
  - *La Belle* (French Sunken State Craft in U.S. Territorial Sea)
  - Japanese Midget Subs (in U.S. Territorial Sea)
  - Treasure Galleons (Spanish Sunken State Craft in U.S. Territorial Sea)



## U.S. UCH Laws in State Waters

- NOAA National Marine Sanctuaries Act – *USS Monitor*
- Sunken Military Craft Act – President’s Statement on Warships & other Sunken State Craft
- Antiquities Act (UCH on Cont. Shelf)
- National Historic Preservation Act
- National Environmental Policy Act
- Proclamation of 24 nm Contiguous Zone (1999)

More →



## U.S. UCH Laws in State Waters (continued)

- All previously listed, plus
- The Abandoned Shipwreck Act (1987), plus
- Applicable state laws
  - > Not all states have UCH legislation
  - > Not all states have maritime archaeologists
  - > State UCH laws are all different



## Foreign Vessels: a Virginia Example



- 1996 - A private salvor, Sea Hunt, Inc., received a Virginia permit to search for shipwrecks off the Virginia coast.
- 1998 - Sea Hunt claimed to have located two Spanish shipwrecks off the Virginia coast of Assateague Island:  
*La Galga* (1750) and *Juno* (1802)
- 1998 - Spain, with full cooperation from the U.S. State Department, claimed ownership of both vessels. Both the salvor and Commonwealth of Virginia challenged Spain's assertion.



## Foreign Vessels: a Virginia Example (continued)



- 1999 – Eastern District Court of Virginia ruled that Spain still owned *Juno*, but not *La Galga*.
- 2000 – U.S. Fourth Circuit Court of Appeals ruled that both vessels still belong to Spain and cannot be salvaged without Spain's approval.
- 2001 – U.S. Supreme Court rejected appeals by both parties without comment, upholding 4th U.S. Circuit Court of Appeals.
- 2001 – Spain has requested that *La Galga* and *Juno* be left undisturbed as military gravesites.



# Suggested Checklist for Reviewing a State Permit Application for Shipwrecks

- Review the provisions of the Abandoned Shipwreck Act (ASA) and applicable laws in your state,
- Attempt to determine national origin of wreck,
- Attempt to determine if applicant is a commercial salvor or an institution seeking to conduct a scientific investigation meeting professional U.S. and UNESCO archaeology standards, and
- Consult with state and federal cultural resource managers.



# Protecting Our Underwater Cultural Heritage



## Convention on the Protection of the Underwater Cultural Heritage 2001

- **U.S. has not ratified the Convention, but some states and organizations have agreed to adhere to the Convention and/or the Annex Rules.**

### Key provisions:

- States shall preserve underwater cultural heritage (UCH) for the benefit of humanity.
- The preservation *in situ* of UCH shall be considered as the first option before allowing or engaging in any disturbance activities.
- Recovered underwater cultural heritage shall be deposited, conserved and managed in a manner that ensures its long-term preservation.
- Underwater cultural heritage shall not be commercially exploited.



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