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AN EXAMINATION OF THE LEGAL ISSUES CONCERNING HISTORIC SHIPWRECKS

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## EXECUTIVE SUMMARY

The coastal waters surrounding the United States are a rich hunting ground for archaeologists and treasure salvors. With the development of high-technology search-and-salvage equipment, great interest has centered upon the recovery of many treasure-laden shipwrecks. The financing and organization of these search-and-salvage ventures has aroused considerable interest.

The Submerged Lands Act and the Outer Continental Shelf Lands Act clarified the jurisdiction of submerged lands but did not deal with the disposition of manmade objects located in these areas. An ancient legal doctrine in Anglo-American law--the doctrine of sovereign prerogative--is of current significance as to the disposition of property recovered from the sea. The British interpretation, recently reaffirmed and modified, provides that objects recovered from the British territorial waters become the property of the government, rather than the salvor. The American view is that the salvor of the abandoned or long lost property takes the title to the property, rather than the government.

State laws governing the salvage/preservation of underwater resources vary greatly from complex detailed legislation which provides a comprehensive framework for salvage/preservation activities to very generalized legislation. Litigation has arisen regarding the ownership of property recovered from search-and-salvage ventures. Recent cases have focused on the location of the submerged object and whether the government--state or federal--has asserted legislative control or ownership over the area where the object is located. Hence, the controlling features of these cases seem to be: 1) the location of the underwater property and 2) whether state statutes or federal claims assert ownership to the underwater property.

With the great increase of treasure hunting explorations, a variety of investment techniques have been utilized to raise necessary capital. Many of these ventures involve the creation of tax shelters. These ventures usually involve limited partnerships with the promoter assuming the chief role of salvor and the limited partners providing financial backing. Such financial arrangements provide tax advantages--an investment tax credit, capital depreciation, and advantageous capital gains distributions.

There is no uniform federal law governing either the salvage/preservation process or the financing of such ventures, nor do existing international accords definitively resolve ownership/jurisdictional questions regarding archaeological and historical objects found at sea. Several legislative proposals have been introduced in the Ninety-Ninth Congress. Proposals to regulate the salvage/preservation of shipwrecks and their cargoes have been introduced. Legislation to form an international commission to study the preservation/salvage of the Titanic has been introduced and might serve as a model for future international accords for the salvage/ preservation of resources found in other areas of the world.



## AN EXAMINATION OF THE LEGAL ISSUES CONCERNING HISTORIC SHIPWRECKS

### INTRODUCTION

Several issues involving historic shipwrecks confront today's legislators and courts.<sup>1/</sup> With the development of sophisticated exploration and salvage equipment, the stunning success of various underwater salvage operations, and the sophisticated financial marketing of underwater salvage projects, the courts, state legislatures, Congress, and international bodies are grappling with competing interests, values, and laws.<sup>2/</sup> The purpose of this report is to examine and analyze some of the issues relating to historic shipwrecks and the current applicable laws, if any, governing these issues. While these issues concern the legislator and the jurist, they also concern the preservationist, the historian, the salvor, the financial promoter, and the investor.<sup>3/</sup>

### BACKGROUND

In the coastal waters surrounding the United States, a rich treasure trove in submerged objects exists.<sup>4/</sup> This treasure trove had its origins

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<sup>1/</sup> Osterlund, Doubloon seekers, archaeologists, and states tug at treasure chest, Christian Science Monitor 5 (Aug. 13, 1985).

<sup>2/</sup> Osterlund, 'That's my wreck....', Christian Science Monitor 1, 40 (Aug. 13, 1985).

<sup>3/</sup> Hitchings, Secrets of the Sunken Treasure Trade, Business Week, 109 (Aug. 19, 1985)(Cited to afterwards as "Secrets").

<sup>4/</sup> Delon, Millions in treasure still lost in the deep, USA Today, 11A (Sept. 16, 1985).



in the Spanish treasure fleets which conveyed New World gold, silver, and gems to Spain in the sixteenth and seventeenth centuries. Often, these treasure fleets were beset by bad weather, frequently by hurricanes.<sup>5/</sup>

The recovery of these treasure ships, notably by Mel Fisher and his salvage company--Treasure Salvors--has caused international headlines and has brought millions of dollars in profits.<sup>6/</sup> The success of the Fisher projects has served as an impetus for many other salvage operations.<sup>7/</sup>

Although the Spanish treasure ships have the greatest lure for salvors, many other sorts of objects tantalize the archaeologist and the salvor. Ships sunk during the American Civil War (1861-1865), late nineteenth and early twentieth century wrecks, and many other vessels and their cargoes await discovery and/or salvage.<sup>8/</sup> Two of the most spectacular recent finds involve two sunken twentieth century luxury liners in waters relatively close to the United States: the Andrea Doria and the Titanic. The Titanic, with conflicting reports as to the value of its cargo, is the international focus of many conflicting legal claims and counterclaims.<sup>9/</sup>

<sup>5/</sup> Starr, Treasure Hunt: Wrecks to Riches, Newsweek, 18, 20 (Aug. 5, 1985).

<sup>6/</sup> New York Times, Sept. 35, 1985, at 35, col. 1.

<sup>7/</sup> Treasure Hunter Who Went for the Gold, U.S. News & World Report (Aug. 5, 1985).

<sup>8/</sup> New York Times, July 26, 1985, p. A26 col. 1.

<sup>9/</sup> Marbach, Titanic Controversies, Newsweek, 57, Sept. 23, 1985.

In waters relatively close to the United States, certain shipwrecks await the hand of the archaeologist and/or the treasure salvor. These vessels were lost through the caprices of weather, human error, or military action. What makes the various issues so compelling is the rapid and dramatic improvement in underwater salvage techniques.

The technology has improved so greatly of late, according to David Paul Horan, a Key West specialist in admiralty law, that salvage no longer depends on finding something as big as a hulk. Now objects as small as coins can be located and retrieved. Indeed, much of the current yield from the sea comes from gold and silver coins strewn around wrecks. Divers have long had side-scan sonar, which detects sizable objects on the ocean floor, and magnetometers, for spotting iron on hulks in shallow water. But if they couldn't see a coin, they couldn't pick it up. Now, using hand-held, underwater nonferrous-metal detectors (costing \$3,000 to \$5,000), divers can find coins buried as much as 2 ft. under the ocean floor. 10/

Unresolved legal issues involve the actual ownership of the wrecks and the related issue of federal/state/international jurisdictional questions as to what governmental body exerts control over salvage operations. 11/ Unresolved policy questions, which are beyond the scope of this report, involve the preservation and/or salvage of the wreck, whether legislation or international treaty should cover only "historic" wrecks and their contents, and a determination of what is to be considered "historic" for the purposes of preservation/salvage.

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10/ Secrets, at 106.

11/ Chicago Tribune, Sept. 6, 1985, at 4, col. 1.

Not only is interest focused on the actual wrecks and their associated relics, but the financing and syndication of these ventures has entered the realm of big business.<sup>12/</sup> Salvage operations are sometimes loosely organized, using informal operating procedures, and sometimes have limited investor protection. At times, these operations are used as tax shelters for investors. Other times, when the treasure hunt is successful, a bonanza can accrue to investors.<sup>13/</sup> However, many questions remain unresolved regarding investor protection, securities regulation, and tax liability.<sup>14/</sup> These issues await legislative resolution.

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<sup>12/</sup> New York Times, July 22, 1985, at 1, col. 4.

<sup>13/</sup> Brower, Mild-Mannered Mel Fisher, People, 69-70 (Aug. 12, 1985).

<sup>14/</sup> Secrets, at 109-110.



FEDERAL-STATE JURISDICTION

State and federal boundaries regarding lands and underwater natural resources have been long established. The basic doctrine, determined by the enactment of the Submerged Lands Act ("SLA") <sup>15/</sup> in 1953 and confirmed in subsequent legal action, is that state boundaries and related jurisdiction over natural resources extend three geographical miles seaward from their coasts (or up to three marine leagues in the Gulf of Mexico), and that the federal government has dominion and control over lands and resources lying outside of these state boundaries. These state-owned and controlled lands are "lands beneath navigable waters" under the terms of the SLA, and are sometimes called submerged lands. The federally controlled lands outside the state boundaries are "outer continental shelf lands" under the terms of the Outer Continental Shelf Lands Act ("OCSLA") of 1953. <sup>16/</sup> Many years of conflict over whether the states or the federal government controlled the right to develop offshore natural resources preceded the enactment of the SLA and the OCSLA in 1953. <sup>17/</sup> However, this legislation did not either directly or by inference allocate ownership or control over non-natural objects--such as wrecked ships and their cargoes--resting in either submerged lands or outer continental shelf lands. <sup>18/</sup>

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<sup>15/</sup> May 22, 1953, ch. 65, 67 Stat. 29. (Codified at 43 U.S.C. §§ 1301-1303; 1311-1315).

<sup>16/</sup> Aug. 7, 1953, ch. 345, 67 Stat. 462. (Codified at 43 U.S.C. § 1331 note; §§ 1331-1343).

<sup>17/</sup> See, Comment, Conflicting State and Federal Claims of Title in Submerged Lands of the Continental Shelf, 56 Yale L.J. 356 (1947).

<sup>18/</sup> Courts have affirmed this legislative interpretation. See, United States v. Florida, 425 U.S. 791 (1975), infra p. 15.

The SLA quitclaimed to the states the ownership of lands and resources beneath navigable waters, but expressly reserved as "paramount" full federal powers over commerce, defense, and international relations. "Lands beneath navigable waters" were defined as including offshore waters up to the mean high tide line and extending seaward from the "coast line" (defined as the low water line or the line marking the seaward limit of inland waters) for three geographical miles, or, in the case of Gulf of Mexico states whose historic boundaries extended beyond three miles, up to three marine leagues. Lands and resources lying outside these state-owned "lands beneath navigable waters" were expressly reserved to the United States.

Since Congress had not granted state control over all mineral resources of the continental shelf, there still existed a need to provide statutory authority for the disposition of federally controlled minerals lying outside state submerged lands. In 1945, the United States had asserted jurisdiction, as against other nations, over the natural resources of the subsoil and seabed of the entire continental shelf.<sup>19/</sup> The authority to lease the outer continental shelf lands for oil and gas development was granted to the Secretary of the Interior by the OCSLA. While the enactment of the SLA and the OCSLA resolved many state-federal conflicts, they did not resolve the potential conflicts regarding the disposition and control of manmade objects resting

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<sup>19/</sup> Proclamation No. 2667, 10 Fed. Reg. 12303 (1945) (sometimes called the Truman Proclamation). The same day President Truman issued an executive order reserving continental shelf resources pending resolution of the federal-state jurisdictional dispute by legislation or court decree, but disclaiming any intent to affect that dispute by either the proclamation or order. Exec. Order 9633, 10 Fed. Reg. 12305 (1945).



on the ocean floor. However, as will be seen later, this legislation has assisted courts in their determination of ownership and jurisdictional rights, and this legislation could serve as a basis for federal legislation dealing with the ownership/disposition of wrecked ships and their cargoes.

### EXISTING LAW AND SHIPWRECKS

#### The Legal Doctrine of Sovereign Prerogative in Anglo-American Law

The ancient legal doctrine of sovereign prerogative lies at the heart of certain legal issues involving the ownership of certain shipwrecks. The doctrine had medieval origins relating to property salvaged from the sea. It is of great importance to examine this legal concept, as much of American law is based on English precedents. Also, many of Britain's other former colonies have used English common law as the basis for their legal systems.

The doctrine of sovereign prerogative, sometimes called the king's prerogative, has its origins in ancient English law. Through the centuries, the doctrine developed and the king's unrestricted prerogatives were limited through law and through practice. <sup>20/</sup> The great British jurist and legal scholar Blackstone noted that:

...one of the principal bulwarks of civil liberty, or (in other words) of the British constitution, was the limitation of the king's prerogative by bounds...that it is impossible that he should ever exceed them, without the consent of the people on one hand; or without, on the other, a violation of that original contract, which in all states, impliedly, and in ours most expressly, subsists between the prince and his people. 21/

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<sup>20/</sup> 1 W. Blackstone, Commentaries on the Laws of England 237 (1st ed. 1803. (Afterwards cited to as 1 Blackstone)).

21/ Id.



Today, under the well established British view, property which is recovered from the sea belongs to the crown by virtue of the doctrine of sovereign prerogative. <sup>22/</sup> While the exact roots of the doctrine's application to items recovered from the sea are not clear, the doctrine can be traced as far back as 1275 to the Statute of Westminster which clearly stated that the sovereign was entitled to the "wreck" of the sea:

Concerning wrecks of the sea, it is agreed, that where a man, a dog, or a cat escape quick out of the ship, that such ship nor barge, nor anything within them, shall be adjudged wreck; but the goods shall be saved and kept by view of the sheriff, coroner, or the king's bailiff, and delivered into the hands of such as are of the town where the goods were found; so that if any sue for those goods, and after prove that they were his, or perished in his keeping within a year and a day, they shall be restored to him without delay; and if not they shall remain to the king and be seized by the sheriffs, coroners, and bailiffs, and shall be delivered to them of the town, which shall answer before the justices of the wreck belonging to the king. <sup>23/</sup>

The Statute of Westminster refers specifically to the "wreck" of the sea. According to Blackstone, the term "wreck" is to be narrowly defined to include only property that was lost at sea and which has come to the shore. <sup>24/</sup>

The king's right to property lost at sea was extended in Constable's Case <sup>25/</sup> to include salvage other than that which may have floated to the shore. A series of cases decided between 1798 and 1834 firmly established the modern English view that ownership of derelict property lost at sea

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<sup>22/</sup> Alpizar, "Sovereign Rights and Sunken Treasure," 7 Cap.U.L.Rev. 76 (1977).

<sup>23/</sup> Statute of Westminster, 1275, 3 Edw. 1, c. 4.

<sup>24/</sup> 1 Blackstone, at 292.

<sup>25/</sup> 77 Eng. Rep. 218, 223 (K.B. 1601).

is in the crown as against all but the true owner. <sup>26/</sup> The landmark case of The Aquila <sup>27/</sup> was decided in 1798. The case involved a ship and its cargo which were found floating at sea. The ship was restored to its owner, but the king and the finders asserted ownership of the cargo. The court held for the crown stating:

It will depend, therefore, on the law of each country to determine, whether property so acquired by occupancy, shall accrue to the individual finder, or to the Sovereign, and his representatives, and I consider it to be the general rule of civilized countries, that what is found derelict on the seas, is acquired beneficially for the Sovereign, if no owner shall appear. <sup>28/</sup>

After The Aquila decision, the rights of the sovereign as the owner of derelict property became virtually undisputed, against all but the original owner. In The King v. Property Derelict, <sup>29/</sup> decided in 1825, the court was concerned with the considerable number of rings, watches, and gold coins that were found aboard a vessel, drifting at sea in a waterlogged condition by the crew of an English ship. In its brief decision, the court asserted that the law did not sanction a private distribution of property found derelict. Instead, the property had to be restored to the original owner upon the payment of a salvage fee to the finder. However, if the original owner did not appear in time to claim the property, it then had to be condemned for the benefit of the crown. <sup>30/</sup> In England today, the ownership of abandoned

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<sup>26/</sup> See, Kenny and Hrusoff, "Ownership of Treasures of the Sea," 9 Wm. & Mary L. Rev. 383, 390 (1967).

<sup>27/</sup> 165 Eng. Rep. 87 (Adm. 1798).

<sup>28/</sup> Id., at 89.

<sup>29/</sup> 166 Eng. Rep. 136 (Adm. 1825).

<sup>30/</sup> Alpizar, at 77.

sea property continues to be well settled in favor of the crown treasury by virtue of the doctrine of sovereign prerogative. <sup>31/</sup>

A recent decision of the British Admiralty Court reaffirmed the doctrine of sovereign prerogative and clarified the position that the Crown had no title to wrecks found in international waters. <sup>32/</sup> This action concerned the salvage of the Lusitania which was torpedoed by a German U-boat off Ireland in 1915. In 1982, the salvors landed salvaged goods worth 2.3 million pounds. The British government claimed the items under the ancient doctrine of "Admiralty droit"—sovereign prerogative—that the government had first claim on any wreck material landed in Britain. <sup>33/</sup>

Mr. Justice Sheen, sitting in the Admiralty Court, although affirming the ancient doctrine, determined that the British government had no title to wrecks found in international waters. <sup>34/</sup> Observers indicated that this decision signaled efforts to salvage the Titanic. Previously, there had been fears that the British government would seize the Titanic under the doctrine of sovereign prerogative. However, the court decision negated this concern, and the decision is considered to serve as a stimulus for future salvage activities. <sup>35/</sup>

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<sup>31/</sup> See, Annot., 26 A.L.R. Fed. 858 (1976).

<sup>32/</sup> Manchester (England) Guardian Weekly, Dec. 8, 1985, at 6.

<sup>33/</sup> Id.

<sup>34/</sup> Id.

<sup>35/</sup> Id.



The majority view <sup>36/</sup> in the United States favors the claim of the finder of lost or abandoned property over that of the sovereign. <sup>37/</sup>

The British rule was not clearly defined during the earliest days of the American republic, and this may partially explain why American courts have reached a different result of consistently favoring the claims of the finder over that of the sovereign. <sup>38/</sup> However, there exists some agreement between the English and American courts to the extent that the rights of the original owners are preferred over those of either the sovereign or the finder. <sup>39/</sup> This was evidenced in the Statute of Westminster by the year-and-a-day provision designed to give the original owner a chance to

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<sup>36/</sup> It should be noted that in 1956, in the case of State ex rel. Ervin v. Massachusetts Co., 95 So.2d 902 (Fla. 1956), cert. denied, 355 U.S. 881 (1957), the Supreme Court of Florida reversed its former position in the case of Howard v. Sharlin, 61 So.2d 181 (Fla. 1952), by holding contrary to the American rule and awarding ownership of a sunken vessel to the state in its sovereign capacity. However, several aspects of the decision have received extensive criticism from the majority of commentators who have subsequently written on the subject. Some of these were: (1) that the court gave extensive consideration to the Statute of Westminster and referred to the vessel in question as belonging to the sovereign at the end of a year and a day. However, the vessel in the case was not a "wreck" since it never reached shore, and the provisions of the Statute of Westminster were inapplicable. (2) In addition, the court cited English cases in support of its decision, but ignored American cases to the contrary. (3) There was no authority for the court's statement in the case that the derelict belonged to the sovereign if or because it was resting in the sovereign's territorial waters. (See, also, Kenny and Hrusoff, at 396-397).

<sup>37/</sup> See, Annot., 26 A.L.R. Fed. 858 (1976).

<sup>38/</sup> Alpizar, at 77-78.

<sup>39/</sup> Kenny and Hrusoff, at 393.

re-acquire his property.<sup>40/</sup> American courts have accomplished the same result by holding that the original owner only forfeits his property when there has been an actual abandonment.<sup>41/</sup> However, where the dispute is between the finder and the sovereign, with no claim by the original owner, it becomes unnecessary for either party to show an abandonment.<sup>42/</sup>

There are two theories as to why the American courts treat property lost or abandoned at sea differently from the English courts. In the United States, it is not pure English common law which prevails.<sup>43/</sup> The common law prevailing in the United States is that which existed in the colonies prior to 1776, as modified by the colonial experience.<sup>44/</sup> At least one court has held that the practice prevailing in the colonies in 1776 was such that the English rule regarding wrecks of the sea did not become part of American common law.

It is worth while to notice that our colonial policy radically differed from the severe common-law rules as to wrecks and as to property floating on the high seas under such circumstances that it might well be regarded as an incident of some maritime misfortune, and that this difference is now accepted as part of common law, except so far as it has been enacted into the statutes.<sup>45/</sup>

The other most frequently cited justification for the departure from the British rule is that expressed in United States v. Tyndale<sup>46/</sup> (cited to

<sup>40/</sup> 1 Blackstone, at 292.

<sup>41/</sup> United States v. Smiley, 27 F.Cas. 1132 (N.D. Cal. 1864)(No. 16317).

<sup>42/</sup> Beall, "State Regulation of Search for and Salvage of Sunken Treasure," 4 Nat. Resources Law. 1, 16 (1971).

<sup>43/</sup> Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212 (1845).

<sup>44/</sup> Id.

<sup>45/</sup> United States v. Tyndale, 116 F. 820, 823 (1st Cir. 1902).

<sup>46/</sup> 116 F. 820, 823 (1st Cir. 1902).



afterwards as "Tyndale") and Thompson v. United States <sup>47/</sup> (cited to afterwards as "Thompson"). Both of these cases recognized that the United States has the inherent power to assert its ownership over treasures recovered from the sea. However, both cases concluded that unlike the English Crown, Congress <sup>48/</sup> has not exercised this power. Therefore, until some specific legislative authority to appropriate such property is established by Congress, the courts <sup>49/</sup> held that the claims of the finder will continue to prevail. The court in Tyndale based its rationale upon the lack of either a statute or settled practice requiring a determination by the court that the Treasury of the United States represented any particular prerogative. <sup>50/</sup> In Thompson, the United States Court of Claims specifically found that:

It seems well settled that when a vessel is derelict and abandoned in the navigable waters of the United States or anywhere else it belongs to that person who finds it and reduces it to possession. Congress could undoubtedly provide that the proceeds of derelicts and abandoned vessels in the navigable waters of the United States be paid into the Treasury; but no such law has been passed and until it is the principles of natural law must prevail. <sup>51/</sup>

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<sup>47/</sup> 116 F. 820 (1st Cir. 1902).

<sup>48/</sup> See, 116 F. 820, 823-824; and 62 Ct. Cl. 516, 524-525.

<sup>49/</sup> Id.

<sup>50/</sup> 116 F. 820, 823.

<sup>51/</sup> 62 Ct. Cl. 516, 524.



Summary and Overview of Selected State Laws Dealing with Historic Shipwrecks and Underwater Cultural Resources

As has been previously discussed in this report, there exists no uniform or comprehensive federal legislative framework aimed at the protection and/or the salvage of historic shipwrecks and underwater cultural resources. However, there is a large body of state law which provides various levels of protection and differing guidelines for salvors and archaeologists. While it has been determined that the American rule--favoring the rights of the salvor/finder to those of the state--has been widely accepted in this country, various states have enacted legislation which gives control and/or ownership of underwater resources to the state. A selection of these state laws are examined below. The apparent conflict between state laws asserting state interest/ownership in submerged resources and the traditional American rule has led to litigation which is discussed in a subsequent section of this report.

Florida's underwater resources law is of considerable consequence because of Florida's many underwater resources and because of the extensive litigation involving Florida-based salvage operations. This law establishes a state bureau of historic sites and property which has jurisdiction over sunken or abandoned ships, as well as objects located in state controlled submerged lands.

CH. 267 ARCHIVES AND HISTORY § 267.061

267.061 Bureau of historic sites and properties; state policy, responsibilities

(1) State policy relative to historic sites and properties:

(a) It is hereby declared to be the public policy of the state to protect and preserve historic sites and properties, buildings, artifacts, treasure trove, and objects of antiquity which have scientific or historical value or are of interest to the

public, including, but not limited to monuments, memorials, fossil deposits, Indian habitations, ceremonial sites, abandoned settlements, caves, sunken or abandoned ships, historical sites and properties and buildings or objects, or any part thereof relating to the history, government and culture of the state.

(b) It is further declared to be the public policy of the state that all treasure trove, artifacts and such objects having intrinsic or historical and archaeological value which have been abandoned on state-owned lands or state-owned sovereignty submerged lands shall belong to the state with the title theretofore vested in the division of archives, history and records management of the department of state for the purpose of administration and protection.

(2) Division responsibility.--It shall be the responsibility of the bureau of historic sites and properties to:

(a) Locate, acquire, protect, preserve, and promote the location, acquisition, and preservation of historic sites and properties, buildings, artifacts, treasure trove, and objects of antiquity which have scientific or historical value or are of interest to the public, including, but not limited to monuments, memorials, fossil deposits, Indian habitations, ceremonial sites, abandoned settlements, caves, sunken or abandoned ships, or any part thereof;

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This law specifically provides for state protection of treasure trove and sunken or abandoned ships. Broad authority is given for the determination of those properties which are to be considered historic or are related to the history, government, and culture of the state. The law provides for the state ownership of such objects on state-owned lands or on state-owned sovereignty submerged lands. However, the claim of state ownership of such objects does not preclude the state from entering into partnerships or other deals for the salvage of such objects. For instance, the State of Florida could enter into a contract with a salvor whereby the salvor would receive a percentage of the recovered objects and the remainder of the objects would revert to the state. Thus, the state can become actively involved in salvage operations through entering into agreements with salvors.



South Carolina, another coastal state like Florida, has a very extensive and comprehensive law entitled the South Carolina Underwater Antiquities Act of 1982. <sup>53/</sup> This statute conveys the title to the bottom of navigable waters to the state. In contrast to the Florida law and most other state laws, this law provides for precise licensing for salvage/archaeological operations. This licensing procedure sets firm guidelines for the salvage, disposition, and preservation of recovered objects. A unique feature of the South Carolina law is its stringent penalty provisions and enforcement mechanisms. The state may revoke a salvor's license for failure to comply with state salvage/preservation guidelines. State and local law enforcement agencies are specifically empowered to assist in the enforcement of the South Carolina law and the deliberate violation of the law is considered to be a misdemeanor. Convictions can range from fines of \$200 to \$10,000, or imprisonment to range from 30 days to two years. <sup>53a/</sup>

In sharp contrast to the comprehensive South Carolina and Florida laws is the very concise directive contained in the Texas law.

§ 191.091. Ships, Wrecks of the Sea, and Treasure Imbedded in Earth

    Sunken or abandoned pre-twentieth century ships and wrecks of the sea, and any part or the contents of them, and all treasure imbedded in the earth, located in, on, or under the surface of land belonging to the State of Texas, including its tidelands, submerged land, and the beds of its rivers and the sea within jurisdiction of the State of Texas are declared to be state archeological landmarks. <sup>54/</sup>

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<sup>53/</sup> S.C. Code Ann. §§ 54-7-400, et. seq. (Law Co-op. 1985). Copy attached in Appendix 1.

<sup>53a/</sup> Id.

<sup>54/</sup> Texas Nat. Res. Code Ann. § 191.091 (Vernon 1978).



Although Texas is a coastal state with rich archaeological resources, its law does not contain guidelines for a licensing procedure. Neither does the Texas law provide enforcement mechanisms or punitive measures. A very unique feature of this statute, however, is that for a wreck to receive protection under Texas jurisdiction, it must be "pre-twentieth century." It appears that the Texas legislature has determined that for an object to be of historical or archaeological interest, it must predate 1900. Hence, the 1912 Titanic would receive no protection if it rested in waters under Texas' jurisdiction. However, ships or their cargoes of pre-1900 vintage would receive protection.

Hawaii, the only island state, has a rich underwater cultural heritage. Unlike Florida and South Carolina, the Hawaii law is expressed in very general terms. No provision is made for licensing, excavation, preservation, or enforcement.

[§6E-2] Definitions. As used in this chapter:

- (1) "Department" means the department of land and natural resources.
- (2) "Historic property" means any building, structure, object, district, area, or site, including underwater site, that is significant in the history, architecture, archaeology, or culture of this State, its communities or the nation.
- (3) "Historic preservation" means the research, protection, restoration, rehabilitation, and interpretation of buildings, structures, objects, districts, areas, and sites, including underwater sites, significant to the history, architecture, archaeology, or culture of this State, its communities, or the nation.

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The Hawaii statute, like the Texas law leaves many unanswered questions in the areas of salvage, preservation, licensing, and enforcement. For example, under what circumstances can salvage/archaeological projects be undertaken? What body oversees such projects and what excavation criteria are to be used? What penalties await noncomplying salvors and what body would enforce such penalties? Although the state asserts jurisdiction/ownership over such resources, it does not provide guidelines for their preservation, excavation, or disposition.

In considering this sampling of state underwater protection laws, certain legal considerations arise. Conflicts could arise with state laws where more than one state exercises jurisdiction over a body of water. For instance, controversies could develop regarding the control or ownership of a wreck that is physically located in a body of water controlled by two or more states, such as a river or a lake that serves as a state boundary. Likewise, there can be federal and state jurisdictional questions. Similarly, legal conflicts could occur over the licensing procedures and the enforcement mechanisms. It appears that the more comprehensive state laws, such as the South Carolina statute, provide specific criteria for licensing, excavation, and enforcement activities. Broadly-worded state statutes, such as the Texas and Hawaii laws, leave many unanswered legal and factual questions which may have to be resolved through judicial interpretation. The following section of this report specifically examines recent American litigation concerning the interpretation of state underwater preservation statutes and related issues.

Recent Day American Litigation

Recent judicial decisions regarding underwater salvage activities have interpreted state underwater salvage laws, as well as federal claims to underwater resources. The following discussion examines some of these decisions.

In a recent case, Klein v. Unidentified, Wrecked and Abandoned Sailing Vessel,<sup>56/</sup> the United States Court for the Southern District of Florida considered the issue of ownership of recovered shipwreck items. The court found for the U.S. government and distinguished its holding from the Treasure Salvor reasoning, discussed below, upon the basis of the geographic location of the recovered property. In the Treasure Salvor cases, the property was located on the Outer Continental Shelf where there was no existing legislative basis for a federal claim to abandoned property. In Klein, the disputed property was recovered from submerged land owned by the United States and administered and controlled by the National Park System.<sup>57/</sup>

Another recent case, People v. Massey,<sup>58/</sup> interpreted the Michigan state law dealing with abandoned historical underwater property. In this case, the state statute declared abandoned property of a historical nature found on the bottom of the Great Lakes to be state property. Salvage was conducted without complying with state licensing procedures and

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<sup>56/</sup> 568 F.Supp. 1562 (S.D. Fla. 1983).

<sup>57/</sup> Id., at 1565-1566.

<sup>58/</sup> 358 N.W.2d 615 (Mich.App. 1984).



the Court of Appeals of Michigan determined that the state salvage law was controlling.<sup>59/</sup> Thus, the recovered property was deemed to revert to the state because of the state statute asserting ownership to such recovered property.

In the mid-1970's, legal controversies developed among Mel Fisher and his company--Treasure Salvors, the State of Florida, and the United States. These conflicts centered upon the ownership of gold, jewels, and other valuables recovered by Fisher and his company from an ancient sunken treasure ship.<sup>60/</sup> The U.S. Supreme Court examined lower court holdings concerning the Eleventh Amendment and its applicability to the present situation.<sup>61/</sup> Ultimately, the Supreme Court affirmed in part and reversed in part the holding of the Fifth Circuit U.S. Court of Appeals.<sup>62/</sup> Upholding the court of appeals decision in part, the High Court held that the Eleventh Amendment did not bar the process issued (execution of a warrant) by the U.S. District Court to secure the possession of the recovered artifacts held by Florida officials.<sup>63/</sup> However, reversing in part the court of appeals decision, the

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<sup>59/</sup> Id., at 619.

<sup>60/</sup> The United States based its claims on the Antiquities Act, Act of June 8, 1908, ch. 3060, 34 Stat. 225, codified at 16 U.S.C. §§ 431 and 433 (1982); and the Abandoned Property Act, Pub. L. 89-30, § 4, June 2, 1965, 79 Stat. 119, codified at 40 U.S.C. § 310 (1982).

<sup>61/</sup> Florida Department of State v. Treasure Salvors, Inc., 458 U.S. 670 (1982).

<sup>62/</sup> Treasure Salvors v. Unidentified Wrecked, Etc., 569 F.2d 330 (5th Cir. 1978).

<sup>63/</sup> 458 U.S. 670, 698-699 (1982).

Supreme Court determined that the proper resolution of the Eleventh Amendment issue did not require or permit a determination of the State of Florida's ownership of the articles. <sup>64/</sup> The series of Treasure Salvor cases <sup>65/</sup> reaffirmed the American rule and determined that the objects in controversy were located in an area outside the jurisdiction of the State of Florida.

\* Located in an area under the control of the United States, the government had not legislatively asserted ownership interests in the property. Hence, the property reverted to the finder.

In Klein, the recovered property reverted to the United States, because the property was recovered from submerged land directly owned, controlled, and administered by the federal government. In Massey, the property reverted to the state, since there was a state statute dealing with underwater property found in particular geographic areas. The lower courts in the Treasure Salvor cases determined that the property reverted to the finder. This rationale was based upon the location of the recovered property, that state law was not applicable to the disposition of the objects, and because federal law did not assert ownership to manmade objects. Hence, the controlling features of these cases seem to be: 1) the location of the underwater property and 2) whether state statutes or federal claims assert ownership to underwater property.

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<sup>64/</sup> Id., at 699-700.

<sup>65/</sup> See, Appendix 2 for a chronological listing for all of the cases involving Treasure Salvors.

TAX SHELTERS AND THE TREASURE HUNTER

One of the most popular means of financing treasure hunting explorations is through groups of investors who form partnerships, syndicates, or other business forms. These ventures frequently serve as tax shelters for the investors.<sup>66/</sup> As treasure hunting has entered the realm of big business with major expenditures, shares of these investments are offered to shareholders, investors, or partners who participate in the business venture.

The tax laws of the United States permit substantial financial benefits to capital investments of many kinds. Some of these investments involve the chief investor(s) or promoter(s) passing along shares of the investment to others, usually utilizing the form of limited partnership as the preferred form of organization.<sup>67/</sup> A limited partnership has one or more general partners and one or more limited partners. Normally, limited partners have no obligation for the debts of the partnership. Management of the business of the partnership is in the hands of the general partner(s).<sup>68/</sup> Limited liability is a privilege given by the state; hence, limited partnerships can be created only under a state statute.<sup>69/</sup> The purpose of the limited partnership form of business organization is to permit some partnership investors to have limited liability. The limited partner gives up the right to participate in the

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<sup>66/</sup> See, D. Dickson, Tax Shelters 1-12 (1982).

<sup>67/</sup> 2 Willis, Partnership Taxation 136-138 (1976)[cited to afterwards as "Willis"].

<sup>68/</sup> Donnell, Law for Business 350 (1980)[cited to afterwards as "Donnell"].

<sup>69/</sup> Id., at 351.



management of the partnership business in return for limited liability. Like a corporate shareholder, the limited partner may lose his investment but no more.<sup>70/</sup> The limited partnership form of business organization is chosen when taxation as a partnership is desired by investors who want limited liability. It is often used in tax shelter ventures. Such limited ventures are treated as securities and their offerings and sales are usually regulated under federal and state securities laws.<sup>71/</sup>

Generally speaking, tax shelters are investments in which a significant portion of the investor's return is in the form of tax benefits. The investors are willing to risk their investment because of the tax benefits which will accrue to them as a result of their investment. The tax considerations deal with the manner in which tax laws provide incentives to stimulate investments.<sup>72/</sup>

Investors in tax shelters reap benefits from a variety of aspects of those investments. Among these tax benefits are tax deferral and tax shelter of other sources of income.<sup>73/</sup> These benefits arise from the passing through of expenses of the partnership to the taxpayer. Partnership investments which generate accelerated depreciation deductions and the investment tax credits are

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<sup>70/</sup> Id.

<sup>71/</sup> Id.

<sup>72/</sup> See, Willis, at 193-219.

<sup>73/</sup> Id., at 193-196.

probably the principal means of creating tax shelters. <sup>74/</sup> Another benefit of creating a tax shelter is converting ordinary income to capital gains which are taxed at lower rates than ordinary income. <sup>75/</sup>

Shipwreck lawyer Robert Case, who has advised numerous salvage ventures, states that the tax aspects of such a venture are complex, and as yet, "there are no clear answers." <sup>76/</sup> If the investment program pays off in cash, the investor pays taxes on the profits as ordinary income. <sup>77/</sup> But, most search and salvage projects pay off "in kind." That is, the investors receive items recovered from the wreck as their share of the proceeds. Hence, the items may qualify as "inside distribution" which is not taxed. <sup>78/</sup> After a distribution, the investor pays tax at ordinary rates on the gain from any item that he sells, unless holding it for five years qualifies for the capital-gains treatment on the sale of partnership inventory. <sup>79/</sup> Thus, by taking investment returns in recovered property and holding them for five years, the investor can qualify for reduced capital gains tax rates.

Another means to maximize tax advantages from a search-and-salvage venture is for the taxpayer to donate the recovered items to a museum and to receive

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<sup>74/</sup> Id.

<sup>75/</sup> Id.

<sup>76/</sup> Secrets, at 109.

<sup>77/</sup> Id.

<sup>78/</sup> Id.

<sup>79/</sup> Id. See, also, I.R.C. § 734(a)(2)(1985).

tax deductions for the contribution. <sup>80/</sup> It has been observed that plain silver bars recovered from a shipwreck, if well-authenticated, can be worth considerably more than the price of the silver ingot. <sup>81/</sup> However, a series of big finds could lower the value of individual articles. Most notably, common silver coins in poor condition could lose value as more treasure is recovered. <sup>82/</sup> As with corporate distributions "in kind," valuation problems exist for museum donations which must be finally resolved through the Internal Revenue Service. A unique problem with the treasure trove is its constantly shifting value, fluctuating both with precious metal prices and the amount of similar goods recovered from other wrecks.

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<sup>80/</sup> Id.

<sup>81/</sup> Id.

<sup>82/</sup> Id.



PROMOTING TREASURE-HUNTING SEARCHES

Many techniques exist for financing treasure hunting ventures. Because of the success and the ensuing publicity of Mel Fisher's ventures, illustrative information is available about his underwriting/promotional activities. <sup>83/</sup> Jerome Burke of Underhill Associates Inc., of Red Bank, N.J. underwrites the limited partnerships for Mel Fisher's various undersea exploration ventures. <sup>84/</sup> Burke compared the treasure hunting ventures to wildcatting for oil, "except that we know where the ship sank." <sup>85/</sup> Because of modern salvaging techniques and Fisher's determination, all of the investors in the nine deals that Burke has handled for Fisher since 1980 broke even or better.

Currently, there are three limited partnerships working on the main wreck. There is a 30-unit deal, Treasure Co., established in 1980, with shares sold at \$150,000 each in exchange for a share in the partnership's claim on 10% of all the treasure. <sup>86/</sup> Two other limited partnerships sold 862 investors one unit each at \$1000. In one of the limited partnerships, the unit holders will divide up a 5% share of the proceeds from three wrecks. In the second limited partnership, the unit holders receive 10% of what is salvaged from five ships in a Spanish fleet Fisher is salvaging off Vero Beach, Florida. <sup>87/</sup>

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<sup>83/</sup> Information regarding the Fisher ventures is used only for purposes of illustration.

<sup>84/</sup> Secrets, at 109.

<sup>85/</sup> Id.

<sup>86/</sup> Banks, The Curious Deals Behind the Key West Treasure, Money 46 (Sept. 1985)[cited to afterwards as "Deals"].

<sup>87/</sup> Id., at 48.

These two \$1,000-a-share limited partnerships have a unique feature in that they are only one year in duration. Promotion was launched through self-destructing limited partnerships with Fisher. <sup>88/</sup> Under the terms of each year's project, limited partners receive only what Fisher and his crew salvage in that year. Investors in the 1985 deal will take their share of what Fisher recovers in 1985 only. <sup>89/</sup> By having a large number of limited partners, Fishers and other salvors are able to keep cash flowing in while keeping a tight control over the payout.

In addition to Fisher's limited partnership arrangements, he has another company called Treasure Salvors, Inc. with 1,016,000 shares of stock outstanding. The stock is not registered with the Securities and Exchange Commission and thus does not have to comply with SEC disclosure rules, but is limited in the number of investors to whom it may sell shares. <sup>90/</sup> Previously, Fisher had encountered problems with Florida securities laws and in 1973 signed a consent order agreeing not to sell unregistered stock to more than the allowed number of investors. <sup>91/</sup>

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<sup>88/</sup> New York Times, Sept. 29, 1985, pA35 col. 1/

<sup>89/</sup> Id.

<sup>90/</sup> Deals, at 49. Not all securities offerings need to be registered with the SEC. Purely intrastate offerings and small offerings totaling no more than \$1.5 million are exempted from the registration requirement with the SEC. Another exemption is given to private offerings. Under this exemption sales must be limited to 35 purchasers or less who are experienced investors and who are able to assume the risk. The purchasers in private offerings are restricted in their rights to resell the securities. (See, Donnell, at 392-393). Presumably, Fisher's initial stock offering was purely intrastate and did not total more than \$1.5 million in stock sales.

<sup>91/</sup> Id., at 48. The Corporation Act of Florida establishes stringent criteria for the authorization and sales of stock in a corporation. (See, Fla. Stat. Ann. §§ 607.044, et. seq. (West 1977)).



Thus, a variety of promotional techniques are available for the treasure salvor. However, legal pitfalls may surround the unwary promoter. The limited partnership approach appears to be the most feasible scheme for a salvor with limited resources. In complex limited partnership schemes, factual and legal questions arise over the speed of salvage, the division of objects, and control of the partnership venture. In public stock sales, the salvor must be aware of and comply with state and federal securities laws. Compliance with these laws and the ensuing legal fees may be very costly for a small salvage operation.

#### FOREIGN AND INTERNATIONAL LAWS AND SEARCH-AND-SALVAGE VENTURES

Under current law, the federal government does not lay claim to treasures or other manmade resources found in U.S. waters, although Congress, now under considerable pressure from archaeologists and preservationists, could change this situation in the future. <sup>92/</sup> For American-sponsored projects undertaken off a foreign coast, the foreign country usually negotiates a deal with the salvor for a percentage of the recovered objects, usually ranging from 30-50% or more. <sup>93/</sup> Although shipwrecks can currently be claimed in U.S. waters and receive protection from the authorities from subsequent salvors, interlopers or salvage pirates can be a danger at some of the promising Central and South American sites now being surveyed for exploration. <sup>94/</sup>

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<sup>92/</sup> Bandow, Selling off the Titanic, Washington Times 3D (Sept. 19, 1985).

<sup>93/</sup> Secrets, at 110.

<sup>94/</sup> Id.



During the twentieth century, a series of international conventions have been adopted which are noteworthy in relation to specified international salvage issues. For example, the Brussels Salvage Convention of 1910, to which the United States is a Party, deals with a salvor's right to remuneration for salvage assistance.<sup>95/</sup> The Convention does not, however, endeavor to allocate international or national jurisdiction over historic shipwrecks.

In 1958, the International Law Commission (ILC), under the direction of the United Nations, prepared four multilateral conventions dealing with various aspects of the law of the sea.<sup>96/</sup> While these conventions provide for coastal nation control of designated maritime areas for specified purposes, the instruments do not specifically address international jurisdictional and ownership issues vis a vis historic shipwrecks.<sup>97/</sup> Indeed, the ILC Commentary regarding the Convention on the Continental Shelf indicates that "[i]t is clearly understood that the rights in question do not cover objects such as wrecked ships and their cargoes (including bullion) lying on the seabed or covered by the sand of the subsoil."<sup>98/</sup>

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<sup>95/</sup> Convention for the Unification of Certain Rules with Respect to Assistance and Salvage at Sea, Sept. 28, 1910, 37 Stat. 1658 (1911).

<sup>96/</sup> Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, 15 U.S.T. 1606; Convention on the High Seas, April 29, 1958, 13 U.S.T. 2312; Convention on the Continental Shelf, April 29, 1958, 15 U.S.T. 471; and Convention on Fishing and Conservation of the Living Resources of the High Seas, April 29, 1958, 17 U.S.T. 138.

<sup>97/</sup> See, Arend, Archaeological and Historical Objects: The International Legal Implications of UNCLOS III, 22 *V.J.Int'l.L.* 777, 780-87 (1982)(cited to afterwards as Arend).

<sup>98/</sup> Report of the International Law Commission to the General Assembly, 11 GAOR Supp. (No. 9) at 42, U.N. Doc. A/3159 (1956), quoted in Arend, supra, n. 33, at 784.

More recent international efforts in this area are reflected in the 1982 United Nations Convention on the Law of the Sea (LOS Convention). Article 303(1) of the LOS Convention provides that "States have the duty to protect objects of an archaeological and historical nature found at sea and shall co-operate for this purpose." On the other hand, Article 303(2) declares that "(n)othing in this article affects the rights of identifiable owners, the law of salvage or other rules of admiralty, or laws and practices with respect to cultural exchanges." As to what constitutes an archaeological or historic object for purposes of the LOS Convention, there appears to be no precise cut-off date as a matter of law, but it has been suggested that "(a) relatively recent wreck such as the Titanic does not qualify as an archaeological object [but] a Roman ship from the third century does." <sup>100/</sup>

On the international level, the law of salvage seems essentially to consist of long-standing principles of custom which have been recognized by all maritime nations. <sup>101/</sup> It has been declared that salvage is a question arising under the jus gentium (law of nations) and is not dependent upon the individual salvage laws of particular countries. <sup>102/</sup> It is because

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<sup>99/</sup> United Nations, The Law of the Sea: Official Text of the United Nations Convention on the Law of the Sea with Annexes and Index (1983). The LOS Convention is not in force at the present time and the United States did not support its adoption.

<sup>100/</sup> Arend, supra, n. 97, at 779-80.

<sup>101/</sup> M. Norris, Benedict on Admiralty 1-23--1-24 (1984)(cited to as Benedict).

<sup>102/</sup> Id., at 1-23. See, Usatore v. Compania Argentina Navegacion Mihanovich Ltd., 172 F.2d 434 (2d Cir. 1949); The Bee, F.Cas. 1219 (D. Me. 1836); Barkas v. Cia Naviero Coronado, S.A., 126 F.Supp. 532 (S.D.N.Y. 1954); Dalmas v. Stathatos, 84 F. Supp. 828 (S.D.N.Y. 1949); Weeks v. The Catherine Maria, F.Cas. 17,351 (D. Pa. 1790); Anderson v. Edam, 13 F.135 (E.D.N.Y. 1882); One Hundred and Ninety-Four Shawls, F.Cas. 10,521 (S.D.N.Y. 1848).

of the universal application of the principles of salvage that the jurisdiction was given between nations and nations.  
103/  
 courts.

It is settled beyond all question that a claim for salvage in an American court arises out of the jus gentium and does not depend on the local laws of particular countries. The applicable law is "general maritime law, as understood and administered in the courts of the country in which the litigation is prosecuted." 104/

The test of admiralty jurisdiction is the public navigable character of the water, no matter how the water originates. 105/

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103/ Id., at 1-24. See, Barkas v. Cia Naviero Coronado, S.A., supra; Dalmas v. Strathatos, supra; One Hundred and Ninety-Four Shawls, supra.

104/ Sobonis v. Steam Tanker Nat. Defender, 298 F.Supp. 631, 1969 A.M.C. 1219 (S.D.N.Y. 1969).

105/ See, Benedict, at 1-24.



LEGISLATIVE PROPOSALS

In response to the growing interest and legal controversies dealing with historic shipwrecks, the Ninety-Ninth Congress has pending two kinds of legislation which, if enacted, would have differing impacts on underwater salvage and preservation activities.

The proposed Abandoned Shipwreck Act of 1985, <sup>106/</sup> introduced in both the House and the Senate would provide that the United States would assert title to any abandoned shipwreck that is: (1) substantially buried in submerged lands of a state; (2) in coralline formations protected by a state on its submerged lands; or (3) on submerged lands of a state when such a shipwreck is included or eligible for inclusion in the National Register of Historic Sites, and the public is given adequate notice of the location of the shipwreck. The bill declares that any title to any abandoned shipwreck asserted under these conditions is transferred to the state in or on whose submerged lands the shipwreck is located. The bill states that any abandoned shipwreck in or on the public lands of the United States, except the Outer Continental Shelf, is the property of the United States. The bill directs the Advisory Council on Historic Preservation to publish, within six months after the enactment of this legislation, advisory guidelines for the protection of shipwrecks and related properties.

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<sup>106/</sup> Three bills, introduced in the First Session of the 99th Congress, contain similar provisions for the disposition and preservation of shipwrecks: H.R. 25, H.R. 3558, and S. 676.

With the recent discovery of the wreck of the Titanic, legislation has been introduced to attempt to preserve the site of the wreck. The bill, entitled the Titanic Maritime Memorial Act of 1985 <sup>107/</sup> commends the members of the joint international expedition which discovered the wreck of the Titanic. The bill directs the Administrator of the National Oceanic and Atmospheric Administration to develop guidelines governing the research, exploration, and if appropriate, the salvage of the Titanic, which: (1) are consistent with its historical and cultural significance; (2) promote the safety of those involved in such operations; and (3) recognize the sanctity of the Titanic as a maritime memorial. In addition, the bill directs the Secretary of State, in consultation with the Administrator, to negotiate an international agreement providing for international research, exploration, and, if appropriate, salvage of the Titanic consistent with the guidelines developed by the Administrator. The bill requires the Secretary, upon the adoption of the international agreement, to notify the specified committees of the Congress and to recommend implementing legislation. The legislation expresses the sense of the Congress that pending adoption of an international agreement, all nations should comply with the guidelines established by the Administrator.

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<sup>107/</sup> S. 676, 99th Cong., 1st Sess. (1985).

CONCLUSION

The coastal waters surrounding the United States are a rich hunting ground for archaeologists and treasure salvors. With the development of high-technology search-and-salvage equipment, great interest has centered upon the recovery of many treasure-laden wrecks. The financing and organization of these search-and-salvage ventures has come under scrutiny.


The Submerged Lands Act and the Outer Continental Shelf Lands Act clarified the jurisdiction of submerged lands between the states and the federal government. However, this legislation did not deal with the disposition of manmade objects located in such areas. An ancient legal doctrine in Anglo-American law, the doctrine of sovereign prerogative, is of current day significance as to the disposition of property recovered from the sea. The British interpretation, recently reaffirmed but modified, states that objects recovered from British territorial waters become the property of the government, rather than the salvor. The American view is that the salvor of the recovered property takes the title to the property, rather than the government.

State laws governing the salvage/preservation of underwater resources vary greatly from complex detailed legislation which provides a comprehensive framework for salvage/preservation activities to very generalized legislation. Legal cases have arisen regarding the ownership of property recovered from search-and-salvage ventures. Recent cases have focused on the location of the submerged object and whether the government—state or federal—has asserted legislative control or ownership over the area where the object is located.



With the great increase of treasure hunting explorations, a variety of investment techniques have been utilized to raise necessary capital. Many of these ventures involve the creation of tax shelters. These ventures usually involve limited partnerships with the promoter assuming the chief role of salvor and the limited partners providing financial backing. Such financial arrangements provide tax advantages--an investment tax credit, depreciation, and advantageous capital gains distributions.

There is no uniform federal law governing either the salvage/preservation process nor the financing of such ventures, nor do international accords definitively resolve ownership/jurisdictional questions regarding archaeological and historical objects found at sea. Several legislative proposals have been introduced in the Ninety-Ninth Congress, particularly proposals to regulate the salvage/preservation of shipwrecks and their cargoes. In addition, legislation to form an international commission to study the preservation/salvage of the Titanic has been introduced and might serve as a model for future international accords for the salvage/preservation of resources found in other areas of the world.

  
Douglas Reid Weimer  
Legislative Attorney

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HISTORY: 1982 Act No. 365, § 1, eff July 1, 1982.

**Editor's Note—**

The preamble to 1982 Act No. 365, effective July 1, 1982, provides as follows: "Whereas, since it is the sole purpose of this act to preserve the historic and scientific values inherent in submerged antiquities for the benefit of all of the people of the State, it is only incidental to this purpose, and as a means of achieving this purpose, that licenses provided for in this act may be granted and that portions of the recovered objects shall be transferred to the licensee. Now, therefore, Be it enacted by the General Assembly of the State of South Carolina."

**ARTICLE 4. South Carolina Underwater Antiquities Act of 1982**

*New Articles Added*

**CHAPTER 7**

**Shipwrecks and Salvage Operations**

**ARTICLE 3**

**CONTROL OF SALVAGE OPERATIONS**

**§§ 54-7-210 through 54-7-280.** [Am 1977 Act No. 1]  
Repealed by 1982 Act No. 365 § 16, eff July 1, 1982.

**Editor's Note—**

For current provisions regulating underwater exploration, recovery or salvage operations, see now Article 4, this chapter, consisting of §§ 54-7-400 et seq.

**ARTICLE 4 [NEW]**

**SOUTH CAROLINA UNDERWATER ANTIQUITIES ACT OF 1982**

- Sac.**  
 54-7-400. Short title.  
 54-7-410. Definitions.  
 54-7-420. State has title to bottoms of navigable waters.  
 54-7-430. Custodians of archaeological and paleontological materials and other things of value.  
 54-7-440. Application for license to conduct operations affecting submerged antiquities or archaeological or paleontological sites.  
 54-7-450. Disposition of funds received under article.  
 54-7-460. License required for certain operations; types of licenses; restrictions; regulation of licenses and operations.  
 54-7-470. Hobby licenses.  
 54-7-480. Terms and conditions for license.  
 54-7-490. Search licenses.  
 54-7-500. Salvage licenses.  
 54-7-510. Assistance of law enforcement agencies.  
 54-7-520. Suspension or revocation of license.  
 54-7-530. Violation of article a misdemeanor; penalty.  
 54-7-540. Prima facie evidence of violation.

**§ 54-7-400. Short title.**

This article may be cited as the South Carolina Underwater Antiquities Act of 1982.

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**§ 54-7-410. Definitions.**

For the purposes of this act:

(A) "Salvage operations" means the disturbance or removal of any submerged antiquities that lie within any navigable waters of the State or that lie within one marine league seaward from the Atlantic shoreline of the State measured from mean low water.

(B) "Navigable waters" means all waters belonging to the State which are navigable in fact.

(C) "Submerged antiquities" means any and all objects of archeological or paleontological association and which have remained unclaimed for more than fifty years and which are located at or below mean low water. The term shall include archaeological material which shall include but not be limited to sunken vessels and all things therein, individual assemblages of historic or prehistoric artifacts. The term "paleontological materials" shall include but not be limited to fossils and other paleontological material, both plant and animal, such as molds, casts, bones, and teeth.

(D) "Employment contract" means a contract or agreement between the principal party of the license and others who purport to be supplied and equipped to perform the actual exploration or salvage.

(E) "Data recording techniques" means, but is not limited to:

(1) Plan or sketch drawings of the objects *in situ* before disturbance or recovery and photographs thereof whenever visibility permits.

(2) Sketches or plan drawings of large submerged antiquities, such as sunken vessels, in detail showing positions of decks, bottoms, holds, superstructures, stern, bow, cargo, and other features and their relationships to each other.

(3) Narrative or pictorial descriptions of the surroundings including any adjacent objects, depth of water, nature of bottoms such as quantity of mud, and depth to which the objects are sunk in the mud.

(4) Photographs of all objects immediately after recovery.



(5) Records of what part of the sunken vessel or area of salvage each recovered object came from or such further data recording techniques as may be required.

(F) "License" means that a person licensed has been given a right to perform recovery operations outlined in this article. It is not a proof of qualification to skin or scuba diver.

HISTORY: 1982 Act No. 365, § 2, eff July 1, 1982.

Cross references—

As to custodian of things of value not provided for in this section, see § 54-7-430.

**§ 54-7-420.** State has title to bottoms of navigable waters. Notwithstanding any other provision of law, the title to all bottoms of navigable waters within the State and within the territorial boundaries of the State measured seaward from the mean low water one marine league from the Atlantic seashore and to all submerged antiquities is declared to be in the State of South Carolina.

HISTORY: 1982 Act No. 365, § 3, eff July 1, 1982.

**§ 54-7-430.** Custodians of archaeological and paleontological materials and other things of value.

(a) The custodian of archaeological materials shall be the South Carolina Institute of Archeology and Anthropology. The custodian of paleontological materials shall be the South Carolina Museum Commission. The Institute of Archeology and Anthropology may promulgate such regulations as may be necessary to carry out its duties under this article.

(b) The custodian of any other things of value not provided for in § 54-7-410 shall be the State Budget and Control Board which may promulgate such regulations as may be necessary for this purpose.

HISTORY: 1982 Act No. 365, § 4, eff July 1, 1982.

**§ 54-7-440.** Application for license to conduct operations affecting submerged antiquities or archaeological or paleontological sites.

Any person desiring to conduct operations pursuant to this article in the course of which submerged antiquities or submerged archeological or paleontological sites may be removed, displaced, or destroyed shall make application to the Institute for a license to conduct such operations. If the Institute after consultation with the South Carolina Museum Commission on paleontological mat-

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ters finds that the granting of such license is in the best interest of the State, it may grant it for such period of time and under such conditions as the Institute may deem to be in the best interest of the State. The license may include but not be limited to the following:

(a) A portion or all of the antiquities may be sold or exchanged by the institute.

(b) The licensee's equity shall be stated in the license and shall not be less than fifty percent, in value of its kind, of the antiquities recovered.

(c) Any other reasonable conditions constituting fair compensation to the licensee and protection of property rights of the people of the State.

No license shall be required of the Institute or the South Carolina Museum Commission which may conduct any operations provided for by this article and all recovered items shall belong to the State.

Any person desiring to recover anything of value other than submerged antiquities shall obtain a license from the State Budget and Control Board under such terms and conditions as the board may determine.

HISTORY: 1982 Act No. 365, § 5, eff July 1, 1982.

**§ 54-7-450.** Disposition of funds received under article.

Subject to the approval of the Budget and Control Board, any funds received by the Institute pursuant to this article may be used by it for continuing its duties under this article, or the board may direct that all or any of such funds be paid into the general fund of the State. Any funds received by the board may be allocated as it sees fit.

HISTORY: 1982 Act No. 365, § 6, eff July 1, 1982.

**§ 54-7-460.** Licensee required for certain operations; types of licenses; restrictions; regulation of licensees and operations.

(a) No operations provided for in this article shall be conducted by any person, partnership, or any other entity that has not first been granted an appropriate license from the Institute.

(b) Licensees shall be of three types: hobby licenses, search licenses, and salvage licenses. Restrictive licenses may be granted to persons under the age of sixteen who may exercise the privileges of such license only when accompanied by the holder of a nonrestrictive license.



(c) Each application for a license shall be filed with the Institute in writing on an application form to be provided by the Institute. The Institute may request additional information, documentation, or references from any applicant for a license or from any licensee at any time.

(d) Upon application and payment of an additional fee, any license under which the work has been diligently prosecuted and faithfully adhered to may be renewed at the discretion of the Institute if it is found to be in the best interest of the State.

(e) All submerged antiquities, or submerged antiquities that have been recovered recently, are declared to be the property of the State. Such submerged antiquities as are from time to time recovered under a license shall be granted, in part, to the licensee as stated in his license as reasonable compensation for his efforts in recovering the objects and the title to and ownership of the objects is transferred to the licensee. The division of antiquities recovered under search and salvage licenses shall be made in accordance with the method established at the issuance of the license with the Institute acting in the best interest of the State and giving due consideration to the fair treatment of the licensee.

The division of antiquities recovered under a hobby license shall be on a percentage basis, in value or in kind, with the Institute acting as the arbiter of the division in the best interest of the State and giving due consideration to the fair treatment of the licensee.

(f) No objects recovered under the authority of any type of license shall be disposed of by gift, sale, discard, or in any other way until a division has been made and the object has been properly released by the Institute.

(g) Any objects that have been or are submerged antiquities as defined in this article that have been recovered, taken, collected, or otherwise disturbed, contrary to the terms of a license, or without a license, may be confiscated wherever found and at any time by any South Carolina law enforcement officer, or any Institute archeologist or other authorized member of the staff of the Institute, or of the staff of the South Carolina Wildlife and Marine Resources Department, or of the staff of the South Carolina Department of Parks, Recreation and Tourism, and may be disposed of as the Institute shall determine to be in the best interest of the State.

(h) Any of the persons named in subsection (g) above, may, at any time, examine the license of any person, partnership, or other entity claiming privileges under this article and may fully examine all work done under such license and may apprehend or cause to be arrested any person suspected of being in violation of any part

of this article and may confiscate any antiquities in the possession of such person that have been recovered as a result of such suspected violation.

(i) The Institute may seek information, consultation, or advice on any aspect of the granting or supervision of a license or on any other aspect of the carrying out of the provisions of this article and may act upon that information, advice, or consultation in the best interest of the State.

(j) Any licensee shall fully comply with all normal safety regulations governing activities as exercised under the privileges of his license and the State shall not be held liable or responsible for any accident, injury, or any other harm sustained by any person or loss, damage, or any other harm to any equipment in any way connected or associated with the operation of such license.

(k) It is the responsibility of each licensee to determine what federal and state regulations will pertain to the activities under the license and to comply fully with all such regulations.

(l) A licensee shall not be permitted to recover underwater antiquities selectively. The licensee shall not select only salable objects to recover nor only one kind of objects but shall recover all objects located including broken objects, fragments of objects, prehistoric objects, and other antiquities in his search area. If some objects are too large to recover, the licensee shall describe those objects that were not recovered.

(m) A licensee shall not use underwater explosives or other grossly destructive devices in any aspect of salvage or exploratory work except where written permission has been obtained from the Institute and an Institute staff member is on the site. What constitutes a grossly destructive device shall be determined by the Institute. Requests for permission to use explosives or other grossly destructive devices shall be limited to a specific reason, on a specific date and explosives or other grossly destructive devices may be used only after the Institute determines that all available scientific information has been retrieved.

(n) The Institute by its designated agent may visit and be present at any operations including diving operations, storage facilities for the recovered antiquities, or any other phase of the operation for which a license has been granted but only when a representative of the licensee is present. The underwater site may be visited at any time by a designated agent of the Institute without a representative of the licensee present.

(o) All licensees shall be required to comply with all reasonable requests or directives to them by the Institute or its designated agent with respect to the operations authorized by the licenses.



(p) All archeological records of the Institute of Archeology and Anthropology pertaining to underwater sites, including but not limited to actual locations of archeological sites or mandatory reports from licensed divers concerning locations of archeological finds and objects recovered, are not open records under the provisions of the Freedom of Information Act. These records may only be opened when the Director of the Institute of Archeology and Anthropology considers that it is in the best interest of the State to allow access to the records upon good cause shown by the person petitioning to open the records.

HISTORY: 1982 Act No. 365, § 7, eff July 1, 1982; 1983 Act No. 151 Part II § 51A, eff June 20, 1983.

#### Effect of Amendments—

The 1993 amendment added item (P) relating to disclosure of archeological records of the South Carolina Institute of Archeology and Anthropology.

### § 54-7-470. Hobby licenses.

(a) A hobby license may be granted to an applicant of good moral character for temporary, intermittent noncommercial search and salvage operations of a recreational nature requiring minimal equipment, training, and experience. This nonexclusive statewide license shall be granted for one year.

(b) There shall be two categories of hobby licenses, individual and instructional. Individual licenses may be granted to individuals, or husbands and wives, and accompanying children fifteen years of age and under. The license fee shall be five dollars for state residents and ten dollars for nonresidents. Instructional licenses may be granted to a skin and scuba diving instructor or organized training facility where antiquity recovery may occur incidental to instruction. This license shall be in effect only during sessions of instruction. The license fee shall be twenty-five dollars for state resident instructors or facilities and fifty dollars for nonresident instructors or facilities.

(c) Hobby license holders shall not exercise the privileges of their licenses in waters for which any type of exclusive license has been granted and is in effect or in waters for which such exclusive licenses become effective during the life of that exclusive license.

(d) It is the intent of this section to limit the recovery of submerged antiquities under a hobby license to recreational, small scale, noncommercial, hobby activities and all powered mechanical dredging and lifting devices and electronic detection devices of any sort are prohibited under such license.

(e) Every holder of a hobby license shall submit a written monthly report of his activities including a listing of all recovered

objects and descriptions of the places from which they were recovered to the Institute no later than the tenth of the following month. All objects recovered during any calendar month will be made available to the Institute for inspection, study, research, and photography during that month or no later than sixty days from the receipt of the monthly report. If the Institute does not contact the licensee by the end of the sixty days, title to the objects recovered and listed on his monthly report shall revert to the licensee.

HISTORY: 1982 Act No. 365, § 8, eff July 1, 1982.

### § 54-7-480. Terms and conditions for licensure

(a) It is the intent of the Institute to limit search and salvage licenses under this article, insofar as is practical, to those persons, partnerships, or other entities who will themselves conduct the work. The licensee shall remain solely answerable to the Institute for the conduct of the operations and the proper accounting of antiquities located or recovered under the terms of the license.

(b) No license for the disturbance or removal of any submerged antiquities which in the opinion of the Institute, are of primary scientific value shall be granted.

(c) No license for the disturbance or removal of any submerged antiquities which can be preserved *in situ* under the protection of the State and remains as objects of interest, shall be granted.

(d) No license for the disturbance or removal of any submerged antiquities which are, in the opinion of the Institute, a part of any archeological or paleontological site on land where the Institute may conduct research, shall be granted except in relation to and as part of that research.

(e) No applicant shall be granted a license for an area larger than he can reasonably be expected to fully and adequately investigate.

(f) The Institute may approve employment contracts but will consider any license subject to cancellation if the licensee does not retain full responsibility for the actual operations conducted under the license. No license, or any part thereof, shall be assigned or sublet.

(g) Application for search or salvage licenses shall be accompanied by a definite and specific plan of operation, including plans for preservation and storage of antiquities, proposed starting date, and the length of time proposed to be devoted to the work.

(h) The application shall be accompanied by a sketch map, location map, and other pictorial description of the site or area where work is to be done, of sufficient detail and definition as to



be clearly and accurately located on a standard map or chart. A representative of the Institute, accompanied by the applicant, may visit the proposed site or area to determine the license area boundaries.

(i) The application shall include the name and address of the applicant, the names of the person who will be in immediate charge of the work, the names and addresses of all persons who will participate in the work, or who are otherwise connected with the work. The application shall also be accompanied by a listing of the experience, training, and background of responsibility of all participants in the work. Additional personnel may be hired upon approval of the Institute or its authorized representative. Any changeover in personnel shall be reported immediately to the Institute with the accompanying information required by this section.

(j) The applicant shall list all equipment to be used in the work or that will be available for use and shall submit a statement of the financial support for the work. Additional equipment may be authorized after issuance of the license upon approval of the Institute or its authorized representative. Should there be proposed changes in the financial support, the Institute shall be notified immediately. Changes in financial support or deviation from the plan of operation may result in revocation of the license.

(k) In the application each applicant shall furnish a list of all vessels expected to be used under the license, including a full description, the name, and registration number of the vessel. The use of additional vessels may be authorized, after issuance of the license, upon approval of the Institute or its authorized representative.

(l) Under this section, no applicant shall be granted more than two licenses to be in effect at the same time, and it is the intent of this article to limit a single applicant to one license insofar as this is practicable and in the best interest of the State.

(m) Licenses for search and salvage operations may be granted by the Institute acting in the best interest of the State to persons, partnerships, or other entities that are, in its opinion, of reputable character, qualified to conduct the work, financially able and adequately equipped to carry out the operations proposed.

(n) To afford adequate protection for the interest of the State, it shall be the policy of the Institute to limit the number of licenses granted under this section to those that can be properly supervised and administered by the authorized agents of the Institute. The nature and the extent of the supervision shall be determined by the Institute.

(o) Each licensee may be required to properly mark and protect against encroachment by others any and all sites and areas for which the license is granted and the State is not responsible for such marking or protection except as the Institute may determine to be incidental to the administration of this act.

(p) At all times there shall be a person designated by and acting for the licensee aboard any vessel or present at any phase of the operation going on under the license who shall be responsible for the work and who shall be familiar with the law, stipulations, and directives concerning the work and who shall be responsible for compliance with them in order to insure the preservation of archeological and paleontological data.

(q) As a means of preserving the historic and scientific values of the submerged antiquities each licensee shall exercise all data recording techniques of which he is capable within the framework of his operation. The licensee shall not disturb or remove submerged antiquities without making as much of a record of their *in situ* positions and locations as is possible.

(r) Failure to begin work under the terms of a license within the first third of the life of the license or failure to diligently prosecute such work after it has been started or to faithfully comply with any of the provisions of the license or of the directives concerning the work shall be reason for revocation of the license and any license may be revoked for cause.

HISTORY: 1982 Act No. 365, § 9, eff. July 1, 1982; 1983 Act No. 151 Part II § 51B, eff. June 20, 1983.

#### Effect of Amendments—

The 1983 amendment, in subsection (o), substituted the words "may be required to" for the word "shall" in the opening line of the text of this item.

### § 54-7-490. Search licenses.

(a) A search license shall be an exclusive license that may be granted to an applicant for the purpose of conducting underwater search operations using remote sensing systems, ranging systems, or other methods of search. It shall be granted for a period not to exceed three months.

(b) Search licenses shall be issued for a specific area which may consist of one or more search units. A search unit shall not be larger than one nautical mile on a side and a fee of twenty-five dollars per search unit will be charged. All search units issued under one license shall be contiguous and no more than nine search units may be issued under one license.

It is the intent of the Institute to limit the number of search units to a number that can be adequately surveyed within the



scope and time frame of the project. The disturbance or removal of submerged antiquities under this license shall only be allowed for evaluation and interpretation of the sites.

(c) A written report of activities including a listing of all antiquities and other objects recovered and a diagram, chart, or other description of all submerged antiquities and other objects, sites located, and other required information shall be made to the Institute at such times as may be noted on the license.

(d) Within sixty days of the receipt of the report, all objects recovered under the authority of the license shall, upon demand, be made available to the Institute for its inspection. Upon inspection, the Institute shall grant to the licensee his portion of the objects either immediately or after a reasonable period of time for study, research, and photography of the objects, not to exceed sixty days from the date of the inspection.

HISTORY: 1982 Act No. 365, § 10, cff July 1, 1982.

### § 54-7-500. Salvage licenses.

(a) The salvage license shall be an exclusive license that may be granted to an applicant for the purpose of conducting a well-planned, continuing, underwater salvage operation with experienced personnel and adequate financial support. The salvage license shall be for a specific site and shall be granted for a period of time not to exceed one year. A fee of two hundred fifty dollars shall be charged.

(b) A written report of all activities carried out under the authority of this license both on surface and underwater shall be made to the Institute at such times as may be noted on the license. The requirements of the report shall be stated in the license.

(c) Within sixty days of the receipt of the report, all objects recovered under the authority of the license shall, upon demand, be made available to the Institute for its inspection. Upon inspection, the Institute shall grant to the licensee his portion of the objects either immediately or after a reasonable period of time for study, research, and photography of the objects, not to exceed sixty days from the date of the inspection.

HISTORY: 1982 Act No. 365, § 11, cff July 1, 1982.

### § 54-7-510. Assistance of law enforcement agencies.

All state and local law enforcement agencies are hereby empowered to assist the Institute, the board, and the licensee.

HISTORY: 1982 Act No. 365, § 12, cff July 1, 1982.

### § 54-7-520. Suspension or revocation of license.

(a) The Institute or board may suspend or revoke a license issued by them for just cause after the licensee has been given at least twenty days' notice in writing of the charges against him and is granted a hearing by the issuing authority. Upon the hearing of any such proceedings the issuing authority may administer oaths and subpoena the attendance of witnesses and all other necessary parties and the production of relevant books and papers.

(b) Any licensee who is not satisfied with the decision of the hearing may appeal to the circuit court in the same manner as provided for by law regarding appeals from magistrates' courts. The court may in its discretion reverse or modify any order made by the issuing authority.

HISTORY: 1982 Act No. 365, § 13, cff July 1, 1982.

### § 54-7-530. Violation of article a misdemeanor; penalty.

Any person violating the provisions of this article regarding a hobby license is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed two hundred dollars or by imprisonment not to exceed thirty days.

Any person violating the provisions of this article regarding a search or salvage license is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed ten thousand dollars or imprisonment not to exceed two years.

HISTORY: 1982 Act No. 365, § 14, cff July 1, 1982.

### § 54-7-540. Prima facie evidence of violation.

Any submerged antiquities found in any watercraft or vehicle occupied by persons unlicensed as required by this article shall constitute prima facie evidence of violation of this article.

HISTORY: 1982 Act No. 365, § 15, cff July 1, 1982.

CHRONOLOGICAL LIST OF COURT DECISIONS DEALING WITH THE DISPOSITION OF THE  
OBJECTS RECOVERED BY TREASURE SALVORS

1. United States v. Florida, 420 U.S. 531 (1975).
2. United States v. Florida, 420 U.S. 791 (1975).
3. Treasure Salvors, Inc. v. Abandoned Sailing Vessel, 408 F.Supp. 907 (D.C. Fla. 1976).
4. Treasure Salvors, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel, 569 F.2d 330 (5th Cir. 1978).
5. Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel, 459 F.Supp. 597 (D.C. Fla. 1978).
6. In re State of Florida, Dept. of State v. Treasure Salvors, Inc., 621 F.2d 1340 (5th Cir. 1980).
7. Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel, 640 F.2d 560 (5th Cir. 1981).
8. Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel, 546 F.Supp. 919 (D.C. Fla. 1981).
9. Florida Department of State v. Treasure Salvors, Inc., 458 U.S. 670 (1982).
10. State of Florida, Dept. of State v. Treasure Salvors, 689 F.2d 1254 (1982).