

Odyssey Marine Exploration, Inc. v. Unidentified Shipwrecked Vessel, [657 F.3d 1159 \(11th Cir. 2011\)](#), cert. denied, 132 S. Ct. 2379 (2012).

Location: “International waters” west of the Straits of Gibraltar (e.g., continental shelf of Portugal)

Applicable Laws: [Abandoned Shipwreck Act](#) (ASA) ([43 U.S.C. §§ 2101 et seq.](#))
Foreign Sovereign Immunities Act (FSIA) ([28 U.S.C. §§ 1602 et seq.](#))
1902 Treaty of Friendship and General Relations between U.S. and Spain
[Sunken Military Craft Act](#) (SMCA) ([10 U.S.C. §§ 113 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 on the submerged lands of a state when the wreck is included in or determined to be eligible for the National Register.

1902 Treaty of Friendship: Provided that U.S. is to apply its laws and policies to Spanish sovereign wrecks in the same manner as the U.S. would treat one of its own sovereign vessels. The court therefore considered the Sunken Military Craft Act and other U.S. laws and policies regarding historic sunken military craft.

Sunken Military Craft Act: Applies to sunken U.S. military ships and aircraft worldwide and sunken foreign craft in U.S. waters, including the internal waters, territorial sea, and contiguous zone (up to 24 nautical miles off the U.S. coast). While the SMCA is not applicable to a foreign wreck on the continental shelf of Portugal, its provisions protecting U.S. military craft were relevant to how the U.S. court should treat a Spanish wreck under the Friendship Treaty with Spain.

Holding: A 19th Century Spanish sovereign vessel and its private cargo wrecked in “international waters” is entitled to immunity from judicial arrest in U.S. courts.

Overview:

Odyssey Marine Exploration, Inc. (Odyssey) brought an *in rem* action against a wrecked 19th Century Spanish vessel, *Nuestra Senora de las Mercedes*, located in “international waters” west of the Straits of Gibraltar. Under the law of finds, Odyssey sought ownership rights over items it recovered from the wreck. The district court granted Spain’s motion to dismiss for lack of subject matter jurisdiction over Odyssey’s claims “because the *res* was the shipwreck of a sunken Spanish warship and was entitled to sovereign immunity.” (657 F.3d at 1166). The U.S. Court of Appeals for the Eleventh Circuit affirmed the lower court’s decision and held that the cargo aboard the *Mercedes* did not fall under any of the FSIA exceptions to *in rem* immunity. The decision also references the Treaty with Spain that requires the U.S. to treat Spanish

sovereign wrecks in the same manner as U.S. laws and policies would treat U.S. sovereign wrecks. Accordingly the court looked to the Sunken Military Craft Act and the Abandoned Shipwreck Act for guidance. Under U.S. law and policy, private cargo on a sovereign shipwreck is treated as part of the shipwreck for purposes of immunity of the sovereign vessel.

The Court also noted that under the Sunken Military Craft Act, and in line with the Abandoned Shipwreck Act, the cargo aboard the Mercedes was not severable from the shipwreck. Therefore, “the protections awarded to a sunken sovereign vessel also extend to the cargo aboard that vessel.” (657 F.2d at 1181).