

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

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Administration (NOAA)

Mr. Broadwater spoke of the importance of preserving our underwater cultural resources and then followed with these questions:

What are submerged cultural resources?

- Historical and archaeological remains that are located underwater
- Shipwrecks are best known; artifacts, refuse, sunken remains, etc.
- Inundated Native American sites; villages and hunting camps
- UN uses the term: Underwater Cultural Heritage (UCH)

Why are they important?

- Non-renewable
- Can give us unique information about our past
- Provide exciting opportunities for recreational and educational experiences

What problems exist?

- Looting and commercial salvage – intentional removal and site damage
- Souvenir collecting – removing just a “keepsake”
- Inadvertent human impact – anchor damage, dangling gear, resting or hanging onto a wreck, etc
- Erosion – from currents, wakes, runoff, waves
- Development – construction, dredging, draining, etc.

History of Preservation Law – a global perspective:

- Law of the Sea Convention, 1982 – 100+ countries participated, large impact on our coasts, definitions given for areas/features
- UNESCO Convention on Protection of Underwater Cultural Heritage, 2001 – this was an international effort to create a convention, to provide an *international* scope to antiquities preservation laws
- Antiquities Legislation (1906-2005)
- International Law of Salvage (admiralty law)
- U.S. Multi-lateral Agreements

The U.S. has not signed the Law of the Sea Convention, but the U.S. always attempts to comply with international legislation. Maritime zones have been established: from high seas, to EEZ/200 mi, to 24 mi contiguous zone, to 12 mi territorial sea, to 3 mi state territorial zone (within that 12 miles).

Many federal laws cover shipwrecks in U.S. waters; the latest is the Sunken Military Craft Act of 2005, which applies to sunken naval and government vessels and aircraft from all nations. Myriad state laws also exist.

Admiralty law – intended to encourage rescue of vessels, to save lives and property by providing compensation to salvors; does not apply to historic shipwrecks imbedded in state bottomlands and covered by the federal Abandoned Shipwrecks Act.

- Admiralty law recently used to gain control over shipwrecks and their cargo
- Bush used AA to designate the largest marine protected area in world: the Papahānaumokuākea Marine National Monument in the Northwestern Hawaiian Islands.

National Historic Preservation Act:

- Mitigate potential damage – regulation and permits
- Inventory and assess – management and research

Archaeological Resources Protection Act:

- Applies to resources 100+ yrs old on public or tribal lands
- Prohibits excavation, removal etc.
- Cannot transfer resources across state line
- Provides guidelines, BMPs and penalties under law

Abandoned Shipwreck Act of 1987 – an umbrella law for the states:

- Management and control by states, admiralty does not apply, gave “teeth” to protection efforts

Sunken Military Craft Act, 2005:

- All military craft (ships and aircraft) of U.S. service are still property of U.S. government
- Same right and protection for state craft from another country that lie on U.S. bottomland
- Encourages development of international agreements to protect sunken state craft
- Regulations still being developed

National Marine Sanctuary Regulations Regarding UCH:

- Prohibits removal/injury of UCH without permit
- Prohibits alteration of seabed
- Enforcement of regulations upheld in Admiralty court
- No Law of Finds, because UCH not abandoned
- This is available protective tool for use by states (contact NOAA)

- Two sanctuaries established to date for cultural resource conservation purposes:
  - USS *Monitor*
  - Thunder Bay
- Best way to protect shipwrecks: get everyone to the table and get them to help develop a special agreement.

Discovery of foreign vessels:

A Virginia example was cited – the ships *Juno* and *La Galga* discovered off Assateague Island.

In this case:

- Jurisdiction of state bottomlands vs. federal national seashore questioned
- Jurisdiction with other states
- Country of Spain made claim of ownership

- Supreme Court refused to hear the case, supporting lower case ruling that Spain's claim of ownership was valid.
- Spain requested that they be left undisturbed as military gravesites, 2001

Mr. Broadwater's recommendation on how to proceed with permits and related matters: consult with others at the state and federal level.

In closing, Mr. Broadwater mentioned the Convention on the Protection of the UCH of 2001. Many states and NOAA are complying with this convention.