

Sunken Military Craft Act

Agencies: U.S. Navy (within U.S. Department of Defense)

Citation: [10 U.S.C. §§ 113 *et seq.*](#)

Enacted as: the “Sunken Military Craft Act”, on October 28, 2004, as Title XIV of the “Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005”

Where Law Applies: Applies to sunken U.S. military ships and aircraft wherever located around the world. It also applies to sunken foreign craft in U.S. waters that are defined to include the internal waters, territorial sea, and contiguous zone (up to 24 nautical miles off the U.S. coast).

Summary of Law:

On October 28, 2004, President George W. Bush signed the [National Defense Authorization Act for Fiscal Year 2005](#). Title XIV of the Act, generally referred to as the Sunken Military Craft Act (SMCA) (10 U.S.C. § 113 *et seq.*), preserves the sovereign status of sunken U.S. military vessels and aircraft by codifying both their protected sovereign status and permanent U.S. ownership, regardless of the passage of time. The purpose of the SMCA is to protect sunken military vessels and aircraft and the remains of their crews from unauthorized disturbance. Thousands of U.S. Government warships and military aircraft lie in waters around the world. Recent advances in technology have made these wrecks accessible to looters, treasure hunters, and others who may cause damage. This issue is a growing concern both nationally and internationally because, in addition to war graves, many sunken warships and aircraft contain objects of a sensitive archaeological or historical nature. By providing legal protection for sunken military craft, the SMCA helps reduce the potential for irreversible harm to important historical resources.

The SMCA protects sunken U.S. military ships and aircraft wherever they are located, as well as the graves of their lost military personnel, sensitive archaeological artifacts, and historical information. Its scope is broad, protecting sunken U.S. craft worldwide and sunken foreign craft in U.S. waters defined to include the internal waters, territorial sea, and contiguous zone (up to 24 nautical miles off the U.S. coast).

Source: <http://www.history.navy.mil/branches/org12-12.htm> (last visited April 9, 2013).

Summary of Legislative History:

The Sunken Military Craft Act was incorporated into the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, as Title XIV. Introduced as [H.R. 4200](#) on April 22, 2004, the original bill did not contain the SMCA. The bill was then [reported](#), with amendments, by the Committee on Armed Services on May 14, 2004. On May 20, 2004, the Committee on Armed Services filed a [supplemental report](#), which contained the SMCA language. The 108th Congress enacted [Public Law 108-375](#) on October 28, 2004, including the SMCA.

2012 attempted revision to the SMCA

Florida Congressman Connie Mack added an amendment to the 2012 fiscal year defense authorization bill that would amend the SMCA to remove its protections for ships on commercial missions when they sank. It is described as an amendment that-

Would make changes to the language of the Sunken Military Craft Act of H.R. 1540, the National Defense Authorization Act for Fiscal Year 2012. Would clarify the language of the Sunken Military Craft Act to restore its original intent, and would specify that a sunken military craft would be defined as a vessel only when on military noncommercial service when it sank.

Such an amendment would allow salvors such as those in *Odyssey Marine Exploration, Inc. v. Unidentified Shipwrecked Vessel*, [657 F.3d 1159](#) (11th Cir. 2011) more leeway in establishing rights over their finds.

The House version of this bill contained an amendment to the National Defense Authorization Act for Fiscal Year 2012:

H.R.1540 National Defense Authorization Act for Fiscal Year 2012 (Engrossed in House)

SEC. 1099N. SUNKEN MILITARY CRAFT.

Section 1408(3) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (10 U.S.C. 113 note) is amended--

(1) in subparagraph (A), by inserting ‘, that was’ before ‘on military noncommercial service’; and

(2) in subparagraph (B), by inserting a comma before ‘that was owned or operated’.

However, the Senate removed this amendment in its version and it remained absent from the final version of the bill signed in December 2012.

National Defense Authorization Act for Fiscal Year 2012 (Enrolled Bill - Final as Passed Both House and Senate)

Cases:

- *International Aircraft Recovery, L.L.C. v. Unidentified, Wrecked & Abandoned Aircraft*, [218 F.3d 1255 \(11th Cir. 2000\)](#), cert. denied, 531 U.S. 1144 (2001). (See case summary).
 - Not SMCA case but SMCA is codification of cases similar to this case involving government ownership of sunken military craft.
- *Odyssey Marine Exploration, Inc. v. Unidentified Shipwrecked Vessel*, [657 F.3d 1159 \(11th Cir. 2011\)](#), cert. denied, 132 S. Ct. 2379 (2012). (See [case summary](#)).
 - SMCA is considered part of U.S. law and policy for reciprocal treatment under the Friendship Treaty with Spain; SMCA was not applied as a matter of law to Spanish wreck outside of U.S. waters.
- *United States v. Steinmetz*, [973 F.2d 212 \(3d Cir. 1992\)](#), aff'g [763 F. Supp. 1293 \(D.N.J. 1991\)](#), cert. denied, 113 S. Ct. 1578 (1993). (See [case summary](#)).

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Law Articles:

David J. Bederman, *Congress Enacts Increased Protections for Sunken Military Craft*, 100 Am. J. Int'l L. 649 (2006).

- Article traces the development of the areas of law dealing with sunken military craft. It analyzes the provisions of the SMCA and critiques some of its legal assumptions with regard to developments in this area.

Michael R. Nelson, *Finders, Weepers-Losers, Keepers? Florida Court Says U.S. Company Must Return Recovered Treasure to Kingdom of Spain*, 16 L. & Bus. Rev. Am. 587, 587-88 (2010).

- Article follows the developments of the *Nuestra Senora de las Mercedes* shipwreck, commonly referred to as the “Black Swan” (657 F.3d 1159 (11th Cir. 2011); 675 F. Supp. 2d 1126 (M.D. Fla. 2009)).

Rand R. Pixa, *In Defense of Perpetual Title to Sovereign Wrecks* (2004), available at <http://www.history.navy.mil/branches/org12-7m.htm>.

- Article describes U.S. and international law relating to the salvage of ship and aircraft wrecks.

Other Relevant Sources:

U.S. Navy, Naval History and Heritage Command, Underwater Archaeology:

- [Protection for Sunken Military Vessels and Aircraft](#)
- [Talking Points on the Sunken Military Craft Act](#)