



The Public Importance of World War I Shipwrecks: Why a State Should Care and the Challenges of Protection

James Delgado

Marine Archaeologist, Director of Maritime Heritage Program, Office of National Marine Sanctuaries, National Oceanic and Atmospheric Administration (NOAA)
James.Delgado@noaa.gov

Ole Varmer

Attorney-Adviser, International Section of the Office of NOAA General Counsel
Ole.Varmer@noaa.gov

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The Public Importance of World War I Shipwrecks: Why a State should Care

The centennial of the First World War highlights the fact that shipwrecks, as well as other underwater cultural heritage from that conflict, have now begun to come under the blanket of protection afforded by the UNESCO 2001 Convention on the Protection of Underwater Cultural Heritage (hereinafter UNESCO 2001 Convention). Under the Convention, underwater cultural heritage (UCH) is defined to mean, ‘all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years.’ Some of these sites from World War I have already been recognized as being significant under United States (US) law. For example, a number of these wrecks have been determined eligible for listing on its National Register of Historic Places under its National Historic Preservation Act. The public interest and importance of such heritage is reflected in a number of other US laws, and in international law protecting heritage resources.

Beyond the heritage resource laws indicating that states care about preserving our respective history and culture, a number of wrecks have other values that should concern or interest a state. For example, wrecks with the status as a war grave or memorial, or historical prototypes of ships and their technology that survive in a submerged museum-like status all provide incentives for preservation. In some cases, a collection of sites or elements can become extensions of national parks or monuments underwater, such as the famous near-shore naval battlefield of Gallipoli in Turkey; this also supports preservation.

The 1982 Law of the Sea Convention (LOSC) is recognized by the US as reflecting customary international law. Under Article 303(1) states have a legal duty to protect objects of an archaeological or historical nature found at sea. States, in some cases, have fulfilled this duty to protect such heritage by assessing and determining an appropriate approach to the long-term management of underwater cultural heritage. In the United States, again as an example, long-term management is sometimes accomplished through an assessment of whether the heritage is 'significant', and thus eligible for listing in the National Register of Historic Places. Alternatively, and more in line with an ecosystem management approach to resources, assessments of shipwrecks can also focus on determining whether a vessel is a potentially polluting vessel or a hazard to navigation at one end of a spectrum, or a heritage asset to be protected, researched, and interpreted on the other end of the spectrum.

Under Article 303(1), there is also a duty for states to cooperate with one another in protecting UCH. So another factor to consider is the location of the UCH. Is one nation's UCH within another state's waters? There are a number of WWI foreign vessels that were lost in transit to attack, or wrecked by other means, such as vessels in a convoy lost to weather or accident, or warships lost in battle. In some cases, these vessels may not have much relative importance to the state in whose waters they rest, but they have considerable significance to their state of origin.

Due to its late (1917) entry into the war, the US has relatively little UCH from the First World War. The first shipwreck of the war of note to many in the US was the sinking of RMS *Lusitania*, lost to a U-boat attack off Ireland on 7 May 1915, at a cost of 1,195 lives, 128 of whom were US citizens. The subsequent restriction by Germany of submarine warfare to warships, to preserve civilian passengers and crew, staved off pressure for the US to enter the war for a couple of years. The sinking of vessels with some connection to the US continued, and affected US views of the war, including the British steamer *Falaba*, sunk by U-28 on 28 March 1915, with 128 lost, including one US citizen, and the SS *Arabic*, sunk by U-24 on 19 August 1915, with a loss of 44 lives, including 3 US citizens. However, it was not until the resumption of unrestricted submarine warfare, and the subsequent loss of a number of private commercial vessels to U-boat attack, that renewed US indignation grew sufficiently to abandon efforts for peace and go to war. The wrecks were clearly 'of interest', as the graves of US citizens increased, along with disruption of trade and commerce. The use of unrestricted warfare against merchant vessels and civilians was ultimately a primary factor in the American decision to declare war on Germany and its allies on 6 April 1917. When war came for the US, it did so with U-boat campaigns to address its interests and its allies. The US destroyers *Chauncey* and *Jacob Jones* were on convoy duty in the eastern Atlantic when they were lost on

20 November and 6 December 1917 respectively. The first U-boat to come into US waters, *U-151*, did so in May 1918, cutting submarine cables, laying mines, sinking three schooners with gunfire and seven ships with torpedoes or bombs placed in them after they were intercepted and stopped. The mines left by the U-boat damaged and sank other ships; in all, the cruise of *U-151* resulted in 23 naval casualties. Subsequent attacks by *U-117*, *U-140*, and *U-151* resulted in the loss of 30 ships involved in US commerce. *U-156* also shelled the US coastal town of Orleans, off Nauset Beach, Massachusetts on 21 July 1918. This was the first time foreign enemy shells had landed on American shores since the War of 1812. The US also lost five naval or Coast Guard vessels, the greatest loss being the armored cruiser *San Diego*, which sank as a result of mine off New York. The Coast Guard cutter *Tampa* was torpedoed and lost with all hands on 26 September 1918, and the Diamond Shoals Lightship, *LV-71*, was shelled and sunk by *U-140* on 6 August 1918 at its station off North Carolina's Cape Hatteras in US waters. As is often the case with sovereign vessels, the US retains ownership of the wrecks, and the three that sank with loss of life are considered war graves. The *San Diego* has other 'values', as it lies in relatively shallow water and is accessible to divers. It is listed in the National Register of Historic Places, and is a well-known and popular dive site. USS *San Diego* is also an example of UCH that has been subjected to unlicensed recovery and salvage. UCH of WWI may also be found just 30 miles from Washington D.C. in Mallows Bay (Figure 1).



Figure 1. Abandoned vessel in Mallows Bay. Built during WWI to transport supplies.
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One other warship lost during the war and listed in the National Register of Historic Places is SMS *Cormoran*, a German Navy commerce raider attached to the Graf von Spee's East Asiatic Squadron. Fleeing Tsingtao, and pursued by Japanese warships, the *Cormoran* eluded capture or destruction. On 14 December, it arrived at the US harbor of Apra, Guam to take on coal. For a number of reasons, the US Governor of Guam let the *Cormoran's* captain take only a small amount of coal, and ordered the raider to either leave in 24 hours, or go into detention. The *Cormoran* remained in Guam along with its captain and crew. With the entry of the US into the war on 7 April 1917, the *Cormoran's* captain ordered his ship scuttled; nine of the crew died in the scuttling and are buried ashore in Guam. The *Cormoran's* wreck, partly salvaged, remains in place, on its side, in 34 m (110 ft.) of water. The wreck has been archaeologically mapped, but not extensively studied, and was listed in the National Register of Historic Places in 1975. Adjacent to the *Cormoran*, is a torpedoed Japanese transport, the *Tokai Maru*, sunk on 27 August 1943; it too is listed on the National Register (1988). The *Tokai Maru's* keel rests adjacent to the *Cormoran's* stern. The two wrecks are highly popular dive attractions, with many guidebooks and articles noting that this is one of the few places underwater where a diver can literally reach across a narrow gap and place their hands on ships from two World Wars.

With the exception of the *Cormoran*, and other wrecks in a park in Guam, wrecks from WWI in US waters are not currently part of any US marine protected area; the same also holds true for a number of WWII wrecks. The War in the Pacific National Historic Park in Guam includes Outer Apra Harbor, where 29 shipwrecks and 3 aircraft from WWII rest on the seabed. Management of the sites is the responsibility of Guam's Historic Preservation Office. In addition, there is a memorandum of agreement between the Guam HPO and the US Navy in which training and other exercises that may affect sensitive cultural resources are controlled and in some cases restricted, including over the *Tokai Maru* and *Cormoran* sites. The site is an example of how challenging it can be to protect UCH, and the international cooperation that may be necessary for that purpose.

Cooperation among nations that were once at war with one another also provides an opportunity to protect UCH not just for preservation, but to learn the lessons from the war, to celebrate the peace among those nations now, and help foster peace among all nations in the future. One such challenge in the US is our project to document shipwrecks involved in the Battle of the Atlantic and other ideas that have been inspired by the UNESCO scientific conference and WWI commemorative 2014 meeting in Bruges. Although no U-boats were lost off the US coast in combat during WWI, 178 U-boats were lost elsewhere during the war, with some 5,000 men. The U-boat fate in WWII, however, was

a different matter. In all, 734 boats, with some 40,000 men, were lost in that war. Of these, several were lost in waters subject to US jurisdiction. The US Government considers them all war graves, heritage sites, and the property of the German Government, and has cooperated with, and intends to continue to cooperate with, Germany to protect these sites to the best of its ability.

While some WWII wrecks are in parks or marine protected areas, there is no comprehensive park or sanctuary that specifically deals with the underwater cultural heritage of either conflict. The US National Oceanic and Atmospheric Administration (NOAA), working with the University of Rhode Island's Dr. Rod Mather, has funded research to locate, map and assess the wrecks of captured German warships off US waters in the Atlantic Ocean. This collection of ships, known colloquially as the 'Billy Mitchell Fleet,' (named for the Army officer who spearheaded the tests) has interest to the US and NOAA for historical reasons, as the ships represent an interesting and significant period in the post-war years when they were used as targets in controversial but demonstrative tests of naval aircraft's ability to sink warships. The wrecks are also of scientific interest for biological reasons as habitats, and for corrosion studies. There has been informal discussion among various parties as to whether these wrecks might comprise a unique park or sanctuary, but no formal proposal has been made, and under a recent US regulation, the creation of a national marine sanctuary where none exists is a lengthy process that begins with a nomination by communities or other partners. That has yet to take place with the Billy Mitchell Fleet.

The Battle of the Atlantic as a special marine area is a concept suggested by some members of the public, which is being considered by NOAA and others. Off the coast of the US State of North Carolina, one alternative being weighed is a possible expansion of the USS Monitor National Marine Sanctuary to include a collection of ships sunk during WWI and WWII.

In the US State of Maryland, citizen groups are discussing nominating a collection of wooden steamships, numbering in the hundreds, that lie in Mallows Bay in a graveyard of these hastily built for use in WWI and ultimately abandoned (Figure 2). This last collection merits interest at the local, regional



Figure 2. One of the many WWI-Built ships abandoned in Mallows Bay. © James Delgado/NOAA

and perhaps national level not only for the history, but also because the wrecks, in a shallow freshwater bay, are now merging with the natural environment to form a unique ecosystem and a laboratory in which a once industrial area and graveyard for ships becomes a refuge or a sanctuary available for study and public recreation.

In both of these cases, what is key is that multiple values for these resources and a variety of potential uses exist beyond the commemoration of a specific vessel, battle, or of the war itself. In terms of the latter example, the collection of wooden steamships represents, perhaps in an ideal sense, a real-life application of swords beaten into plowshares, as vessels built for war are now a habitat for estuarine life and a setting for recreation and contemplative reflection on the costs of war and the potential healing powers of nature at time of peace. In that, there is the reality that for many of these wrecks, the natural processes working/operating on them has rendered them into something more than a shipwreck. They are natural habitats, artificial reefs in one sense, with values inclusive of their natural resources, which in some cases, render them scientifically of interest to disciplines other than archaeology or history. The biological colonization of these wrecks also offers, at times, compelling reasons to visit them for recreational purposes, photographing the marine life or simply observing it in passive enjoyment.

Importance of our Cultural Heritage as Reflected in US Law

In the US, the preservation of historic sites started with local government and private initiatives preserving sites associated with the establishment of the US and the founding leaders. For example, the 1816 purchase of the building associated with the Declaration of Independence and the US Constitution, and the purchase of George Washington's headquarters in New York, and home in Mount Vernon, Virginia in the 1850s. While Congress authorized the purchase of some land associated with Civil War battles in 1890, it was not until the enactment of the Antiquities Act in 1906, that a US national historic preservation program was established, primarily for terrestrial sites. In 1975, NOAA designated the first national marine sanctuary to protect the wreck of the USS *Monitor*, 17 miles offshore on the US continental shelf. At that time, the wreck was under the high seas, well outside what was then the US 3 nautical mile territorial sea and 12 nautical mile contiguous zone, so enforcement was limited to US flag vessels and nationals. Since the extension of the US contiguous zone to 24 nautical miles, the laws protecting USS *Monitor* may now be enforced against foreign flag vessels and nationals, consistent with international law. In the 1980s, the US Congress enacted two laws to specifically protect UCH, the Abandoned Shipwreck Act and RMS *Titanic* Maritime Memorial Act. In regard to the *Titanic*, the US Congress noted that

international cooperation was needed to protect the wreck of the *Titanic*, as it is well outside of the maritime zones subject to US jurisdiction. The 2001 President's Statement on Sunken Warships provided notice of the US policy to protect US and foreign government vessels from unauthorized disturbance, wherever they may be located, in a manner consistent with international law. In 2004, the Sunken Military Craft Act was enacted, codifying this US policy and underlying case law, and protecting US and foreign sunken military craft, including craft from WWI and WWII.

At the international level, the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954 Hague Convention) was adopted at The Hague in the Netherlands in 1954 in the wake of massive destruction of cultural heritage during WWII. The 1954 Hague Convention is the first international treaty focusing exclusively on the protection of cultural heritage in the event of armed conflict. It covers immovable and movable cultural heritage, including monuments, architecture, art or history, archaeological sites, works of art, manuscripts, books and other objects of artistic, historical, or archaeological interest, as well as scientific collections of all kinds regardless of their origin or ownership. Next was the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO 1970 Convention) to curb the increasing illicit international trafficking of cultural property, and the 1972 World Heritage Convention (WHC) to recognize the protection of our natural and cultural heritage of outstanding universal value. While these conventions focused on terrestrial sites, it may be worth exploring how they may apply or provide guidance on how to better protect UCH from WWI and WWII.

The 1982 LOSC was the first treaty to specifically address UCH, albeit in very broad terms. The UNCLOS sets forth a comprehensive legal framework for the use and protection of the sea, the seabed and subsoil, and the marine environment, including both natural and cultural heritage resources. In addition to providing a balance of jurisdiction between coastal states and flag states over uses of the sea in these various maritime zones, Articles 149 and 303 provide a framework for the protection of UCH found at sea. Article 149 provides that,

All objects of an archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin.

While it is not always clear which nations have preferential rights, it is clear that they would include the flag states of the sunken ship and perhaps the nations from where the passengers, crew or cargo came or are returning to. Article 303(1) sets forth a duty for all States to protect objects of an archaeological and

historical nature found at sea, and a duty to cooperate to ensure that protection. While Article 149 applies just in the Area (i.e., seabed and ocean floor and subsoil beyond the limits of national jurisdiction, under the high seas), Article 303 is under Part XVI (General Provisions) and applies in all of the maritime zones. As most, though not all, of LOSC is now recognized as reflecting customary international law, it may be argued that the duty to cooperate to protect UCH is an established part of international law. While LOSC does not recognize a coastal state's authority and jurisdiction to unilaterally enforce its UCH laws against a foreign-flagged vessel on the continental shelf beyond the 24 nautical mile contiguous zone, nations may enter into agreements, such as the UNESCO 2001 Convention, to address their duty to cooperate in the protection of UCH. In addition, there appears to be a consensus among professional archaeologists and US agencies that any salvage or recovery of UCH should be conducted in compliance with international scientific standards as reflected in the Annex Rules of the UNESCO 2001 Convention.

Adopted in 2001 by UNESCO's General Conference, and entering into force on January 2, 2009, the UNESCO 2001 Convention represents an international response to the concerns of looting and destruction of UCH. The UNESCO 2001 Convention is based on four main principles: 1) the obligation to protect UCH; 2) in situ preservation policies and scientific rules for research and recovery; 3) a prohibition on commercial exploitation of this heritage; and 4) cooperation among states to protect this heritage, particularly in regards to training, education, and outreach. The primary purpose of the UNESCO 2001 Convention is to ensure and strengthen the protection of UCH. The geographic scope of the UNESCO 2001 Convention includes UCH located in all maritime zones, including on the continental shelf and seabed Area beyond national jurisdiction. Under article 10, a party agrees to protect UCH by controlling 'activities directed at underwater cultural heritage' in the exclusive economic zone (EEZ) and on the continental shelf through a system of authorizations or permits that require compliance with the current international standards and requirements for research and recovery in the Annex Rules. There is also an obligation for parties to use the 'best practicable means at its disposal to prevent or mitigate any adverse effects that might arise from activities under its jurisdiction incidentally affecting underwater cultural heritage.' As of December 2014, there are 48 parties to the UNESCO 2001 Convention, including France, which was the first 'major maritime power' to ratify the UNESCO 2001 Convention and become a party. The United States has stated that the Convention, "particularly the Annexed Rules, preamble, and general principles, reflects substantial progress by the global community in developing means to protect submerged cultural heritage. However, the United States continues to have serious concerns with certain provisions in the Convention. These concerns have prevented our country from becoming a State Party. For

example, the United States cannot join a convention that is not consistent with the jurisdictional regime set forth in the United Nations Convention on the Law of the Sea.” Regardless of whether it is a party, the United States has a number of laws and policies that are consistent with the obligations imposed on parties to the UNESCO 2001 Convention, including the National Historic Preservation Act, the National Marine Sanctuaries Act, the Sunken Military Craft Act and the President’s Statement on Sunken Warships.

The Legal and Other Challenges in Protecting UCH from World War I

Protection of wrecks from WWI, as with all UCH, starts with the challenge of balancing the interests of coastal states and flag states consistent with international law as reflected in UNCLOS. Under Article 303(2), coastal states may presume that the removal of UCH such as WWI wrecks from the seabed within the limit of the 24 nautical mile contiguous zone would be subject to its contiguous zone jurisdiction. Preserving WWI wrecks in the 200 nautical mile EEZ and on the continental shelf seaward of the 24 nautical mile line presents even greater challenges. Nations have coastal state jurisdiction over activities directed at environmental protection and natural resources of the continental shelf and EEZ that may be triggered by activities directed at a WWI wreck as UCH often becomes an intricate part of the environment, e.g., becoming a foundation for growth of marine life and acting as an artificial reef providing habitat for marine life. Preserving WWI wrecks in the Area under high seas is beyond national jurisdiction.

Sovereign immunity is a long-standing principle of respect and cooperation among nations under customary international law and is reflected in treaty law, including LOSC and UNESCO 2001 Convention. In general, sunken foreign warships are not subject to arrest under the maritime law of salvage, seizure or other enforcement actions by the coastal state without the consent of the foreign flag state. This principle of sovereign immunity should be distinguished from the rights of owners to deny salvage under the maritime law. Cooperation between Spain and the US, and respect of the rights of owners and sovereign immunity of sunken warships by a US court sitting in admiralty jurisdiction, resulted in the dismissal of a salvor’s claims to treasure associated with wreck of the Spanish warship *Mercedes*, and the return of some 17 tons of silver and gold to Spain, the owner of the wreck.. Provisions of the UNESCO 2001 Convention are consistent with LOSC Article 303. In carrying this authority, the coastal state has a duty to protect heritage from WWI and to cooperate with the foreign flag state in carrying out that duty to protect WWI wrecks. These duties to protect and cooperate apply to warships, and still involve the need to respect of ownership and sovereign immunity of the flag State. This includes a

duty to get consent of the foreign flag state for activities directed at their WWI wrecks, including those that are within territorial sea and internal waters. The US case concerning the *Mercedes* is an example of how states relied on shared views on ownership and sovereign immunity of sunken state craft to address a challenge under the law of salvage. There are, of course, challenges other than the legal ones. The respectful treatment of WWI wrecks as gravesites is perhaps the most difficult challenge all nations face.

Other challenges in regard to the UCH of WWII are safety issues in regard to munitions and risks to diver safety; this problem is not unique to the US situation, nor are the problems associated with partially cleared or uncleared naval mine fields and munitions dumps, where trawling or other activities may bring munitions to the surface. There is also the issue of potential environmental pollution from munitions, hazardous cargo, fuel and other materials on wrecks. The issue of fuel or other oil on WWI wrecks is less of a problem, as a number of vessels at that time were coal-fired, but fuel oil carrying vessels are present in that population of wrecks, and dominate the known and suspected population of WWII wrecks. Considerable resources and attention have been focused on this issue in the US, by a variety of Federal partners, working with states and local governments. This is because there are concerns about potential environmental impacts from the eventual release of cargo and fuel from the 20,000 shipwrecks in US waters. Most wrecks, unless they pose an immediate pollution threat or impede navigation, are left alone and are largely forgotten until they begin to leak, often becoming the source of 'mystery spills' that harm coastal economies and environments.

On 20 May 2013, NOAA presented the US Coast Guard with a national report finding that 36 sunken vessels scattered across the US seafloor could pose an oil pollution threat to the nation's coastal and marine resources. Of those, 17 were recommended for further assessment and the potential removal of both fuel oil and oil cargo. The report, part of NOAA's Remediation of Underwater Legacy Environmental Threats (RULET) project, identifies the location and nature of potential sources of oil pollution from sunken vessels. Knowing where these vessels are helps oil response planning efforts, and may help in the investigation of reported mystery spills - sightings of oil where a source is not immediately known or suspected. The sunken vessels are a legacy of more than a century of US commerce and warfare. The scope of the problem is much more manageable than initially thought by the NOAA project team. With this assessment reliable bounds can be put on the potential oil pollution threats, and start to plan accordingly. The distribution of vessels is skewed heavily to WWII casualties in the Battle of the Atlantic. Some of these vessels may be eligible for listing under the National Register of Historic Places; in addition, many of them are either civilian or military gravesites. In these cases,

NOAA has worked with others to assess the eligibility, and in some cases, has listed wrecks to recognize their heritage value. However, understanding the historical significance does not overrule steps needed to address imminent environmental threats. In those cases where remediation has been undertaken, it should be noted that those remediation efforts have been sensitive to cultural resources and war grave/memorial values of the vessels. Of particular note is the ongoing monitoring and detailed assessment undertaken by the National Park Service with the wreck of USS *Arizona* at Pearl Harbor. Arguably one of the most sensitive war grave sites in American waters, and a heavily visited memorial, the *Arizona* continues to leak its fuel after more than 70 years on the bottom. Studies have assessed the origin of the leak, the rate of flow (which is minimal) and the ongoing corrosion and structural changes to the wreck to determine if a catastrophic hull failure and major release might happen. These studies have shown such a possibility is decades if not a century away, and even then, if the *Arizona* collapsed, it might well not trigger a major spill. One interesting aspect of the *Arizona* oil leak is that it has become a symbolic aspect of the wreck's significance, as a number of visitors liken it to a still-bleeding wound, or tears, and argue that it conveys a timeless message about war and its consequences.

Conclusion

The centennial of WWI brings to the forefront the fact that UCH from that conflict is starting to be protected by the UNESCO 2001 Convention. The importance of WWI wrecks, like other UCH, may also be found in other international and domestic laws protecting our cultural heritage. Some of these WWI sites are already being protected by the US and other nations. They provide examples of why states care – it's because of the historic, archaeological, and cultural values including the respectful treatment of sites as a war grave, a memorial park, monument or sanctuary. While there are a number of challenges, the US NOAA is taking a leadership role in protecting wrecks from WWI and WWII and cooperating with other nations in such protection in a manner that is consistent with international law and respects the ownership and sovereign immunity of foreign wrecks from WWI and WWII. We hope that cooperation among allies and former enemies in preserving our submarine/underwater cultural heritage from the World Wars will not only further research and education, but a lasting peace.

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