

Northeast Research v. One Shipwrecked Vessel, her Tackle, Equipment, Appurtenances, and Cargo, [790 F. Supp.2d 56 \(W.D.N.Y. 2011\)](#).

Location: Lake Erie, State waters of New York

Applicable Laws: [Abandoned Shipwreck Act](#) (ASA) (43 U.S.C. §§ 2101 *et seq.*)
[Submerged Lands Act](#) (SLA) (43 U.S.C. §§ 1301 *et seq.*)

Where Laws Apply: *Abandoned Shipwreck Act:* Applies to abandoned shipwrecks that are embedded in the submerged lands of a state, embedded in coralline formations protected by a state on its submerged lands, or located on the submerged lands of a state when the wreck is included in or determined to be eligible for the National Register.

Submerged Lands Act: Grants coastal states rights to natural resources and control of the seabed out to 3 nautical miles (9 nautical miles for Texas, the Gulf coast of Florida, and Puerto Rico and to the international boundary line for states bordering the Great Lakes), defining the seaward limit of a state's submerged lands and the landward boundary of federally managed outer continental shelf lands.

Holding: For the purposes of the Abandoned Shipwreck Act, this court found that abandonment may be inferred by clear and convincing evidence. Here, the court found there was clear and convincing evidence of inferred abandonment based on the fact that the vessel had been wrecked for over 150 years, salvage technology existed at the time it sank, and nobody had tried to locate the wreck.

General Facts:

Plaintiff, Northeast Research, LLC (NER), a business engaged in locating and salvaging submerged shipwrecks, filed a claim for salvage rights and title to an early 19th century inland schooner embedded in submerged lands of New York in the eastern basin of Lake Erie. The vessel, located in 170 feet of water, was unable to be conclusively identified and thus was nicknamed the "Dunkirk Schooner", as it was located near Dunkirk, New York. Because of the depth of the wreck, the freshwater of Lake Erie, and the temperature of the water, the wreck was extremely well-preserved.

NER believed the wreck to be the *Caledonia/General Wayne*. The *Caledonia* was built in 1799 by the British North West Trading Company and originally used in fur trading. During the War of 1812, the British converted the vessel to a brig-of-war used for transporting troops. The *Caledonia* was captured in 1813 by the U.S. Army and was used in their services during the war. After the war, the United States sold the vessel to two merchants in Pennsylvania. The merchants, Rufus Reed and John Dickson, refitted the vessel into a commercial schooner, renamed it the *General Wayne* and used it to ferry slaves across Lake Erie to freedom in Canada. The last evidence of the *General Wayne* clearing a Great Lakes port was in 1818.

The State, however, disagreed with NER's contention that the vessel was the *Caledonia*. When the wreck was discovered, its holds were filled with grain and hickory nuts. In the 1800s, grain and hickory nuts were harvested in the fall and carried east across Lake Erie to distilleries to make whiskey. The State's expert believed that the amount of cargo in the holds suggested this was likely to have been the situation. However, the court never addressed the issue of which vessel the wreck likely was as it was deemed irrelevant.

Procedural Posture:

NER commenced an admiralty *in rem* action by filing a complaint against One Shipwrecked Vessel located in 170 feet of freshwater in New York state waters of Lake Erie, asserting title to the vessel. The State intervened and filed an answer asserting title to the wreck under the Abandoned Shipwreck Act (ASA) of 1987, the Submerged Lands Act, and various provision of New York State Law. The State then filed a motion for summary judgment asserting ownership under the ASA. In response, NER cross-moved for partial summary judgment, seeking a salvage award and asserting that the State had failed to prove its ASA claim.

The motions for summary judgment were referred to a Magistrate Judge for review. The Magistrate Judge issued a Report and Recommendation to the district court judge recommending: granting the State's motion for summary judgment; or denying the plaintiff's motion and granting title of the vessel to the State under the ASA, or in the alternative, under either New York Education Law or New York Public Lands Law. NER filed an objection to the Report and Recommendation with the district court judge. The district court judge reviewed the objected portions of the Report and Recommendation *de novo*.

Holding and Reasoning:

The Court upheld the Magistrate Judge's recommendation to grant summary judgment to the State under the ASA. The ASA transfers to the United States title of any *abandoned* shipwreck that is:

- 1) Embedded in submerged lands of a State;
- 2) Embedded in coralline formations protected by a State on submerged lands of a State; or
- 3) On submerged lands of a State and is included or determined eligible for inclusion in the National Register.

43 U.S.C. § 21059(a).

As long as the wreck meets one of those three criteria and is abandoned, title vests with the State and no salvage award is granted. Here, the Magistrate Judge found that it was undisputed that the wreck was embedded in submerged lands of the State of New York. However, NER claimed that the vessel was not abandoned and therefore title could not be transferred to the State under the ASA.

The ASA does not define "abandoned". Among the Circuit courts, there is a split of authority as to whether abandonment needs to be proven by an express relinquishment of title or whether it can be inferred from surrounding circumstances. In *California v. Deep Sea Research, Inc.*, [523 U.S. 491 \(1998\)](#), the Supreme Court provided guidance only that the meaning of "abandoned" under the ASA conforms with its meaning under admiralty law. The Fourth Circuit holds the position that intent to abandon must be demonstrated by a clear and unmistakable affirmative act (see *Columbus-America Discovery Group v. Atlantic Mut. Ins.*, [947 F.2d 450 \(4th Cir. 1992\)](#)). The Ninth Circuit follows the test that a vessel is abandoned when title has been affirmatively renounced or when circumstances give rise to an inference that the vessel has been abandoned. *Deep Sea Research, Inc. v. Brother Jonathan*, [102 F.3d 379 \(9th Cir. 1996\)](#), vacated by [523 U.S. 491 \(1998\)](#). The Sixth Circuit has followed the Ninth Circuit in also finding that intent to abandon may be inferred by circumstances. See *Fairport Int'l Exploration, Inc. v. Shipwrecked Vessel known as The Captain Lawrence*, [105 F.3d 1078 \(6th Cir. 1997\)](#).

The court here found that abandonment may be inferred from the surrounding circumstances, but must be proved by clear and convincing evidence. The Magistrate Judge found the State had done so in regards to the Dunkirk Schooner. The Magistrate Judge held that the vessel was likely shipwrecked for over 150 years before being discovered and no efforts had been made to locate the vessel during that time. The District Court Judge affirmed the Magistrate Judge's opinion that there was clear and convincing evidence to demonstrate intent to abandon due to: the passage of time; the existence of technology needed to located the wreck; and the absence of evidence showing that anyone had tried looking for the wreck. Therefore, the Court found the abandon element of the State's ASA claim was met. Because the vessel was abandoned and embedded in the submerged lands of the State of New York, it fell within the jurisdiction of the ASA. The court found summary judgment was correctly granted in favor of the State.