

SUNKEN TREASURE: LAW, TECHNOLOGY & ETHICS

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**SHOULD THERE BE SUCH A THING AS
TREASURE SALVAGE?**

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OLE VARMER, THE CASE AGAINST TREASURE SALVAGE

I. *PROTECT HISTORIC SHIPWRECKS THROUGH ON-SITE PRESERVATION - DO NOT "SALVAGE" UNLESS THREATENED*

Compare and contrast the public interest in historic preservation laws, science based policies and the precautionary approach to Underwater Cultural Heritage (UCH) management programs with the commercial public interest embodied in the maritime law of salvage.

In addition to non-intrusive research and education, identify other multiple uses of the UCH that are compatible with on-site preservation of the UCH, e.g., boating, diving, fishing.

Note that on-site preservation of UCH is also consistent with the protection of natural resources, particularly coral, seagrass and other significant natural habitats.

Explain how "Salvage" not viewed by historic preservationists as rescuing or saving the UCH from any marine peril, but is rather viewed as the looting and destruction of a time capsule.

If the UCH site is threatened, the scrupulous recovery of the artifacts and recording of archaeological information may be required to protect the artifacts and the contextual information therein.

Is there a public interest in recovery of the UCH even if it is not threatened? Perhaps no, under a strict archaeological view of publicly owned resources, but yes under a more flexible multiple use management approach and certain historic preservation laws.

II. *UNSCIENTIFIC EXPLOITATION OF THE UNDERWATER CULTURAL HERITAGE DESTROYS IRREPLACEABLE HISTORIC RESOURCES, INCLUDING ARCHAEOLOGICAL CONTEXTUAL INFORMATION*

A. *Unscientific Search Treasure vs Scientific Survey & Inventory*

Discuss scrupulously planned professional scientific survey of UCH vs. Inadequately planned, random and potentially destructive search for treasure.

Historic and natural resources are often destroyed from the use of destructive search technology, such as explosives and propellor wash deflectors. Also raise the issue of the UCH site being a grave site.

Salvors are generally only interested in the treasure, and are not interested in preserving non-marketable artifacts or properly recording all of the archaeological information.

Salvors do not generally have professional archaeologists involved in the salvage operations, much less the search.

B. Commercial Profit Driven Salvage vs Professional Archaeological Recovery

To maximize profit from their salvage of treasure, salvors minimize expenses. In addition to not using a professional archaeologist, there is little or no scrupulous care taken in the recovery. When there is some recording, it is generally not in strict adherence to a scientific methodology which is necessary in recording the archaeological information, including contextual information.

Objects discovered which have little or no value in commercial markets are generally treated as junk as opposed to being treated as the irreplaceable archaeological resources that they are.

While the trend in the commercial salvage of treasure has been to a more scientific approach, because of the need to be cost-effective, non-marketable artifacts are often destroyed, left on the seabed, or not fully conserved or curated.

Some commercial salvors have conserved what they have discovered, which takes us to perhaps the greatest potential conflict: what is done with the collection of salvaged artifacts and archaeological information?

III. *DISPOSITION OF THE UCH WHICH HAS BEEN REMOVED*

Under historic preservation laws and policies, the artifacts must be kept together in a collection for research, education and other public uses. As opposed to commercial salvage, where artifacts are generally sold and/or distributed to investors which results in the dispersal of collection of artifacts.

Code of Ethics of Archaeologists Prohibit the Sale of Artifacts or working with treasure salvors

ARPA Prohibits the sale of publicly owned archaeological resources

Models for compromise: the ASA Guidelines, the Florida Keys National Marine Sanctuary Submerged Cultural Resource Management Plan, the Titanic?

Under Florida Keys National Marine Sanctuary Submerged Cultural Resource Management Plan, NOAA permits private sector recovery when it is determined to be in the public interest. However, this is done pursuant to sanctuary permit system which considers the public interest in natural, as well as cultural resources. NOAA, the State of Florida and the Advisory Council on Historic Preservation agreed that it was in the public's interest to protect and manage the UCH under environmental and historic preservation laws, and not under the maritime law of salvage.

IV. *PROBLEMS WITH MANAGEMENT OF UCH UNDER ADMIRALTY LAW OF SALVAGE*

Maritime salvage law may be appropriate for addressing private disputes in recent marine casualties, but it has failed to address the public interest in historic preservation. It also fails to consider the impact to natural resources as well as the grave site issue. Moreover, Admiralty courts are ill suited to be managing public resources.

Under the Constitutional Separation of Powers, the Executive Branch manages public resources, not the Judiciary. Courts are there to resolve disputes between parties and provide a check and balance on the management of resources by the Executive Branch.

Maritime salvage law provides no civil or criminal punishment for the looting or pirating of the UCH outside of Admiralty court cases, process and authority. To the contrary, it has created an environment whereby such looting is perceived and argued to be legitimate.

Admiralty courts have generally not required compliance with professional scientific archaeological standards.

When the exceptional Admiralty court has applied consideration of scientific standards it is not done uniformly and often not up to professional scientific standards.

The trend in domestic and international law is towards protecting the UCH under historic preservation laws and precluding the application of the maritime law of salvage and the common law of finds. (Abandoned Shipwreck Act, National Marine Sanctuaries Act, United Nations Educational, Scientific, and Cultural Organization {UNESCO} draft Convention for the Protection of the Underwater Cultural Heritage)