

## Abandoned Shipwreck Act

**Agencies:** U.S. National Park Service (within the Department of the Interior)

**Citation:** [43 U.S.C. §§ 2101 et seq.](#)

**Enacted as:** the “Abandoned Shipwreck Act of 1987”, on April 28, 1988

**Where Law Applies:** The 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.

### **Summary:**

Under the [Abandoned Shipwreck Act of 1987 \(ASA or Act\)](#) (43 U.S.C. §§ 2101 *et seq.*), the United States Congress asserts title 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. The Act then transfers title to the state whose submerged lands contain the shipwreck, except when the wreck is located on U.S. public lands (title remains with the U.S. Government) or Indian lands (title is held by the Indian tribe owning the lands). The public is given notice of the location of any shipwreck when title is asserted under the ASA (43 U.S.C. § 2105).

Pursuant to the ASA, states manage a broad range of living and nonliving resources in state submerged lands and waters, including abandoned shipwrecks. The Act states that it is the declared policy of Congress that states carry out their responsibilities under this chapter to develop appropriate and consistent policies so as to protect resources and habitats, guarantee recreational exploration of sites, and allow “appropriate” public and private recovery of shipwrecks. The Act encourages states to create underwater parks and areas to protect such resources. Funds available to states from grants from the Historic Preservation Fund shall be available for study, protection, and preservation of shipwrecks (43 U.S.C. § 2103).

The Secretary of the Interior, through the U.S. National Park Service, required the development of [guidelines](#) to: maximize the enhancement of shipwrecks as cultural resources; foster a partnership among sport divers, salvors, and other interests to manage shipwreck resources; facilitate access to and utilization of the shipwrecks; and recognize the interests of groups engaged in shipwreck discovery and salvage (43 U.S.C. § 2104). Corrections to the guidelines were published in the Federal Register on December 14, 1990 (55 Fed. Reg. 51528) and February 26, 1991 (56 Fed. Reg. 7875).

**Source:** [http://www.cr.nps.gov/local-law/FHPL\\_AbndShipwreck.pdf](http://www.cr.nps.gov/local-law/FHPL_AbndShipwreck.pdf)

**See also:** <http://www.nps.gov/archeology/tools/laws/asa.htm>

## Legislative History:

State governments claimed title to and control over abandoned shipwrecks on State submerged lands pursuant to the Submerged Lands Act of 1953. By the 1980s, over half of the States had enacted laws and established programs to manage abandoned historic shipwrecks in State waters. While some States prevailed in their claims over, in most of the Federal Admiralty Court cases the courts applied the common law of finds or salvage. These salvage activities were often carried out in a hurried unscientific manner that damaged or destroyed a shipwreck's historical, archaeological, and scientific value. Nonetheless, As a result a number of States sought legislation that would prevent the application of the law of salvage and finds and codify their ownership and control of abandoned shipwrecks.

Congress passed the Abandoned Shipwreck Act of 1987 in response to the resulting legal uncertainty and the need for protection of these irreplaceable cultural resources from treasure hunting and salvage. In passing the ASA, Congress exercised the sovereign prerogative of the U.S. to assert title to certain abandoned shipwrecks and their cargo within the waters of states and U.S. territories.

Congressional findings support the view that the states already had the authority to manage the UCH pursuant to the Submerged Lands Act, and that the ASA merely codified this minority view of admiralty cases. (43 U.S.C. § 2101 (effective 28 April 1988); *Protection of Historic Shipwrecks, and the National Maritime Museum: Hearing Before the Senate Committee on Energy and Natural Resources*, 98th Cong. 44 (1983)). The ASA's legislative history also states that the laws of salvage and finds are "obviously inappropriate for underwater archaeological sites as [they] would be for ancient ruins on land." (Statement of Sen. Bill Bradley (D-N.J.), 133 Cong. Rec. 36,578 (1987)).

Although there is a general preference for on-site protection of UCH, the ASA does "allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites." 43 U.S.C. 2103(a)(2)(C). This provision is a result of a Congressional compromise among salvors, archaeologists, recreational divers, and other multiple users. (Ole Varmer, *The Case Against the "Salvage" of the Cultural Heritage*, 1999).

**Source:** National Park Service, Abandoned Shipwreck Act:  
<http://www.nps.gov/archeology/tools/laws/asa.htm>

## Cases:

- *Calif. and State Lands Comm'n v. Deep Sea Research, Inc.*, [523 U.S. 491 \(1998\)](#), *aff'g in part, vacating in part, and remanding sub nom. Deep Sea Research, Inc. v. The Brother Jonathan*, [102 F.3d 379 \(9th Cir. 1996\)](#).
- *Great Lakes Exploration Group, LLC v. Unidentified Wrecked and (For-Salvage Right Purposes), Abandoned Sailing Vessel, etc.*, [522 F.3d 682 \(6th Cir. 2008\)](#).
- *Northeast Research v. One Shipwrecked Vessel, her Tackle, Equipment, Appurtenances, and Cargo*, [790 F.Supp.2d 56 \(W.D.N.Y. 2011\)](#).

- *Odyssey Marine Exploration, Inc. v. Unidentified Shipwrecked Vessel*, [657 F.3d 1159 \(11<sup>th</sup> Cir. 2011\)](#), cert. denied, 132 S. Ct. 2379 (2012).
- *Paul L. Ehorn v. Abandoned Shipwreck Known as the James R. Bentley*, [No. 99 CV 10278 \(E.D. Mich. Filed \\_\\_\\_\\_\\_, 1999\)](#).
- *People ex. rel. Ill. Historic Pres. Agency v. Zych*, [710 N.E.2d 820 \(Ill. 1999\)](#), rev'g, 690 N.E.2d 1387 (Ill. App. Ct. 1997).
- *Sea Hunt, Inc. v. Unidentified, Shipwrecked Vessel or Vessels*, [221 F.3d 634 \(4th Cir. 2000\)](#), aff'g in part & rev'g in part [47 F. Supp. 2d 678 \(E.D. Va. 1999\)](#).
- *Zych v. Unidentified, Wrecked & Abandoned Vessel*, [19 F.3d 1136 \(7th Cir. 1994\)](#), cert. denied sub nom., *Zych v. Ill. Dep't of Transp.*, 513 U.S. 961 (1994).

#### **Law Articles:**

- Robert D. Peltz, *Salvaging Historic Wrecks*, 25 TUL. MAR. L.J. 1 (2000).
- Seena Foster, *Validity, construction, and application of Abandoned Shipwreck Act of 1987 (43 U.S.C.A. §§ 2101 et seq.)*, 163 A.L.R. Fed. 421 (2001) (Provides a detailed analysis of cases in which courts considered the Abandoned Shipwreck Act).

#### **Other Relevant Sources:**

- National Park Service, Archeology Program, [Abandoned Shipwreck Act](#)