

# HISTORIC SHIPWRECKS

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## HEARING BEFORE THE SUBCOMMITTEE ON OCEANOGRAPHY OF THE COMMITTEE ON MERCHANT MARINE AND FISHERIES HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

**H.R. 74**

A BILL TO ESTABLISH THE TITLE OF STATES IN CERTAIN ABANDONED SHIPWRECKS, AND FOR OTHER PURPOSES

**H.R. 2071**

A BILL TO ASSURE PROTECTION OF CERTAIN HISTORIC ABANDONED SHIPWRECKS BY REQUIRING RESPONSIBLE SALVAGE, AND FOR OTHER PURPOSES

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APRIL 21, 1987

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**Serial No. 100-17**

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Printed for the use of the  
Committee on Merchant Marine and Fisheries



File With. 100.. PUBLIC LAW. 298. approved .. 4/29/88 #2

U S GOVERNMENT PRINTING OFFICE

76-615

WASHINGTON 1987

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## HISTORIC SHIPWRECKS

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TUESDAY, APRIL 21, 1987

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON OCEANOGRAPHY,  
COMMITTEE ON MERCHANT MARINE AND FISHERIES,  
*Washington, DC*

The subcommittee met, pursuant to notice, at 10 35 a m , in room 1334, Longworth House Office Building, Hon Mike Lowry (chairman of the subcommittee) presiding

Present Representatives Lowry, Studts, Hughes, Foghietta, Borski, Tallon, Bennett, Jones (ex officio), Davis, Shumway, Schneider, Bateman, Saxton, and DioGuardi

Staff present Curtis L Marshall, Stephen Finley, Nancy Tyson, Jan Chisolm, Larry Flick, and Lisa Pittman

### STATEMENT OF HON MIKE LOWRY, A US REPRESENTATIVE FROM THE STATE OF WASHINGTON, AND CHAIRMAN, SUBCOMMITTEE ON OCEANOGRAPHY

Mr LOWRY The subcommittee will come to order, please

This is a hearing of the Subcommittee on Oceanography of the full Committee on Merchant Marine and Fisheries

Today, we will be conducting a hearing on two pieces of legislation regarding abandoned shipwrecks, H R 74 which has been introduced by one of our more distinguished Members of our body, Congressman Bennett, and H R 2071 which has been introduced by another distinguished Member of our body, Mr Shumway, of this committee

I want to compliment Congressman Bennett for his steadfast pursuit in this very important area This committee has had before it this legislation in previous Congresses, and Mr Bennett, I think after we have some opening statements, we will just start off with you to introduce and describe your legislation to us

However, before that time, I would like to ask unanimous consent that my full statement be entered into the record and ask unanimous consent that Speaker Jim Wright's full statement be entered into the record and ask unanimous consent that Mr Davis' statement be entered into the record, and I would like to call on our good friend and very valuable member of this committee, Mr Shumway

[Statements of Mr Lowry, Mr Wright, and Mr Davis follow ]

STATEMENT BY THE HONORABLE MIKE LOWRY (D-WA),  
CHAIRMAN, SUBCOMMITTEE ON OCEANOGRAPHY,  
REGARDING ABANDNED SHIPWRECK LEGISLATION,  
H R 74 AND H R 2071,  
APRIL 21, 1987

Today we will be hearing testimony regarding two quite different bills which attempt to address the questions surrounding the uncertain status of abandoned shipwrecks off our coasts

First, I would like to commend my colleague from Florida Mr Bennett, for his leadership on this important issue and his longstanding interest in the need for historic preservation, generally Many people do not realize how important it is to ensure that the archeological values of historic shipwrecks are preserved And, in order to preserve these values and inherent benefits to society, it is essential that any excavation of these historic vessels be carried out under a carefully developed plan which recognizes that much of the historic value of these shipwrecks can be lost forever if the excavation is not done properly

My colleague from Florida has recognized this important principle and has been a strong advocate for giving the states' title to these historic shipwrecks This approach would clearly convey the authority to the states to ensure that any excavation plan

was properly carried out. This approach would also eliminate any uncertainty surrounding the state's authority over shipwrecks in state waters, which was brought into question as a result of the so-called "Cobb-Coin Case"

What H R 74 does is very simple. It asserts federal title to any abandoned shipwreck that is (1) embedded in the submerged lands of a state, (2) embedded in coralline formations protected by a state, or (3) on submerged lands of a state when the shipwreck is included in or determined eligible for inclusion in the National Register. Then, the bill transfers title to the shipwreck from the federal government to the state in or on whose submerged lands the shipwreck is located. I will defer to my colleague from Florida to further explain this legislation in a few minutes, and I would again congratulate him for his continued efforts to move this legislation.

At this time, however, I would like to recognize the Ranking Minority Member, Norman Shumway, who has also introduced legislation on this matter, H R 2071, which takes a quite different approach, one which would maintain "admiralty law" jurisdiction over these wrecks.

Mr. Shumway, do you have an opening statement?

STATEMENT OF SPEAKER JIM WRIGHT ON H R 74, ABANDONED SHIPWRECK ACT  
April 21, 1987

Mr Chairman First, let me congratulate the Subcommittee on Oceanography for its efforts on behalf of H R 74, the proposed Abandoned Shipwreck Act This bill incorporates some important principles concerning our nation's "drowned" cultural heritage with which I am happy to associate myself The state of Texas has also gone strongly on record over the past several years in support of such legislation, both individually and as a member of the Coastal States Organization, which has passed a resolution supporting historic shipwreck preservation legislation

Second, let me state how essential this bill is and how simple its purpose New technology, such as magnetometers and sonar beams, have almost overnight opened up to recovery many more historically important shipwrecks than has ever been possible before Questions of salvage, ownership, use and preservation are being raised in the federal courts, many of which have upheld the validity of state control, while others have upheld the "finders keepers" tradition of admiralty law Thus, there is a need to establish a clear federal policy on historic shipwrecks which can be followed by both the states and the courts

At the heart of the provisions of this bill is our nation's responsibility toward its cultural heritage Twenty-six states already have laws on their books concerning historic shipwrecks Congress historically has consistently reaffirmed support for laws preserving our nation's historic resources at the federal level That has been public policy since the days of Thomas Jefferson who not only authored the Declaration of Independence, but was also our country's first scientific archaeological excavator Jefferson and the many who followed him, have taught us much about the importance of preserving scientific records of

the past so as to better understand the present and to gain foresight into the future. Congress has been guided by these principles in the establishment of many laws, including the Antiquities Act of 1906, the Historic Sites and Buildings Act of 1935, the National Historic Preservation Act of 1966, the 1976 amendments to the National Historic Preservation Act and the Archaeological Resources Protection Act of 1979, to name just a few.

H. R. 74 affirms to the states the right to deal with historic shipwrecks within the boundaries of each state. It would give to the Department of the Interior the right to deal with historic shipwrecks on federal land. At the state level, each state would function as a multiple use manager among the many who are affected by state laws on shipwrecks such as salvors, treasure hunters, preservationists, archeologists, divers, and the general public. The rights of each would be respected, but no one group would have absolute rights over all other groups on every occasion. Because circumstances will differ from state to state, and among different shipwrecks, the bill leaves to each state legislature the right to make such laws and regulations as fit its own needs for the historic shipwrecks found under its navigable streams and rivers and streambeds. The bill defines as historic shipwrecks those which meet the age requirements of eligibility for the National Register of Historic Places. The decision on any ship's qualification would be made through each state's historic preservation office. Texas, for example, has some 1,700 known shipwrecks of various historic periods, of which 653 have been designated as historic landmarks.

The bill does not include shipwrecks located in international waters on the continental shelf, or in U. S. territorial waters, of which the recently discovered Nuestra Senora de Atocha and the Titanic are two prominent examples.

Conservation of Historic Shipwrecks

The Coastal States Organization (CSO) supports the conservation of abandoned shipwreck resources of historical and cultural significance which are buried in submerged state lands. Historic shipwrecks are a finite resource subject to multiple-use demands, primarily from three major groups -- recreational divers, archaeologists and treasure salvors

In recent years, disputes have arisen over rights to ownership of and management authority over these shipwrecks. The states have held title to the submerged lands and natural resources within state territorial waters for many years, and this title was reaffirmed by passage of the Submerged Lands Act in 1953. Whether or not shipwrecks found on state lands are included within the jurisdiction of the Act has been subject to question in the courts. Some court decisions have supported the validity of state claims to shipwrecks, while others have upheld the traditional federal admiralty law of salvage

The CSO believes that resolution of these differences can best be achieved through the enactment of legislation which grants states jurisdiction over abandoned shipwrecks on submerged state lands. The states have already demonstrated their commitment to managing historic shipwrecks. All the states have legislation and programs in place to protect historic archaeological resources, while 25 states have passed specific laws governing the use and preservation of abandoned historic shipwrecks within their boundaries. It is fitting that states now assume the role of responsible managers in determining the multiple use of various historic shipwreck sites within their territorial waters.

The CSO, therefore, encourages Congress to enact legislation affirming state title to and jurisdiction over a properly constructed program in which states retain control over excavations on state lands to encourage the proper management and conservation of these abandoned shipwrecks, while allowing access to the resources by sport divers and other interested groups

Adopted May 3, 1985

STATEMENT BY THE HONORABLE ROBERT W DAVIS (R -MICH ) AT THE  
OCEANOGRAPHY SUBCOMMITTEE HEARING ON HISTORIC ABANDONED SHIP-  
WRECKS    APRIL 21, 1987

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THANK YOU, MR CHAIRMAN

I AM VERY PLEASED TO SEE THE BILLS INTRODUCED BY MY COL-  
LEAGUES, MR BENNETT AND MR SHUMWAY, AND THIS HEARING BEING HELD  
BY YOUR SUBCOMMITTEE TODAY    I AM PROUD TO RECOGNIZE THAT THE  
STATE OF MICHIGAN HAS A WEALTH OF UNDERWATER RESOURCES, BOTH  
NATURAL AND MANMADE, IN THE DIM, COOL WATERS OF THE GREAT LAKES  
A 1975 STUDY BY THE INSTITUTE FOR GREAT LAKES RESEARCH ESTIMATED  
THAT AT LEAST 3000 VESSELS, RANGING FROM LARGE MERCHANT SHIPS TO  
BARGES TO SMALL PLEASURE CRAFT, SANK BENEATH MICHIGAN STATE  
WATERS BETWEEN 1679 AND THE 1920'S

GIVEN THE ENORMOUS NUMBER OF SHIPWRECKS ON OUR STATE BOTTOM-  
LANDS, PROBABLY MORE THAN ALMOST ANY OTHER STATE IN THE UNION, IT  
IS NOT SURPRISING THAT MICHIGAN ALSO HAS A PROGRAM FOR REGULATING  
THE RECOVERY OF THESE WRECKS AND THE REMOVAL OF OBJECTS FROM  
THEM

THE DEPARTMENT OF STATE AND THE DEPARTMENT OF NATURAL  
RESOURCES ISSUE PERMITS TO THOSE WHO WISH TO EXCAVATE ABANDONED  
SHIPS WITH SUBSTANTIAL HISTORICAL OR RECREATIONAL VALUE    THESE  
PERMITS ARE DESIGNED TO ACCOMMODATE THE STATE INTEREST IN THE

PROTECTION OF THE HISTORICAL AND ARCHAEOLOGICAL VALUES OF THESE ABANDONED WATERCRAFT IN ADDITION, THE DEPARTMENT OF NATURAL RESOURCES, WITH THE APPROVAL OF THE STATE LEGISLATURE, CAN ESTABLISH UNDERWATER PRESERVES BY ADMINISTRATIVE RULE THESE PRESERVES, SUCH AS THE ONE AT ISLE ROYALE IN WESTERN LAKE SUPERIOR, FUNCTION AS RECREATIONAL AREAS FOR THE STATE WHERE DIVERS CAN EXPLORE PROTECTED UNDERWATER ARCHAEOLOGICAL SITES

OBVIOUSLY, MICHIGAN HAS SHOWN THAT IT IS AWARE OF THE VALUE OF THESE RESOURCES AND IS WORKING TO ACCOMMODATE THE INTERESTS OF ALL THOSE WHO WISH TO USE THE TREASURES BENEATH THE WAVES I AM PLEASED TO SEE THAT MR KENNETH POTTS OF THE LAKE MICHIGAN MARITIME MUSEUM IS HERE TO SPEAK WITH US TODAY, AND I HOPE THAT HIS PRESENTATION WILL DEMONSTRATE THAT A COOPERATIVE RELATIONSHIP IS POSSIBLE TO DEVELOP AND PROTECT THESE IMPORTANT STATE AND NATIONAL RESOURCES

WE LOOK FORWARD TO WORKING WITH YOU, MR SHUMWAY AND MR BENNETT, ON THE ISSUES RAISED BY THESE BILLS THANK YOU

# # # # #

RWD LPM

STATEMENT OF HON NORMAN D SHUMWAY, A U S  
REPRESENTATIVE FROM THE STATE OF CALIFORNIA

Mr SHUMWAY Thank you, Mr Chairman

I would first like to compliment you for convening this hearing This is a subject that has been before this subcommittee for some time, and it is very appropriate that we focus attention on both Mr Bennett's bill, H R 74, as well as the legislation which I have introduced, H R 2071

To my knowledge, this is the first time that we have considered this subject that we have had an alternative before the committee to the proposal from the gentleman from Florida

Mr Chairman, I have in the past spoken many times on this issue, and my written statement outlines the concerns that I have with the gentleman's bill I am not going to go through all of that at this point Perhaps I should take the witness table and testify as the gentleman from Florida is

However, I very much appreciate his effort, and I think that between his effort and my effort, we may well be able to find a compromise solution to address this issue that will be acceptable to all of us and, certainly, the very many people in the industry and otherwise who are concerned So, I look forward to hearing from the witnesses today

Again, Mr Chairman, I express my gratitude to you for convening this hearing, and I ask that my full statement may be included in the record

[Statement of Mr Shumway follows ]

STATEMENT BY THE HONORABLE NORMAN D SHUMWAY (R -CALIF ) AT THE  
SUBCOMMITTEE ON OCEANOGRAPHY HEARING ON ABANDONED HISTORIC  
SHIPWRECKS APRIL 21, 1987

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THANK YOU, MR CHAIRMAN I AM PLEASED THAT H R 2071,  
LEGISLATION WHICH I INTRODUCED TO PROTECT HISTORIC ABANDONED  
SHIPWRECKS, IS ON THE SUBCOMMITTEE'S AGENDA THIS MORNING ALONG  
WITH MR BENNETT'S BILL, H R 74 WHILE THE COMMITTEE HAS BEEN  
CONSIDERING THE ABANDONED HISTORIC SHIPWRECK PROTECTION MATTER  
FOR MORE THEN 8 YEARS NOW, TODAY'S HEARING MARKS THE FIRST TIME,  
TO MY KNOWLEDGE, AN ALTERNATIVE TO MR BENNETT'S BILL IS BEFORE  
THE COMMITTEE

WHILE I APPRECIATE MY FRIEND FROM FLORIDA'S EFFORTS TO  
PROTECT THE HISTORICALLY VALUABLE SHIPWRECKS LOCATED IN NEAR  
COASTAL WATERS, I MUST REITERATE THE CONCERNS WITH HIS  
LEGISLATION WHICH I OUTLINED DURING LAST YEAR'S CONSIDERATION

FIRST, IT IS ESSENTIAL THAT WE UNDERSTAND THAT H R 74, BY  
UNCONDITIONALLY GIVING THE STATES TITLE TO A CERTAIN GROUP OF  
"HISTORIC SHIPWRECKS", ADDRESSES ONLY THE QUESTION OF OWNERSHIP  
OF THESE SHIPWRECKS -- NOTHING MORE, NOTHING LESS H R 74  
COMPLETELY FAILS TO SET UP ANY MECHANISM TO FORMALLY ADDRESS HOW  
TO ENSURE "HISTORIC PROTECTION" FOR HISTORIC SHIPWRECKS

SECOND, CONTRARY TO WHAT SOME PROPONENTS OF THE LEGISLATION HAVE MAINTAINED, THIS BILL IS NOT IN THE BEST INTEREST OF THE MORE THEN 4 MILLION SPORT DIVERS WHILE THE LANGUAGE IN H R 74 REGARDING SPORT DIVING ACCESS HAS BEEN "BEEFED UP" SOMEWHAT FROM LAST YEAR'S BILL, IT REMAINS SIMPLY "SENSE-OF-THE-CONGRESS" TYPE LANGUAGE WHICH IN NO WAY IS LEGALLY BINDING ON STATES IN FACT, GIVEN THE RESTRICTIONS CERTAIN STATES HAVE IMPOSED ON DIVERS' ACCESS, THIS BILL WOULD LIKELY RESULT IN GREATER LIMITATIONS ON SPORT DIVING

FINALLY, MR CHAIRMAN, WITH RESPECT TO H R 74 IF THE FEDERAL GOVERNMENT GIVES STATES TITLE TO THESE ABANDONED SHIPWRECKS, WE WILL LIKELY SEE A SITUATION -- SUCH AS IS ALREADY THE CASE IN MANY STATES TODAY -- WHERE STATE REGULATION, TO THE BENEFIT OF STATES SPONSORED ARCHAEOLOGY, FORBIDS PRIVATE SALVAGE OPERATIONS SUCH STATE LEGAL REGIMES WOULD DRAMATICALLY REDUCE -- IF NOT EFFECTIVELY ELIMINATE -- THE NUMBER OF PRIVATE EXPLORATION ACTIVITIES AND, CORRESPONDINGLY, THE NUMBER OF SHIPWRECKS DISCOVERED HOW, THEN, BY PASSING H R 74 ARE WE PROMOTING ARCHAEOLOGY, AND OPPORTUNITIES FOR LEARNING FROM HISTORIC SHIPWRECKS, WHEN H R 74 WILL LIKELY RESULT IN STATE LAWS WHICH CREATE MAJOR DISINCENTIVES TO EFFORTS TO DISCOVER HISTORIC SHIPWRECKS?

ON THE OTHER HAND, MR CHAIRMAN, I HAVE INTRODUCED LEGISLATION H R 2071, WHICH TAKES POSITIVE STEPS TO ENSURE THAT HISTORIC PROTECTION OF ABANDONED SHIPWRECKS WILL BE IMPLEMENTED

AS A MATTER OF NATIONAL POLICY, AND WHICH PROTECTS THE PRIVATE SECTOR INTEREST IN BOTH SPORT DIVING AND SALVAGE

ARTICLE III SECTION 2 OF THE U S CONSTITUTION STATES, "THE JUDICIAL POWER SHALL EXTEND TO ALL CASES OF ADMIRALTY AND MARITIME JURISDICTION " AS A RESULT, MY BILL BUILDS UPON, RATHER THEN ABANDONS, A BODY ADMIRALTY LAW WHICH IS CONSTITUTIONALLY FOUNDED AND WHICH HAS EVOLVED IN OUR COURTS OVER CENTURIES MR CHAIRMAN, IT DOES SO BY REQUIRING THE COURTS TO IMPOSE UPON SALVORS NEW HISTORIC PROTECTION REQUIREMENTS TO RESPONSIBLY REGULATE THE SALVAGE ACTIVITY, H R 2071 THEN REQUIRES SALVORS TO ADEQUATELY MEET THESE REQUIREMENTS AS A PREREQUISITE TO RECEIVING A SALVAGE AWARD FROM THE COURT

MY LEGISLATION ALSO SPECIFICALLY ALLOWS STATES OR FEDERAL AGENCIES (OR ANYONE FOR THAT MATTER) TO INTERVENE IN THE SALVAGE LITIGATION AS A TRUSTEE OF THE PUBLIC INTEREST TO ENSURE PROTECTION OF THE HISTORICAL AND ARCHAEOLOGICAL SIGNIFICANCE OF THESE SHIPWRECKS THIS WOULD ALLOW, FOR EXAMPLE, A STATE TO PLACE AN AGENT OR EMPLOYEE ON BOARD A SALVAGE VESSEL TO MONITOR A SALVAGE OPERATION STATES COULD ALSO REQUEST AN AWARD OF A REPRESENTATIVE SAMPLE OF THE ARTIFACTS OR TREASURES RECOVERED DURING SALVAGE WHICH OTHERWISE ARE NOT REPRESENTED IN THEIR STATE MUSEUMS, AND WHICH ARE IMPORTANT TO THE PRESERVATION OF THE NATION'S OR THE STATE'S CULTURAL, HISTORICAL, OR SCIENTIFIC HERITAGE

WITH RESPECT TO SPORT DIVING ACCESS, MY LEGISLATION ACTUALLY GOES FURTHER THEN LEAVING INTACT THE STATUS QUO REGARDING ACCESS BY SPORT DIVERS SPECIFICALLY, H R 2071 PROVIDES A CLEAR, DIRECT FEDERAL STATEMENT TO DISTRICT COURTS REGARDING ACCESS FOR SPORT DIVERS, WHEREAS H R 74, THE BENNETT BILL, CONTAINS ONLY "SENSE-OF-THE-CONGRESS" TYPE LANGUAGE REGARDING SPORT DIVING ACCESS

IN SUMMARY, MY LEGISLATION BALANCES THE CONCERNS OF EACH OF THE MAJOR INTEREST GROUPS INVOLVED IN THIS ISSUE

- O PRIVATE SECTORS SALVORS' EXPLORATION RIGHTS ARE MAINTAINED, SUBJECT TO NEW HISTORIC PROTECTION REQUIREMENTS, THUS MAINTAINING THE INCENTIVE FOR SALVORS TO FIND THESE SHIPWRECKS,
- O STATES ARE PROVIDED NEW OPPORTUNITIES TO INFLUENCE AND MONITOR SALVAGE OPERATIONS THAT THEY DO NOT SPECIFICALLY HAVE NOW HAVE UNDER GENERAL ADMIRALTY LAW, AND
- O SPORT DIVERS WILL ACTUALLY ENJOY EVEN MORE ASSURANCE WITH REGARD TO DIVING ACCESS THAN THE STATUS QUO

FINALLY, ENACTMENT OF HR 2071 WILL PREVENT A SITUATION AS WOULD BE THE CASE UNDER HR 74, WHERE, IN THE NAME OF "ARCHAEOLOGY" AND "HISTORIC PRESERVATION", STATES WILL REGULATE THESE SHIPWRECK EXPLORATION AND DEVELOPMENT ACTIVITIES SO

ONEROUSLY THAT ALL PRIVATE INCENTIVE TO FIND THESE WRECKS IS  
ELIMINATED, AND, AS A RESULT, IMPORTANT HISTORICALLY VALUABLE  
WRECKS WILL VANISH FOREVER INTO THE DEPTHS OF THE OCEAN FLOOR  
ALONG WITH THEIR HISTORICAL SIGNIFICANCE AND TREASURES

# # # # #

NDS/LFN

Mr LOWRY Fine Thank you, Mr Shumway  
 Congressman Bennett, again, congratulations to you on your pursuit of this important subject If you would like to just proceed?  
 Mr BENNETT I would like to make a statement

**STATEMENT OF HON CHARLES BENNETT, A U S  
 REPRESENTATIVE FROM THE STATE OF FLORIDA**

Mr BENNETT Thank you very much Mr Chairman, thank you for allowing me to speak today on behalf of H R 74, the Abandoned Shipwreck Act of 1987 Winston Churchill once said, "The longer you can look back, the further you can look forward " This rings as true today as it did when Churchill first said it

H R 74 is designed to enhance and protect our knowledge of the past which will enrich our future Most of us here today agree on the need to protect important historical artifacts My bill would simply provide for State management of historically valuable shipwrecks found in State waters

Because of recent court decisions, these irreplaceable cultural and recreational resources remain prey to commercial treasure salvors who can operate beyond the bounds of Federal or State oversight My bill would allow States to oversee excavation and ensure access to sport divers at no cost to the Federal Government

This is why I submit this bill as a substitute for archaic salvage law which optimizes taking all artifacts from the sea in exchange for financial reward and puts in place a law like this one that will allow enrichment for the discovery and salvage and, nevertheless, will, under State regulation, preserve historic shipwrecks and their contents for their historic values Eliminating salvage law and utilizing a preservation approach is one-half of this bill

The other half is assertion of ownership in State government so they do not have to go hat in hand to those who excavate historic shipwrecks They basically own it, but the question is asserting it in a way in which it will be noncontested

The basic purpose of H R 74 is for the protection and proper utilization of historic shipwrecks and their environments and contents This is achieved first by assertion of title on abandoned historic shipwrecks in the United States and transferring such title to the State in which the submerged lands containing the shipwrecks are located

This is needed as the result of Federal Admiralty Court decisions that gutted States' antiquities laws, such laws which tried to assist State ownership of historic shipwrecks, set stringent standards for excavation and data recording These measures were enforced by onsite archaeologists With the Admiralty Court decisions, salvagers are effectively on their own to do just as they wish with only their consciences or their pocketbooks to lead them

While court decisions currently deny title of abandoned shipwrecks to the States, they clearly say the United States may legally assert and also transfer to the States This is precisely what this legislation does

My friend and colleague, Norm Shumway, has introduced H R 2071 that ostensibly would protect historic shipwrecks However, H R 2071 leaves admiralty law intact

In remarks last year before the subcommittee, the gentleman from California voiced concern that my bill "does not fully and formally address how to assure historic protection for historic shipwrecks" My feeling is that as long as we have admiralty law intact, there is no way to guarantee adequate protection of historic shipwrecks in State waters So, that part of my bill is essential

I haven't practiced any law for over 40 years, but at one time, I did practice admiralty law in addition to other law I practiced for 10 years in Florida

H R 2071 does in fact establish some reasonable safeguards for historic shipwreck protection However, since it confirms the jurisdiction of Admiralty Courts, it is naturally predisposed toward commercial activity and requires States to argue separately in court for each case to protect shipwrecks This is not only bad for historic shipwreck preservation but for the court system

H R 2071 would enlarge by hundreds of times the already substantial burden and legal costs borne by the State taxpayers in such suits and would increase the case loads and expenses of the Federal court system More importantly, it would force States to grapple for resources that rightly belong to them

Historical artifacts in State waters are no different than historical artifacts on land Imagine someone trying to sell chunks off the Plymouth Rock Of course, this could not happen, but it is the type of thing we leave our historical shipwrecks open to

Last year, Congressman Shumway said of my bill, "it abdicates any and all Federal responsibility for protecting shipwrecks, even those that may be of regional, national, or even international historic significance" In fact, H R 74 does not mandate to the States what they can or can't do with these wrecks Also, H R 74 doesn't deal with shipwrecks outside of State waters

Frankly, I have no problem with expanding this legislation as Mr Shumway suggested to take in legislation outside of State waters nor do I oppose creating guidelines or requiring States to draft historic shipwreck plans before title of historic shipwrecks are shifted to them

Perhaps this committee working on Congressman Shumway's suggestion might want to add provisions along these lines or to use his bill as a base I don't really care It is not a matter of pride of authorship It is a matter of trying to get the matter done in a proper way A compromise bill would be agreeable to me if it was along the lines suggested

However, the key concern here which is shared by numerous archaeological groups as well as the National Governors Conference and President Reagan's Interior Department is State ownership If you want to expand this bill or provide guidelines, fine But let's not gut the main part, namely, State ownership

If this committee can make modifications that won't unduly hurt H R 74's chances of passage, I would expect to support any of those compromises fully

H R 74, besides putting title in the State so that preservation purposes can be achieved, specifically provides that historic shipwrecks shall not fall under the law of salvage This is needed because salvage law is not preservation oriented and has been held

by some courts to apply to historic shipwrecks just as in the case of modern shipwrecks

The Florida State Department of State has said this of that particular provision "These courts have said, in essence, that historic wrecks are owned by no one and that any commercial salvor who can raise shipwreck material can have claim to it There is no provision in admiralty law to require that professional archaeological methods be followed by these salvors despite the historic importance of such sites "

Abandoned shipwrecks in State waters must be taken out of the admiralty courts H R 74 does that H R 2071 doesn't H R 2071 affirms the law of fines and the law of salvage and the applicability of admiralty law Admiralty law is bad for historic shipwrecks since it is designed to provide incentives and rewards for the return to commerce of goods in danger of being lost at sea

H R 74, while it does not outlaw private salvage, does give the States more control of the artifacts, artifacts in their own waters, artifacts they should be able to manage, and this legislation would accomplish that

This is a preservation issue, and archaeological issue, and also a States rights issue This is not an attack on the entrepreneur, as some have tried to frame it People will always be fascinated by finds of historic shipwrecks, but once that fascination is gone, what is left? If the answer is only a ransacked piece of junk and expanded billfolds, the answer is wrong

Mr Chairman, this bill's time has come Senator Bradley and 11 Senators have introduced similar legislation in the Senate Seven sponsors are Democratic, including the former chairwoman of this subcommittee, and four are Republican In the House, we have 34 cosponsors from all the political spectrum

Similar legislation passed the House in the 98th Congress but wasn't considered by the Senate Since then, this legislation has been amended to deal with the legitimate concerns of sport diver groups As a result, H R 74 is much improved over past legislative efforts in this area

This is the historic 100th Congress What better time to protect historic shipwrecks? Let's move to protect history Let's act now to guarantee that we can look back to those who sailed the coasts of our American States before there even was an America and bring this knowledge forward to the people who are living in our time so that they can utilize it for the development of thoughts and historic preservation and the riches to come from that in our day

Thank you

Mr LOWRY Thank you, Congressman Bennett

Mr BENNETT I will go up here, if it is all right

Mr LOWRY That will be excellent

Mr BENNETT Thank you

Mr LOWRY Thank you

Mr BENNETT Unless somebody has a question

Mr SHUMWAY I have one

Mr LOWRY Mr Shumway has a question

Mr SHUMWAY Mr Chairman, I appreciate Chairman Bennett's remarks here today I think your remarks honestly recognize and state the concerns that I have raised in the past

I have always maintained that ownership, whether it is Federal or State, is not the main question. The main question is whatever route is taken on the Federal-State ownership question, it must include clear-cut and legally binding provisions to protect the overriding interests of sport divers, private salvors, and historic preservationists. We just can't assume that States will adequately balance these sometimes competing interests, because they are sometimes in conflict with each other.

The gentleman from Florida, I believe, this morning has opened the door for a compromise whereby States can be afforded management jurisdiction provided they meet certain minimal Federal standards. To follow up on this, I would just like to ask one question.

As your statement explains, you are acutely aware of the need to protect important historic artifacts, in this case, historic shipwrecks. Your bill seeks to do that by handing over title to States to manage and protect these historic shipwrecks. However, there are no requirements for States to manage shipwrecks in a manner that balances the overriding concerns of competing interest groups—sport divers, salvors, and archaeologists. Rather, it contains sort of sense of the Congress type language that instructs States that they should balance these interests. It seems to me that there ought to be a more clear determination made in that regard.

Would you, therefore, Mr. Bennett, be willing to strengthen those provisions by making them requirements on States before States could actually exercise management jurisdiction?

Mr. BENNETT: Yes, I would, and I think the States would agree.

Mr. SHUMWAY: I thank the gentleman.

Mr. LOWRY: Thank you very much, Congressman, and you will be joining us up on the panel, I assume.

Mr. BENNETT: Thank you.

Mr. LOWRY: Thank you.

Our next panel will be the administration panel. Dr. Bennie Keel, Departmental Consulting Archaeologist, Department of Interior, and Herbert Kaufman, Deputy Chief, Marine and Estuarine Management Division, National Oceanic and Atmospheric Administration.

Thank you very much for joining us today. We look forward to your testimony. Dr. Keel, would you also introduce for the record the assistant you have with you?

Dr. KEEL: Yes, Mr. Chairman. It gives me great pleasure to introduce Ms. Michele Aubry who is on my staff. She will give the clerk her name, et cetera.

Mr. LOWRY: Thank you. Then, if you will just proceed ahead, Dr. Keel, with your testimony. It will all be placed in the record if you can summarize.

**STATEMENT OF DR BENNIE KEEL, DEPARTMENTAL CONSULTING ARCHAEOLOGIST, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY MICHELE AUBRY, ARCHAEOLOGICAL PROGRAM SPECIALIST, OFFICE OF THE DEPARTMENTAL CONSULTING ARCHAEOLOGIST, DEPARTMENT OF THE INTERIOR**

Dr KEEL Thank you, Mr Chairman We have provided you with our formal testimony in writing, and I want this morning to present to you a very abbreviated version of that to make the specific points in as brief a time as I possibly can that we have concerns with

On behalf of Secretary Hodel, I appreciate the opportunity to present the views of the Department of the Interior on the legislative proposals before the subcommittee today dealing with abandoned historic shipwrecks

We believe that H R 74 would provide a mechanism for the protection of the Nation's sunken historic shipwrecks We recommend its enactment if amended as suggested below

In addition to the States outlined in section 3(6) of H R 74, the Northern Mariana Islands should be added and language should be added in section 3(7) that would include lands beneath the navigable waters of the Northern Mariana Islands

Section 5 of H R 74 would direct the Advisory Council on Historic Preservation to publish advisory guidelines for the protection of shipwrecks and properties Because the Departments of the Interior and Commerce have the most expertise in the preservation of shipwrecks, we recommend that section 5 be amended to direct these two departments to develop and jointly publish guidelines for the identification, evaluation, and protection of shipwrecks instead of the Advisory Council on Historic Preservation This would ensure consistency with two previous Congressional mandates

First, in 1980, the Congress directed the Department of the Interior to issue standards and guidelines for the preservation of historic properties In response, the Department issued the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation in September of 1983 These advisory standards and guidelines address the full range of historic preservation management issues They are applicable to all classes of archaeological and historic properties whether terrestrial, buried, or submerged

Second, in 1984, the Congress directed the National Park Service, in cooperation with the maritime preservation community and National Trust for Historic Preservation, to conduct a survey of historic maritime resources, including those of the National Park Service, to recommend standards and priorities for the preservation of those resources, and to recommend the appropriate Federal and private sector roles in addressing those priorities

In response, the National Park Service has initiated a number of activities relevant to H R 74, including First, undertaking the inventory of shipwrecks, Second, documenting shipwreck sites in the National Park System, Third, assisting the National Oceanic and Atmospheric Administration of the Department of Commerce in using existing National Park Service standards and guidelines in the U S S *Monitor* archaeological project and in drafting standards for the preservation of submerged cultural resources in national

marine sanctuaries and protected areas, and fourth, developing and issuing a technical bulletin that provides instructions for applying the National Register of Historic Places for nominating shipwrecks and historic vessels to the Register

We believe it would be more appropriate to expand the existing standards and guidelines to include more specific guidance on the full range of preservation issues relating to historic shipwrecks rather than to involve yet another agency and yet another set of guidelines

Section 6(a)(2) of H R 74 would restrict assertion of title to abandoned shipwrecks embedded in coralline formations which are in some manner protected by a State The Department of Commerce, through its marine sanctuaries program and its marine fisheries program, is the only agency that is able to designate, protect, and manage certain coral resources in any consistent, nationwide fashion Therefore, we recommend that the words "protected by a State" be deleted from section 6(a)(2)

In addition, section 6(a)(3)(B) of H R 74 would provide for the United States to assert title to any abandoned shipwreck that is on submerged lands of a State when the shipwreck is listed in or determined eligible for inclusion in the National Register of Historic Places, and the public is given adequate notice of site location

The Congress directed Federal agencies to withhold from disclosure to the public locational information if such disclosure would result in a substantial risk of harm, theft, or destruction to the property Therefore, we recommend that the language on notifying the public in section 6(a)(3)(B) either be deleted or amended to state that publication of general locational information on a submerged site rather than specific coordinates would constitute adequate notice to the public Alternatively, we recommend that appropriate explanatory language be included in the committee report to accompany H R 74

We are pleased to see the inclusion of language in section 6(c) asserting and retaining Federal title to any abandoned shipwreck that is located on public lands of the United States or lands controlled by the United States except the Outer Continental Shelf Federal land managing agencies can continue to manage and protect abandoned shipwrecks that are located on lands that the agencies own and administer or hold fee simple title to

However, it is unclear if agencies such as the National Park Service and the Fish and Wildlife Service would be able to continue to manage and protect abandoned shipwrecks that are located on lands that, while within a designated unit of the National Park System and the National Wildlife Refuge System, are held in fee simple title by State or local government agencies or other parties

We believe that in those instances when a Federal agency is, by agreement or law, managing historic shipwrecks located on lands under the jurisdiction of but not owned by the agency, the U S Government should also assert and retain title to such shipwrecks We recommend that additional language be inserted in section 6(c) specifically exempting from transfer to the States any shipwreck that is located on lands which are owned or administered by the United States Alternatively, we recommend that explanatory language be included in the committee report

In addition, section 6(c) would claim title for Indian tribes or individual Indians to any abandoned shipwreck that is located in or on Indian lands since, under the Archaeological Resources Protection Act of 1979, cultural resources located on Indian lands are owned by the Indian or the Indian tribe having jurisdiction over the land. The addition of such language in 6(c) would be consistent with the definition of the terms "public lands" and "Indian lands" presented in section 3(8) of the bill.

We also recommend that additional language be inserted in section 6 specifically exempting from transfer to the States any shipwreck, regardless of its location, that is under control of or claimed by a Federal agency such as the U.S. Navy. Alternatively, the term "abandoned shipwreck" could be defined in section 3. This definition would be particularly useful to address questions that could arise should a shipwreck of foreign origin be claimed by another sovereignty.

We would like to assure you that we are aware of one more point which has not been addressed in the bill. H.R. 74 would not provide new Federal authority for the supervision or control over historic shipwrecks on the seabed or subsoil outside the State boundaries. The Department of Commerce advises us that under the Marine Sanctuaries Act, authority exists for Federal ownership and management of certain historic shipwrecks seaward from the 3-mile limit of the coastline. The Department of State also has advised us that under customary international law, such authority exists, although it is limited.

The United States has ownership rights and exclusive jurisdiction of sunken U.S. warships wherever they might be. In addition, the United States can restrict the activities of U.S. nationals with respect to any shipwreck beyond the territorial waters of the United States. Finally, article 303 of the 1982 Law of the Sea Convention which reflects customary international law grants nations general jurisdiction over shipwrecks within a "contiguous zone" which, in the case of the United States, extends 12 miles from our coasts.

We believe that the limited authority in United States and in international law is sufficient, but we want all parties concerned to understand the limits of this authority.

This concludes our comments on H.R. 74. Our views on H.R. 2071 are much briefer in that we do not recommend its enactment.

We firmly believe that the recovery of historic shipwrecks is an archaeological activity, not a maritime salvage activity. The remains of historic shipwrecks, including whole or fragmentary pieces of the ship's hull, rigging, tackle, apparel, armaments, cargo, and contents, should be left intact on the seafloor until they can be scientifically recovered. Once excavated, the remains should be preserved in museums for the benefit of the public, not sold for personal gain.

This is why we have consistently recommended enactment of legislation through the past several years such as H.R. 74 that would remove the salvage of abandoned historic shipwrecks from the purview of admiralty and maritime jurisdiction.

Because H.R. 2071 would maintain the jurisdiction of admiralty courts over the salvage of abandoned historic shipwrecks, we do not

recommend its enactment We recognize that H R 2071 would establish a mechanism for directing salvors to conduct salvage operations according to historic preservation requirements that might be placed by the U S district courts, but the majority, if not all, of the remains recovered would be awarded to the salvor

It would also establish a mechanism for directing salvors to halt salvage operations if the Court determines that the shipwreck is of such significance that it should be preserved and excavated scientifically However, this latter mechanism would require that a State or Federal agency request, on a case-by-case basis and at its own expense, that the pertinent United States District Court either place additional historic preservation requirements on the salvor or instruct the salvor to halt salvage operations

Implementation of H R 2071 would place a great financial burden on the State and the Federal agencies that intervened in salvage litigation For example, an agency that was successful in intervening and halting salvage operations at a historic shipwreck would be required to first, post bond for expenses, costs, and fees that may be incurred by the salvor in defending the request, second, reimburse salvors for expenses and costs incurred to date, and third, pay archaeological teams to complete the scientific excavation of the shipwreck

H R 2071 would make ineffective existing State laws that protect historic and prehistoric archaeological resources located on State lands and submerged lands It is unclear if it would also make ineffective existing Federal laws that protect such resources located on public lands and on lands under the control of the U S Government

Mr Chairman, this concludes my statement on H R 74 and H R 2071 I would certainly be happy to try to answer any questions that you or the members of the subcommittee may have

[Prepared statement of Dr Keel may be found at the end of the hearing ]

Mr LOWRY Thank you, Dr Keel

Mr Kaufman, if you would give your testimony, then we will ask questions of the entire panel

**STATEMENT OF HERBERT KAUFMAN, DEPUTY CHIEF, MARINE AND ESTUARINE MANAGEMENT DIVISION, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

Mr KAUFMAN Thank you, Mr Chairman and members of the subcommittee

My name is Herbert Kaufman, and I appreciate the opportunity to appear before you today on behalf of the Department of Commerce to comment on H R 74 and H R 2071, two bills that address abandoned historic shipwrecks

The bills differ in approach H R 74 would remove historic abandoned shipwrecks from the jurisdiction of admiralty law and allow States to protect those wrecks as archaeological sites similar to historical and cultural resources on land H R 2071 would continue to treat abandoned historic shipwrecks as property subject to the rules of salvage under admiralty law, although additional consider-

ation would be given to historical and cultural factors by the U S district courts sitting in admiralty

The National Oceanic and Atmospheric Administration [NOAA], supports the enactment of H R 74, the Abandoned Shipwreck Act of 1987, but is seriously concerned with the approach taken in H R 2071, the Abandoned Historic Shipwreck Protection Act of 1987 I will first comment on H R 74 and then discuss H R 2071

Modern technological advances have given man greater access to the sea than ever before, opening vast opportunities for the development of marine resources such as oil, gas, and minerals Accompanying these advances has been a general recognition of the need for a balance between the use of resources and preservation of the environment Other marine resources not commonly associated with these resources but also requiring a balance between resource use and preservation are submerged cultural resources, specifically, abandoned historic shipwrecks Currently, admiralty law recognizes only the commercial value of abandoned shipwrecks The recognition that abandoned shipwrecks have additional values would be a first step toward developing mechanisms for multiple use of these resources

In addition to their recognized commercial value, abandoned shipwrecks have recreational, historic, and archaeological values which may be of local, regional, national, or international significance Under the National Marine Sanctuary Program established by title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended in 1984, the Secretary of Commerce is authorized to designate areas of the marine environment as national marine sanctuaries to preserve their conservation, recreational, ecological, historical, research, or aesthetic values, including sites having cultural, archaeological and paleontological significance These designated sites may include historic shipwrecks having national significance and, under certain conditions, may be located in ocean and coastal waters over which the United States exercises jurisdiction, including the Great Lakes and submerged lands, if as to sites within State waters, the designation is approved by the given State International law limits the authority of the United States to exercise jurisdiction over abandoned shipwrecks located outside the territorial waters of the United States

The intent of the Marine Sanctuary Program is to protect and manage special marine areas for the long-term benefit and enjoyment of the public Marine sanctuaries allow, to the maximum extent feasible, multiple uses of the site by public and private interests, including recreational and commercial uses that do not threaten the basic integrity of a site's resource values

H R 74 would provide for the protection of abandoned historic shipwrecks by asserting United States jurisdiction over abandoned shipwrecks embedded in the submerged lands of a State, in coral-line formations protected by a State on its submerged lands, or on submerged lands of a State when the shipwreck is included in, or eligible for inclusion in, the National Register of Historic Places, and the public is given notice of the location of the shipwreck The title of the United States would be transferred to the State in or on whose submerged lands a shipwreck is located Abandoned shipwrecks in or on the public lands of the United States, or lands

which are controlled by the United States—except the Outer Continental Shelf—would remain the property of the US Government.

H R 74 also would provide that the laws of salvage and finds would not apply to abandoned shipwrecks to which title is asserted and transferred under section 6. Finally, States to which title is transferred would be encouraged to protect natural resources, to guarantee recreational exploration of shipwreck sites, and to allow public and private salvage activities consistent with protection of the historical values and environmental integrity of shipwrecks.

The problem of protecting and preserving abandoned shipwrecks while not restricting human use and development of these marine resources, is not limited to the United States or any particular region or ocean. It is a worldwide problem. By removing historic shipwrecks found within State waters from the jurisdiction of salvage law and recognizing their valuable historic and cultural values, the United States, under H R 74, would be following the example of nearly every other western nation. As early as 1952, several international assemblies and conventions—including the United Nations Educational, Scientific and Cultural Organization, International Council of Museums, International Congress of Maritime Museums, and the Council of Europe—identified the need for cooperation in shipwreck protection not only among governments in the international community but among professional and amateur archaeologists, underwater explorers, and sport divers. H R 74 represents an important first step in developing the necessary State-national cooperation in the United States by formulating advisory guidelines for dealing with a portion of our underwater cultural heritage. We recommend that the Department of Commerce and the Department of the Interior jointly develop and publish guidelines for the protection of shipwrecks and properties, instead of the Advisory Council on Historic Preservation, as provided by the bill.

The study of historic shipwrecks provides an invaluable opportunity from several disciplinary viewpoints to study the physical remains of man's activities in and on the sea. In many instances, the wrecks are well preserved and relatively undisturbed by man or the marine environment.

Historic shipwrecks should be viewed as valuable resources of primary source data on man's maritime activities that are unavailable elsewhere. The potential of these resources is restrained only by our technology and our attitudes towards their value and use. Similar to the fragile coral reefs that can be irreparably damaged by individuals unaware of their ecological sensitivity, historic shipwrecks should not be viewed as resources only of economic value. Sport divers have long enjoyed wreck diving as a form of recreation due to the abundant sea life found in the vicinity of artificial reefs and have come to recognize the need for protection and preservation of their favorite diving spots. Additionally, the growth of marine archaeology as a science in recent years represents an unprecedented opportunity for properly trained divers to explore the past by discovering and analyzing historical material on the seafloor. Thus, there is increasing recognition that shipwrecks possess historical and cultural values and, in certain instances, these values will be greater than those of traditional salvage. H R 74

would be helpful in this regard because it would effectively place historic shipwrecks outside the jurisdiction of admiralty law, which currently recognizes only the commercial value of abandoned historic shipwrecks

The famous Civil War ironclad USS *Monitor* was designated as the Nation's first national marine sanctuary in 1975 for its historic, cultural, and technological values. It also was the first and, to date, remains the only sanctuary designated exclusively for a nationally significant historic shipwreck.

NOAA's fundamental approach to the management of the Monitor National Marine Sanctuary recognizes the importance of the shipwreck as an irreplaceable and non-renewable cultural resource of national significance. Due to the ship's historical significance and the high public interest in it, there is consensus that the site warrants careful and deliberate planning so that maximum return and benefit can be derived for the American public. The manner in which the Monitor is treated can establish a precedent for the treatment of other nationally important historic shipwrecks in the United States in the future.

All historic shipwrecks, however, do not require treatment similar to what we are giving the Monitor. Few ships in US history are as nationally significant. At the International Congress of Maritime Museums in the fall of 1985, it was confidently stated that we will not accept anything less for the Monitor than the standards of preservation achieved by the WASA, the Bremer Cog, and the Mary Rose projects in Europe. Future generations of Americans will surely sit in judgment of what we accomplish. However, regardless of the outcome, the record will be clear that we took seriously our responsibility to save the past for the future and that we preserved for them as much of the Monitor as we could in our time.

The down side of any archaeological excavation and recovery, besides its cost, is that it can never be repeated. It can only be done once. So, the decision must be made how to obtain the maximum potential from the resource, and we must be prepared to preserve its value before we risk the destruction of the site through archaeological excavation. Additionally, no artifacts should be recovered unless they can be properly conserved and have been previously integrated into a long-term plan for the management of the resulting artifact collection. Previous projects, both here and abroad, have taught us that to proceed with any recovery plans before questions concerning conservation, display, and required funding are fully answered will surely jeopardize the resource and the success of the project.

NOAA is studying the relationship of H R 74 to Title III of the Marine Protection, Research, and Sanctuaries Act and will submit a report at a later date. We understand that other Federal agencies, including the Department of Justice, will be submitting reports to you on H R 74.

If we are to preserve the values of these shipwrecks for the greatest benefit of the American people, then H R 74 is a useful first step. Only by removing historic shipwrecks from the jurisdiction of admiralty law can we begin to treat these important cultural resources within the same care as similar resources on land.

The National Oceanic and Atmospheric Administration has reservations concerning the provisions of H R 2071 H R 2071 would effectively remove any basis for State jurisdiction over, or claim to a separate controlling interest in, abandoned historic shipwrecks on, in, or under State owned submerged lands This approach differs significantly from H R 74 and is inconsistent with this Administration's efforts to ensure that, absent a preeminent national interest, States should assume responsibility for the management of resources within their jurisdiction

H R 2071 authorizes U S District Courts sitting in admiralty to specify the manner of salvage adequate to protect the historical and archaeological significance of an abandoned shipwreck Because H R 2071 would assign a normally administrative function to a judicial body, it is questionable whether such a method would be practical and effective in protecting the public interest in the archaeological and cultural values of abandoned shipwrecks In addition, H R 2071 would assign significant burdens of proof and potential costs to Federal and State public interest trustees in any effort to assert or protect a public interest in altering or preventing salvage activities which affect abandoned historic shipwrecks These obstacles would provide a significant disincentive for action by public interest trustees and, as a result, could effectively discourage protection of abandoned shipwrecks for their archaeological and historical value

Mr Chairman, that concludes my prepared remarks I will be happy to answer any questions you or other members of the subcommittee may have

Mr LOWRY Thank you, Mr Kaufman

To either of you, how important is the area beyond the States, beyond the 3 miles? Is there quite an incidence of historic shipwrecks in the Federal waters beyond the State, and how important is that to be addressed in this legislation or in legislation that we mark up?

Mr KAUFMAN The majority of historic shipwrecks are indeed found closer to the coastal States I don't want to deemphasize, however, the importance of protecting shipwrecks beyond the States' boundaries But, again, the majority of those wrecks are going to be found in the boundaries of the States

Mr LOWRY Do either of you—

Dr KEEL I would concur in that assessment

Mr LOWRY Do either of you think the legislation should address Federal waters beyond the State?

Dr KEEL I believe that, in terms of the approach that the Department of Commerce and NOAA are taking in addressing important nationally significant historic shipwrecks under their Marine Sanctuaries Program, they can establish those beyond the three-mile limit I think that is a good first step in controlling those shipwrecks I would want to give some more consideration to what kind of protection ought to be given to those and other shipwrecks beyond the State waters

Mr KAUFMAN If I may address that, I think that there ought to be a provision in any legislation that enunciates the Federal interest in shipwrecks beyond the coastal limit, and the reason is because the protection and preservation of historic and cultural re-

sources, including shipwrecks, is clearly stated in title III of the Marine Protection, Research, and Sanctuaries Act

I think that if comprehensive shipwreck legislation does not identify and explain the relationship between any new shipwreck legislation and title III then there is indeed the problem of jurisdiction remaining and a possible problem in preserving or protecting the resource. So, that still exists if indeed there is no clear explanation of the relationship between title III and any new shipwreck legislation

Mr LOWRY If the legislation that this committee works on does address historic shipwrecks outside the State waters, the management responsibility would lie where within the Federal agencies? NOAA, Parks, where? How would you work that out and what would be the recommendation?

Mr KAUFMAN Well, I would—

Dr KEEL I think, at the moment, my recommendation would be it should be within NOAA. I will stick with that.

Mr KAUFMAN And if I may address that also, yes, I agree with that. I think that title III provides the authority for the protection, for the comprehensive and coordinated conservation and management, research, and education and interpretation of cultural resources, including shipwrecks. Thus, compared to legislation that only provides protection, title III represents a significantly broader mandate of cultural resource management.

Mr LOWRY Should there be minimum Federal guidelines before the transfer of title to the States if legislation such as Mr Bennett's was to come out of the committee? Should there be minimal Federal guidelines for historic preservation and archaeology reasons?

Mr KAUFMAN I would say yes, sir.

Mr LOWRY Does this legislation, H R 74, do that now?

Dr KEEL No, sir. I don't believe it does require any kind of formal guidance before transfer.

I would like to comment in regard to the necessity of Federal guidelines prior to transfer. When we were reviewing and studying previous bills regarding shipwrecks, we looked at a number of the existing State management procedures, those in the State of Florida, my native State, those in Texas and New Jersey and other places. We felt that basically those States which had dealt at the State level with protection of these kinds of resources within their waters were doing a pretty good job.

I certainly would have no objection at all to seeing that introduced and to become part of the legislation that there would be minimal guidelines developed prior to the transfer of title. I would also recommend to you and the other members of the committee those guidelines be developed as we recommended in our testimony and circulated for public comment.

Mr LOWRY Thank you.

Mr Shumway?

Mr SHUMWAY Dr Keel, in developing those guidelines, would you limit the consultation to the Federal agencies, or would you reach out and embrace private entities such as salvors, State historic preservation officers, historians, and others who might have interests in these shipwrecks?

Dr KEEL Absolutely, absolutely

Mr SHUMWAY You would, the latter?

Dr KEEL As we developed the guidelines, we would certainly circulate initial drafts Even before that, we would make an announcement that we were doing to develop such guidelines and that we would like to hear what the people's concerns are Once we had those comments, we would analyze them Based on the suggestions that came from other Federal agencies, the public in general, and whatever specific constituencies, sports divers and so on, we would take all of that into account, and then we would go through several drafts and all of the involved people would have numerous opportunities to comment on it prior to its becoming effective

Mr SHUMWAY Mr Chairman, as you realize, I can appreciate the administration's warm endorsement of my legislation, and I certainly concur with the States' rights point of view that has been expressed by this panel I feel very strongly in that regard as well, however, I think that there is a national interest that has to be dealt with in this legislation, and that is why I have introduced HR 2071

Dr Keel, let me ask you, do I read your testimony correctly—and I am looking at page 7 when you state "once excavated, the remains should be preserved in museums for the benefit of the public, not sold for personal gain" Do you see any role at all for private salvors, or do you believe that private salvors, if they are subject to archaeological guidelines, could responsibly conduct salvage activities on these shipwrecks?

Dr KEEL Sir, I would like to respond with this We view historic shipwrecks as cultural resources that should properly be considered and dealt with for the benefit of the American public Presented in those terms, it would not be impossible to develop a situation in which private industry could play a role in the excavation, recovery, interpretation of material from—

Mr SHUMWAY You say it would not be impossible?

Dr KEEL It would not be impossible

Mr SHUMWAY That is encouraging

Dr KEEL I think that, for me, one of the differences, and excuse the expression, it seems one of the difficulties in regard to dealing with these types of resources is who is going to be in the catbird seat? Who is going to make the decisions for the public benefit, public officials, State officials, Federal officials, historians, archaeologists, museum interpreters, or people who are involved in this primarily for personal enrichment, monetary enrichment?

I think that is one of the areas where we—

Mr SHUMWAY Well, I think we are all concerned about those things The question is just how we best address them, through the admiralty system or through some other system? And I think that is the point of departure Isn't that right?

Dr KEEL Yes, I think so

Mr SHUMWAY I share your concern about those values

Dr KEEL I would agree with you

Mr SHUMWAY Mr Kaufman, let me ask you, in your testimony you referred repeatedly with references to the Monitor shipwreck, for example, and then you talked about the shipwrecks having national significance Do you think States, assuming they acquire

title to these shipwrecks, would have the same kind of priorities as the nation may have in managing them, in allowing access to them, if indeed they are national historical shipwrecks?

In other words, if the Monitor were just now discovered and we had not already taken the steps to protect it that we have, do you think that the State would do what we as a nation have done, express the same kind of priority regarding it as the nation has done?

Mr KAUFMAN I do believe that, Congressman Shumway Many States already have some very aggressive programs in place

Mr SHUMWAY And yet some States don't have anything at all Isn't that correct?

Mr KAUFMAN And some have nothing in place I do believe that with some guidance perhaps from Federal agencies, such as the Department of Commerce and the Department of the Interior, as well as using models of States which have put together effective programs in preserving and conserving the resource, that other States could indeed do the same

Mr SHUMWAY In all of your zeal to recognize and preserve States' rights, would you support minimum Federal requirements which would be binding on States in this regard?

Mr KAUFMAN Minimum Federal requirements, yes

Mr SHUMWAY Thank you, Mr Chairman

Dr KEEL Mr Shumway, may I make a comment in regard to your question as well, in terms of what the States would or would not do? Of course, it is difficult for any of us to predict what might happen there, but I would also want to bring to the committee's and your attention that we do have a system of National Historic Landmarks wherein many, or the vast majority of them, in fact, are taken care of excellently, not only by States but also by private owners

It would be possible, in my opinion, for shipwrecks that obviously have a national importance to receive the same kind of recognition and oversight as part of the section 8 annual report requirement in National Historic Landmark legislation to assure that owners are taking proper care of these nationally important wrecks So, there is opportunity here

Mr SHUMWAY Thank you

Mr LOWRY Thank you

The gentleman from Florida

Mr BENNETT I just want to emphasize that if there are improvements suggested by anybody here to this legislation I have introduced, I would be glad to accede to it Actually, a lot of the language in the bill that is before us now has come about because of particular people asking that certain interests be protected

On page 4, the right of access states the position of the Federal Government to protect natural resources, the habitat area, to guarantee recreational exploration of the site, and allow for public sector recovery and private sector recovery of shipwrecks Then, the next section, section 5, provides for a council on historic preservation which has already been established by law, and they shall publish guidelines that would carry out the section before that

So, it is all intended to do the things that have been suggested here, but if the committee wants to tighten up on it, as far as I am concerned, that is a positive thing

These words came about, however, as a result of particular people suggesting they would like to improve the legislation, and I am not sure it couldn't be improved more by making it more binding. At the present time, it is not all that binding because in section 4 it says that the Federal Government's position is that these things shall be taken off and the guidelines in the next section are to be set up by that council.

So, I would assume the Federal Government wouldn't allow this to transpire under this legislation unless something consistent with this legislation was passed, but you could say that this title wouldn't even go to the State—that would be a way of saying it—unless they did comply with certain regulations the Federal Government would want.

The main conversation I am having here at this point is I would hope the Department of the Interior which is really I guess the most knowledgeable department in this area, would come forth with specific suggestions as to changing the language of this legislation, if they would, because I would hate to see this legislation die because its friends all want to make it better.

In other words, it has already gone through that process as best as I can do it. I have tried to be as kind and as thoughtful as I could to everybody, private sector like Mr. Fisher, divers that want to do it recreationally, all this sort of thing. I attempted to do everything they wanted to do. The only thing that is lacking in it is, I guess, an absolute prohibition that you do other than what is in this legislation, because it now is left pretty much up to the States.

Mr. Shumway's suggestion, I think, is an improvement, that is, to have it real clear in this legislation that the Federal Government does control the things outside of the State boundaries. I think that is an asset. As to whether or not we have to act on that or not in this legislation is another matter.

But I think the legislation would be improved by asserting title to that outside of the State boundary.

I would hope the Department of the Interior might come forth with specific language. Is there a possibility you might do that?

Dr. KEEL: Yes, sir. We will be more than pleased to do that.

Mr. BENNETT: It would be helpful if you could, because I would like to move this legislation forward, and, as I say, I wouldn't want it to be killed by its friends. It could well be. In other words, everybody wants to improve it, and it has already been through this one 2-year period, and to go through another 2-year period for more perfection, this represents, I think, a kindly and reasonable approach to everybody who had an objection, and it seems like to me it is a nicely worded bill.

But if you do want to tighten it up like Mr. Shumway wants to tighten it up and be sure the Federal Government protects every national asset that maybe is lying out there, including offshore beyond the States and including some requirement of the States, I don't think there would be any objection of the States to live with that kind of an arrangement. They are not asserting title beyond their State boundaries.

The two essential things in this legislation are to give the title to the States so we don't go through all this litigious situation which allows wealthy people to do in the preservation aspects of our coun-

try That is the one thing about it The other thing in this legislation is to get rid of admiralty law, because admiralty law is founded on something entirely inconsistent with what we are trying to do here

If you don't get rid of admiralty law and you don't assert the title to the States, this legislation is a nothing But if you do those two things, the improvements Mr Shumway suggested are entirely agreeable to me

I am just modestly trying to do what, as I see it, he wants to do even better, and I would be glad to do it even better with him, and I would like to have you in the Department of Interior come forth as promptly as you could with legislation so we could move this forward

Dr KEEL Yes, sir I will have our specific language to you just as quickly as possible

Mr BENNETT Thank you very much

Dr KEEL Thank you, sir

[The information was not received at the time of publication ]

Mr LOWRY The gentleman from New Jersey

Mr SAXTON Thank you, Mr Chairman

Dr Keel and Mr Kaufman, in the next panel, if I may jump ahead just a little bit, we are going to hear testimony from people in New Jersey, Florida, and South Carolina who have been involved with this subject in trying to promote the preservation, protection, and access to abandoned shipwrecks Obviously, from reading through their testimony, it appears there has been a level of frustration experienced by those—at least who are here—in trying to accomplish the goals that they think are important

Just for the record and for the edification of the members of this panel, can you specifically lay out—and you have touched on this in your testimony and perhaps in some depth—for us what you think the problems are with existing law and the confusion that perhaps existing law mandates or makes part of this system that has frustrated so many who are interested in this subject of shipwreck preservation?

Dr KEEL Yes, sir The simple fact is that shipwrecks come under admiralty law, as Mr Bennett has pointed out, which is based on recovery for profit The States of New Jersey, Florida, Delaware, Texas, and others that have tried to deal with these shipwrecks as historic resources for the benefit of the people have been frustrated by the courts' viewing of historic shipwrecks as property to be salvaged

So, that is the key to the difficulty

Mr KAUFMAN I would like to echo that Generally, the problem is to clarify the jurisdiction where these shipwrecks fall Some States have implemented some very fine programs such as Florida, Texas, South Carolina, North Carolina, and Michigan to protect the resources, while other States don't have any such programs

There is a question as to whether these programs are indeed constitutional The status quo now is that when these cases go to the courts, shipwrecks are indeed viewed as salvage prizes and are treated as if they were an eminent peril That recognizes only the economic value and disregards the archaeological, historic, and cultural values

The salvors' primary interest is the economic gain, while the archaeologists' interest is obtaining information from the resource. Because of this inherent conflict, the archaeological and cultural values are continually superceded by the economic drive under admiralty law. That, I believe, is the problem as we see it today.

Mr SAXTON: Mr Kaufman, are you familiar with any instances where States have attempted to gain ownership title to shipwrecks and what the results of those attempts have been?

Mr KAUFMAN: I would have to research that, sir. I would be happy to provide that for the record.

[Material was not available at the time of publication.]

Mr SAXTON: It is my understanding that because there is some confusion here that one might assume that there have been attempts on the part of States to gain title where they have been frustrated in one way or another.

Mr KAUFMAN: There is, yes. As far as the results, again, I would like to—

Mr SAXTON: Dr Keel, did you want to comment on that?

Dr KEEL: Yes, Mr Saxton, let me comment on that. I am sure you will hear, and perhaps a better group to address it are those people who are going to be testifying from Texas and South Carolina, but the States, for example, the State of Virginia in dealing with Yorktown—that is a Revolutionary War vessel that is down there in Virginia that they are doing a recovery program for the public interest. I don't believe there has been any specific conflict over the State asserting title to it, and there are others around. I can't mention the vessels by name, I am sorry, but there are some around.

Mr SAXTON: Thank you.

Mr LOWRY: Thank you, Mr Saxton.

The gentleman from South Carolina.

Mr TALLON: Mr Chairman, thank you.

I just would like to thank the panel for their testimony. I would like to thank you for holding this hearing, and I appreciate the subcommittee's interest.

In my opinion, we have a model program in South Carolina that we have wanted to hear a little bit more about. I appreciate Mr Shumway's interest with his legislation, and I am a cosponsor and supporter of Mr Bennett's bill which I think can go a long way to avert potential problems that might arise if we don't enact this legislation.

Thank you, Mr Chairman.

Mr LOWRY: Thank you, Mr Tallon.

We appreciate the testimony of the panel, and our staff will be communicating with you, in the near future as we move along on this. Thank you very much.

Dr KEEL: Thank you. It is a pleasure to appear.

Mr KAUFMAN: Thank you.

Mr LOWRY: The next panel is our State panel. Mr John Weingart, director, Division of Coastal Resources, State of New Jersey, Mr James Miller, Bureau of Archaeological Research, Division of Historical Resources, State of Florida, Mr Alan Albright, South Carolina Institute of Archaeology.

Gentlemen, thank you very much for taking your time to help us out today. If we would just start off, in the way I read them Mr Weingart, if you would start off, your statements will be entered into the record, and you can just summarize and tell us what you might care to tell us.

**STATEMENT OF JOHN WEINGART, DIRECTOR, DIVISION OF COASTAL RESOURCES, STATE OF NEW JERSEY**

Mr WEINGART Thank you Thank you, Mr Chairman, and members of the committee, for holding this hearing.

My name is John Weingart. I am director of the Division of Coastal Resources for the State of New Jersey.

New Jersey has more than 3000 shipwrecks and no State law specifically addressing their use or management. As a result, we respond to anyone expressing interest in one of these wrecks be they an historian, archaeologist, fisherman, recreational diver, or commercial salvor with a process that is confusing, ad hoc, and generally unproductive.

The primary reason we have no State shipwreck management act is the belief of our attorney general that current Federal-State roles in this area are so unclear that our State Legislature should, if possible, wait for a clarifying act from Congress. I believe H R 74 and the similar S 858 introduced by Senator Bradley would serve that purpose.

I want to briefly describe one experience we have had with an attempt to salvage a shipwreck which is referred to in passing in my written testimony and also will help to answer or respond to some of the questions Congressman Saxton just asked.

This concerns a ship called the *Sindia* that ran aground off Ocean City, NJ in 1901. The ship is thought to still contain 3,000 cases of porcelain and china from Japan and China.

In 1981, two salvors from Maryland approached New Jersey expressing interest in the *Sindia*. Within 2 months of their initial inquiry, the State had issued a State coastal permit to the salvors and had negotiated a contract with them governing the sharing of any profits from their exploration.

The salvors then ran into financial difficulties, and ended up finding new backers. The new backers looked at this agreement and decided to file suit in Admiralty Court saying that the State, in effect, had no jurisdiction in this matter. Then, while the suit was pending, they renegotiated with the State and settled for an agreement that was more cost beneficial to the salvors but still was quite agreeable to the State.

Those backers, too, left, and the salvors got a third set of backers, and the new set of backers looked at the new agreement and again filed suit, and that is where the matter remains today.

So, here we are in 1987, almost 6 years after interest was first expressed in exploring and salvaging the *Sindia* and almost 6 years after all relevant State agencies and the salvors reached amicable agreements on how this should take place. In the case of New Jersey, all relevant agencies included the Office of Historic Preservation, our Division of Fish, Game, and Wildlife, our Coastal Zone

Management Agency, the State Library, a Marine Police, the State Treasurer, and the Attorney General's office

The conclusion we draw from this is that we in New Jersey know how to manage shipwrecks. Like almost all other coastal States, we have a federally approved coastal zone management program expressly designed to help us make decisions that balance competing public goals and rights on and in our coastal lands and waters.

We believe that enactment of H R 74 would free us to better apply that expertise to manage this important resource.

Thank you very much. I will be happy to answer questions later. [Prepared statement of Mr Weingart may be found at the end of the hearing.]

Mr LOWRY: Thank you very much, Mr Weingart.

Mr MILLER:

**STATEMENT OF JAMES MILLER, BUREAU OF ARCHAEOLOGICAL RESEARCH, DIVISION OF HISTORICAL RESOURCES, STATE OF FLORIDA**

Mr MILLER: Mr Chairman and members of the committee, I am Jim Miller. I am the State Archaeologist of Florida, and I am the chief of the Bureau of Archaeological Research. I thank you for the opportunity to appear before you today to state my strong support for H R 74, the Abandoned Shipwreck Act of 1987.

By claiming title to its shipwrecks and artifacts, Florida has been able to manage them for the benefit of historians, its citizens, and its visitors. However, the Federal judiciary has in recent years held that the salvage principles of Federal admiralty law superceded Florida's ownership claims.

Today, this subcommittee is presented with a simple question: Who should manage abandoned shipwreck sites in Florida's waters, the State of Florida which has the expertise and commitment to do so as evidenced by its actions over the past 20 years, or the Federal courts which are clearly not equipped to carry on such a task?

H R 74 resolves this question. It recognizes that Florida has title to and responsibility for managing its underwater historic resources. If you do not resolve this issue, I fear the result will be the commercial exploitation of Florida's shipwrecks with no concern for their historical or recreational significance.

I would like to share some facts with you about the significance of Florida's underwater sites that underscore the importance of this bill to Florida.

Historical documents record more than 300 shipwrecks in Florida between 1523 and 1825.

More than 1,000 shipwrecks of all ages are believed to lie in Florida's waters.

While not all shipwreck sites are historically significant, many do have the potential to produce information and objects about the very early history of our nation not available from any other sources.

Since the mid 1960's, more than 30 historically significant shipwreck sites have been salvaged in Florida waters.

Florida's historic shipwreck sites are uniquely able to contribute to our understanding of the European discovery and settlement of

our Nation as well as our State To do so, however, they must be managed in a responsible way and studied by qualified archaeologists and historians The ability to do this depends upon the existence of a system of control and management with authority to decide which wrecks will be excavated and according to what standards

While the Florida Department of State carried out this responsibility for 20 years, its ability to do so now has been seriously undermined by Federal admiralty jurisdiction Under the present system of law in the southern district of Florida, decisions about management and disposition of shipwreck sites are made on the basis of precedent and pleadings by salvors rather than on the basis of historical significance

The two important products of shipwrecks are information and artifacts The artifacts are not just gold, jewels, or other items of monetary value They include objects like tools, weapons, rigging, ship's structure, pottery, armaments, personal items, things that tell the story of life at sea and in the New World

Before artifacts can be used for studies and for exhibit in museums, they must be conserved to avoid disintegration To this end, Florida has spent over \$2 million since 1970 conserving its artifacts The State's Research and Conservation Laboratory is recognized as one of the finest facilities of its kind in the world

Shipwreck artifacts owned by the State make up an important study collection of 17th and 18th century material, but more important, they are available on loan to other museums for exhibit and study Since 1975, Florida's shipwreck artifacts have been loaned at no charge for 41 permanent and travelling exhibits They are now on display in 17 museums, and both national and international travelling exhibits are now being arranged

In addition, Florida is in the process of establishing its first archaeological underwater preserve where sport divers will be able to view the interpreted remains of a vessel from the 1715 Spanish Plate Fleet

The information about historic shipwrecks that results from excavation is as important as the artifacts In order for the stories of these wrecks to be understood and told, the information they yield must be collected, curated, and made available to the public

The Florida Department of State has assembled and cared for information from Florida wrecks for two decades To continue this effort requires that standards of information collection be followed and that the State be involved in the excavation of shipwrecks

In many cases of admiralty control, there is no State involvement, and information is either not collected or not made available to the public When this happens, unique opportunities for learning more about our early history are lost forever

In 1981, the U S District Court for the Southern District of Florida held in the *Cobb Coin* case that the salvor was entitled to exclusive salvage rights over the wrecks and cargo at nine different locations Florida spent some \$300,000 litigating the *Cobb Coin* case to safeguard its management ability and to establish ownership of its resources

Since that time, there have been about 20 additional admiralty arrests in Florida waters Each one potentially represents a body of

significant historical information and artifacts that will be unavailable to the public unless the admiralty court orders that archaeological information be properly collected, that artifacts be properly conserved, and that information be placed in a central location where it can be used

Under the proposed alternative, H R 2071, there would be no system of management. Rather, agencies of the States and the Federal Government would be required to litigate each instance of potential loss of archaeological and historical information. Public funds possibly available for the management, protection, and study of historic shipwrecks would be diverted to legal costs even when the district court agrees that the salvor's actions would result in a significant loss to the public.

Under H R 2071, when a salvor arrests an historically significant shipwreck and conducts salvage that fails to protect the significance of the wreck, the public is bound to pay the salvor not only his costs incurred in damaging the wreck but also his attorney's fees.

The effects of admiralty court management of historic shipwreck sites as proposed in H R 2071 are already known in Florida. With the exception of the *Cobb Coin* east coast project, there is little or no archaeological participation on shipwreck salvage. A simple list of unconserved artifacts presented to the judge in request of an award passes for systematic record keeping. In some cases, the State is not even notified that an admiralty arrest has been filed or that salvage is underway on State lands.

It is clear that under the admiralty system of jurisdiction, there is no consistent control. No one decides that a historic shipwreck is too important for salvage unless the State has the resources to become involved in litigation. No one keeps track of what arrests have been filed, what sites are being salvaged, what archaeological information has been collected, or what artifacts have been recovered other than the State.

Unless the State has the authority to ensure that such information be collected and submitted, there will be little useful knowledge of the unique historical treasures that shipwrecks represent. We will have squandered an important chance to learn more about our past.

I know that concerns have been raised about the impact of this bill on sports divers and salvors. Let me assure you that Florida is committed to carry out its responsibilities under H R 74 to guarantee recreational exploration of shipwreck sites and allow for private sector recovery of shipwrecks that will protect their historical values and environmental integrity.

In closing, let me say that the timing of this bill is excellent, for in 5 years, Florida, our Nation and our hemisphere will celebrate the 500th anniversary of the first European contact with the New World. The shipwrecks and artifacts in Florida's waters are tangible documentation of our history. If they are managed wisely, future generations will be able to experience history through the exhibition and study of these artifacts.

I urge your favorable consideration of H R 74 because it will assist Florida in preserving this heritage.

I thank you.

[Prepared statement of Mr Miller may be found at the end of the hearing ]

Mr LOWRY Thank you, Mr Miller  
Mr Albright?

**STATEMENT OF ALAN ALBRIGHT, SOUTH CAROLINA INSTITUTE  
OF ARCHAEOLOGY**

Mr ALBRIGHT Thank you, Mr Chairman

My name is Alan Albright I am the underwater archaeologist for the State of South Carolina

I want to thank the committee for inviting me to testify here, and right off the bat, I would like to show you that this is our South Carolina Underwater Antiquities Act of 1982, and it has been in effect, in one form or another, since 1968

South Carolina stands four square behind H R 74, because it meets the three major requirements that South Carolina perceives are fundamental to the management of its State underwater archaeological resources

No 1, H R 74 provides protection for the archaeologically significant vessels

H R 74 recognizes the rights of the sports divers to have access to shipwrecks for recreational purposes

H R 74 recognizes and reinforces the authority of the State to manage its own resources, whether natural or man made, and it also dovetails beautifully into the South Carolina Underwater Antiquities Act

One of the problems that has often come up is sports divers believe that if any legislation were passed, it would keep them off of shipwreck sites I want to put that to rest at least in the State of South Carolina The sport divers have participated in every single underwater archaeological project carried out by the institute in the 13 years I have been running the program Their contributions have been absolutely critical to the operation's success which is another way of saying that without them, we would not have been able to have these archaeological projects

The Underwater Antiquities Act has a licensing system in it which licenses individuals to recover artifacts and fossils from beneath the waters of the State It also authorizes the issuance of licenses to professional salvors to recover artifacts It guarantees an equity of 50 percent in the artifacts recovered

Right now, we have 750 sport divers making monthly reports to my office of their activities in South Carolina State waters These reports detail what is found, where it is found, and when it is found

We have one salvage license outstanding, and that is to a Florida man, and he has worked very closely with us for a period of 6 years now We have issued him three separate licenses over these 6 years, and he has fulfilled every single requirement He has exceeded the requirements that we have put on him

Most all the underwater archaeological sites—we have 300 or 400 of them in South Carolina—have been discovered by sports divers and reported to the State The contribution these sports divers make to the State can be seen very quickly in mentioned by the

*Browns Ferry* vessel A sport diver a number of years ago, in 1976, called me up and said he found a vessel and he wanted to know what to do with it I informed him that he should recover a couple of artifacts and I would come down and look at them

When I went down and looked at them, I saw that they were from the Colonial period from the 1730's and 1740's, and I explained to him the maritime significance of this site He wrote a document out and sent it to me turning over his equity in the entire site to the people of the State of South Carolina

This enabled me to raise \$350,000 to build what is now the largest waterlogged wood conservation laboratory in the Western Hemisphere, and the *Browns Ferry* vessel is now undergoing treatment there and will come out probably in about a year to be put on display in a local museum near where it was built and near where it also was found

So, he has made a major contribution to the study of maritime history

Another diver found an unusual jug and brought it to our attention, a crudely made clay jug One of our archaeologists on the institute staff took a very strong interest in that and studied it and found that it had exact duplicates in Africa

This turned out to be the first 18th century positively identified slave pottery that has been found From this discovery, an entire new discipline in the study of archaeology and ceramics has arisen, the study of slave ceramics, and we have had people from Smithsonian, Harvard, Princeton, and all the major agencies that deal with ceramics and history and prehistory come down and look at our collection

Now, when this young man left the State of South Carolina to move to Texas, he called me up and said come down and pick up this jug, it is too valuable to leave the State So, I went down and picked it up, signed the loan forms He owns it, we happen to have it in our possession, and it is on display in a local museum When he moves back to South Carolina, he gets the jug back

We have made it the backbone of our operations in South Carolina to cooperate with the sport divers, and it has paid off magnificently I could go on half a day with the various contributions that they have made to our program

I, personally, and as representing the State of South Carolina support H R 74 I think the law must serve both the long-term interests of the educational and historic value of this nonrenewable resource and the present interests of the recreational value inherent in sunken vessels Neither extreme in this delicate issue, whether it is a conservative archaeological viewpoint or the liberal laissez faire philosophy, will work to the benefit of the resource This is not a black and white issue

H R 74, however, presents the best compromise and serves the major interests of all sides and should become the law of the land

Thank you

[Prepared statement of Mr Albright may be found at the end of the hearing ]

Mr LOWRY Thank you, Mr Albright  
Mr Shumway?

Mr SHUMWAY Mr Albright, I appreciate your testimony, your examples, in particular, about the responsible activities of those who are reaching some of these shipwrecks, either as salvors or as sportsmen I commend you also for the way that you have administered the South Carolina Underwater Antiquities Act It sounds as though you have struck a very responsible balance

But I think that act in South Carolina could be contrasted with what I understand the State approach to be in Texas, for example, where salvor operations are virtually outlawed unless one goes back to the Texas Legislature and gets a special act permitting that kind of activity

So, there is a great deal of difference between the approach taken by various States to these underwater wrecks

Let me just ask the panel in general—any one or all of you might care to answer—would you support H R 74 if it were amended to include Federal requirements for States to provide diving access and access to private salvage provided it was done consistent with the accepted archaeological practices?

Mr ALBRIGHT We do that in South Carolina as it is

Mr SHUMWAY You are doing that in South Carolina New Jersey? Florida?

Mr WEINGART We would do that provided it used language similar to what is in H R 74 now It says it also included environmental resources and protection of fisheries as well as archaeological

Mr SHUMWAY Well, there is nothing in H R 74 now We are just suggesting that maybe we could put something in it

Mr WEINGART Well, there is a standard toward the beginning of H R 74 that talks about—it is not a requirement, I guess, but a guideline

Mr SHUMWAY I am suggesting a requirement How would you feel about that?

Mr WEINGART We would have no problem with that

Mr SHUMWAY Florida?

Mr MILLER We do that in Florida, as well We have the contract program and we also—there is no limit of access to shipwrecks in Florida waters and never has been

Mr SHUMWAY Under H R 74, the Federal Government transfers title to the States for only a certain category as defined in that bill of shipwrecks in State waters Why is it that States are only interested in those that are defined as historic under this act and not all shipwrecks that might lie within State waters?

Mr ALBRIGHT I don't think that is the way we approach it in South Carolina

Mr SHUMWAY It is not the case in South Carolina?

Mr ALBRIGHT In South Carolina, we are interested in all shipwrecks, and we are particularly interested in the more modern shipwrecks, because that brings an economic boon to South Carolina

South Carolina is a very popular State for diving I have seen two and three bus loads of people come down on weekends from New York We have issued licenses to people in 28 States, some of them in California

Mr SHUMWAY We don't have enough shipwrecks out in California We have all got to come back east to find them

Mr ALBRIGHT It is warmer in the Cooper River than it is on the Pacific Coast of California I walked out in there and was astounded one time at how cold it was

We have a lot of modern sunken vessels down there, and they are all open to the sport diving community Even those vessels which some of my archaeological colleagues will argue with me on, Civil War blockade runners and other Civil War vessels—we had one ship that was hit with 78 cannon balls in the Civil War, blew up and sank The Confederates pillaged it The Union came in after the war was over and completely salvaged it, and a license was requested to conduct a salvage on it, and I gave it

As I say, some of my archaeological colleagues disagree with that thinking that anything that is under the water has to be saved, and I don't agree with that

I have a license out on five blockade runners right now These also went through the same type of things, cannon balls, explosions, salvage after the war I particularly like them I particularly like that type of ship because, to be perfectly frank, it draws the attention of the dive community to something that they can identify with and pick up and take with them and not destroy the earlier colonial vessels which they have to work very hard to find and work very hard to excavate

Mr SHUMWAY Those wrecks that you have described would not necessarily, then, fall within the definition contained in section 6 of Mr Bennett's bill? He talks there about wrecks that are embedded in the submerged lands or embedded in coralline formations or on submerged lands when they are in the National Register, for example These would not necessarily be within those categories?

Mr ALBRIGHT I don't quite understand that question, sir

Mr SHUMWAY Well, the bill defines the kinds of wrecks title of which would be transferred to the States The wrecks that you have just described—

Mr ALBRIGHT Which are the more modern wrecks

Mr SHUMWAY Would be more modern wrecks They wouldn't fit within the definition contained in this bill necessarily?

Mr ALBRIGHT Generally, they would not, because, generally, they project above the bottom and have gone through a systematic man made destruction already So, they are not looked upon as highly as the ones that are embedded in the coral or deep in the silt

Mr SHUMWAY Thank you

Mr LOWRY The gentleman from the warm water of South Carolina

Mr TALLON Thank you, Mr Chairman

First, I would certainly like to invite my dear friend and colleague from California, Mr Shumway, to come down to South Carolina, and we will go diving

Mr SHUMWAY I will be there I like your laws

Mr TALLON Thank you

I thank the entire panel of professionals, experts I especially want to congratulate Mr Albright of the South Carolina Institute of Archaeology and Anthropology for his leadership These artifacts are, of course, very important to our heritage and our culture in South Carolina and to all the States The program that he has

developed in South Carolina with our law to monitor what is going on would have to be a model program, and, Mr Shumway, I would invite the Department of Interior to look at how South Carolina has managed our underwater historical vessels

I think Mr Albright has certainly expressed the cooperation between the groups that we think would be competing and would generally be in disagreement, the different interests involved Again, it has worked well in South Carolina

Mr Albright, is there anything else that you might like to tell us along the lines as far as the different interest groups are concerned and the cooperation that you have experienced in your program?

Mr ALBRIGHT Well, a strange thing happened to me soon after I came to South Carolina The law at that time was very, very restrictive It said that anything unclaimed for more than 10 years on the bottom of the rivers belonged to the State, and that appalled me

I wanted to put it into the same context as an antiquity is described by the Federal Government, 100 years So, I rewrote the law and submitted it the dive community and went around and visited all the dive clubs and sat through thousands of boring dive club meetings They all rose up in arms about that, and they said why are you giving away our heritage, 100 years? Ten years is too short, a hundred years is too long, make it 50 years

So, that gives the sport diving community the opportunity to recover things that are less than 50 years on the bottom without even going through our licensing process Our licensing process starts after something has been on the bottom for 50 or more years, and that was the act of the sports divers, not my act that did that

Mr TALLON Well, again, I congratulate you for a very pragmatic and balanced approach and appreciate the work you have done and thank all of you gentlemen for your testimony this morning

Thank you, Mr Chairman

Mr LOWRY Thank you, Congressman

Congressman Saxton?

Mr SAXTON Mr Chairman, thank you very much

I want to join with Mr Tallon in inviting Mr Shumway to come to the east coast I am told that we have over 3,000 known shipwrecks off the New Jersey coast So, we certainly invite you to come out and look at some of those with us and maybe even find some more Who knows?

Mr Chairman, I would just like to say thanks to the panel for coming to share with us their in-depth knowledge of this subject Of course, in the case of New Jersey, I particularly thank Mr John Weingart who is the director of the Division of Coastal Resources in New Jersey

You know, we all think we have tough jobs Well, there is one job in New Jersey which is a particularly tough one, and that is trying to coordinate the State and Federal laws that have to do with environmental protection along our long and beautiful coastline, something that all of us are very interested in preserving, particularly in a State like New Jersey which has such a high population density

By the time Mr Weingart gets finished trying to coordinate the desires of the builders and the developers and those who are inter-

ested in environmental protection, keeping our shores and our beaches clean and open to the public and trying to coordinate State and Federal programs, he has got one difficult job to do, and I want to thank you for coming here today to share your expertise in this subject with us

Let me ask you just one quick question, and all three of you might want to answer. However, Mr Weingart, in particular, indicated that New Jersey, through its Coastal Resources Act, has in place a program which provides for the preservation of shipwrecks. John, you also mentioned that New Jersey is ready to pass an act to further protect and regulate the activity involved with this subject, I suppose, pursuant to the passage of H R 74

Would you describe as briefly as you can what it is that New Jersey has presently in place to do and what it is that we hope to do under the new act?

Mr WEINGART Presently, New Jersey State law provides that any boat lying on submerged lands for more than a year and a day belongs to the State. We operate that way, although that obviously can be called into question with Federal law.

Anyone today who wants to salvage a shipwreck or explore a shipwreck needs a waterfront development permit from the State which is granted. If it is a salvage operation, they need an agreement with the State over how the revenues are going to be provided.

What we propose in the bill that we attached to my testimony to the committee—and this is very much a draft bill, but I attached it just to let you know what our thinking was—would be a board of nine people that would include representatives of three State agencies and six members of the public appointed by the Governor, and the bill specifies that those people would be drawn from a variety of communities, including fisheries, commercial salvors, recreational divers, and so forth.

That board would perform an assessment of the shipwrecks in New Jersey and an inventory and prepare guidelines for the State governing on what basis decision should be made to balance the various competing needs with shipwrecks.

Mr SAXTON Thank you.

Mr Miller or Mr Albright, do you want to respond?

Mr ALBRIGHT Yes, I would like to make a comment to what you just said a minute ago. This year in South Carolina, I was able to get some legislation passed which creates a team, a five-person team, two women and three men, that any time the coastal council considers issuing a permit to disturb the bottom in any way, shape or form in South Carolina, this dive SWAT team goes out and investigates the area before any work is done, dredging, riprap along the side, docks. This came about because we discovered a Revolutionary War ship last year.

The ship had sunk July 17, 1781, but somebody had put a dock out, not knowing that the ship was down there, and they had driven a piling right through the middle of it. The only positive benefit of that piling was it kept the ship from slipping down into deeper water.

However, when we realized the number of docks that go up in South Carolina, I was able to get this legislation passed. So, now,

before any disturbance of the bottom in South Carolina waters, we have a dive team out there looking at it I believe we are the first State in the nation to do this

Mr MILLER Since 1967, Florida law has granted title to the Division of Historical Resources of historical objects abandoned on State lands Really, for us, the issue is reaffirming that title, resolving that question of title

The law is in place for protection It has allowed private sector recovery for more than 40 years now We are working with the sport divers I think our problem in Florida is ownership and title and authority

Mr SAXTON Thank you

Once again, Mr Chairman, I would just like to thank the gentlemen for coming such a long way to help us better understand this problem

Mr LOWRY Thank you, Congressman Saxton

Mr ALBRIGHT Mr Chairman?

Mr LOWRY Yes?

Mr ALBRIGHT I don't know the protocol of doing this, but how does one go about placing this in the record? I would like to do so

Mr LOWRY With no objection, we will place the South Carolina model plan in the record

Mr ALBRIGHT Thank you, sir

[Material may be found in the Subcommittee files]

Mr LOWRY Could I ask just one question that probably everybody else in the room knows the answer to but me? For the salvage value, how do you, representing the State, work an agreement with the salvors? Is it 50/50, or do you have that established? Do you do that individually? Just how is that done?

Mr MILLER Under terms of a contract between the State and the salvor In the past, the standard division had been 25 percent to the State and 75 percent to the salvor As a result of an out of court settlement agreement with *Cobb Coin Co*, the ratio was changed to 20 percent to the State and 80 percent to the salvor, and that has become consistent in all other salvage contracts with the State

I might add that those divisions are made not on the basis of monetary value but rather on the basis of historical significance and other factors

Mr LOWRY And who determines that?

Mr MILLER Who determines that?

Mr LOWRY Yes

Mr MILLER We and *Cobb Coin* together determine that in consultation Our settlement agreement binds us both to cooperate with mutual good will, and we do so in our salvage contracts That is how we divide

Mr LOWRY OK Does anybody want to add to that?

Mr WEINGART The exact science of the system in New Jersey is evidenced by the first agreement we reached with the shipwreck I mentioned, and this was through negotiation with the Attorney General's office It was a split with two-thirds going to the State and one-third to the salvor The second agreement we reached reversed that with one-third going to the State and two-thirds to the salvor

Mr ALBRIGHT In South Carolina, we, as I mentioned earlier, we have a 50/50 equity, 50-percent equity to the diver and 50 percent to the State I am using the word equity rather than division, because we have the right to purchase the diver's 50-percent equity so long as his appraiser, our appraiser, and an appraiser selected by those two agree on a price

Now, we have issued over 4,000 hobby licenses since I have been in South Carolina Hobby licenses are for individuals Again, the 50/50 division is in the law, but I have never made a division with a single sport diver in the 13 years I have run the program

This nonconfrontational way that we work in South Carolina has meant that any time I want to borrow an artifact from anyone for scientific study, I can do so I have never been refused the loan of an artifact

Mr LOWRY Thank you very much, gentlemen, for your very helpful testimony

Our next panel will be Mr Melvin Fisher, Treasure Salvors, Inc , accompanied by David Horan, admiralty attorney

Thank you, Mr Fisher, for joining us If you would just proceed ahead with your testimony, please

**STATEMENT OF MELVIN A FISHER, TREASURE SALVORS, INC ,  
ACCOMPANIED BY DAVID P HORAN, ADMIRALTY ATTORNEY**

Mr FISHER Thank you, Mr Chairman and distinguished member of the committee

My name is Mel Fisher I come before you today from Key West, FL

Back in the early 1800's, the island city of Key West was known as the rescue and salvage or wrecking capital of the world Its wealthiest citizens were salvors of many ships that ran aground upon the dangerous reefs of the Florida Keys The island of Key West was first charted by that famous explorer, Ponce de Leon

It is right and fitting I should be from Key West and testifying before this committee today about shipwrecks The occurrences of the last 2 years, in particular, have revived for the world the tradition of the searchers and salvages of the 1800's During the past 10 to 15 years, millions of Americans and millions more people around the world have experienced with us, through the media and knowing us, the thrill of searching for and finding one Spanish galleon and part of her sister ship off the Florida Keys Final discovery of the main ballast pile of the *Nuestra Senora de Atocha* was widely reported and publicized in July of 1985

This was after 17 years of searching hundreds of thousands of miles and investing millions of dollars and much more

The publicity and information produced to the general public both here in the United States and around the world as the result of our efforts on the *Nuestra Senora de Atocha* and her sister galleon, *Santa Margarita*, have put more archaeology and more history before more people than any governmental progress that ever has been or ever could be envisioned by the individual States or the Federal Government

In fact, more than one-half of the total salvage from the *Atocha* is ending up in public ownership because of donations by the many

investors who, with their private risk capital, have made my dream and the dreams of so many who have worked with me become possible

If you have any doubt about whether the American people are in favor of keeping the incentive and the dreams that I stand for a reality of our great nation, then I suggest asking your constituents when you go back home Or, if you want to know how to spend more Federal and State tax dollars on bureaucratic treasure hunts, then you could ask the few public employees who are the real motivators behind this bill called H R 74, and they certainly will let you know how They need Government grants, big ones

In contrast, because it seems to preserve such things as the constitutional intent of our Nation's founding forefathers in establishing Federal district court jurisdiction over admiralty and maritime matters, I would like to suggest the acceptability of H R 2071 That bill is sponsored by Mr Shumway, reflects some real study of the lessons of the past that we look toward preserving our heritage for the future generations while preserving as well the greatest incentive of all, the American dream of free enterprise

These are some of the things I strongly urge should be part of responsible legislation regarding shipwrecks

Responsible archaeological salvage of ancient or historic abandoned shipwrecks should be encouraged by promoting, through private investment and public participation, cooperative recovery efforts between government and private enterprise with guaranteed public access to unsalvaged wrecks by responsible sport divers, shipwreck salvors, and professional and amateur archaeologists who are willing to ensure the maintenance of archaeological integrity

Federal district courts, sitting in admiralty and applying the laws of salvage, are best suited by constitutional designation and resulting heritage of judicial decisions to remain the forum for the resolution of disputes among competing salvors and between States and private entities, including large and small salvage companies, for fair and equitable enforcement of legal requirements designed to ensure preservation of the archaeological integrity of historic shipwrecks

Individual States should continue to have the right to intervene in a Federal admiralty action to assert a claim to archaeological data and historically important artifacts for public display, but the private person or enterprise, whether a salvage company or association of sport divers, must also continue to have the right to appeal unfair tactics by a State or other governmental body to some higher and wholly unbiased body such as the Federal court system

There should be—and my team of many years which includes archaeologists and divers has helped formulate some with me—a set of responsible guidelines which can be embodied in Federal legislation with continued enforcement by Federal admiralty courts and judges

If you don't put in guidelines ahead of time, the ones that the States invent will be just horrible

Today, you have two distinctly different pieces of proposed legislation before you One, H R 74, also known as the Bennett bill,

would totally gut the constitutional mandate for the Federal district courts to have exclusive jurisdiction of admiralty and maritime affairs I beg you before you consider anything, this matter should be taken before the Judiciary Committee, because this affects the Constitution

The other bill, H R 2071, known as the Shumway bill, would preserve the constitutional jurisdiction of the Federal district courts over admiralty and maritime matters and seems to fairly balance the need for incentive with the need for enforcement

It was mentioned a while ago that the admiralty court does not allow for archaeology, and that is not true In the case of *Cobb v the State of Florida*, admiralty law does describe archaeological balance and protection

The late Judge William Marvin who was the Provisional Governor of Florida and the U S district court judge sitting in admiralty in Key West way back in the 1840's summed it up as well as anyone could Judge Marvin asked as part of one of his opinions which ultimately went to the Supreme Court of the United States, "What court other than a court of admiralty would have jurisdiction over salvage?"

Judge Marvin was right in the 1840's, and he is right now H R 2071 goes into preserving the archaeological and historical integrity of an ancient wreck by putting out a lot of requirements for salvors It has been my experience that any salvor worth their salt realizes that good archaeology and good history are required in order to maximize the profit and other benefits of the recoveries from an ancient vessel

The best example of this that I can give to you is the fact that you can buy a silver coin from some unknown, unidentified galleon in the Bahamas for \$150 while a very similar silver coin from the *Atocha* sold for more than \$1,000 The only difference between these two coins is that good archaeology and good history have added to the value of the salvaged items

The increase in value is not only ascertainable in the private market, but also in the public collections that, to the greatest extent, are nothing more than donations by private salvors and private investors

The admiralty courts have always been in the positions of determining the proper way to salvage a vessel and, historically, whether all efforts went first to the saving of lives In the case of an ancient historic vessel, the courts have determined that the proper way to salvage is to require that the salvor adhere to certain standards for the protection of the archaeological and historical data revealed during the recovery of items from the shipwrecks

I know and you know that archaeology is a very important part of history I believe all of us realize that the reason history is so important to our society is that we can learn from the past Hopefully, the mistakes of the past can be carefully analyzed, documented, compiled, and studied so that, with the knowledge gained, the mistakes of the past can be avoided in the future

Studying about my past struggles to fulfill my dream at the greatest of costs will lead to the point where we now stand—looking back at the past so that we can navigate the future course of archaeological recovery from shipwrecks

Over 200 years ago, our forefathers put in the U S Constitution that admiralty and maritime claims were exclusively under the jurisdiction of the U S district courts. Now, I beg you, do not try to change the Constitution by passing H R 74. What you would do is turn all admiralty and maritime claims over salvage of all shipwrecks of a certain age to the individual States and their courts which, because of the Constitution provision, would not have jurisdiction over salvage which is a uniquely maritime claim.

What you would end up doing is to put all private salvors and private risk capital at the hands and under the time consuming jurisdictions of the administrative laws and administrative bureaucracies of the various coastal States with no recourse except the State's own courts.

Federal admiralty law as it now exists encourages the salvaging of derelict, wrecked, and abandoned vessels, and the Federal courts are ready, willing, and able to protect the individual rights of the finder and salvor.

The Federal district courts also protect the interests of the public in the archaeological and historical data retrieved from shipwrecks. With their own great heritage rooted in the Constitution, U S district court system and its jurists are very well aware of the public responsibility that is the cloth of their robes. The process is relatively simple and straightforward.

My presence before you here today shows that it does work, even when the State and Federal Governments at the time tried their best and their dirtiest tricks, to take it away from the people who have spent so much time and so much money and lives to make the dreams come true. The system we have works well enough so that in my case, at least, the good guys won.

If you have any questions that today's testimony does not fully answer, I invite all of you to come to Key West and get a first-hand look at this dream come true.

What has made this country great is that I can pursue as an adult the dreams I first had in grade school and high school. I was just honored down in Palm Beach County last week at a science museum where a lot of talented young people were explaining about their own dreams. One young lady explained about how she plans to find *Atlantis*. I would sure like to get her on my payroll.

Incentive, and the freedom to pursue it, are part of what this country is still about. Let's keep the incentive and the freedom intact to explore the oceans and rivers and lakes of our great Nation and not have to be only a bureaucrat or a lettered scientist or academic before we can touch the face of history.

We have many archaeologists working for us under contract and on our payroll. We have many preservationists working for us full-time. We have the most advanced computerized archaeology in the world today, state of the art. We scan religious objects. They go into the computer. All the data as to weight, date, everything else is entered in. It can be faxed off to the Vatican museum in a matter of 12 seconds. They can compare it with their religious items and let us know what we have found.

Motivation is the main thing. I am motivating millions of kids and millions of adults as well to be able to pick out their goals in life and follow their dreams, persevere, and accomplish what they

want to do If the State owns shipwrecks, it will put everything back 25 years We will have to start back in the beginning

By the way, you were mentioning the difference between Government boundaries and State boundaries They are one and the same It is 3 miles in the Atlantic, 3 leagues in the Gulf of Mexico The State boundaries are the same as the Federal boundaries There is no difference

They mentioned something about going out beyond the State boundary, and this would very much conflict with a treaty in Geneva signed by 134 nations I don't think we would ever get 134 nations to agree to anything again They stated that shipwrecks and the bullion lying on and under the seafloor does not belong to the State or the Nation near which it is situated, and all 134 nations agreed to that, and we should abide by that also

Archaeological guidelines are spelled out in Mr Shumway's bill They are not spelled out in the other one

Title is the main thing Mr Bennett was right, we should tighten up his bill We should eliminate title to the government from his bill

You see, if they get title to shipwrecks, then next year they will have title to all of our homes that are more than 50 years old, all of our antique airplanes, automobiles, and trains Shipwrecks are no different They do not belong to the Federal Government

Admiralty law does provide for archaeology I don't know if you know it, but if the States own all these shipwrecks like they are saying they want to own all of them—that is awful greedy—but I don't know if they realize the liability they will be biting off There are thousands and thousands and thousands of shipwrecks, and many of them are just beneath the surface of the water Some are sticking out of the water

Anytime somebody hits one of those shipwrecks, there is going to be large liability law suits

There is also a thing called the Jones Act that highly restricts sailors, divers, people who are on salvage boats The States and Federal Government, if they attempt to do this, will have to have huge enormous insurance policies It is very tough, and they will have to pay huge high wages for all these people

I don't think there is any treasure hunter or salvor who is in this business for private gain only Several of them mentioned that Most of them are much more interested in the history and the archaeology

Fifty percent, off the top, is a pretty good deal So is 25 percent off the top It is very unfair, though, and very unbusinesslike If any store or businessman in the United States had 50 percent of his income taken away by the Government, every one of them would go bankrupt, every one of them, any business you name If you are going to take 50 percent or 25 percent of our gross income each year, you should also make that in lieu of income tax If you will cancel income tax for treasure salvors, then I don't mind giving over half of the gross of my income each year That makes sense

The States, if they own title, harass you tremendously I know I have been there I have been in the business 26 years The first 5 years was beautiful because they had no State law Once I found

gold, they made a State law saying they owned all the shipwrecks and the treasure. From then on, the stuff hit the fan.

They arrested my men, put us in jail, put me in jail, they stopped us from working. Then, once they let us go back to work again, they would only let us work 8 hours a day and 5 days a week, and we had to go by thousands of rules and regulations that they invented which did put us out of business, so we had to go outside the country and outside the State.

We have been doing a magnificent job of archaeology, and the latest archaeological conference is somewhere here in South Carolina—I guess a couple dozen of my archaeologists gave papers there. They are very astute, talented people. We gave more papers than everybody else in the United States put together.

One of them was about seeds and trash that was in the bottom of the *Atocha*. It seems silly for an archaeologist to be sorting out all this trash and little insects and bones and sludge in the bottom of the sea, but it paid off last week because they found three seeds that had been under the sea for 365 years, and now they are sprouting and becoming alive again. So, the *Atocha* still lives.

I guess I am going to let Dave talk a little bit here and give you a little insight into the legal end of it.

Mr. LOWRY: Thank you, Mr. Fisher, for your very interesting testimony.

Mr. HORAN: Can you sort of summarize? We are running a little short of time.

Mr. HORAN: Yes, Mr. Chairman.

Your question to Mr. Miller, I think, was extremely astute, because what you were looking at was how does this process work. The fact is Mr. Miller testified that there was mutual good will shown between *Cobb Coin* which is Mel Fisher and his group and the State of Florida. Let me assure you that when the State got through the many, many years of very bitter litigation, putting Mr. Fisher in jail, and all these different things that happened, the end result was an impartial arbiter over a contract entered into between the State of Florida and a private salvor.

That is 2071. That is the bill, because, in fact, you have an impartial arbiter. We have never had to go, since we entered into that on June 7 of 1983, we have never had to go back to the Federal court to arbitrate a dispute, but let me inform you that every single year, there has always been the unspoken thought—and a couple of times it has been spoken—between us as we work back and forth on this mutual good will that, in fact, if we tied up, we had someone to go to to break that tie.

And when you take the Federal district courts with their historical and their constitutional jurisdiction of admiralty and maritime claims—and certainly maritime recovery is a uniquely maritime claim—and you take that out of the Federal courts and you have the State courts saying no, that is a contract with regard to maritime work that is exclusively the jurisdiction of the Federal district courts, then you have the State bureaucracies taking over.

Then, if you have the benevolent dictator that you have in the situation where South Carolina has a 50/50 State law but he has never made a demand for that one-half in the entire time he has been there, and he has made it work strictly because of his person-

ality and because he stayed with it and realized what the end result should be, that is fine, but you do not have that kind of man in most of the States

You have people who absolutely continue to feed at the public trough, do not believe they are public servants, and will look for every way in the world to stop you from doing what you want to do. You have to have an impartial arbiter.

Now, there is one thing that you need to ask this next panel. You have to get them to name one example of the destruction of one ancient shipwreck of interest to a State which has occurred under the jurisdiction of the Federal district courts. There is none.

If the States want to go ahead and make sure there is good archaeology and good history, they have a right to intervene under the present Federal admiralty law to make sure that there is good archaeology and good history being carried out. Simply put, you have to get them to tell you why the system that is now working in the State of Florida—we have never had to go back in the 4 years that we have had this contract—why isn't that system something that would work on a national scale?

You see, everybody wants to make sure that there is an ensured archaeological and historical data retrieval system in place. Well, they are encouraged by the admiralty law to make that that happens, and it is done at no cost to the State, because it allows for the investment and the private risk capital.

If you take title and give it to the States, how do you make a donation if they already own it? And don't you realize that a majority of the museums and all these things that we are so very much enamored of in the public interest are in fact nothing but collections of donations by the private risk capital that made it all work?

There is \$100 million worth of recovery from the *Atocha* that would never have happened if HR 74 had been in place 12 years ago. Let me assure you, without any doubt, that the galleon *Atocha* would have never been found, that over \$100 million in donation would have never been made, that tens of millions of Americans who have vicariously experienced the thrill of discovery sitting in their armchairs looking at National Geographic would have never seen. The archaeological papers that have come out of it in reams would have never been done. You would have never had live hook-ups all over the world with Mel talking to some young lady in the back of a boat last week and being beamed up through satellites and being seen live in Italy. You would have never had that.

You would have never had the idea that this country is the only one where private initiative and the dreams of individuals can go forward with private risk capital and recover and make something work. And it is working right now.

My Lord, you are trying to reinvent the wheel. If it is not broke, don't fix it. We are in a situation right now where it does work.

You can put as many of the archaeological guidelines in place right now as you possibly want and give an impartial arbiter, the Federal district court, give that impartial arbiter the right to adjudicate it, and you won't have—we are not talking about but a handful of litigation. That is all.

And once it is put into place, it works, because the spectre of having the Federal district court take major items right out of the salvage and give it to the State requires that the donations be agreed to beforehand. You see, under the Federal law, the States can come in and show a need to have certain valuable archaeological items to be represented in the State's collection. That is what the law is right now. Most of these people haven't read that law, but that is what it says.

If you have the right of the States to have this in their collections, and the salvor has the prospect of having that taken right off the top with no return of investment capital, then he turns around and makes his donations and gets everything set up so that 100 percent of the items can be awarded to the salvor so that the donations can take place.

In *Treasure Salvors'* case in the *Atocha* litigation, it took seven solid years to prove that in fact a man at the absolute greatest of costs could succeed even over the Government that made it possible. Believe you me, there was never a stone unturned by the various States and the Federal Government in that litigation.

What you are going to do now is take all that history, that seven years of legal history, you are going to take all of that and just totally do away with it and turn it over to a State program where the incentive to find the galleon would never be there again.

So, believe me, the last Spanish galleon act is before you today, because if you pass H R 74, there would never be an incentive for someone to find a Spanish galleon and let anybody know about it. You can't undiscover something that somebody has found. You have to treat it, and if you do it the way we have on the books right now, the public gets their archaeology and their history and their donations, no cost to the Federal or State government, or very little cost only from the standpoint of letting them audit it. So, why mess it up? Why not go ahead and let it go?

Mr LOWRY Thank you, Mr Horan.

Have there been other court decisions other than the *Cobb Coin*?

Mr HORAN Sure. At this point it is kind of shotgun approach. The *Cobb Coin* case was the first one that really called into question the ability of the States to wipe out admiralty by State law. Since then, they have had one up in Massachusetts that went directly the other way. It said no, Massachusetts owns that vessel. The 11th amendment operates, divest the Federal courts of jurisdiction, and that was upheld.

You have other ones. A lot of them have followed *Cobb Coin* and a couple of them have followed the other side, too. I think there is a need for Federal legislation to straighten it out.

Mr LOWRY Because there is inconsistency between States. The *Cobb Coin* was only Florida, correct?

Mr HORAN Sure.

Mr LOWRY And then Massachusetts was something, and then there are other States, I assume from what you are saying, that there have been court decisions in.

Mr HORAN Yes. In the *Cobb Coin* case, we settled that while it was pending before the 11th circuit. The reason was because we couldn't continue the litigation. They had just litigated us into a hole. We have \$127,000 in attorney's fees granted against the State,

and they said if you will let us off the attorney's fees and the interest and the appellate bond that we posted and all that, we will work out a deal with you, and we worked out the deal

The fact is it has worked since then only because of the on-going jurisdiction and the impartial arbitrator

Mr LOWRY Are there any particular State laws that you have felt have worked better, relative to this historic preservation salvage question?

Mr HORAN Florida's law, if it will allow the State to intervene and to assert an interest on behalf of the public to the archaeological data retrieval coming up in an admiralty case would work beautifully, because they have demonstrated that if they will go ahead and work with you, it is something that—I mean, it is like a love in Everybody gets together and everything is going perfectly, because everybody is in line and they see the ultimate objection

Not one time has there been any award by the Federal district court during the past 4 years of any item to the State Yet, the State has ended up in all cases with as much if not more than they ever would have gotten under the old guidelines And the private risk capital is much more available because you have a tax donation which will offset the risk capital expenditure

Mr LOWRY Were you saying Florida's law works?

Mr HORAN Florida's law works if the State is not asserting ownership If they are asserting only the archaeological interests but not ownership, it works But if they assert ownership, it destroys the incentive, and then it goes out the window Plus, it destroys the jurisdiction of the Federal district courts because of the 11th amendment

Mr LOWRY Mr Shumway?

Mr SHUMWAY Thank you, Mr Chairman

Mr Horan, since you are a lawyer, I would like to ask you this question We have had some testimony today that my bill, H R 2071, would greatly increase legal fees for States Do you agree with that assessment and would you sort of characterize where the legal fees might be expended in the case of either one of these bills being passed?

Mr HORAN Well, I can The legal fees that I have charged with regard to the ones where we worked out an agreement have been less than \$10,000 The legal fees with regard to the *Cobb Coin* case—I don't remember exactly what mine were They started out at \$50 an hour and went to \$75 and stuck there through the whole thing, but the law firm of Smathers and Thompson that was hired by the State as outside counsel billed and collected from the State of Florida during 2 years of the 3 years of litigation nearly \$400,000

That is an expenditure the people of the State of Florida could well have done without We let them off the \$127,000 in attorney's fees when we signed the agreement

So, I don't know what the cost to the people of the State of Florida was, but I will promise you this The donations that come from a working relationship far offset by 100 to 1 what legal fees would be expended with regard to auditing the Federal district court proceedings from the standpoint of ensuring that the State gets their donation that they would like to have or their entitlement to go in

and make a claim right out of the Federal district court That exists today

Mr SHUMWAY It seems to me that there is a strong likelihood of litigation in trying to meet the definition of ownership in the Bennett bill For example, to determine whether a vessel is embedded in submerged lands or not, whether it is encrusted by coralline formations or not, wouldn't those things require factual submissions, evidence in a court hearing and, therefore, invite litigation?

Mr HORAN I am up here because of a philosophical bent and not a legal one, because if that one passed, I could definitely see my legal fees upping tremendously, because every one would have to be litigated

What you would be actually litigating under the Bennett bill is whether or not admiralty applies So, you would file suit in admiralty, and, then, the other side, the State or whatever, would be arguing to the Federal district court that the reason the Federal district court did not have jurisdiction was because it applied to only these particular types under the Bennett bill

That would be litigated for a long, long time, tied up in appeals for a long, long time, and, yes, that is a tremendous amount of litigation The ownership issue kept stayed in the Federal district courts That is where you are going to get the private incentive, and that is where you are going to get the donations, and that is what the whole thing is about, I believe

Mr SHUMWAY Just one last question for Mr Fisher regarding incentive Mr Horan has testified that if this bill were enacted that there would no longer be any incentive on the part of people like you to go out and discover historic shipwrecks, and, therefore, there would not be any archaeology to preserve, essentially

Do you agree with that Mr Fisher? Is that an accurate statement or your feelings about this bill?

Mr FISHER Yes, I do I was forced to leave the State because of the claim of title by the State of Florida and the extreme pressures they put upon us which were just not possible to cope and live with

I think the solution for the previous question is one that came up—was brought up before another nation's legislature not too long ago, and they decided to make the boundary be 100 years of age This way, you would be alleviated from all that liability I was telling you about, and 100 years of age is no problem as far as determination of age

I think that would be the solution

In other legislation they also did enter in the other point I mentioned In lieu of income taxes or duty or any other type of governmental tax, the salvor conveys 20 percent annually of what he recovers to the government

Mr SHUMWAY Thank you, gentlemen

Thank you, Mr Chairman

Mr LOWRY Thank you very much, gentlemen

Our next panel is Mr Kenneth Pott, Lake Michigan Maritime Museum, Mr J Barto Arnold, Archaeologist, Society for Historical Archaeology, chairman of the Advisory Council on Underwater Archaeology, Mr J Jackson Walter, president, National Trust for

Historic Preservation, and Mr Mike Roberts, president of Time-lines Inc

Thank you very much for joining us and taking your time today and being patient in waiting. If we could start with Mr Pott, please

**STATEMENT OF KENNETH R. POTT, CURATOR, LAKE MICHIGAN MARITIME MUSEUM, SOUTH HAVEN, MI**

Mr POTT Mr Chairman and Congressmen, I appreciate this opportunity to testify with regard to H R 74

I am here today representing the Association for Great Lakes Maritime History which is a consortium of more than 30 maritime museums and preservation organizations distributed throughout six Great Lakes States. I am also here as chief archaeologist and curator of the Lake Michigan Maritime Museum, an institution of maritime preservation and education based in southwestern Michigan.

You have my testimony. What I would like to do today is just briefly emphasize some of the points made in that testimony.

First of all, I would like to state that the Association for Great Lakes Maritime History, the member institutions of that organization, very strongly endorse and support the passage into law of H R 74. It is the hope of this association that the bill be passed without compromise. It is felt that it is very, very significant in this regard.

Now, the building and use of boats is an activity that has been no less important to the technological, social, and economic history of the Great Lakes region than it was to the settlement and development of our western, southern, or eastern coastal regions. In fact, it can be stated that the maritime trades represented an activity, particularly for the period of the 17th, 18th, and 19th centuries, that affected virtually everyone's life in one fashion or another.

This activity was not without its risk. Historical research has documented that in the Great Lakes region at large, no fewer than 6,000 vessels were lost between the period of 1679 and the turn of this century. Within Michigan boundary waters alone, more than 3,000 such vessels have been documented.

These wrecks represent an extremely valuable, finite, non-renewable source of information, most importantly, a source of information for which, quite frankly, few other written sources and means of documentation exist. They also exist in a rather remarkable state of preservation, in many cases.

A case in point can be made with the War of 1812 vessels, the *Scourge* and the *Hamilton*, that lie in the bottom lands of Lake Ontario in a virtually intact condition as well as the rather sad example of the *Alvin Clark*, a vessel that was recovered a number of years ago from Lake Michigan which actually contained edible casks of cheese aboard dating to the period of the mid 19th century.

I would also like to make the point with regard to an example of successful State legislation which has been recently enacted, and that is the example that Michigan provides.

Michigan recognized some time ago the value and finite nature of its underwater cultural resources and began to enact legislation as early as the 1960's

In 1980, they passed a very significant law, Public Act 184. This piece of legislation provided the State with the right to establish preserve systems in areas where known concentrations of wrecks were known to exist. It provided a permit salvage system for private archaeological salvage and recovery, and it also provided the basis for archaeological research in the region.

This particular bill has been very important to Michigan's development of the management and control of its cultural resources.

Now, over the intervening years, there have been four preserve systems established in Michigan waters. Again, these have been established in areas of known concentrations of shipwreck sites. These preserve systems have not only served to contain and, in many respects, preserve shipwreck sites, but they have also provided a very valuable economic bonus to the communities off which they are located.

They are attracting divers literally by the thousands who come to visit these sites for recreational purposes. These divers in turn are contributing in a very important way to the economy of Michigan.

I think Michigan residents can take pride in the role that this State has taken in this regard. Another vital phase of Michigan's program has been the implementation of the first program of archaeological research, the first case where an archaeological research design has been applied to the study of a shipwreck site.

This program is being administered cooperatively by the Lake Michigan Maritime Museum, the Michigan Department of Natural Resources, and the Michigan State Bureau of History.

All of the above examples, all the examples that I have given today have in many, many different ways involved the public, private, and preservation communities, including the dive population of the Great Lakes region. It has been a very successful program to date, and it has operated on virtually a zero budget. There have been no moneys provided by the State for the implementation of any of these programs.

There is a fear that if HR 74 is not passed as it exists, these kind of programs will stagnate, particularly Michigan's program. This may very well take place with regard to Michigan's program. Michigan has the most developed system in the lakes region in this regard. It is felt that, in the other Great Lakes States, programs may not even evolve because of the complications of admiralty law.

There is another case in point in that regard. Michigan dealt with its most significant illicit recovery situation in recent years. It is referred to as the Massey case. It involved the recovery of two anchors just outside a preserve system in the northwest area of Lake Huron, and these materials were recovered without permit rights. No permit application was submitted.

The gentleman making the recovery was caught red handed. In fact, he was turned in by representatives from the dive community to the State.

He was subsequently prosecuted at the local court level in this regard, and the judge there ruled that the State could not legally

prosecute this individual for the recovery of these materials because the State did not have jurisdiction over or control over the cultural resources located on its bottom lands

Subsequently, this ruling was appealed to the circuit court level, and it was overturned, however, not without some problems

And the State is very aware of the vast amount of money that it spent in this particular court case and in the problems which could arise in further forms of prosecution in the future, and they feel very strongly, again, that this bill be passed as is without any significant form of compromise, particularly with regard to any link with admiralty law

That is the conclusion of my testimony

[Prepared statement of Mr Pott may be found at the end of the hearing ]

Mr LOWRY Thank you very much, Mr Pott

Mr Arnold

**STATEMENT OF J BARTO ARNOLD III, ARCHAEOLOGIST, SOCIETY FOR HISTORICAL ARCHAEOLOGY, CHAIRMAN, ADVISORY COUNCIL ON UNDERWATER ARCHAEOLOGY**

Mr ARNOLD Thank you, Mr Chairman

I would like to thank you and the committee for allowing me to testify on behalf of H R 74 Today, I am representing the Society for Historical Archaeology and the Advisory Council on Underwater Archaeology

The Society for Historical Archaeology is a scholarly society of archaeologists interested in the historical period of archaeology since the European expansion The ACUA, the Advisory Council on Underwater Archaeology is a committee of leading underwater archaeologists associated with the SHA

I am not representing officially today my State agency, but I would like to let you know that I have been the State Marine Archaeologist in Texas for 12 years

Normally, the SHA concentrates on internal scholarly matters, but the issue before us today, the matter of historic shipwrecks, is such a vital part of our national patrimony that the society decided to become involved in the legislative process Gentlemen, historic shipwrecks are threatened They are a nonrenewable resource

We are delighted to have worked with Congressman Bennett since 1979 in the various versions of this bill If I might quote his testimony today, "as long as we leave admiralty intact, there is no way to guarantee adequate protection of historic shipwrecks in States' waters," and "admiralty law is bad for historic sites "

The society couldn't agree more with that assessment Admiralty jurisdiction poses a threat to historic shipwrecks because admiralty courts are commercially oriented, and commercial treasure salvage is destructive Unfortunately, not all commercial treasure salvors are as responsible as some that we have seen and heard of today who have an interest in archaeology and history

In most cases, archaeological data and historical data are lost during a commercially oriented underwater historic shipwreck project It is the spatial interrelationship of the artifacts that, when carefully documented and recorded during slow, careful exca-

vation and then later analyzed, can tell you about the ship and the people

It takes lots of extra time to record this data, and to a businessman, time is money They cannot afford to spend the necessary time to record the archaeological data and still make a profit at the end of their project

The commercial exploitation and destruction of archaeological sites is unethical to archaeologists All seven major archaeological societies in the country, State, regional, and local archaeological societies, condemn the commercial exploitation of archaeological sites, including shipwrecks

Let's take the analogy of Mount Vernon We wouldn't allow an entrepreneur to go in and tear down Mount Vernon to sell brick by brick to tourists This is the national patrimony we are talking about

Remember, these are publicly owned resources on public land If somebody went to a national park and tried to treasure hunt the way is allowed with shipwrecks, they would land in jail It is against Federal law to hunt treasure on Federal land

Anyway, this bill as it stands has almost a 10-year history It has 9 years of history in its evolution, and it is already a compromise It is a compromise because archaeologists, most of them, would like to forbid treasure hunting altogether

This bill, as it is structured, leaves it up to the individual States If Florida wants to allow treasure hunting, well and good If we want to have stricter regulations that don't allow the destructive treasure hunting in another State, that is also allowed

It is urgent that we eliminate the double standard of protection ashore and destruction under water

[Prepared statement of Mr Arnold may be found at the end of the hearing ]

Mr LOWRY Thank you, Mr Arnold

Mr Walter

#### **STATEMENT OF J JACKSON WALTER, PRESIDENT, NATIONAL TRUST FOR HISTORIC PRESERVATION**

Mr WALTER Mr Chairman, for the record, I am Jack Walter, the president of the National Trust for Historic Preservation

I want to thank you for the opportunity to appear before you today on behalf of the more than 190,000 members across the country of the National Trust in strong support of efforts to protect historic shipwrecks, an irreplaceable part of America's heritage As the congressionally chartered leader of the Nation's private sector historic preservation movement, the National Trust has taken a continuing and strong interest in matters relating to the preservation of our maritime heritage

I have given you a couple of pictures, Mr Chairman We will just consider them handed over, and they are yours

The issue today is not the admiralty law of salvage, whether as it was once practiced by Mr Bennett or as it is practiced today by Mr Horan or as it was understood by Judge Marvin in Florida in the 1840's as cited by Mr Fisher The issue, I take it, is the future status of historic shipwrecks

It turns out that these are the most endangered, most at risk category of historic resources in America

The recommendation of the National Trust begins with the framework of the 1966 National Historic Preservation Act which set up the partnership between the National Park Service, the State historic preservation offices, the National Trust, and, now, certified local governments We are very happy with the steps taken in H R 74 subject to what we think of as three basic principles that should guide legislation in this area

First of all, the legislation must remove historic shipwrecks from the jurisdiction of Federal admiralty law The admiralty courts, a part of the judicial branch of government, are not an appropriate place to house the executive function of protecting and managing historic resources Neither do the admiralty courts have the archaeological expertise to make important decisions in this area

I think we would simply associate ourselves fully with Congressman Bennetts' remarks with respect to the applicability or inapplicability of admiralty law to historic shipwrecks

Second, any legislation must seek to vest the authority to regulate the exploration and salvage of historic shipwrecks in the States State governments throughout this nation are seeking such authority, and several have distinguished records of achievement in the maritime archaeology area

Mr Arnold has mentioned already that he is the maritime archaeologist in Texas One fine example is his home State's exemplary recovery of ships from the 1554 sunken Spanish fleet and its careful study and conservation of artifacts

As a third principle, any legislation to protect historic shipwrecks should be consistent with the Federal, State, and private partnership established by the National Historic Preservation Act of 1966 This law established the basic framework for dealing with the entire Nation's historic preservation program of which nautical archaeology should be a part Under this program approved State programs are given primary responsibility to make preservation decisions for historical and archaeological resources

That there is a Federal interest in these historic shipwrecks, happily, is the position of both H R 74 and H R 2071 The issue seems to be how best to advance this Federal interest We believe that State title and State management should be the goal, but following your question, Mr Chairman, we also do favor minimum Federal standards

For your information, you might want to know that the National Trust is convening a panel of experts in the field of nautical archaeology to study and recommend standards for State assumption of regulatory authority in this field This group is scheduled to be meeting during the week of the 11th of May Based on this group's work, we anticipate and hope that the National Trust would be able to make recommendations in this area to the committee by the 1st of June

It would be our position, therefore, to urge you and your committee to await these recommendations prior to taking any final action on this legislation

Absent an approved State program, we believe that the National Park Service should have the management responsibility through

Dr Keel's office and through the National Park Service's Submerged Cultural Resources Unit which has many years of experience in actually handling underwater resources in all of the Federal parks

Furthermore, we believe that the National Park Service of the Interior Department should have the standard setting responsibility, as it has by the 1966 National Historic Preservation Act throughout this field, citing for one splendid example the performance of the Park Service in developing regulations for the historic rehabilitation tax credits which have done so very much over the past few years to revitalize downtowns of America all across the country

In conclusion, Mr Chairman, if I might, let me say something that is a little bit akin to Mr Arnold's comments about Mount Vernon As a nation, we would not tolerate a commercial enterprise that bulldozed *Gettysburg* and then dumped the remains through a sifting machine to recover any valuable objects Yet, this is exactly what current law allows treasure hunters to do to our Nation's maritime legacy Current law allows this

This legacy is not the property of any syndicate of investors, dare devil treasure seekers, or even well meaning sportsmen It is the property of the Nation as a whole, and the Nation as a whole is not currently protecting its interests in its heritage of historic shipwrecks

Thank you, Mr Chairman

[Prepared statement of Mr Walter may be found at the end of the hearing ]

Mr LOWRY Thank you, Mr Walter  
Mr Roberts?

#### STATEMENT OF MIKE ROBERTS, PRESIDENT, TIMELINES, INC

Mr ROBERTS Thank you, Mr Chairman

For the record, my name is Michael Roberts, president of Timelines, Inc , a firm specializing in planning, analysis, and managing of historic preservation projects

I want to thank you for inviting me to testify today My remarks here will emphasize points made in my written statement which has been previously provided

As a member of the Society for American Archaeology, the Society for Historical Archaeology, and the Society of Professional Archaeologists, it is my responsibility to maintain professional standards and ethics on all my projects I am currently managing five major projects of which one involves the recovery of material from the sunken pirate ship *Whydah*

This project is currently nested within both State and Federal permitting procedures which allows high quality archaeological research to be performed in tandem with commercial material recovery

I am not here today as a representative of the *Whydah* project but as a representative of the archaeological data that can't appear in person, data that can help us understand the role of piracy and smuggling in establishing a tendency toward independence in the colonists, thus leading to the foundation of our Nation, data from a

bag of objects found in the wreck, one pirate's belongings, that we hope will give us insights into the daily lives of an important but little understood segment of 18th century society, data that would surely be lost without professionally performed archaeological research and whose data are well served in the current situation

On this project, we are inventing new ways to conserve and document objects, methods which will be invaluable to future efforts at recovery of materials from sunken ships. In addition, a wide range of public benefit programs is planned for the education of the public

Stepping back from this project, however, and viewing it in the context of a wide range of other archaeological projects, I believe that underwater sites should be considered to be equal with other historic and prehistoric resources in their management, treatment, and reporting to the public. These resources should be considered in context in each of the State's historic preservation plans

I believe that within the framework of H R 74, the States, Federal Government, and archaeological community and commercial salvors can work together effectively which, after all, is the goal of this bill

The proponents of this bill have consulted with a wide range of archaeologists, salvors, sport divers, historic preservationists, and State historic preservation officers. Many compromises have been made along the way

I believe that this is a good bill and one that will substantially reduce the existing chaos and allow the States to demonstrate their commitment to historic preservation as well as to free enterprise. It should be supported

I have a couple of additional points based on some earlier testimony. The Massachusetts State board which provides permits to work in the waters of the State is composed of individuals representing the sport diving community, archaeologists, Government agencies, law enforcement, and many others

In addition, the Massachusetts State board is currently establishing a panel to study and establish the value of material recovered from offshore

Finally, to respond to Mel's remarks, the *Whydah* team gave as many papers as the *Atocha* team at the meetings in Savannah. We also believe that we are developing the most sophisticated computer data base management system in the Nation

Thank you

[Prepared statement of Mr Roberts may be found at the end of the hearing]

Mr LOWRY Thank you, Mr Roberts

To any or all members of the panel, under H R 74, would many of these significant discoveries have been discovered, or would there have been a lack of incentive and so, thereby, the work would not have been done and the discovery would not have happened?

Probably all of you can comment on that Mr Roberts?

Mr ROBERTS In the State of Massachusetts, the salvor responsible for the *Whydah* project has been under State permit to work the waters of Massachusetts since virtually the inception of the

project, and the actual wreck site was discovered in the course—under the control of that permit

Mr LOWRY Now, what was the contract division on that between the State and the salvor?

Mr ROBERTS I believe the current State of Massachusetts regulations call for a 75/25 split, 25 to the State and 75 to the salvor

Mr LOWRY And if you others would also answer the obvious question which is, does this incentive result in discovery? That seems to be a very logical question to me, if any of the others would care to address that

Mr ARNOLD Mr Chairman, I think some surveys have actually been done on this, and a much greater number of historic shipwrecks have been found by university academics, State and private skin diver type groups than by treasure salvors

Mr POTT Well, there are a great many known shipwreck sites in Michigan boundary waters, for example, many more than we can deal with effectively as an archaeological entity While there is certainly no problem on the part of existing State law with regard to divers searching for and locating shipwreck sites, there doesn't seem to be any real need for this to take place as far as the archaeological community is concerned

The wrecks that exist in an archaeological sense, those that are of archaeological and historical value, are basically stable These wreck sites, we have discovered, tend to stabilize within the first quarter-century of their submersion Therefore, there is little change taking place with regard to these resources They are not deteriorating or disintegrating with time, as such

The State feels that it would be better, again, while they have no problem with the discovery of these sites, if these discoveries were to wait a number of years until we could perhaps deal with these resources in a more effective fashion

Certainly, those sites that are discovered, it is the State's hope that they will be viewed and enjoyed as a recreational resource, but that recovery would be extremely limited in any regard

Mr WALTER Mr Chairman, it seems to me perhaps the way to answer that one is to say if H R 74 were in place, first of all, the issue becomes a State legislative matter If the State wishes to construct a system of incentives such that it wants to encourage this kind of an activity, that is, the discovery and salvage, they can perfectly well do that as a State matter, because they have title to the property and they are the regulatory authority You are transferring a responsibility for this matter, and it would then be played out as a State matter

I used to do a good deal of work at the State level I was in the cabinet of a Governor of the State of Florida, and I know the Florida legislature reasonably well, and I think I could predict how that would play itself out

I have no idea what would happen in Michigan It presumably would be a different issue

Nonetheless, what we have to remember is that both H R 2071 and H R 74 indicate that there is a Federal interest in these historic shipwrecks Certainly, we have nothing in the admiralty law now that says that there is any kind of Federal interest at all in these shipwrecks

The assertion of that Federal interest and then the manner in which it gets transferred to the States and the terms and conditions on which it would then be played out within the several States strikes me as being something that is especially appropriate for the States to work out Texas has its approach, Florida its, and, clearly, Massachusetts its, but all being playing out subject to, if you will, the higher interest of the nation in its history

I think what we are all here arguing for, and we with some modifications to H R 74, others precisely as it is written, is the question of having asserted that there is a Federal interest in these historic shipwrecks, then how best to further that We think it should be best done through the States but with a reserved, if you will, minimum Federal standards in order to preserve that Federal interest which is, after all, why we are here now arguing this as a national historic preservation issue, sir

Mr LOWRY Thank you

Mr Roberts?

Mr ROBERTS With respect to the States issues, exactly the differences between the nature of each State is why I believe that the decisionmaking power should be within the State Michigan has a situation where wrecks are well preserved In the case off the coast of Massachusetts, every hurricane that hits the coast redistributes most of that wreck

Those things are in a state of dynamic flux So, the individual cases should be considered and will be considered more adequately at the State level, I believe

Mr LOWRY Can any members of the panel name a single shipwreck that was damaged under the existing admiralty jurisdiction? Mr Arnold?

Mr ARNOLD Yes, sir, I certainly can This case is the reason we have a strict antiquities code in Texas

In the late 1960s, there was a treasure salvage firm that, without giving any notice to the State or going to a Federal admiralty court, completely removed all the artifacts from a very early, very important historic shipwreck site There was no archaeological data recorded whatsoever

Later, they filed an admiralty claim We had an 18-year long litigation, and through a mistake of their attorneys, the State of Texas ended up with the collection We did have to pay a salvage award, however

There is one example where a site was destroyed by treasure salvors

Mr LOWRY But that wasn't the admiralty court, though, right?

Mr ARNOLD Yes, sir It ultimately was—well, he should have gone first to arrest the wreck in admiralty court That company, number one, was an out of State corporation They did not file with the Texas Secretary of State to do business in Texas, and they did not arrest the wreck in admiralty court as they should have before they started or immediately when they started

All salvors are not as meticulous and as well versed in the law or as interested in archaeology and history as Mr Fisher's group

Mr LOWRY Mr Walter, did you—

Mr WALTER I can't name you a ship, sir, no What I wanted to say is it seemed clear to me that Mr Horan who placed that ques-

tion, as I recall, and a perfectly good question—it was perfectly logical to ask it, but nonetheless I do remember that he posed it—I take it was really not asking a question about the admiralty law as much as it was “can you name something subject to the kinds of settlement terms and agreements that we have worked out with the State of Florida” which was, after all, the result of settling an issue in admiralty court that they got that arrangement all set up

I take it that is not a straight, by Congressman Bennett’s discussion of admiralty law the way it was when he practiced it It didn’t necessarily lead to that kind of a conclusion

I think I will follow Chairman Bennett’s lead when it comes to how to characterize the operation of Federal admiralty law in this area

Mr LOWRY Thank you

Mr Shumway

Mr SHUMWAY I have no questions, Mr Chairman Thank you

Mr LOWRY Thank you

I want to thank the panel very much for your very helpful discussion

Our last panel is Anne Giesecke, legislative director, Underwater Society of America, Milton Bush, legislative liaison, Diving Equipment Manufacturer’s Association, director of the Washington Operations of the Sporting Goods Manufacturer’s Association, Thomas Maddox, owner/operator of East Coast Diving Supply, and Peter Hess, representative of Ocean Watch

Thank you all very much for your patience in waiting If you could start off, please, Ms Giesecke

#### STATEMENT OF ANNE GIESECKE, LEGISLATIVE DIRECTOR, UNDERWATER SOCIETY OF AMERICA

Ms GIESECKE Thank you Thank you, Mr Chairman and Mr Shumway, for your patience and for listening to all of the important arguments and discussion that we have heard here today on this very important issue

I am here representing the Underwater Society of America which is the largest volunteer sport diving organization in the United States It was established in 1959, and we now have more than 8,000 members, over 2,000 members in California alone Since its incorporation, the society has promoted the enjoyment of diving and acted as spokesman and protector of the sport

In 1983, we made a commitment to represent the interests of the sport diving community, a sizable group which previously had no effective voice in the discussion of the shipwreck bills The Diving Equipment Manufacturers Association, along with other sport diving organizations, joined our efforts in 1984

The language of H R 74 which protects the rights of sport divers is a direct result of our persistent efforts We are here today to testify in support of H R 74 and to oppose H R 2071

The primary purpose of H R 74 is to recognize each State’s authority to control the excavation of State lands for the purpose of recovering embedded and historic ship-wrecks The bill accomplishes this purpose by declaring that the State has title to ship-

wrecks that are embedded in submerged lands, in coralline formations, or eligible for the National Register

The bill is needed for two reasons. First is an important management reason. Environmental conflicts can occur when treasure hunters look for shipwrecks. Dynamiting coral reefs, dredging of endangered turtle nesting habitat, excavation of shellfish beds, and disruption of recreational diving and swimming are the kinds of activities that the States need to control.

The bill meets this need by clearly stating that the State has title to the land and what is embedded in the land. The bill addresses the State's right to permit the excavation of State land and the State's right to spend money on the creation of parks, on the conservation of recovered artifacts, on public education, and displays.

The second reason the bill is needed is to decrease the costs to the State of unnecessary litigation. State authority has been challenged in Federal court on six occasions. In one case, the court assumed jurisdiction over the excavation of State land for the purpose of recovering shipwrecks without regard for environmental or recreational concerns. More than 35 cases are still pending.

If H R 74 passes, no new litigation on this jurisdictional question will add to the \$20 million that State taxpayers have already spent. Moreover, H R 74 will not cost the Federal Government any money and will not expand the Federal bureaucracy.

The State's ability to issue and to deny permits for activities on State lands is essential to good management. An "after the environmental damage has been done" case-by-case approach by the Federal admiralty court is not sufficient.

Over the years, States have worked closely with sport divers. They have recognized that sport divers are discovering and studying historic shipwrecks and are also major contributors to many local economies. At least 80 percent of the known shipwrecks have been discovered by sport divers, about 15 percent by State projects and fishermen, and less than 5 percent by treasure hunters.

Archaeological excavation of the approximately 5 percent of the found wrecks that are historic is being done by sport divers and by college students. Every year, more than 25 groups sponsor more than 50 projects to map and recover shipwrecks.

If H R 74 passes, we expect that the States will continue to protect historic shipwrecks and to encourage sport diving.

States such as Michigan, Vermont, South Carolina, and Florida have encouraged sport diving by producing publications, by creating underwater parks, by placing moorings near wrecks, and by sinking ships as dive sites.

States have applied, under their historic preservation laws, minimum national standards to their historic wrecks since 1966.

States already administer shipwreck archaeological sites. There is no need to substantively distort the Federal court system which applies to ships and cargoes that are in imminent danger to administer archaeological sites.

H R 2071 should be titled the admiralty lawyer enrichment act. The bill makes a show of protecting shipwrecks while it actually acts to increase the size of State and Federal budgets, expand bureaucracies, and enhance opportunities for lawyers.

The establishment of a complex court filing system will require increased tax support for the Federal court and increased State taxes to support State participation. Sport divers are understandably averse to paying higher taxes for the purpose of being excluded from dive sites.

There are probably only two commercial operators working in the United States who might benefit from this salvor subsidy on the mining of old wet wrecks. There are more than 25 million sport divers who stand to lose access to their favorite dive sites.

We oppose H R 2071.

As an alternative, conditioning the State's authority to own shipwrecks would also require the development of a costly Federal bureaucracy.

In conclusion, continuation of the assignment of title to abandoned historic shipwrecks is the simplest, clearest management system. With title, the expenditure of State funds for administration of permit systems, the conservation of materials for public benefit, and the transfer of title to certain artifacts would be most clear. Any international claims to historic shipwrecks in State waters would be foreclosed.

The sport divers and other interested groups who know their own interests and their own resources should be allowed to continue to evolve appropriate systems to manage their State's shipwrecks. The management system for prehistoric canoe in North Dakota need not be the same as the system for a Spanish galleon in Florida or a world war II fleet in Truk Lagoon. We support H R 74.

Mr Chairman, I would like to submit for the record some supplemental information on some surveys that have been done and a short summary of some of the case law.

If I might just comment on one point that came up on the liability question, the States having liability for the ownership and title to shipwrecks that are embedded in State waters. Since the States have already claimed that authority and have been acting that way, they have already accepted that liability. In the case of the Corps of Engineers, many States already have agreements with the Corps of Engineers for maintaining navigation in channels in regard to those wrecks. So, the liability question has not, in the last 20 years, been a problem.

Thank you.

[Prepared statement of Ms Giesecke may be found at the end of the hearing.]

[Material to be supplied can be found in the subcommittee files.]

Mr Lowry: Thank you, Ms Giesecke.

Mr Bush?

**STATEMENT OF MILTON BUSH, WASHINGTON REPRESENTATIVE,  
DIVING EQUIPMENT MANUFACTURERS ASSOCIATION AND DIRECTOR,  
WASHINGTON OPERATIONS, SPORTING GOODS MANUFACTURERS ASSOCIATION**

Mr BUSH: Good afternoon. My name is Milton Bush, and I am a lawyer and Washington representative for the Diving Equipment Manufacturers Association, also known as DEMA.

I would like to first take the opportunity to thank you, Chairman Lowry, for inviting me to testify on behalf of Robert Gray, executive director of DEMA, who was unable to appear before the subcommittee today

DEMA represents the U S producers of sport and commercial diving products We are an \$800 million industry in total, employing approximately 30,000 people in the United States This includes but is not limited to 17,000 instructors, 4,000 retailers and their employers, 6,000 employees of manufacturing companies, and 3,000 employees of suppliers, certifying agencies, and destination operations

DEMA, then, is the primary organization that links producers, sellers, instructors, and suppliers of equipment and recreational diving opportunities together to promote the safety and growth of the sport As this essential link to the broad based sports diving community, we are present today for two reasons, one, to pledge our support for H R 74 as introduced on January 6, 1987 by the Honorable Charles Bennett, and, two, to demonstrate why we support the present bill and not its predecessors

The predecessors of H R 74 did not guarantee sports divers access to the shipwrecks as enumerated in the bill, while the historical value and environmental integrity of these sites remained protected Based upon DEMA's testimony on H R 3558 and at the request of then subcommittee Chairwoman Mikulski on October 29, 1985, DEMA submitted a letter outlining suggested amendments to H R 3558 which have been subsequently incorporated into H R 74

For the benefit of the new subcommittee chairman and new subcommittee members, I would like to point out and explain those amendments to the bill and emphasize their significance to the sports diving community

Section 3, definitions, has been amended so that "embedded in submerged lands" means that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof "Embedded in coralline formations" means fixed in coralline so that tools of excavation are required in order to gain access to the shipwreck, its cargo, or any part thereof

What the tools of excavation requirement means to the sport diving community is that the environmental and historical integrity of the wreck will be considered before any dynamiting or dredging of the wreck would occur and that the salvor would be required to obtain a permit from a State before beginning operations

It is important to point out now, as previous testimony and hearings in prior Congresses have demonstrated, that the vast majority of wrecks have been discovered by sports divers I only have to refer to Ms Giesecke's testimony and the honorable gentleman, Alan Albright, from South Carolina

So that the incentive for sports divers remains and they may continue their discoveries which predominantly serve the public interest, we asked for section 4's rights of access provision to be amended so that States holding title to such shipwrecks pursuant to section 6 of the act provide "reasonable access by the public to such abandoned shipwrecks, guarantee recreational exploration of shipwreck sites, allow for appropriate private sector recovery of

shipwrecks which protect the historical values and environmental integrity of shipwrecks and the sites, and encourage States to create underwater parks or areas to provide additional protection for such resources”

Finally, section 6, rights of ownership language, has been clarified for consistency purposes by adding “embedded“ to preface “in coralline formations” on line 13

Each year, recreational divers discover hundreds of new wrecks and artifacts These are items that would otherwise be lost to the ravages of time and decay By identifying the location of such objects and often doing much of the preliminary research, recreational divers open the door for follow-up by the archaeological community and salvors

The result is that the public gains awareness of a history that would otherwise be lost

The beauty of this bill is that it brings the three interests together, sports divers, archaeologists, and salvors, not in an adversarial proceeding in the Federal district court under admiralty law but to resolve controversies through the Council for Historic Preservation It also clarifies the jurisdictional conflict between Federal and State government ownership rights

Also, so that the public interest is served, that “determined eligible for inclusion in the National Register” means that “the Secretary of the Interior has, after consultation with the appropriate State historic preservation officer, made a written determination that the abandoned shipwreck meets the criteria for inclusion on the National Register of Historic Places”

The number of recreational divers continues to grow Consequently, so will the number of individuals whose enthusiastic explorations lead to the location and discovery of new wrecks and artifacts

For example, over 40 percent of the readers responding to a 1985 Skin Diver Magazine survey actually went wreck diving in the previous 12 months Wreck diving is a popular specialty diving activity

Sports diving is growing at a compounded annual rate of 12 percent for equipment sales, a 20-percent increase in sales in 1986, and an astonishing 20 percent in participation Every year, more than 400,000 new divers are certified by the various training agencies leading to a total of over 3 million certified divers in the United States HR 74 which DEMA supports and endorses, meets the needs of this growing constituency

I would like to make one final comment regarding Mr Fisher’s goal to motivate young people and to make their dreams come true just like his We at DEMA representing the sports divers have the same goal of motivating young people, and that is precisely why we support Mr Bennett’s bill This bill provides the framework to allow these young people to develop the appropriate skills and the place that history places upon their activities

Thank you very much

Mr Lowry Thank you, Mr Bush

Mr Maddox?

**STATEMENT OF THOMAS A MADDOX, OWNER AND OPERATOR,  
EAST COAST DIVING SUPPLY**

Mr MADDOX Mr Chairman and respected committee members, my name is Thomas Maddox I own one of the largest dive stores in the State of New Jersey and also probably in the country Through our store, we teach a wide number of sport divers every year, a very large school We have a club that represents close to 400 divers located in the eastern and southeastern section of New Jersey, and I also own and operate a charter dive boat off the coast of New Jersey

I am here today to express some points of view concerning H R 74 and H R 2071 I am a professional diving instructor and dive store owner and I also own and operate a charter diving boat, as I mentioned After talking with many other dive store owners and recreational divers throughout the country, I am sure that most of the views I present today are shared by them as well

As a matter of record, I would like to call to your attention that, by proxy, my viewpoints and position are also those of the New Jersey Council of Dive Clubs and their membership This organization represents the strongest membership of recreational divers in our State

There is great concern within the sport diving community that we will be denied access to what has rightfully been ours for so long While H R 74 seems to deal primarily with major salvage operations, we would remind you that the majority of diving is done for recreational purposes, not treasure salvage Most shipwrecks are used as a source of recreation, not as a source of revenue

H R 74 does nothing to protect our access to dive sites In fact, it creates a situation that could dangerously affect our accessibility to these wrecks H R 74 does not define reasonable access

New Jersey is an active sport diving location With 127 miles of shoreline, our State has an estimated 4,000 shipwrecks I have been making my living in these waters for over 13 years

As a small businessman, I feel my right to free enterprise is threatened If any legislation, State or Federal, were to keep me from plying my trade on these shipwrecks, I would be out of business in no time H R 74 places this right to free enterprise in jeopardy

While H R 74 seems to place much concern on the preservation of historic artifacts, I would like to remind you that private individuals are willing and eager to work with State and Federal agencies to that end In my State alone, I have been active in many educational programs that support sound underwater archaeology We have recently worked in conjunction with the New Jersey State Museum on a project in the historic Mullica River mapping and locating Revolutionary War vessels

I, along with other interested parties, have helped to fund these projects with no return on our investment other than the satisfaction of providing accurate historical data for the education of the general public Our students have continued working with the State Museum to provide them with information concerning these wreck sites Many of them are still collecting information on their own and providing this information at their own expense

These divers are not there to bring up artifacts for their own collections. They are there to provide a reasonable working relationship for all concerned. Would you jeopardize their work by denying them access to these sites?

We feel that H R 74, by transferring ownership of certain shipwrecks to the States, would create an antagonistic relationship between the State and the private sector recreational diver. H R 74 would open the door for States to become the salvors, a position we feel is inappropriate.

On the other hand, leaving the ownership of these wrecks in Federal hands and providing an alternative method of management, such as stipulated in H R 2071, will be to the benefit of all involved.

The sport diving industry is not to be ignored. The diving retailer has no national association to represent it as of yet, but the business of sport diving in my State alone is a multimillion dollar industry.

Mr Chairman, I would like to interject at this point that DEMA, with all respect to Mr Bush, to the best of my knowledge, does not represent diving retailers as there is no national organization representing diving retailers of which I have been one for 13 years, and there is also—DEMA does not represent the diving instructors. I would like to make that point clear.

Because of the nature of our coastline, we have no other real diving locations other than our shipwrecks. Almost all diving activities in our State take place on these wrecks. If access were denied, our industry would grind to a halt.

Mr Chairman and respected members of this committee, I would remind you that time and tide are against us. Supporting H R 74 would put ownership of historically valuable wrecks in the hands of those who have never seen a shipwreck first hand. I have seen that many of our important wrecks are being destroyed by time and tide. How much of our history would be lost during the confusion created by transfer of ownership?

Who would become legally liable for the wrecks? Who owns the wrecks located under State leased oyster beds? Who owns wrecks submerged under waters included in the riparian rights granted to property owners? These questions and more would add to the confusion of the issue.

Instead, Federal education programs could be set up with small financial grants, perhaps with matching funds, for State and private archaeology projects. Committees could be formed within the States to oversee responsible management of historic sites. These committees should include legislators, archaeologists, salvors, and recreational divers.

These are only some ideas presented as alternatives to turning ownership of the wrecks over to the States. I ask that you be responsible enough to investigate some other options before enacting a law that could have such an irreversibly devastating effect.

In closing, I feel that if any legislation concerning abandoned shipwrecks must be addressed, a bill providing us with certain guarantees must be written. It must provide for responsible salvage procedures, the preservation of our historical artifacts, our right to free enterprise, and access to our wrecks by recreational divers. It

must approach shipwrecks as though they were a resource, not as a property

I urge you to leave ownership of these wreck sites to the Federal Government and under the laws of Federal admiralty

H R 74 falls short of these very important requirements While its wording suggests guidelines for providing certain rights to recreational divers, it does not guarantee that the States will adopt these guidelines It approaches shipwrecks as though they were all of salvage rather than recreational value and, therefore, should be defeated

I urge you to explore all available options of shipwreck legislation before passing a bill that could be so devastating to such a large number of people While H R 74 provides for none of these guarantees, H R 2071 is a step in the right direction and should be a starting point for abandoned shipwreck legislation

Thank you

Mr LOWRY Thank you, Mr Maddox

Mr Hess, please

#### STATEMENT OF PETER E HESS, REPRESENTATIVE, OCEAN WATCH

Mr HESS Good afternoon I would like to thank the members of the Oceanography Subcommittee for the opportunity to testify today

My name is Peter E Hess I am a sport diver and amateur underwater archaeologist who has also been an attorney in litigation for salvage rights to historic shipwrecks, representing in various cases the salvor, the State, and the sport diving public

The committee is examining two bills now, both of which purport to protect historic shipwrecks H R 74 has been before this committee for 9 years and has not yet been enacted into law That alone should say something as to its merit

This bill would achieve preservation of historic shipwrecks through a wholesale governmental taking of a class of largely undiscovered and unknown property I might add that the ownership would extend to all shipwrecks, because regardless of whether it is eligible for inclusion on the National Register of Historic Places, I have yet to see a shipwreck in 10 years of diving which is not embedded in the bottom It covers all wrecks

Fifth amendment problems with governmental taking notwithstanding, the bill creates no mandate to manage or even survey the resource that is turned over to the coastal State

Concomitantly, the bill abolishes the admiralty jurisdiction over claims for salvage rights to historic shipwrecks in State waters This creates a two tiered system and a jurisdictional nightmare for a wreck that is within State waters or 2 5 miles offshore would not be subject to admiralty jurisdiction while one which was 3 5 miles offshore would be

In effect, the bill amends the Constitution because in article III, section 2, the US Constitution provides that "the judicial power shall extend to all cases of admiralty and maritime jurisdiction " There is nothing more maritime in nature than the salvage of a shipwreck from the ocean's floor

Despite the profound effect that this bill would have on the United States Constitution, in the 9 years it has been examined, it has yet to be reviewed by any Judiciary Committee of the U S Congress

Finally, the bill gives only a vague guarantee of "reasonable access" to sport divers

H R 2071, on the other hand, expands upon existing admiralty jurisdiction and provides for strict archaeological guidelines for the salvage of historic shipwrecks The bill promotes the exploration and discovery of this resource It protects the interests of the States as public interest trustee without the financial burden and potential liability that ownership entails

In addition, it contains specific guarantees of access to sport divers

In this our bicentennial year of the United States Constitution, it is important for us to remember why the Framers gave exclusive admiralty jurisdiction to the Federal judiciary The reason was uniformity for vessels of various flags calling on any United States port concerning matters of navigation, commerce, seaworthiness, and even salvage

H R 2071 would build upon this proud tradition of over 200 years of Federal common law and statutory admiralty jurisdiction

I am speaking today primarily as a representative of the sport diving community As you know, we number in the millions and are by far the largest group directly affected by this legislation

In the Atlantic Ocean, the Gulf of Mexico, and the Great Lakes, virtually all recreational diving is concentrated on shipwreck sites As you have heard, sport divers have discovered the vast majority of shipwrecks that are located each year

Ms Giesecke recently testified as a representative of the Underwater Society of America that they are in favor of this bill I would contest that A constituent member of the Underwater Society of America is the New Jersey Council of Diving Clubs I was at an executive meeting of the council last month during which time I informed them that the Underwater Society was a proponent of this bill They informed me that they had never been asked by the Society for their position on this bill In fact, the New Jersey Council is opposed to H R 74

As sport divers have become increasingly fascinated by the lure of history under water, we have done lengthy archival research and extensive remote electronic searches for sunken wrecks In short, the sport diving community has the money, the ability, and the enthusiasm to discover shipwrecks, and we want to do it scientifically

Contrary to the earlier representations, of the hundreds of sport divers that I know and dive with, there is uniform and strident opposition to H R 74

The admiralty courts which would be abolished by H R 74 have already recognized the right of access by sport divers to historic shipwrecks In 1986, the U S District Court for the District of Delaware resolved conflicting claims between sport divers and a commercial salvor for the rights to recover English ironstone china from a 19th century sailing vessel which is wrecked at the mouth of Delaware Bay

The court held that the sport divers' organization, Ocean Watch, had demonstrated that its members had been diving and recovering antique china plates and dishes from the so-called China wreck for 15 years and could therefore permanently enjoin the commercial salvage of that popular sport diving and fishing site *Indian River Recovery Co v The China*, 646 F Supp 141 (D Del 1986)

H R 74 would destroy the precedential value of the judicial recognition of a sport diver's right to access to historic shipwrecks H R 2071, on the other hand, builds upon the China wreck decision and gives specific guarantees of access to sport divers

I might add that in the two years in which the China wreck case was litigated and which was public knowledge throughout the sport diving and diving community in general, of the many governmental entities and organizations which have testified here today, not one stepped forward with moral, financial, or legal support to Ocean Watch The sport divers bound together and litigated and won that case

The only organization which did support them was the Atlantic Alliance for Maritime Heritage Conservation which provided financial, moral, and legal support The Atlantic Alliance has been a leader in opposition to H R 74, as it is opposed to wholesale governmental taking of an unknown and vaguely defined class of shipwrecks Instead the Atlantic Alliance believes that the key to the preservation of historic shipwrecks is through education of sport divers and cooperation with those states which treat divers as part of the solution, rather than part of the problem

I also would like to give you another reason as to why the sport diving community is opposed to State ownership of shipwrecks In the State of Wisconsin last year, the legislature tried to ramrod through a bill which would assert ownership to 300 wrecks in Wisconsin waters, leaving all others open for sport diving The problem was that there were only 300 known wrecks in Wisconsin waters Sport divers defeated that bill

An even worse scenario occurred in the State of Georgia There, three sport divers became fascinated with the Civil War blockade runner, *CSS Nashville*, which is partially submerged in a river there They attempted to get a permit from the State which had no procedure for granting a permit and instead commenced doing archaeological work and artifact recovery from this wreck—in waters with strong currents and zero visibility—for 5 years

At that time, the Georgia Department of Natural Resources seized all the artifacts which these sport divers had recovered and preserved and prohibited them from continuing to dive on that site The divers had put their artifacts on public display The artifacts which the State seized are now locked away from the public view

The divers, using their own money, put together this book, "Tangled Machinery and Charred Relics" It cost the government absolutely nothing I would like the committee members to take a look at this I think this is a fine example of underwater archaeology that was not done at the public expense, and this is the kind of activity which is now prohibited by the State of Georgia

Georgia has since prohibited any kind of archaeological investigation by sport diving organizations other than scientific or educational institutions The Georgia regulations which are now law are

the most restrictive in the United States They are not enlightened regulations, such as those of South Carolina, which Mr Albright testified about

What Georgia has done as a practical matter is not prevented sport divers from recovering artifacts It has merely made what was a legal activity and what sport divers wanted to do in conjunction with the State a criminal activity, and the diving continues although the information which is recovered is no longer available to the public

State ownership of shipwrecks is not a panacea to historic preservation I think the real enemy of historic preservation of shipwrecks has not been addressed by either bill, and it cannot be regulated The enemy of preservation of wrecks is the corrosive effects of the ocean environment I know, because I watch my favorite wrecks deteriorate on an annual basis A bill like H R 2071, which encourages the archaeological recovery of historic shipwrecks, ensures that knowledge and artifacts are rescued from the depths, and not lost to the ravages of the elements

The incredible recent discoveries of the mother lode of the *Atocha* and the wreck of the *Titanic* demonstrate the rich archaeological potential of modern undersea exploration Increasing public interest and active participation in such discoveries is a trend which Congress cannot ignore As new technology improves man's ability to explore the underwater realm, it is inevitable that sport divers will continue to make important discoveries of shipwreck sites and will wish to properly excavate them

H R 2071 guarantees the private individual an economic incentive for the archaeological documentation of a shipwreck and promotes a uniform forum for the resolution of conflicting uses over the resource Unlike H R 74, H R 2071 promotes cooperation instead of confrontation among the Government, private enterprise, and the diving public

Thank you

[Prepared statement of Mr Hess may be found at the end of the hearing ]

Mr LOWRY Thank you, Mr Hess

Obviously, this panel is unanimous in its opinions on this legislation

Mr Maddox, what is done when you go down to the shipwreck or your clients go down to the shipwreck? Do they just look at it, just what do they do?

Mr MADDOX Mr Chairman, we have a varied number of interests on the shipwreck One is simply the visual aesthetics of diving on a shipwreck Another is underwater hunting, spear fishing, catching lobsters One of the great pastimes is underwater photography which the wrecks provide for us to do

In New Jersey, we have a flat sand bottom If we don't dive on shipwrecks, we don't dive

Mr LOWRY But there isn't any removal of any of the ship?

Mr MADDOX There certainly is removal of shipwrecks, parts of shipwrecks, by all members of the diving community—not all members, but by a large number of divers in the community Most of them are acting responsible in either taking their collections, as had been mentioned earlier in testimony, doing the proper preser-

vation techniques, and putting them on loan to museums or in collections and showing them

Not everybody who goes down there, I want to make known, is down there for salvaging artifacts off the shipwrecks. But I would also like to note that the majority of the so-called artifacts that come off of shipwrecks, in my opinion, if you took them all and put them in a dump truck and laid them in the parking lot, nobody would touch them. They are of no historical significance.

But I think what we are attempting to do, I am attempting to do through my organization anyway, by sponsoring sound archaeology workshops working with the State, we are trying to educate the public so that if they do come across something, they will take the proper measure to be able to do that. We feel that, as has been testified many times here today, the private sector recreational diver is responsible for bringing to the forefront most of the shipwreck finds.

If H R 74 passes, we feel that access could greatly be denied. If that access is denied, nothing like that will happen again.

Mr LOWRY: Mr Bush, I may have never heard it exactly, but I thought you testified that you thought that the legislation that had been worked out did provide adequate access for divers.

Mr BUSH: That is correct.

Mr LOWRY: So—

Mr BUSH: Where are we?

Mr LOWRY: Right.

Mr BUSH: You are looking at the Diving Equipment Manufacturers Association which represents a majority of the diving interests in the United States. As a majority, we have appropriate procedures at DEMA for the approval process for a position on any bill which goes to the DEMA board of directors, and the DEMA board of directors has voted to throw their support behind H R 74.

Mr LOWRY: OK, as to that. But can you tell us how adequate access is provided in H R 74?

Mr BUSH: As I showed you before, the language under the rights of access provision, "provides legal access by the public to such abandoned shipwrecks, guarantees recreational exploration of shipwrecks sites, allows for appropriate private sector recovery of shipwrecks which protect the historical values and environmental integrity of shipwrecks and sites, and encourages States to create underwater parks or areas and provide additional protection for such resources."

Mr LOWRY: OK. That is what you read in your testimony.

Mr Maddox or Mr Hess, why don't you think that that provides access or adequate access?

Mr MADDOX: First of all, as testified today, and I am sure Mr Hess has his opinion, we see a varied number of ways that States have already handled their own legislation from restricting almost all diving in the State of Georgia to the South Carolina wonderful relationship that they have with sport divers. We feel that H R 74, in its own wording, says "reasonable access." Who defines reasonable access? What is reasonable access?

If that is left up to the States, we have no control by the time it is passed to the State what that State will do. We would like guide-

lines prior to its passing hands if, in fact, it does that those guidelines are guaranteed to the sport diving community

Mr LOWRY Mr Hess, would you like to add to that?

Mr HESS Yes As an attorney and as many of you lawmakers may well know, the term "reasonable" and what constitutes reasonable behavior—reasonable access in this case—is the source of a great many number of law suits, and I don't believe that this bill is any exception However, H R 2071 specifically states that unless there is an on-going salvage operation, the public will be allowed to visit any historic shipwreck although they may not be allowed to recover artifacts They are always open to the public

To me, that is a concrete guarantee of access Reasonable access is nothing It means only what the State wants it to mean and only invites litigation rather than prevent it

Mr LOWRY Ms Giesecke?

Ms GIESECKE Yes, I would like to comment that I think it is important to note that no State prohibits sport diving No State ever has Michigan was given as an example of the critical importance of sport diving to State economies They established an underwater preserve, and a county, Alger County, which had an annual income of \$1 4 million and had been dependent on sport fishing in a dying community, within a couple of years of establishing the underwater preserve and a sport diving charter system to take people out to those wrecks got an annual county income of over \$6 million That is an economic turnaround in a very short period of time

We see no reason why States would discontinue to encourage sport diving and to encourage wreck diving The amount that Florida and other States have spent on the sinking of wrecks for the purpose of sport diving is phenomenal The Mercedes, the very famous wreck that was just recently washed up on the beach and then sunk off the coast, is a good example of what the States are doing

We expect that the States will continue, in our opinion, to act in a positive way to encourage sport divers

In terms of representation, if I might just comment, we are a democratic organization, and we do vote on positions I will have to acknowledge that there is some hesitancy on some citizens in New Jersey and also some citizens in New York to work with their State governments, but it is interesting to note that in the 98th Congress when we had testimony on this bill, Deborah Whitcraft testified in favor of the legislation as a New Jersey charter boat owner and operator and felt very strongly that she could work with the State

So, there aren't any absolutes here, but I think that I can make a strong case for the majority of our members, a willingness to work out the details at the State level We know our States, we know our resources, we know our interests, and if we want to set up underwater preserves in Michigan, that should be all right If we want to set up some other kind of system in Florida, we want to have that choice We want to work it out at a local level that we feel we can control

We don't feel we can control the court system We don't feel we can control the National Park Service or the Department of Commerce We feel we have access to our State governments and can work effectively as citizens to develop effective laws for our States

Mr LOWRY Mr Shumway?

Mr SHUMWAY Ms Giesecke, you referred in your testimony to language in H R 74 which protects the rights of sports divers I have here the bill, and I have looked in vain for such language Would you tell me where that is contained? I may have overlooked it

Ms GIESECKE We feel that although you may be——

Mr SHUMWAY Would you answer my question? Where is it in the bill? I don't want your opinion I want to know where it says in the bill that those rights are protected

Ms GIESECKE We feel the States will protect our rights

Mr SHUMWAY You are not referring to a section of the bill?

Ms GIESECKE We feel that the diver access rights section of the bill——

Mr SHUMWAY You are referring to entirely prefatory language in the bill which is nothing more than a wish list

Ms GIESECKE Philosophically and effectively

Mr SHUMWAY No guarantee of rights

Mr Hess, I appreciate your testimony, not just because it likes my bill, but because you bring the perspective of both a practicing lawyer as well as a sport diver to the committee Therefore, that is a perspective that is interesting to us

I notice in your statement that you have submitted, you describe the wreck of the H M S *DeBraak* I may not be pronouncing that correctly, but this was off the coast of Delaware The reason I bring it up is that the photos that were submitted to us by the last panel, specifically, Mr Jackson Walter, were photos of the effort to bring up the H M S *DeBraak* and, I take it, were submitted to this subcommittee in an effort to show the kind of evils that would be prevented by passage of H R 74

In your testimony, you indicated that this was an admiralty action The court gave the State complete and unfettered discretion to oversee the salvage, and the State, in this case, ignored any accepted archaeological practices and sanctions, yanking the fragile hull, and so forth, and therefore could be said to be responsible for the damage that did occur Is that correct?

Mr Hess Yes, Mr Shumway The problem with the *DeBraak* case was not with the Federal District Court, because the court allowed the State to oversee the archaeological aspects of the salvage of that historic wreck as they saw fit The State was caught up in the same treasure fever that had gripped the salvor, apparently, because they sanctioned the removal of this large and delicate piece of hull structure without ever planning beforehand any preservation for it

As a result, it sat out in the open for a number of weeks while Delaware officials argued as to what they were going to do with it, and they ended up digging a big hole in a State park and throwing it in there and covering it up with water Now, they are talking about taking it back out to sea and burying it again

It is just incredible, because the hull of the *DeBraak* could have been perfectly salvaged while it remained on the bottom It could have been made into an underwater park, and it could have been enjoyed by the recreational divers of the mid-Atlantic area

Instead, what we have is a splintered piece of—almost a piece of junk, and it is a real tragedy

The point is that State ownership is not a guarantee of historic preservation

Mr SHUMWAY Is there anything in H R 74 that would prevent that from happening again?

Mr HESS No

Mr SHUMWAY Mr Maddox, if H R 74 were enacted today, New Jersey, in your case, would gain title to the shipwrecks within their 3-mile territorial sea. What would this mean for you as a dive store owner and diving instructor interested in diving on shipwrecks?

Mr MADDOX Mr Shumway, as we see it, the biggest problem could be that we would be limited in access to these wreck sites.

I am here today to testify as an independent small businessman, and I also have great connections with the sport diving community. After all, I am responsible for producing probably 50 percent of them in the south Jersey area.

We need to have access to those sites for recreation, for income, and we are also undertaking sound educational programs trying to work along with the States. We certainly are for archaeological preservation, but we have situations where I would like to just give you briefly.

We ran a program on a historical site with the blessings of the State, with State archaeologists on site. One of our divers later went out there to have a look around and was subsequently arrested with no law. The marine police arrested him when he actually popped to the surface and, when asked about it—it happened to be a State trooper that they arrested—was under the impression that this law had come down from the attorney general's office.

Mr SHUMWAY What was he arrested for? What was the charge?

Mr MADDOX Well, the arresting officers were under the impression that this was State regulated water and no one was allowed to dive there.

Mr SHUMWAY Which was not correct.

Mr MADDOX Not as far as I know. We have certainly always had access to it. As a matter of fact, we have had a directive, I believe, in conjunction with the work we have done there where we sought out the permit process and were told that we didn't need permits there, only for excavation purposes which we thought maybe we could do in conjunction with the State but subsequently were never done.

My main concern is that we must have access to these sites, that education would be much better than leaving the people out of this situation altogether.

I can guarantee you that if the States—now, we agree responsible State legislation and a working relationship as in my testimony—if we can get a board of people within the State, legislators, salvors, private sector individuals, divers, working together, that is great. It sounds like a fairy tale come true.

But the reality of it is there is this dark shadow back there that doesn't let me go with it for the simple reason that if it was ever restricted, how would we ever get it back? That is my main concern.

Quite frankly, if that happens, I have lost everything I have invested in the last 11 years

Mr SHUMWAY Just one more question, Mr Chairman I would direct it to Mr Hess and Mr Maddox I realize that both of you come from a regional perspective, but I take it you did not agree with Mr Bush's statement that his client represents a majority of diving interests in America? Do you agree or not agree with that statement?

Mr MADDOX I agree with your statement that he does not I don't know what constitutes a majority I am not sure of the right figures, but I believe DEMA is made up of a membership of less than 150 people

Like I said, I have been in operation for 11 years in my own store, 2 5 years before that owning a store I have been an instructor since 1975 I have never been approached by DEMA concerning any legislative works They have done nothing to represent the retailer that I know of other than to sponsor a buying show once a year Certainly, from the instructors' point of view, I know of no surveys or reports issued concerning this matter

Mr SHUMWAY Mr Hess?

Mr HESS I am not an equipment manufacturer, and the hundreds of divers that I dive with are not equipment manufacturers Therefore, we are not members of DEMA

As I said earlier, we are universally opposed to the wholesale governmental assertion of title to wrecks that haven't even been located

I would like to also comment to an earlier question You said could you—one member of the committee, I believe it was Mr Lowry, asked if we could name a State which prohibits sport diving Well, the State of Georgia, in its newly enacted regulations which were just made into law in 1987, prohibits the exploration or recovery of submerged cultural resources without a permit issued by the State Permits are only available to institutions and are not available to sport divers

So, effectively, you cannot wreck dive in the State of Georgia without violating the law It is this kind of restrictive access which we feel could be engendered by H R 74, because it doesn't give any guarantees

I would like the committee members to take a look at the archaeological work which has been done by volunteers in that State and which is now outlawed

Mr SHUMWAY Thank you, Mr Chairman

Mr LOWRY Thank you

We have a number of people who have asked that their testimony be submitted for the record the National Conference of State Historic Preservation Officers, Preservation Action, American Association of Museums, and Gordon P Watts, Jr, director of Underwater Research, department of history, East Carolina University Without objection, their statements can be entered into the record

[The above-mentioned statements may be found at the end of the hearing]

Mr LOWRY I want to thank both you gentlemen for all of the work you have been doing on this issue, and I want to thank this

panel and the rest of our witnesses for the important information today

The hearing is adjourned

[Whereupon, at 2 15 p m , the subcommittee recessed, to reconvene subject to the call of the Chair ]

[The following was received for the record ]

100TH CONGRESS  
1ST SESSION

# H. R. 74

To establish the title of States in certain abandoned shipwrecks, and for other purposes

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1987

Mr BENNETT (for himself, Mr ORTIZ, Mr BEREUTER, Mr HERTEL, and Mr HUGHES) introduced the following bill, which was referred jointly to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries

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## A BILL

To establish the title of States in certain abandoned shipwrecks,  
and for other purposes

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1 SHORT TITLE**

4 This Act may be cited as the “Abandoned Shipwreck  
5 Act of 1987”

6 **SEC 2 FINDINGS**

7 The Congress finds that—

1           (1) States have the responsibility for management  
2           for a broad range of living and nonliving resources in  
3           State waters and submerged lands, and

4           (2) included in the range of resources are certain  
5           abandoned shipwrecks

6 **SEC 3 DEFINITIONS**

7           For purposes of this Act—

8           (1) The term “National Register” means the Na-  
9           tional Register of Historic Places maintained by the  
10          Secretary of the Interior under section 101 of the Na-  
11          tional Historic Preservation Act (16 U S C 470a)

12          (2) The term “shipwreck” means a vessel or  
13          wreck, its cargo, and other contents

14          (3) The term “embedded in submerged lands”  
15          means that the use of tools of excavation is required in  
16          order to move the bottom sediments to gain access to  
17          the shipwreck, its cargo, and any part thereof

18          (4) The term “embedded in coralline formations”  
19          means fixed in coralline so that tools of excavation are  
20          required in order to gain access to the shipwreck, its  
21          cargo, or any part thereof

22          (5) The term “determined eligible for inclusion in  
23          the National Register” means that the Secretary of the  
24          Interior has, after consultation with the appropriate  
25          State historic preservation officer, made a written de-

1 termination that the abandoned shipwreck meets the  
2 criteria for inclusion of the National Register of His-  
3 toric Places

4 (6) The term "State" means a State of the United  
5 States, the District of Columbia, Puerto Rico, Guam,  
6 the Virgin Islands, and American Samoa

7 (7) The term "submerged lands" means the  
8 lands—

9 (A) that are "lands beneath navigable  
10 waters," as defined in section 2 of the Submerged  
11 Lands Act (43 U S C 1301),

12 (B) of Puerto Rico, as described in section 8  
13 of the act of March 2, 1917 (48 U S C 749), and

14 (C) beneath the navigable waters of Guam,  
15 the Virgin Islands, and American Samoa, includ-  
16 ing inland navigable waters and waters that  
17 extend seaward to the outer limit of the territorial  
18 sea

19 (8) The terms "public lands" and "Indian lands"  
20 have the same meaning as when used in the Archae-  
21 ological Resource Protection Act of 1979 (16 U S C  
22 470aa-47011)

23 (9) the term "lands controlled by the United  
24 States" has the same meaning as in the Antiquities  
25 Act of 1906 (16 U S C 431)

1 **SEC 4 RIGHTS OF ACCESS**

2 To clarify that State waters and shipwrecks offer recre-  
3 ational and educational opportunities to sport divers and  
4 other interested groups, as well as irreplaceable State re-  
5 sources for tourism, biological sanctuaries, and historical re-  
6 search, and to provide that reasonable access by the public to  
7 such abandoned shipwrecks shall be permitted by the State  
8 holding title to such shipwrecks pursuant to section 6 of the  
9 Act, it is the declared policy of the Congress that States  
10 carry out their responsibilities under this Act to develop ap-  
11 propriate and consistent policies so as to—

12 (1) protect natural resources and habitat areas,

13 (2) guarantee recreational exploration of ship-  
14 wreck sites, and

15 (3) allow for appropriate public sector recovery  
16 and private sector recovery of shipwrecks which pro-  
17 tect the historical values and environmental integrity of  
18 the shipwrecks and the sites

19 In managing the resources subject to the provisions of  
20 this Act, States are encouraged to create underwater parks  
21 or areas to provide additional protection for such resources

22 **SEC 5 GUIDELINES**

23 The advisory Council on Historic Preservation, estab-  
24 lished under section 201 of the Historic Preservation Act (16  
25 U S C 4701), in consultation with appropriate public and  
26 private sector interests (including archeologists, salvors, sport

1 divers, historic preservationists, and State Historic Preserva-  
2 tion Officers) shall publish, within six months after the enact-  
3 ment of this act, advisory guidelines for the protection of  
4 shipwrecks and properties. Such guidelines shall assist States  
5 and the United States Government in developing legislation  
6 and regulations to carry out their responsibilities under this  
7 Act in such manner as will be consistent with the policies  
8 stated under section 4.

9 **SEC 6 RIGHTS OF OWNERSHIP**

10 (a) **UNITED STATES TITLE** —The United States asserts  
11 title to any abandoned shipwreck that is—

- 12 (1) embedded in submerged lands of a State,  
13 (2) embedded in coralline formations protected by  
14 a State on submerged lands of a State, or  
15 (3) on submerged lands of a State when—  
16 (A) such shipwreck is included in or deter-  
17 mined eligible for inclusion in the National Regis-  
18 ter, and  
19 (B) the public is given adequate notice of the  
20 location of such shipwreck.

21 (b) **TRANSFER OF TITLE TO STATES** —The title of the  
22 United States to any abandoned shipwreck asserted under  
23 subsection (a) of this section is transferred to the State in or  
24 on whose submerged lands the shipwreck is located.

1 (c) EXCEPTION —Any abandoned shipwreck in or on  
2 the public lands of the United States, or lands controlled by  
3 the United States (except the Outer Continental Shelf) is the  
4 property of the United States Government

5 (d) RESERVATION OF RIGHTS —This section does not  
6 affect any right reserved by the United States or by any  
7 State (including any right reserved with respect to Indian  
8 lands) under—

9 (1) section 3, 5, or 6 of the Submerged Lands Act  
10 (43 U S C 1311, 1313, and 1314), or

11 (2) section 19 or 20 of the Act of March 3, 1899  
12 (33 U S C 409, 411, 412, 414, and 41)

13 **SEC 7 RELATIONSHIP TO OTHER LAWS**

14 (a) LAWS OF SALVAGE AND FINDS —The laws of sal-  
15 vage and finds shall not apply to abandoned shipwrecks to  
16 which section 6 of this Act applies

17 (b) LAWS OF THE UNITED STATES —This Act shall  
18 not change the laws of the United States relating to shipw-  
19 recks, or other than those to which this Act applies

20 (c) EFFECTIVE DATE —This Act shall not affect any  
21 suit filed before the date of enactment of this Act

○

100TH CONGRESS  
1ST SESSION

# H. R. 2071

To assure protection of certain historic abandoned shipwrecks by requiring responsible salvage, and for other purposes

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 1987

Mr SHUMWAY introduced the following bill, which was referred jointly to the Committees on Merchant Marine and Fisheries and Interior and Insular Affairs

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## A BILL

To assure protection of certain historic abandoned shipwrecks by requiring responsible salvage, and for other purposes

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 SECTION 1 SHORT TITLE

4 This Act may be cited as the "Abandoned Historic  
5 Shipwreck Protection Act of 1987"

### 6 SEC 2 FINDINGS AND PURPOSES

7 (a) FINDINGS —The Congress finds that—

8 (1) the protection of abandoned historic ship-  
9 wrecks on, in or under State submerged lands is neces-  
10 sary in order to secure, for the present and future ben-

1       efit of the people of the United States, the historical  
2       and archaeological significance of such shipwrecks, and  
3       (2) salvage of abandoned historic shipwrecks on,  
4       in or under State submerged lands is a uniquely mari-  
5       time activity which, under article III, section 2 of the  
6       Constitution of the United States and under section  
7       1333 of title 28, United States Code, is subject to the  
8       original, exclusive jurisdiction of a United States dis-  
9       trict court exercising the court's admiralty and mari-  
10      time jurisdiction, with appropriate requirements for  
11      protection of the historical and archaeological signifi-  
12      cance of the shipwreck

13      (b) **PURPOSES** —The purposes of this Act are—

14              (1) to assure, for the present and future benefit of  
15      the people of the United States, that the historical and  
16      archaeological significance of abandoned historic ship-  
17      wrecks on, in or under State submerged lands is rea-  
18      sonably protected by requiring responsible salvage of  
19      those shipwrecks,

20              (2) to reaffirm that Federal law, including the his-  
21      torical and archaeological protection requirements of  
22      this Act, governs the salvage of abandoned historic  
23      shipwrecks on, in or under State submerged lands,

24              (3) to require each finder/salvor to conduct sal-  
25      vage activities on an abandoned historic shipwreck on,

1 in or under State submerged lands in a manner which  
2 will protect the historical and archaeological signifi-  
3 cance of the shipwreck,

4 (4) to allow State or Federal agencies to inter-  
5 vene in litigation concerning the salvage of an aban-  
6 doned historic shipwreck on, in or under State sub-  
7 merged lands, for the purpose of representing the  
8 public interest in protecting the historical and archae-  
9 ological significance of the shipwreck,

10 (5) to establish an enforcement mechanism to  
11 assure that the purposes stated above are achieved,

12 (6) to direct the United States district courts to  
13 consider certain additional factors when, and to require  
14 that certain new requirements be met before, making a  
15 salvage award in regard to an abandoned historic ship-  
16 wreck on, in or under State submerged lands,

17 (7) to promote cooperative efforts (by finders/sal-  
18 vors, State and Federal agencies, amateur and profes-  
19 sional archaeologists, sport divers, and other members  
20 of the public and private sectors) to locate and protect  
21 abandoned historic shipwrecks on, in or under State  
22 submerged lands, and

23 (8) to provide a continued incentive to the private  
24 sector to find and return to the stream of commerce

1 certain items diverted from commerce by the sinking of  
2 various vessels

3 **SEC 3 DEFINITIONS**

4 In this Act—

5 “Abandoned historic shipwrecks” means an his-  
6 toric shipwreck with respect to which (as determined  
7 by the United States district court) each owner has  
8 ceased to claim and exercise any right, title, and  
9 interest

10 “Federal agency” means an executive branch  
11 agency, and includes the Smithsonian Institution

12 “Historic shipwreck” means a shipwreck which  
13 (A) is listed in, or determined eligible for listing in, The  
14 National Register of Historic Places maintained by the  
15 Secretary of the Interior under section 101 of the Na-  
16 tional Historic Preservation Act, as amended (16  
17 U S C 470a), or (B) was constructed more than seven-  
18 ty-five years before the date of enactment of this Act

19 “Public interest trustee” means any Federal  
20 agency or State agency (of the State on, in or under  
21 whose State submerged lands the abandoned historic  
22 shipwreck is located) which intervenes in a lawsuit  
23 under section 5 of this Act for the purpose of repre-  
24 senting the public interest in protecting the historical  
25 and archaeological significance of the shipwreck

1           “Shipwreck” means a vessel or wreck, her tackle,  
2           apparel, armament, cargo or other contents, including  
3           those items from her which are scattered on, in or  
4           under the State submerged lands in her vicinity

5           “State” means a State of the United States, the  
6           District of Columbia, Puerto Rico, Guam, the United  
7           States Virgin Islands, American Samoa, and the  
8           Northern Mariana Islands

9           “State submerged lands” means the lands perma-  
10          nently or periodically covered by tidal waters up to but  
11          not above the line of mean high tide—

12                   (1) that are “lands beneath navigable  
13                   waters,” as defined in section 2 of the Submerged  
14                   Lands Act (43 U S C 1301),

15                   (2) of Puerto Rico, as described in section 8  
16                   of the Act of March 2, 1917, as amended (48  
17                   U S C 749), and

18                   (3) beneath the navigable waters of Guam,  
19                   the United States Virgin Islands, American  
20                   Samoa, and the Northern Mariana Islands, includ-  
21                   ing inland navigable waters and waters that  
22                   extend seaward to the outer limit of the territorial  
23                   sea

1 **SEC 4 JURISDICTION OF THE UNITED STATES DISTRICT**  
2 **COURTS**

3 Except as provided in section 8 of this Act, the salvage  
4 of any abandoned historic shipwreck located on, in or under  
5 State submerged lands is subject to the original, exclusive  
6 admiralty and maritime jurisdiction of the United States dis-  
7 trict court within whose geographical jurisdiction the ship-  
8 wreck lies That district court shall have the exclusive power  
9 to control and dispose of that shipwreck (including articles of  
10 salvage from the shipwreck) under the Federal law of admi-  
11 ralty and other applicable Federal law, including this Act

12 **SEC 5 REQUIREMENTS AND PROCEDURES APPLICABLE TO**  
13 **SALVAGE, PUBLIC INTEREST TRUSTEES, SAL-**  
14 **VAGE AWARDS**

15 (a) **GENERAL** — This section applies to the salvage of  
16 an abandoned historic shipwreck located on, in or under State  
17 submerged lands

18 (b) **REQUIREMENT OF ESTABLISHING DISTRICT**  
19 **COURT JURISDICTION OVER SALVAGE ACTIVITIES** — (1)  
20 After discovery of a shipwreck described in subsection (a) and  
21 before the finder/salvor undertakes any substantial salvage  
22 on the shipwreck, the finder/salvor must file an in rem sal-  
23 vage action in the United States district court within whose  
24 geographical jurisdiction the shipwreck lies, except as pro-  
25 vided in paragraph (b)(2)

1           (2) A finder/salvor who, before the date of enactment of  
2 this Act, has undertaken any salvage on a shipwreck de-  
3 scribed in subsection (a) but has not filed a salvage action as  
4 described in paragraph (b)(1), must file a salvage action as  
5 described in paragraph (b)(1) not later than ninety days after  
6 the date of enactment of this Act,<sup>2</sup> and that finder/salvor's  
7 salvage of that shipwreck will not be subject to the other  
8 provisions of this Act until the sooner of the date of the filing  
9 of that salvage action or the date of the expiration of that  
10 ninety day period

11           (3) At the time of filing a salvage action under para-  
12 graph (b)(1) or (b)(2), the finder/salvor must submit to the  
13 district court an affidavit (signed by the individual finder/  
14 salvor, by a senior official of an organization which is the  
15 finder/salvor, or by the finder/salvor's attorney) which at-  
16 tests to the existence of the shipwreck and describes any evi-  
17 dence available to prove that the finder/salvor or a predeces-  
18 sor in interest actually has discovered the shipwreck

19           (4) The district court may waive, reduce or reimburse  
20 any filing fee or court costs regarding any salvage action filed  
21 under paragraph (b)(1) or (b)(2) by a finder/salvor which is a  
22 nonprofit organization as described in section 501 (c)(3) or  
23 (c)(7) of title 26, United States Code, if the finder/salvor (A)  
24 requests a waiver, reduction, or reimbursement, and (B) dem-  
25 onstrates that payment of the normal fee or costs would un-

1 reasonably hinder the finder/salvor's efforts to salvage the  
2 shipwreck

3 (c) PUBLIC NOTICE —The finder/salvor must publish  
4 public notice of the finder/salvor's claims, under the Supple-  
5 mental Rules for Certain Admiralty and Maritime Claims

6 (d) HISTORIC PROTECTION REQUIREMENTS —The  
7 finder/salvor must conduct the salvage of the shipwreck in  
8 such a manner, to be specified by the district court, as  
9 will protect its historical and archaeological significance,  
10 including

11 (1) systematic record-keeping, including—

12 (A) mapping the shipwreck site,

13 (B) tagging recovered items, and

14 (C) documenting the items' horizontal and  
15 vertical location when recovered and other appro-  
16 priate archaeological provenance information, and

17 (2) handling, preserving, and protecting the his-  
18 torically or archaeologically significant recovered items  
19 in such manner as will at least stabilize their physical  
20 condition prior to the district court's salvage award  
21 determinations

22 When specifying the manner in which the finder/salvor must  
23 conduct the salvage, the district court will consider any  
24 guidelines published by the Secretary of the Interior under  
25 section 6 of this Act, and will consider the degree of histori-

1 cal and archaeological significance anticipated with regard to  
2 each shipwreck being salvaged

3 (e) PUBLIC INTEREST TRUSTEES —(1) Any Federal  
4 agency or State agency (of the State on, in or under whose  
5 State submerged lands the abandoned historic shipwreck is  
6 located) may be a public interest trustee under this section  
7 Any public interest trustee may intervene in the district court  
8 litigation, and may request the district court to issue an order  
9 allowing the public interest trustee to place, at no cost to the  
10 finder/salvor, an agent (for example, an employee) on board  
11 one or more of the salvage vessels The agent may document  
12 and authenticate the recovery of the items from the ship-  
13 wreck site

14 (2) If, during the salvage activity, a public interest trust-  
15 ee determines that the finder/salvor is not adequately pro-  
16 tecting the historical and archaeological significance of the  
17 shipwreck, the public interest trustee may request the district  
18 court to issue an appropriate order to either alter or stop the  
19 salvage until appropriate measures are taken to protect the  
20 historical and archaeological significance of the shipwreck

21 (3) If a public interest trustee determines that the ship-  
22 wreck is of such importance to the public interest that it is  
23 necessary to stop all salvage activities and either (A) replace  
24 those activities with a comprehensive scientific archaeological  
25 excavation or (B) leave the shipwreck in situ until better ex-

1 cavation, stabilization, preservation, or restoration techniques  
2 are available, the public interest trustee may request the dis-  
3 trict court to issue an appropriate order. If, after opportunity  
4 for a full evidentiary hearing, the district court finds that  
5 such importance to the public interest exists in the shipwreck  
6 as to require stopping all salvage activities for a reason de-  
7 scribed in the preceding sentence, the district court will issue  
8 an appropriate order, which will include provisions to assure  
9 that the finder/salvor will be paid all of his expenses and  
10 costs to date including a reasonable attorneys' fee. The  
11 finder/salvor may thereafter elect to work with the public  
12 interest trustee's archaeological team to document the histor-  
13 ical and archaeological significance of the shipwreck. That  
14 team, but not the finder/salvor, will be paid for by the public  
15 interest trustee. The team, and the finder/salvor if he so  
16 elects, will complete any scientific archaeological excavation  
17 of the shipwreck. All items recovered by the finder/salvor or  
18 the public interest trustee's archaeological team are subject  
19 to this Act.

20 (4) When filing a request under paragraph (e)(2) or (e)(3)  
21 to alter or stop the salvage, the public interest trustee must  
22 post a bond (in an amount to be set by the district court) for  
23 expenses, costs and fees, and must file an affidavit showing  
24 cause for the request, alleging specifically what action is

1 needed to adequately protect the historical and archaeological  
2 significance of the shipwreck

3 (5) The public interest trustee bears the burden of proof  
4 with regard to showing the need to alter or stop the salvage

5 (6) if the district court denies the request under para-  
6 graph (e)(2) or (e)(3) to alter or stop the salvage, the finder/  
7 salvor will be entitled to recover all costs, including reasona-  
8 ble attorneys' fees, incurred in defending against the request  
9 to alter or stop the salvage

10 (f) AFFECTED MARINE NATURAL RESOURCES —Any  
11 State or Federal agency which exercises management au-  
12 thority over a marine natural resource (for example, a fishery  
13 spawning ground or a protected coral formation) which would  
14 be significantly adversely affected by salvage of a shipwreck  
15 under this Act may request the district court to issue an ap-  
16 propriate order requiring that the salvage be conducted in  
17 such a manner as will minimize, to the extent practicable, the  
18 significant adverse effects on the marine resource

19 (g) SALVAGE AWARD TO FINDER/SALVOR —When de-  
20 termining the salvage award on an abandoned historic ship-  
21 wreck, the district court will consider, in addition to other  
22 factors, the finder/salvor's performance in carrying out the  
23 requirements specified by the district court under subsection  
24 (d) of this section The district court may not make a salvage  
25 award to the finder/salvor unless the finder/salvor docu-

1 ments, to the satisfaction of the district court, that the  
2 finder/salvor has adequately protected the historical and ar-  
3 chaeological significance of the shipwreck

4 (h) SALVAGE AWARD TO PUBLIC INTEREST TRUST-  
5 EE —(1) The public interest trustee may request, in the dis-  
6 trict court's salvage award determination, an award to that  
7 trustee of specific artifacts recovered which the district court  
8 finds (A) are of a type not represented in the trustee's  
9 museum or other public collections, (B) are of a type not  
10 included in any known imminent donation of artifacts to the  
11 trustee, and (C) are important to the preservation of the Na-  
12 tion's or the State's cultural, historical or scientific heritage

13 (2) When determining an award of artifacts to the public  
14 interest trustee under paragraph (h)(1), the district court will  
15 consider the nature, quality, and extent of the trustee's par-  
16 ticipation in protecting the historical and archaeological sig-  
17 nificance of the shipwreck, including, for example, financial  
18 support of the salvage operation and of the stabilization,  
19 presentation or restoration of the artifacts recovered

20 (3) The district court may condition the award of par-  
21 ticular artifacts to the public interest trustee, for example, by  
22 requiring that the trustee put the awarded artifacts on public  
23 display promptly after completion of appropriate stabilization,  
24 preservation, or restoration, or by requiring that ownership of  
25 the artifact revert to the finder/salvor if the trustee attempts

1 to sell the artifact or decides that the artifact is no longer  
2 desired for public display

3 **SEC 6 GUIDELINES**

4 The Secretary of the Interior shall publish, within six  
5 months after the date of enactment of this Act, advisory  
6 guidelines for the protection of the historical and archaeologi-  
7 cal significance of historic shipwrecks. When preparing the  
8 guidelines, the Secretary of the Interior shall consult with the  
9 Administrator of the National Oceanic and Atmospheric Ad-  
10 ministration, the Advisory Council on Historic Preservation,  
11 and other interested persons (including salvors, sport divers,  
12 archaeologists, historic preservationists, and State Historic  
13 Preservation Officers). The Secretary may revise the guide-  
14 lines at appropriate future times, and in doing so will follow  
15 the consultation process described in the preceding sentence.

16 **SEC 7 ENFORCEMENT**

17 (a) **CIVIL PENALTIES AND FORFEITURES**—Any  
18 person who knowingly and willfully undertakes any substan-  
19 tial salvage on, or injures, any abandoned historic shipwreck  
20 located on, in or under State submerged lands without first  
21 filing a salvage action as required by section 5(b) of this Act  
22 shall be liable to the United States for a civil penalty of not  
23 more than \$10,000 per day of violation. Anything which that  
24 person removed from that shipwreck before filing a salvage  
25 action as required by section 5(b) shall be subject to forfeiture.

1 to the United States The appropriate United States district  
2 court shall have jurisdiction to impose any penalty, or order  
3 any forfeiture, authorized under this subsection

4 (b) RESTRAINING AND COMPULSORY ORDERS —The  
5 appropriate United States district court shall have jurisdiction  
6 to issue appropriate orders to restrain any violation of, and to  
7 compel compliance with, the provisions of this Act

8 **SEC 8 RELATIONSHIP TO OTHER LAWS**

9 (a) Except as expressly provided in this Act, this Act  
10 shall not change the laws of the United States relating to  
11 salvage or any other admiralty or maritime claim or right

12 (b) This Act shall not be interpreted to authorize explo-  
13 ration or salvage of a shipwreck if that exploration or salvage  
14 is restricted or prohibited under other Federal law, including  
15 title III of the Marine Protection, Research and Sanctuaries  
16 Act, as amended (16 U S C 1431 et seq ), the National His-  
17 toric Preservation Act, as amended (16 U S C 470a et seq ),  
18 and the Endangered Species Act, as amended (16 U S C  
19 1531 et seq )

20 (c) This Act shall not be interpreted to amend section  
21 1333 of title 28, United States Code

22 (d) This Act does not preclude an award of title to an  
23 abandoned historic shipwreck to any person (including a  
24 State), based upon the common law of finds, where the legal  
25 and factual prerequisites for such an award are satisfied

1 (e) This Act is premised on the fact that the Submerged  
2 Lands Act (43 U S C 1301 et seq ) does not convey title to  
3 or ownership of any abandoned historic shipwreck to any  
4 State

5 (f) This Act does not affect any right reserved by the  
6 United States or to any State (including any right reserved  
7 with respect to Indian lands) under—

8 (1) the Submerged Lands Act (43 U S C 1301 et  
9 seq ), or

10 (2) section 19 or 20 of the Act of March 3, 1899  
11 (33 U S C 414–415)

12 (g) This Act does not apply to any vessel owned by the  
13 United States Government unless the Government has ex-  
14 pressly and specifically, by written instrument, abandoned  
15 the vessel

16 (h) Any State law inconsistent with this Act is supersed-  
17 ed to the extent of the inconsistency

18 **SEC 9 SAVINGS PROVISIONS**

19 This Act shall not affect any lawsuit filed before the  
20 date of enactment of this Act, however, it is the sense of  
21 Congress that any United States district court having juris-  
22 diction over such a lawsuit is encouraged to exercise its equi-  
23 table powers to implement the spirit of sections 5(d) through  
24 (h) of this Act when doing so will not cause undue hardship  
25 to the finder/salvor

1 SEC 10 ACCESS FOR EXPLORATION FOR PURPOSE OF RECRE-  
2 ATION OF HISTORICAL RESEARCH

3 Because exploration of abandoned historic shipwrecks  
4 offers recreational and educational opportunities to sport  
5 divers and offers historical and archaeological research op-  
6 portunities to researchers, access to those shipwrecks for the  
7 purpose of exploration but not salvage should be encouraged  
8 to the maximum extent practicable unless inconsistent with  
9 other applicable law or inconsistent with salvage activities  
10 authorized by the United States district court Upon cessa-  
11 tion of diligent salvage activities authorized by the district  
12 court and dismissal of the salvage action, access to the ship-  
13 wreck for the purpose of exploration but not salvage should  
14 again be encouraged consistent with applicable law





U S Department of  
Transportation

General Counsel

400 Seventh St S W  
Washington D C 20590

AUG 5 1987

The Honorable Walter B Jones  
Chairman, Committee on Merchant  
Marine and Fisheries  
House of Representatives  
Washington, D C 20515

Dear Mr Chairman

This is in response to your request for the views of the  
Department of Transportation concerning H R 74, a bill

"To establish the title of States in certain abandoned  
shipwrecks, and for other purposes "

This bill is similar to H P 3558 which was introduced in the  
99th Congress It would assert United States title to certain  
historic and abandoned shipwrecks and would transfer such  
titles to the states where they are located It would also  
require the Advisory Council on Historic Preservation to  
publish guidelines for the protection of these shipwrecks

As the Federal Government's rights to control navigation and  
commerce in these waters are preserved, the Department is not  
directly affected by this bill Therefore, we would have no  
objection to it

We note, however that, like its predecessor in the 99th  
Congress, H R 3558, this defines submerged lands to include  
"lands beneath navigable waters" as that term is defined in  
43 U S C 1301 and 48 U S C 749 Under these statutes, the  
submerged lands of Florida and Texas along the coast of the  
Gulf of Mexico extend to three marine leagues (nine miles), as  
do the submerged lands of Puerto Rico Under international  
law, the United States cannot claim title to shipwrecks beyond  
its territorial sea (three miles) unless the vessel was  
previously owned by the United States To assert title to all  
shipwrecks between three and nine miles off the Gulf coast of  
Texas and Florida and the coast of Puerto Rico would be  
inconsistent with international law To resolve this problem,  
the Administration recommends that the bill's definition of  
"submerged lands" in subsection 3(7) be revised to include  
"lands beneath navigable waters" as defined in 33 U S C  
1362(7) instead of 43 U S C 1301 and 48 U S C 749 Use of

this definition would ensure that there will be no assertion of ownership rights beyond the territorial sea, thereby avoiding a conflict with international law

The Office of Management and Budget has advised that there is no objection, from the standpoint of the Administration's program, to the submission of this report for the consideration of the Committee on Merchant Marine and Fisheries

Sincerely,

A handwritten signature in cursive script, appearing to read "B. Wayne Vance", followed by a long horizontal line extending to the right.

B. Wayne Vance  
General Counsel

STATEMENT OF DR BENNIE C KEEL, DEPARTMENTAL CONSULTING  
ARCHEOLOGIST AND ASSISTANT DIRECTOR FOR ARCHEOLOGY, NATIONAL PARK  
SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON  
OCEANOGRAPHY, HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

April 21, 1987

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Mr Chairman, on behalf of Secretary Hodel, I appreciate the opportunity to present the views of the Department of the Interior on the legislative proposals before the Subcommittee dealing with abandoned historic shipwrecks. H R 74, the Abandoned Shipwreck Act bill, was introduced by Messrs Bennett, Ortiz, Bereuter, Hertel and Hughes on January 6, 1987. H R 2071, the Abandoned Historic Shipwreck Protection Act bill, was introduced by Mr Shumway on April 9, 1987. Our views on H R 74 are presented first, followed by comments on H R 2071.

We recommend the enactment of H R 74, if amended as suggested below.

H R 74 would provide for the protection of abandoned shipwrecks and their cargo and contents. It would (a) assert Federal title to, and release to the several States and territories, any claims of ownership and any right to administer certain abandoned shipwrecks by the Federal Government within the navigable waters of a State, (b) assert and retain Federal title to abandoned shipwrecks in or on lands that are owned, administered or controlled by the United States (except the Outer Continental Shelf), (c) make inapplicable the United States maritime laws of salvage and finds to certain abandoned shipwrecks, and (d) direct the Advisory Council on Historic Preservation to publish advisory guidelines for the protection of shipwrecks.

We believe that H R 74 would provide a mechanism for the protection of the Nation's sunken historic shipwrecks. During the 98th and 99th Congresses, we recommended enactment of similar legislation with a number of modifications. We are pleased to see

that several of our suggestions have been included in H R 74. In addition, we recommend a number of further modifications to this legislation in order to maintain consistency with other historic preservation statutes and Federal agency responsibilities.

Section 3(6) of H R 74 would define the term "State" to mean a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands and American Samoa. The Northern Mariana Islands should be added to the definition of the term "State." In addition, language should be added to the definition of the term "submerged lands" in section 3(7) that would include lands beneath the navigable waters of the Northern Mariana Islands, including inland navigable waters and waters that extend seaward to the outer limit of the territorial sea.

Section 5 of H R 74 would direct the Advisory Council on Historic Preservation to publish advisory guidelines for the protection of shipwrecks and properties. The guidelines would assist States and the United States Government in developing legislation and regulations to carry out their responsibilities under this legislation, consistent with the policies stated in section 4 on rights of access. Because the Departments of the Interior and Commerce have the most expertise in the preservation of shipwrecks, we recommend that section 5 be amended to direct these two Departments to develop and jointly publish guidelines for the identification, evaluation and protection of shipwrecks, instead of the Advisory Council on Historic Preservation. This would assure consistency with two previous Congressional mandates.

First, in 1980 the Congress directed the Department of the Interior to issue standards and guidelines for the preservation of historic properties. Second, in 1984 the Congress directed the National Park Service, "in cooperation with the maritime preservation community and the National Trust for Historic Preservation, to conduct a survey of

historic maritime resources, including those of the Service, recommend standards and priorities for the preservation of those resources, and recommend the appropriate Federal and private sector roles in addressing those priorities "

In response to the first mandate, in September of 1983 the Department issued the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. These advisory standards and guidelines address the full range of historic preservation management issues including preservation planning, the identification, evaluation, registration, and documentation of significant archeological and historic properties, treatments for preservation projects, and professional qualifications. The standards and guidelines are applicable to all classes of archeological and historic properties, whether terrestrial, buried or submerged.

In response to the second mandate, the National Park Service has initiated a number of activities relevant to H R 74, including (a) undertaking an inventory of shipwrecks, (b) documenting shipwreck sites in the National Park System, (c) assisting the National Oceanic and Atmospheric Administration, Department of Commerce, in using existing National Park Service standards and guidelines in the USS Monitor archeological project and in drafting standards for the preservation of submerged cultural resources in National Marine Sanctuaries and protected areas, and (d) developing and issuing a technical bulletin that provides instructions for applying the National Register criteria and for nominating shipwrecks and historic vessels to the National Register of Historic Places.

As a result of these activities within the Department, we believe that it would be more appropriate to expand the existing standards and guidelines to include more specific guidance on the full range of preservation issues relating to historic shipwrecks, rather than to involve another agency with yet another set of guidelines.

Section 6(a)(2) of H R 74 would restrict assertion of title to abandoned shipwrecks embedded in coralline formations which are in some manner "protected" by a State We recommend that the restriction of formal protection be deleted because there is no standard mechanism by which States uniformly recognize and protect such formations We understand that the Department of Commerce, through its Marine Sanctuaries Program and its Marine Fisheries Program, is the only agency that is able to designate, protect and manage certain coral resources in any consistent, nationwide manner Therefore, we recommend that the words "protected by a State" be deleted from section 6(a)(2)

In addition, section 6(a)(3)(B) of H R 74 would provide for the United States to assert title to any abandoned shipwreck that is on submerged lands of a State when the shipwreck is included in or determined eligible for inclusion in the National Register of Historic Places and the public is given adequate notice of the site location We believe that, under the Archaeological Resources Protection Act of 1979 and the National Historic Preservation Act of 1966 (as amended), the Congress directed Federal agencies to withhold from disclosure to the public information relating to the location or nature of an archeological or historic property if such disclosure would result in a substantial risk of harm, theft or destruction to the property Therefore, we recommend that the language on notifying the public in section 6(a)(3)(B) either be deleted or amended to state that publication of general locational information on a site such as mineral lease block numbers, rather than specific coordinates, would constitute adequate notice to the public of its location Alternatively, we recommend that appropriate explanatory language be included in the committee report to accompany H R 74.

We are pleased to see the inclusion of language in section 6(c) asserting and retaining Federal title to any abandoned shipwreck that is located in or on public lands of the United States, or lands controlled by the United States, except the Outer Continental Shelf. This would enable Federal land managing agencies to continue to manage and protect abandoned shipwrecks that are located on lands that the agencies own and administer or hold fee simple title to. However, it is unclear if agencies such as the National Park Service and the Fish and Wildlife Service would be able to continue to manage and protect abandoned shipwrecks that are located on lands that, while within designated units of the national park system and the wildlife refuge system, are held in fee simple title by State or local Government agencies or other parties. We believe that in those instances when a Federal agency is, by agreement or law, managing historic shipwrecks located on lands under the jurisdiction of, but not owned by, the agency, the United States Government should assert and retain title to such shipwrecks. We recommend that additional language be inserted in section 6(c) specifically exempting from transfer to States any shipwreck that is located on lands which are owned or administered by the United States. Alternatively, we recommend that explanatory language be included in the committee report to accompany H. R. 74.

In addition, section 6(c) should claim title for Indian tribes or individual Indians to any abandoned shipwreck that is located in or on Indian lands since, under the Archaeological Resources Protection Act of 1979, cultural resources located on Indian lands are owned by the Indian or Indian tribe having jurisdiction over the land. The addition of such language in section 6(c) would be consistent with the definition of the terms "public lands" and "Indian lands" presented in section 3(8) of the bill.

We also recommend that additional language be inserted in section 6 specifically exempting from transfer to States any shipwreck, regardless of its location, that is under the control of or claimed by a Federal agency such as the United States Navy. Alternatively, the term "abandoned shipwreck" could be defined in section 3. This definition would be particularly useful to address questions that could arise should a shipwreck of foreign origin be claimed by another sovereignty.

In addition to the above recommendations, we would like to insure that you are aware of one other point which has not been addressed in the bill. H.R. 74 would not provide new Federal authority for the supervision or control over historic shipwrecks on the seabed and subsoil outside State boundaries. The Department of Commerce advises that, under the Marine Sanctuaries Act, authority exists for Federal ownership and management of certain historic shipwrecks seaward from three miles of the coastline. The Department of State also has advised us that under customary international law, such authority exists, although it is limited. The United States has ownership rights and exclusive jurisdiction over sunken U.S. warships wherever they might be. In addition, the United States can restrict the activities of U.S. nationals with respect to any shipwreck beyond the territorial waters of the United States. Finally, article 303 of the 1982 Law of the Sea Convention, which reflects customary international law, grants nations general jurisdiction over shipwrecks within a "contiguous zone" which, in the case of the United States, extends 12 miles from our coasts. We believe that the limited authority in U.S. and international law is sufficient but we want all parties concerned to understand the limits of this authority.

This concludes my comments on H.R. 74. Our views on H.R. 2071 are much briefer in that we do not recommend its enactment.

We firmly believe that the recovery of historic shipwrecks is an archeological activity, not a maritime activity. The remains of historic shipwrecks, including whole or fragmentary pieces of the ship's hull, rigging, tackle, apparel, armaments, cargo and contents, should be left intact on the seafloor until they can be scientifically excavated. Once excavated, the remains should be preserved in museums for the benefit of the public, not sold for personal gain. This is why we have consistently recommended enactment of legislation such as H.R. 74 that would remove the salvage of abandoned historic shipwrecks from the purview of admiralty and maritime jurisdiction.

Because H.R. 2071 would maintain the jurisdiction of admiralty courts over the salvage of abandoned historic shipwrecks, we do not recommend its enactment. We recognize that H.R. 2071 would establish a mechanism for directing salvors to conduct salvage operations according to historic preservation requirements that might be placed by the United States District Courts, but the majority, if not all, of the remains recovered would be awarded to the salvor. It also would establish a mechanism for directing salvors to halt salvage operations if the Court determines that the shipwreck is of such significance that it should be preserved and excavated scientifically. However, this latter mechanism would require that a State or Federal agency request, on a case by case basis and at its own expense, that the pertinent United States District Court either place additional historic preservation requirements on the salvor or instruct the salvor to halt salvage operations.

Implementation of H.R. 2071 would place great financial burdens on State and Federal agencies that intervened in salvage litigation. For example, an agency that was successful in intervening and halting salvage operations at a historic shipwreck would be required to (1) post a bond for expenses, costs and fees that may be incurred by the salvor in defending the request, (2) reimburse salvors for expenses and costs incurred to

date, and (3) pay archeological teams to complete the scientific excavation of the shipwreck

H R 2071 would make ineffective existing State laws that protect historic and prehistoric archeological resources located on State lands and submerged lands. It is unclear if it also would make ineffective existing Federal laws that protect such resources located on public lands and on lands under the control of the United States Government.

The Archaeological Resources Protection Act of 1979 and its uniform regulations direct Federal land managing agencies such as the Department to protect and preserve certain historic and prehistoric archeological resources, including shipwrecks, that are on lands owned and administered by the United States. The Act establishes a permitting process that allows for the scientific excavation and removal of resources, and establishes ownership rights to those resources excavated or removed to the United States. The Act prohibits the excavation, removal or damage to such resources without a permit, and prohibits the sale, purchase, exchange, transport, receipt, or offer to sell, purchase or exchange such resources. The Act also establishes criminal, civil and forfeiture penalties against any person who knowingly violates or counsels, procures, solicits or employs any other person to violate any prohibition under the Act.

We encourage States and municipalities to enact similar laws and ordinances to protect and preserve archeological resources under their control or jurisdiction. We believe it is inappropriate for the United States Government to condone and actively support the pothunting of any historic or prehistoric archeological resource. Historic shipwrecks may be located terrestrially or on submerged lands, and may be located on Federal, State, local or privately owned lands. The location and rights of ownership to archeological resources has no bearing on the significance of those resources.

The term "salvage," as used in admiralty and maritime matters, is a synonym for the term "pothunting," which commonly is used to refer to the unscientific removal of terrestrial archeological resources for personal financial gain. If such activities were carried out at historic shipwrecks located on, in or under submerged public and Indian lands, the pothunter would be subject to criminal and civil penalties and forfeiture of personal property to the United States upon conviction. Historic shipwrecks located on, in or under submerged lands of the respective States are deserving of the same level of protection, and should be removed from the jurisdiction of the admiralty courts.

Mr. Chairman, this concludes my prepared statement on H.R. 74 and H.R. 2071. I would be happy to answer any questions that you or members of the Subcommittee may have.



State of New Jersey  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
TRENTON

DIVISION OF COASTAL RESOURCES

PLEASE ADDRESS REPLY  
CN 401  
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Testimony by John R Weingart Before the  
U S House of Representatives Committee on  
Merchant Marine and Fisheries  
Subcommittee on Oceanography

Longworth House Office Building  
Washington DC

April 21, 1987

*New Jersey Is An Equal Opportunity Employer*

GOOD MORNING MY NAME IS JOHN WEINGART I AM DIRECTOR OF THE DIVISION OF COASTAL RESOURCES OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION I AM PLEASED TO TESTIFY TODAY IN SUPPORT OF H R 74 THIS BILL, IN CONTRAST TO H R 2071 RECOGNIZES THE RESOURCE VALUE OF ABANDONED SHIPWRECKS AND THE NEED FOR CLARIFICATION OF THE STATE'S ROLE IN MANAGING THIS RESOURCE

NEW JERSEY HAS MORE THAN 3,000 KNOWN SHIPWRECKS OUR DEPARTMENT OF ENVIRONMENTAL PROTECTION SEEKS TO PROTECT THEM FOR THEIR ARCHEOLOGICAL, RECREATIONAL, AND FISHERY HABITAT VALUE AS EXPRESSED IN H R 74, THESE WRECKS ARE IMPORTANT FOR THEIR RECREATIONAL AND EDUCATIONAL OPPORTUNITIES TO SPORT DIVERS, ARE IMPORTANT FOR FINFISHING AND SHELLFISHING AND AS REPOSITORIES OF HISTORICAL INFORMATION NEW JERSEY'S FEDERALLY APPROVED COASTAL MANAGEMENT PROGRAM INCORPORATES SPECIFIC POLICIES TO CONSERVE THIS RESOURCE AND PROTECT IT FROM USES THAT WOULD IMPAIR THEIR PHYSICAL INTEGRITY

THE ABILITY OF NEW JERSEY AND OTHER STATES TO EFFECTIVELY PROTECT THIS RESOURCE, HOWEVER, IS HAMPERED BY CONFUSION CONCERNING RIGHTS OF OWNERSHIP AND THE FORCE AND EFFECT OF ADMIRALTY AND MARITIME JURISDICTION IN PARTICULAR, NEW JERSEY HAS ATTEMPTED TO NEGOTIATE IN GOOD FAITH ON A NUMBER OF WOULD BE SALVAGE OPERATIONS ONLY TO HAVE THE MATTERS TERMINATE UNSUCCESSFULLY DUE TO OWNERSHIP UNCERTAINTIES AND WITH ONE CASE ENDING UP IN FEDERAL

DISTRICT COURT WHERE IT NOW SITS THIS STATE OF AFFAIRS IS NOT CONDUCTIVE TO PROMOTING COOPERATION AMONG FINDERS/SALVORS, STATE AND FEDERAL AGENCIES, AMATEUR AND PROFESSIONAL ARCHEOLOGISTS SPORT DIVERS AND OTHER MEMBERS OF THE PUBLIC AND MORE IMPORTANTLY IS NOT EFFECTIVE IN PROTECTING THE RESOURCE H R 74 WOULD RESOLVE THIS PROBLEM BY CLEARLY ARTICULATING THE STATE'S ROLE IN MANAGEMENT OF THE RESOURCE H R 2071 ON THE OTHER HAND WOULD PERPETUATE THE CONFUSION

IN RECENT YEARS, THE NEW JERSEY LEGISLATURE HAD BEFORE IT A STATE ANTIQUITIES BILL WHICH WOULD HAVE ESTABLISHED A STATE PROGRAM TO MANAGE SHIPWRECKS THESE BILLS DIED IN LARGE KPART BECAUSE OF UNCERTAINTY CONCERNING APPROPRIATE STATE/FEDERAL ROLES ON THIS ISSUE

I AM, THEREFORE, DELIGHTED THAT THIS COMMITTEE IS TODAY CONSIDERING HR 74 AS EVIDENCE OF NEW JERSEY'S COMMITMENT TO PROTECTION OF SHIPWRECKS, I AM SUBMITTING AS PART OF MY WRITTEN STATEMENT A COPY OF NEW DRAFT STATE LEGISLATION DEVELOPED BY NJDEP IN COOPERATION WITH THE SPORT DIVING COMMUNITY, FISHERY SCIENTISTS AND HISTORIC PRESERVATIONISTS THE LEGISLATION REFLECTS PARTICIPATION OF A VARIETY OF INTEREST GROUPS IN THE STATE AND HAS EVOLVED OVER A PERIOD OF YEARS IN RESPONSE TO THE MUDDLED STATE/FEDERAL REGULATORY AND JUDICIAL ENVIRONMENT CONCERNING PROTECTION OF SHIPWRECKS AND THE NEED FOR COMPREHENSIVE MANAGEMENT THAT REFLECTS THE PUBLIC INTEREST, SPORT AND

RECREATIONAL INTEREST AND HABITAT VALUE IT CAN PERHAPS BE  
USED AS THE FOUNDATION FOR DEVELOPMENT OF ADVISORY  
GUIDELINES FOR PROTECTION OF SHIPWRECKS AND PROPERTIES AS  
DESCRIBED IN SECTION 5 OF THE BILL

IN SUMMARY, H R 74 IS AN APPROPRIATE CONGRESSIONAL  
RESPONSE TO A CONFUSING REGULATORY/LEGAL ENVIRONMENT  
CONCERNING THE PROTECTION OF AN IRREPLACEABLE RESOURCE IN  
THE ABSENCE OF SUCH A MEASURE, THE STATE'S ABILITY TO  
EFFECTIVELY MANAGE THE RESOURCE WILL CONTINUE TO BE  
IMPAIRED

## Shipwreck Management Act

AN ACT for the identification and management of abandoned sunken vessels located in or below State-owned or controlled water, protecting their historic and ecological resource value, regulating mechanical excavation and recovery, encouraging citizens to report the finding and recovery of artifacts to the appropriate State agency, and providing penalties and civil liabilities for violations

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey

1 This act shall be known and may be cited as the "Shipwreck Management Act"

2 The legislature finds and declares that (a) shipwrecks are an important public resource. The sunken remains of vessels lying on the sea floor serve as critical habitat and as congregation areas for many species of migratory finfishes, as well as for crabs and lobsters, and support extensive sport diving activities, recreational and commercial fishing. These activities help support New Jersey's local economies. Therefore, the habitat value of shipwrecks must be preserved in order for these activities continue to flourish.

(b) there are believed to be over 4,000 shipwrecks in New Jersey's tidal and offshore marine waters. The older vessels are irreplaceable and unique resources of historic and cultural information. Such resources are valuable in and of themselves, but also with respect to the location in which they are found. The private sport diving community has recovered many artifacts from abandoned vessels. These artifacts and information associated with them and their context have provided information about New Jersey's maritime history.

(c) reporting the discovery of historic shipwrecks and underwater artifacts should be encouraged provided that they are properly recorded and preserved from deterioration, that they are available to the general public, and that their recovery results in no net loss of habitat value to living marine species. It is in the public's interest that governmental agencies work in a cooperative manner with fishermen, sport divers, commercial salvors, maritime historians and underwater archeologists to locate and identify shipwrecks, protect their habitat value and learn about the nation's and state's maritime heritage from the recovery, preservation, study and interpretation of recovered artifacts,

(d) too often objects and artifacts of historic or archeological value have been lost or damaged either through neglect or active destruction with a subsequent loss to future generations of knowledge of a part of their heritage.

(e) to prevent further loss, and to promote further study and learning, this act establishes a regulatory system under which qualified persons are encouraged to excavate, preserve, evaluate, study, and exhibit historic shipwrecks found in or below State-owned or controlled waters. To prevent further loss of artifacts recovered from historic shipwrecks in federally controlled waters or by divers not using excavation mechanisms, a system shall be established and funded where divers are encouraged to record and preserve recovered artifacts from all such shipwrecks.

3 As used in this act

a "Historic Shipwrecks" means and includes all abandoned sunken vessels and their cargos, tackle, equipment and other artifacts which may be found in or below state-owned or controlled waters to which the state holds title as provided by federal statute, and which have value as objects of antiquity, aboriginal relics, or as archeological sites, or abandoned sunken vessels which are included in or eligible for inclusion in the National Register of Historic Places and the New Jersey State Register of Historic Places and the New Jersey Historic Sites Inventory

b "Non-historic shipwrecks" means and includes abandoned sunken vessels lying in or below State-owned or controlled waters not meeting above definition under 3a

c "Ecologically Significant Shipwrecks" means and includes abandoned sunken vessel lying in or below State-owned or controlled waters

which serve as habitat for some part of a year to a variety of finfishes or shellfishes or as concentration sites for a species of fin or shellfish during part of the year Historic shipwrecks may also be Ecologically Significant Shipwrecks as well

d "State-owned or controlled waters" means and includes all navigable, non-navigable, and tidally flowed waters under the jurisdiction of the State of New Jersey This includes all submerged lands downstream from measurable tidal influence to the offshore 3 mile limit of the territorial sea

e "Embedded or on the bottom" means and includes vessels that require the use of tools for slavage, raising, or excavation in order to move the bottom sediments to gain access to the shipwreck, or its cargo, tackle, equipment, fixtures, or other associated artifacts

f "Tools" means and includes mechanical, hydraulic, gaseous or pneumatic dredges, explosives, prop wash, airlifts, coffer dams, or chemicals, or other tools which may be used to remove sediments, or trowels and other archeological equipment

g "Excavation" means and includes the active removal, disturbance displacement and/or dispersal of sediments through the use of tools and which require a State Waterfront Development Permit under the Waterfront and Harbor Facilities Law (N J S A 12 5-3)

h "Salvage" means and includes the raising to the water surface of abandoned vessel whole or in part, the dismemberment below the water surface and raising to surface of abandoned vessels, or to otherwise remove an abandoned vessel

i "Disturbance" means and includes any act that alters, changes or affects the physical or ecological condition or context of an abandoned shipwrecks

j "Board" means as described under Section 6

k "Director" means Director of the Division of Coastal Resources

4 All abandoned shipwrecks located in or below State-owned or controlled waters are declared to be the property of the State of New Jersey The salvage, raising, disturbance, excavation, removal, protection, preservation, restoration or exhibition of historic shipwrecks or their associated artifacts obtained from on or below State owned or controlled waters, is reserved exclusively to the State, its official departments and agencies, or to individuals or organizations which have secured permission from the State

5 Nothing in this act shall restrict or require a permit or permission for underwater exploration, photography or marine life collection

by persons engaged in the sport of skin or scuba diving, recreational or commercial fishing

6 An Underwater Archeological Resources Board shall be formed and will be responsible for the management, excavation, removal, protection, preservation and restoration of historic shipwrecks on and under State owned or controlled waters and for making recommendations concerning the issuance of permits to public and private individuals and organizations to engage in those recovery activities on and under such waters The Board shall consist of the State Archeologist, New Jersey State Museum, the State Historic Preservation Officer, the Director of the Division of Coastal Resources in the Department of Environmental Protection and six public members representing appropriate interests such as sport divers, historians, profession archeologists, salvors, fishermen, or other commercial interests, to be appointed by the Governor The public members of the Board shall be appointed for terms of three years Their initial appointment will be staggered such that two serve for a term of one year, two serve for terms of two years, and two serve for terms of three years Members of the Board shall serve without compensation, but shall be reimbursed for actual expenses

b The Commissioner of Environmental Protection shall designate a Chairperson of the Board The Board will meet at least once a quarter each year and at such other times and places as the Chairperson may designate The Chairperson shall notify all members of the Board at least seven days in advance of any meeting except in cases of emergency A

meeting of the Board will be considered valid for the purposes of conducting business if four or more Board members are present. The majority of those present at such meetings will be empowered to pass binding votes on behalf of the Board.

c. The Board shall be in the Department of Environmental Protection. No action of the Board shall become effective unless the Commissioner of the Department of Environmental Protection approves minutes of the Board meeting, or unless the Commissioner fails to either approve or disapprove the minutes or a part thereof within 25 calendar days of the meeting.

7. The Underwater Archeological Resources Board shall

(a) Cooperate with all departments, boards, officials and institutions of the State and its political subdivisions that are concerned with the matters under its supervision,

(b) Cooperate and consult with appropriate Federal agencies and agencies of other states,

(c) Develop within 18 months, after at least one public hearing a list of known historic, non-historic and ecologically significant shipwrecks in and offshore New Jersey and keep and annually update the register. The Board may withhold from the general public information on the whereabouts of the location of certain historic shipwrecks if, in the opinion of the Board,

the disclosure of such whereabouts would promote damage to the resource, or would interfere with State approved excavation in progress

(d) Encourage responsible divers and diving organizations to report discoveries and recoveries from historic and non-historic shipwrecks to the Board and to promote their cooperation with the State in the protection and preservation of such historic shipwrecks recoveries,

(e) Have the power to direct appropriate law enforcement agencies and their officers to enforce this law and the rules and regulations promulgated by the Underwater Archeological Resources Board, and to issue administrative orders to cease and desist unauthorized excavation

(f) Encourage the exposition of recovered historic shipwrecks by responsible public and private organizations and individuals,

(g) Review applications for Waterfront Development permits (N J S A 12 5-3) that may impact historic and non-historic and ecologically significant shipwrecks and make recommendations to the Director,

(h) The Board shall within 18 months, after at least one public hearing, recommend to the Commissioner of Environmental Protection any rules and regulations it believes necessary regarding reporting and permit requirements for the removal and excavation of historic shipwrecks to insure the protection of their archeological, ecological, recreational, historical,

and educational value These rules and regulations shall be adopted into the New Jersey Administrative Code,

(i) Enter into agreements related to the federal administration and enforcement of underwater exploration and removal or excavation of underwater archeological resources beyond the territorial waters of this State,

(j) Apply for, receive and expend such Federal, state or private funds as may be available therefore to carry out its duties,

(k) Request assistance from appropriate State and local agencies and private organizations and individuals,

(l) Oversee the excavation and recovery operations by permit holders

(m) Review the professional qualifications and relevant background information on any individual requesting a permit

8 No person, organization or corporation may remove, displace, disturb, damage or destroy historic shipwrecks or their contents except in conformity with the provisions of this act Any qualified and responsible person, organization, corporation desiring to conduct any type of exploration, recovery or excavation operation in the course of which any historic shipwreck or sediment may be removed, displaced or destroyed, shall

first make application to the Director for a permit to conduct such operations. Any applicant for a permit must submit an Environmental Impact Statement in such form as required by the guidelines, rules, or regulations established by the Board pursuant to this Act.

(b) If the Director, through consultation of the Board, shall find that the operations desired comply with rules adopted by the Board and other applicable State laws and regulations he shall within ninety calendar days (90) from the receipt of a complete application make a decision to grant or deny the applicant a permit which allows said applicant the exclusive and sole right to remove or excavate said historic shipwrecks or part thereof for a period appropriate to the application but a maximum of 3 years. Said permit shall include without limitation the location, nature and extent of activity, reporting requirements and time period covered rights to division of recovered shipwrecks as required by No. 9 below subcontracting of permit rights, and shall provide for the termination of the rights of the permittee on violation of any of the terms of the permit. Until such times as a permit for any given site is granted, all records regarding the permit application for said site shall be confidential unless released by the applicant with the permission of the Director.

(c) The Board by rule may establish appropriate fees with respect to nature and extent of activity for such permits. Such permits shall be renewable for the same duration as the initial term by the Director upon approval of the Board, provided, however, there has been good-faith efforts

regularly to complete the excavation during the period of the original permit A maximum of one renewal shall be granted

(d) The permittee may, with the approval of the Board, subcontract his permit rights to another qualified and responsible person, organization or corporation, subject to the terms of the original permit The subcontractor shall be named on the permit as co-permittee

(e) All exploration, recovery and excavation operations undertaken pursuant to permit shall be carried out under the general supervision of the Board in accordance with its rules and regulations so that the maximum amount of historical, scientific, archeological and educational information may be recovered, reported and preserved The Board may require that a permittee be required to work under the direction of a qualified expert designated by the Board Permittees shall be responsible for obtaining permission of any Federal agencies having jurisdiction prior to conducting any operation

9 The Board shall determine if and how recovered historic shipwrecks may be divided between the State and permit holders Such division of ownership shall be based on the public's historic, archaeological, or educational interest with historic shipwrecks and the need to fairly compensate the permittee for salvage efforts A time schedule for this division shall be part of the permit If historic or archeological value require preservation in sites, then the board shall advise the Director to not permit excavation or salvage

10 Upon the request of any interested party, the Director may require a public hearing, on the granting or renewal of a permit, subcontracting of permit rights, or the division of historic shipwrecks recovered under the permit. The Director may, at his/her own discretion, require a public hearing on the granting or renewal of a permit, subcontracting if permit rights, or the division of historic shipwrecks recovered under a permit.

11 Law enforcement agencies and officers of this State and its subdivisions shall enforce the laws, rules and regulations pertaining to historic shipwrecks. It is the responsibility of the permittee to protect the shipwreck from the removal or excavation of said resource by unauthorized parties. The permittee shall assume all liability for such protection.

12 Any person violating a provision of this act or permit issued hereunder shall be guilty of a misdemeanor punishable by a fine of not more than \_\_\_\_\_, imprisonment for \_\_\_\_\_, or both, and shall forfeit any historic shipwrecks or any of their contents that he has obtained thereby. In addition, his permit, if any, shall be subject to revocation or suspension. Violations committed within the coastal waters of this State may be prosecuted in any district which has venue over the coastal waters. The Superior Court sitting in equity shall have jurisdiction to restrain continuing violations of this section of the Act and shall have jurisdiction to compel the restoration to the State of any historic shipwrecks taken in violations of the provision of this section of the act. Any tools used to violate this Act shall be confiscated by the State.

6 This act shall take effect immediately

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STATEMENT

The purpose of this bill is expressed in its title

RJK/jo



FLORIDA DEPARTMENT OF STATE  
George Firestone  
Secretary of State  
DIVISION OF HISTORICAL RESOURCES  
R A Gray Building  
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WRITTEN STATEMENT OF

JAMES J MILLER

STATE ARCHAEOLOGIST OF FLORIDA

BEFORE THE

SUBCOMMITTEE ON OCEANOGRAPHY

OF THE

HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

ON H R 74

ABANDONED SHIPWRECK ACT OF 1987

APRIL 21 1987

## INTRODUCTION

I am Jim Miller, State Archaeologist of Florida. Thank you for the opportunity to appear before this subcommittee in support of H.R. 74, the Abandoned Shipwreck Act of 1987. As State Archaeologist, I oversee the underwater archaeological program of the Division of Historical Resources. This agency is charged by Chapter 267 of the Florida Statutes to manage historical and archaeological resources on state-owned lands, including sovereignty submerged lands, and is granted title to artifacts from such sites. For the past eight years, the ability of the state to carry out these responsibilities has been hindered by the application of federal admiralty law to historic shipwreck sites on state lands. More than any other state, Florida has been the focus of legal, archaeological, and commercial salvage activities surrounding historic shipwreck sites and is in a unique position to appreciate the critical need for a law like H.R. 74.

## BACKGROUND

Florida has been in the forefront of historic shipwreck activity since the late 1940s when the first licenses to salvage historic shipwreck material were granted by the Florida Governor and Cabinet. During the 1950s and early 1960s, large quantities of treasure were recovered from Florida waters--the most famous being from the Spanish Plate Fleet of 1733 in the Florida Keys. In the 1960s, in response to the concerns of archaeologists, anthropologists, and historians, the Division of Historical Resources was created and assigned the responsibility of managing and preserving Florida's valuable historic shipwrecks.

The Division worked with private salvors to collect information and artifacts through a program of exploration and salvage contracts for historic shipwreck sites on state-owned sovereignty lands. These contracts allowed commercial salvage of the shipwreck sites, but the Division acquired important archaeological information and a

representative sample of the artifacts that were recovered under contract. This approach attempted to reconcile the conflicting goals of salvors and archaeologists.

Florida's program was seriously undermined in 1979 by the filing of a series of admiralty arrests in federal court which placed into legal doubt the clear authority of all states to manage their submerged lands not only for historic shipwreck resources but also for the wide range of other public uses of coastal areas. As a result Florida remains in the forefront with respect to shipwreck sites but now as a case study in the legal and management problems surrounding the dual jurisdiction of the federal courts and state agencies over historic shipwrecks on state lands.

#### STATE OWNERSHIP AND MANAGEMENT PROBLEMS

##### UNDER ADMIRALTY JURISDICTION

Florida's greatest problem in attempting to manage historic shipwrecks is resolving the issue of who has title to and ownership of these archaeological resources. Since the enactment in 1967 of Chapter 267, Florida Statutes, it has been the State's position that all historic shipwrecks abandoned on state-owned sovereignty submerged lands are the property of the people of Florida with title vested in the Division of Historical Resources. However, as noted above, recent decisions of federal courts have held that federal admiralty law applied to historic shipwreck sites supercedes state law and that such wrecks are properly under jurisdiction of the federal admiralty courts. These courts have held, in essence, that historic shipwrecks are not owned by anyone and that any commercial salvor who raises shipwreck material may have valid claim to it. Aside from undermining state ownership, admiralty law encourages the expeditious salvage of artifacts for commercial reasons without regard for the historical significance of these resources.

Florida's problems are further complicated by the federal courts' failure under admiralty law to consider other factors central to the responsible management of public properties. For instance, once an admiralty arrest is filed, the shipwreck site becomes

in effect a small outholding of federal authority within state submerged lands. Thus the state's ability to manage its public lands for multiple use activities such as environmental protection and public use are hampered because federal admiralty law is claimed to preempt the state management laws. In such situations the state is not able to manage its coastal resources based upon the consideration of the many competing demands such as recreation, commercial and sport fishing, residential use, protection of wildlife habitats, and other forms of public enjoyment. For example, a salvage operation may cause turbidity that damages a living coral reef, or a shipwreck might lie under a producing oyster bed, or be so close to public swimming areas that salvage would constitute a public hazard or nuisance, and yet the state's ability to protect these resources is hampered by the application of admiralty law.

While Florida should have the final authority to permit exploration or prevent disturbance of a historic shipwreck, it has been prevented from exercising that authority once admiralty law is applied. Florida should also have the power to decide who is best fit to do a particular job, and whether the site is to be excavated by a commercial salvor or a public institution, or even if a site has sufficient historic potential to warrant preservation rather than salvage. Again, the application of admiralty law prevents Florida from making these determinations.

The State of Florida, along with archaeologists, historians, and preservationists, believes that significant historic underwater sites should receive the same protection that important upland sites now receive. Indeed, all significant cultural resources on public property warrant management and protection in the public interest, regardless of whether they are on upland or submerged land sites. Admiralty jurisdiction over shipwreck sites runs against these principles and is analogous to allowing private contractors to arrest, dig up, and sell material from state-owned archaeological and historical sites on land.

Florida has a long history of admiralty litigation; some suits have been settled to the State's satisfaction and others have not. In an effort to protect the public's interest

in the unique historical artifacts of a number of its shipwreck sites the Florida Department of State in 1983 reached an out-of-court settlement with Cobb Coin Company Inc. The settlement agreement which covered nine areas in state waters upon which admiralty claims had been filed resulted in a series of contracts between the state and Cobb Coin which have governed salvage of those particular sites since that time. The contracts are renewable at the salvor's option for life and incorporate a set of archaeological guidelines developed by both parties which take into account the differing goals of salvors and the state. While the system developed to implement these contracts is working well and will not be affected by passage of H.R. 74 other cases have not been settled so satisfactorily.

Since 1983 around twenty additional admiralty arrests have been filed on historic shipwreck sites in state waters. These arrests further illustrate the problems inherent in dual jurisdiction. In some cases the state may not even have knowledge of the arrests since the federal courts do not necessarily notify the state of the arrests or that salvage is underway. Additionally many conflicts between state authority and federal court authority have been experienced in Florida. Admiralty arrests have been filed by new salvors on wreck sites already under state contract to other salvors. Arrests have been filed on wreck sites for which state contracts have been requested but not executed. Arrests have been filed on wrecks in one federal court that are already under arrest in another federal court and arrests have been filed in state waters by salvors having no intent to apply for a state contract. Dual jurisdiction has resulted not only in confusion and loss of archaeological information on which future management decisions should be based but also in the considerable expenditure of state resources on attempts to resolve these needless conflicts.

Furthermore although some admiralty courts have recognized the importance of involving the Division of Historical Resources in the process of information collection and award of historically significant artifacts others have not. Because each admiralty

court rules individually there is no consistency in management practices. And with each new ruling the Division is forced to implement different procedures and to deal with different interpretations given by salvors to the rights granted them by the federal courts. As a result it has become increasingly difficult for the State of Florida to manage its historic resources to collect information about salvage activities and to make this information available to the public other salvors archaeologists and historians.

Of great concern to the State of Florida is the trend over the past several years of admiralty orders that are decreasing the State's involvement in salvage of historic shipwrecks and the relaxation of requirements that archaeological information be properly collected and stored in a central location for future use. Because some admiralty courts do not recognize or require State involvement in their arrest orders some salvors have refused to contract with or cooperate with the State. In such cases the State's only recourse has been to assert its ownership in state courts resulting in further confusion and expenditure of resources.

If Congress does not resolve this issue and if federal admiralty courts continue diminishing state involvement the final result will be commercial salvage of shipwreck sites with no concern for historical significance. The only winners in this jurisdictional conflict are the commercial salvors. The losers are the taxpayers who pay for these lawsuits and more importantly the citizens and visitors of Florida who are deprived of their use and enjoyment of historical resources on public lands.

#### H R 74 AS A REASONABLE SOLUTION

The conflict that now exists can best be settled by granting title to historic shipwrecks to the states as has been done with the other natural resources found on state submerged lands. Since the settlement of the Cobb Coin cases Florida has demonstrated its commitment to responsible excavation of shipwreck sites following sensible archaeological guidelines.

Florida requests the clear authority to continue that process and views H R 74 as the proper vehicle to achieve that goal I support H R 74 because it

1 Assigns the states the responsibility for managing their resources in their waters including abandoned shipwrecks

2 Transfers title to certain abandoned shipwrecks in or on state submerged lands to the proper owners the states

3 Exempts abandoned shipwrecks from federal admiralty law thus clarifying the proper role of the states

4 Affords meaningful recreational and educational opportunities to sports divers and provides for reasonable recovery of the abandoned shipwrecks and

5 Fairly grandfathered from its provisions any suit filed before the date of enactment

#### CONCLUSION

The present conflict between the federal courts and state law must end Without the enactment of H R 74 Florida will be forced to continue to expend considerable time and money to resolve legal disputes brought on by conflicting federal admiralty law Limited funds which could be used to locate preserve or recover archaeological and historical resources are being wasted on legal disputes that only Congress can settle

You have before you the opportunity to resolve this conflict Each abandoned shipwreck site represents much more than just a cache of cargo Florida's objective is to preserve its heritage and marine resources for current citizens and future generations To do these things we need your support for H R 74

Alan B. Albright  
 South Carolina Institute of  
 Archaeology and Anthropology  
 University of South Carolina  
 Columbia SC 29208

I want to begin by stating that I support HR 74 because it meets the three fundamental goals which I have supported for the 13 years I have been the Head of the Division of Underwater Archaeology of the South Carolina Institute of Archaeology and Anthropology and, through the Office of the Institute Director responsible for the management of the states underwater archaeological resources

During that time I have espoused the three major concepts that I perceive are the main thrust of this bill

- (1) It protects archaeologically significant shipwrecks from unwillfull damage by untrained but otherwise well meaning sports divers
- (2) It provides encouragement to the sports divers and fishermen, to utilize the recreational potential of sunken vessels in their respective sports which would have a very positive effect on the tourist industry that is so essential to the economy of South Carolina
- (3) It reinforces the authority of the individual states to manage their own resources such as fish and game terrestrial and submerged mineral and natural resources such as coal and timber, and now sunken vessels of historic and recreational value

The South Carolina Underwater Antiquities Act of 1982 amended and improved several times since 1968, has provided a vehicle through which the sports diving community can carry out their activities within the framework of a reasonable and workable law and also cooperate with the state in managing the states resources. The Act authorizes the issuance of two types of licences those for commercially oriented diving activities, and those for hobby oriented diving activities

Since the Acts inception approximately 4000 licences have been issued, some 30 to the commercial sphere and the rest to the hobby divers

Today we have only 1 Salvage License in effect, which authorizes a dive group to recover artifacts from several badly damaged Civil War blockade runners. Periodic reports are required from the salvors and a division of artifacts are made with a of 50% equity guarantee for the salvors. The sunken vessels in state waters that should be preserved for the exclusive utilization of the archaeological community consists of only 10 to 15% of the total known wrecks. The rest are in the domain of the sport diving community acting in accordance with the Antiquities act.

In the Hobby Diver category we have over 750 licenses in effect at this moment and we receive monthly reports from them detailing their activities carried out under our law. Like the professional salvors they are guaranteed 50% equity in their finds, but to date we have never made a division with a hobby diver, nor have we ever been refused the loan of an artifact for scientific study. Their reports represent the majority of all of the knowledge we have of underwater sites in South Carolina.

This non-possessive attitude has paid high dividends for the archaeological community and the state. From it directly stemmed the donation to the state of the Browns Ferry vessel by its hobby licensed discoverer Hampton Shuping. This early 18<sup>th</sup> vessel has been described by J. Richard Steffy of the Institute of Nautical Archaeology at Texas A and M as "the most important single nautical archaeological discovery in the United States to date."

A number of years ago a hobby diver recovered an intact example of a "Colono-Indian" jug from underwater. It was assumed that this plain, low fired, red earthenware jug had been made by Indians for sale to the colonists for the use of their slaves. However, an archaeologist from the Institute, examining the shape and impressed design found exact duplicates being made and sold in Africa in this century. He further found in examining our site files that "Colono-Indian" ware had never been recovered in South Carolina from an Indian site and had always been recovered from a slave associated site. This discovery and cooperation by a hobby diver has opened up an entirely new sub-discipline for the archaeological community: the study of slave made ceramics.

We believe that in interacting with the sports diving community cooperation is more effective than confrontation and threats of law enforcement. We believe the ethics of the archaeological community can

not be successfully imposed on the sports diving community. We believe the views of the sport diver should be acknowledged and respected even though they often run counter to the ethics and values of the archaeologist. We believe that mutual respect and education will bring sports diver and the underwater archaeologists together to the benefit of both groups.

In short the law must serve both the long term interests of the educational and historical value of this non-renewable resource and the present interest of the recreational value inherent in sunken vessels. Neither extreme of this delicate issue, whether it is the conservative archaeological viewpoint or the liberal laissez faire philosophy will work to the benefit of the resource.

This is not a black and white issue. HR 74, however, presents the best compromise and serves the major interests of ~~both~~ sides and should become the law of the land.

ALL

Testimony re Bill H R 74  
Submitted by Kenneth R Pott, Curator  
Lake Michigan Maritime Museum  
South Haven MI 49090

To All Subcommittee Members,

Please accept the following testimony, regarding Bill H R 74, as submitted on the behalf of member organizations of the Association for Great Lakes Maritime History. The Association is a consortium of some 30 maritime museums and preservation organizations dedicated to the cooperative study, preservation and interpretation of Great Lakes maritime history. Member organizations are distributed throughout the states of Minnesota, Wisconsin, Michigan, Illinois, Ohio and Pennsylvania. Also please accept certain portions of the following testimony on the basis of my experience as a professional archaeologist and curator with the Lake Michigan Maritime Museum, a Michigan based institution of Great Lakes maritime preservation and education.

It is the consensus of member institutions of the Association for Great Lakes Maritime History that historic shipwreck sites located on the bottomlands of the Great Lakes and their associated tributaries constitute one of our Nation's largest and most valuable archaeological resources. It is the added consensus of all Association member organizations that Bill H R 74 represents legislation necessary to the protection, management and proper use of Great Lakes shipwreck sites. Of great importance is the Bill's allowance for the administration of shipwreck management programs by State governments and an associated recognition of the archaeological integrity of these resources.

For as long as we know, the building and use of boats has been important to the people of the Great Lakes region. First were canoes used for subsistence, exploration and the fur trade. These were followed by wooden sailing craft used for commercial and military purposes. Following the War of 1812, dozens of sailing vessels and small steamers served the needs of a growing Great Lakes population. With the middle 1800's came the discovery of a wealth of natural resources. The waterways of the midwest provided the easiest and cheapest means for the movement of these goods and the next several decades saw a dramatic increase in the Great Lakes commercial fleet. Records show that more than 2,000 sailing craft were active in the 1870's alone, more than 300 steamers were also employed. The building and use of boats had become one of the midwest's most vital industries.

We know from historical research that navigating the Great Lakes in the 19th century was a dangerous occupation. Hazards included shallow waterways, unmarked obstructions and sudden storms. A large number of ships were lost as a result, literally thousands of vessels were recorded wrecked or sunk between 1870 and 1900 alone. These vessels represent a wide range of types, sizes and historical periods, including all manner of sail and steam powered craft. Due to the qualities of the deep, cold, freshwater environment in which they were lost, many of these vessels and their contents have remained remarkably intact. In fact, there are few other parts of the world where such a range of shipwreck resources have survived in such pristine condition.

Great Lakes shipwreck resources should be recognized, first and foremost as cultural resources of historical and anthropological value which belong to all people of the state. These resources are not the sole property of historians or archaeologists nor recreational divers, other special groups or private individuals. They are a finite and non-renewable resource which can provide a valuable range of new information on our collective cultural past, it is important to note that much of the information contained within these sites is not otherwise available through research in the written/historical record. As these resources are deemed the property of the state, it is only natural that they be managed accordingly by state agencies on behalf of all citizens of the state. It is imperative that archaeological sites located on the bottomlands of the Great Lakes be granted the same professional attention and consideration given to their terrestrial counterparts.

A case in point regarding moves toward state management of underwater cultural resources is found in recent developments in Michigan. Michigan has ownership of 38,504 square miles of bottomland in the Great Lakes. This pertains to lands under Lakes Superior, Michigan, Huron, Erie and St. Clair or approximately forty percent of the estimated 95,000 square miles taken up by all of the Great Lakes including Lake Ontario (Halsey 1985, p. 1). A study administered in 1975 by the Institute of Great Lakes Research at Bowling Green State University and the Michigan Department of Natural Resources, accounted for no less than 3,000 vessels having been lost in Michigan's boundary waters between the period of the late 17th to early 20th century.

Aware of the archaeological value and finite nature of its underwater cultural resources, the State of Michigan began in the 1960's to draft legislation necessary for the preservation and management of its many shipwreck sites. These efforts reached a decisive point in October of 1980 with the passage into law of Public Act 184. This important piece of legislation granted the State a certain authority to manage all resources of historical value found on its bottomlands. It provided criteria to regulate the removal of artifacts from any submerged site within the State's jurisdiction, and established the basis for a Great Lakes underwater preserve system.

Over the intervening years, various lakeshore communities have worked closely with representatives of the Michigan Bureau of History and the Michigan Department of Natural Resources to establish preserve systems in areas of known wreck concentrations. It is intended that these preserves act as marine sanctuaries for the many wrecks they contain and as a recreational facility for sport diving activity. To date, four such preserve systems have been established on State owned bottomlands:

- 1) the Thunder Bay Great Lakes state bottomland preserve in Lake Huron off Alpena
- 2) the Alger Great Lakes state bottomland preserve along the coast of Lake Superior in the area of Munising and Pictured Rocks National Lakeshore

- 3) the straits of Mackinac Great Lakes state bottomland preserve located in the historic stretch of water connecting Lakes Michigan and Huron and separating the Upper and Lower peninsulas of Michigan,
- 4) the Huron County "Thumb" Great Lakes state bottomland preserve located on the eastern coast of Huron County (Halsey 1985 p 70)

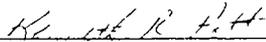
In addition to their preservation role the above preserve systems have proved valuable in a variety of ways to the economies of the communities off which they are located Michigan residents can take pride in the lead role their state has assumed in the field of underwater cultural resource management Despite its recent origin, this program is already being viewed with great interest by other Great Lakes states as a prototype to be copied

A new and vital phase of Michigan's shipwreck management program was initiated in the summer of 1983 with the discovery of an anthropologically significant shipwreck site along the offshore area of South Haven, a small port located on the southwestern side of the State Events soon to follow would result in the selection of this site for a detailed archaeological study This special project, administered by the Lake Michigan Maritime Museum in cooperation with the Michigan Bureau of History and the Michigan Department of Natural Resources, would represent the first occasion where an archaeological research design would be applied to the systematic study of a shipwreck site on the U S side of the Great Lakes

Michigan's efforts to protect and manage its underwater cultural resources serves well to illustrate what can be achieved when state agencies and the general public work together toward a common goal Members of the general public and many representatives of the Great Lakes dive community played key roles in all of the projects described above This involvement and interaction has promoted a keen and growing sense of awareness of all parties concerned regarding the archaeological, social and economic value of the State's shipwreck resources

The example cited above also exemplifies the great need for the passage of Bill H R 74 Efforts to develop Michigan's program further, or to implement similar programs in other states, will likely not occur until the rights of states to the jurisdiction over underwater cultural resources is more clearly defined Bill H R 74 provides just such a needed definition

My thanks for your consideration of the above information and testimony




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Kenneth R Pott

I appreciate the Committee allowing me to participate in today's hearing on HR 74, the Abandoned Shipwreck Act of 1987. I offer the following comments as a representative of the Society for Historical Archaeology and also as Chairman of the Advisory Council on Underwater Archaeology. The SHA is the largest scholarly group concerned with the archaeology of the modern world. The Society promotes scholarly research and the dissemination of knowledge concerning historical and underwater archaeology relating to the era since the beginning of European exploration. The ACUA is a committee of leading underwater archeologists and is associated organizationally with the SHA. While not officially representing my state agency I should also mention that I have been the state marine archeologist for Texas for the last 12 years.

Historical archeologists work on a broad range of sites, preserved on land and underwater. By examining the physical and documentary record of these sites, historical archeologists attempt to discover the fabric of common everyday life in the past, and seek to understand the broader historical development of our own and other societies.

The SHA normally concentrates on internal concerns of the scholarly community. However, the issues relating to historic shipwrecks are of such overriding importance to archeologists and to the nation in general that the

SHA chose to vigorously participate in the legislative process. The SHA and the ACUA have been leaders in the development of the pending historic shipwreck legislation and we urge its enactment.

Why has the SHA undertaken this uncharacteristic campaign? Because archeologists believe deeply in the preservation and highest use of this invaluable aspect of our nation's patrimony. The current situation under admiralty law allows the commercial stripmining of historic shipwrecks for the selective retrieval of salable objects. This is a great tragedy because the scientific archeological data locked away in each wreck site is destroyed in the process. When the objects are picked up without carefully recording their spatial interrelationships, the story they could tell about the ship and the people on board is irretrievably lost. Remains of no commercial value but which could be of great archeological interest are not recovered but disturbed and destroyed in the process.

In contrast an archeologist knows that the excavation of a site is a destructive process that can be performed but once. He strives to record in minute detail every bit of evidence that will allow the reconstruction of the site on paper. This data is then available for analysis, interpretation, and publication. The artifacts remain together as a collection and with the data are available to future scholars for reinterpretation and to answer new research questions that arise as time goes on. From the viewpoint of the general public, the artifact collection curated in a museum is the source of interpretive displays for the enjoyment and edification of all.

Remembering that historic shipwreck sites are publicly owned non-renewable resources located on public tidelands, can there be any doubt that this is a superior outcome to the usual result of a commercial treasure salvage situation? In the latter case the artifacts are scattered by sale, never to be studied as a group and often without the expensive conservation or cleaning and preservation necessary to prevent their eventual disintegration.

The archeologist takes the same careful scientific approach to a site whether it lies on dry land or underwater. Through painstaking techniques of excavating and recording data he seeks to render that which is buried and unknown into something new in the known, the public world of knowledge. The treasure hunter wants to render the unknown into cash.

To the archeologist the commercial exploitation and destruction of our nation's historic patrimony is an unethical act. As Calvin Cummings pointed out in his article on archeological ethics, "Throughout the ages human beings have engaged in a constant struggle between intellectual reason and blind emotion. It has been widely documented, through recorded human history, that nothing clouds intellectual reason more than the 'flash of gold' (greed). Eyes glaze over, minds become fogged, and reason evaporates. Within the archaeological profession of the United States, a structure has been developed, both as an attempt to provide unity and order and to provide an intellectual reason to protect resources from the 'lust for treasure.' The archaeological community has defined standards, ethics, ideals, purposes, principles, and canons of behavior. These are articulated by all seven (7) major professional archaeological societies in the United States. In

addition to being the defined criteria for all of the National Societies, these standards, ethics, and canons are also espoused by regional, state, and local organizations. Avocational and amateur archaeological organizations and societies, as well as the professional archaeological councils and societies, have adopted these published criteria on archaeological behavior and activities." The statement from the bylaws of the SHA is typical of the others.

#### Article VII--Ethical Positions

Section 1 The Society supports the conservation, preservation, and research of archaeological resources, including both land and underwater remains. The collecting, hoarding, exchanging, buying, or selling of archaeological artifacts and research data for the purpose of personal satisfaction or financial gain, or the indiscriminate excavation of archaeological sites, including underwater wrecks, are declared contrary to the purposes of The Society.

These ethical standards have been adopted by archeologists because they frequently encounter the sad evidence of destruction of sites and data wrought by treasure hunters. Most archeologists would prefer to see commercial treasure hunting forbidden altogether. That is why the proposed legislation is a rather large compromise on our part. This bill leaves it up to each individual state to decide how the historic shipwrecks within its waters will be used. Treasure salvage is not forbidden. What we do gain

under this bill is that the sites are removed from the admiralty jurisdiction of the federal courts which is entirely commercially oriented. Under the current state of affairs the federal courts override the jurisdiction of the state antiquities codes. We submit that the federal court is not the proper locus for cultural resource management. On the other hand, each state has an historic preservation office functioning under federal laws and the Secretary of the Interior's published standards. They are accustomed to managing and preserving archeological sites. On federal dry lands, treasure hunting is illegal. Enforcement is strict by federal agencies and jail sentences for offenders are involved. Most coastal states also have a state antiquities code that applies to historic shipwrecks in state waters.

Under the setup proposed in HR 74, even in states that allow commercial treasure salvage, there is a better chance that at least some of the archeological data will be preserved than under the commercially oriented purview of the admiralty court. Where a site has overriding archeological value the state would have the option to prevent the destructive activities of commercial treasure salvage. Texas has 18 years of experience in directly managing and scientifically researching its historic shipwrecks for the benefit of all its citizens. With the coercive threat of appeal to the admiralty courts removed, states would be in a stronger position to choose preservation over commercial exploitation.

The commercial exploitation of historic shipwrecks has been likened by eminent underwater archeologist George Bass to stealing the stars from the night sky for the benefit of private collectors. Others wonder if we would allow an entrepreneur to tear down Mount Vernon and sell it brick by brick.

Obviously a new federal program to research and manage historic shipwrecks at the national level would be the best of all possible approaches. Realizing that huge federal budget deficits make a large new federal program unlikely, let us at least take the modest step proposed in HR 74 of taking a rather limited class of historic wrecks out of the commercial admiralty court setting. We believe that states will choose to protect and manage historic shipwrecks according to the same care and standards afforded similar resources on publicly owned dry land. The present double standard of protection ashore and destruction underwater should be intolerable in a civilized country.



National Trust for Historic Preservation

Testimony of

J JACKSON WALTER

PRESIDENT OF THE NATIONAL TRUST FOR HISTORIC PRESERVATION

before the

SUBCOMMITTEE ON OCEANOGRAPHY  
COMMITTEE ON MERCHANT MARINE AND FISHERIES  
U S HOUSE OF REPRESENTATIVES

April 21, 1987

Mr Chairman and members of the Subcommittee, I thank you for the opportunity to appear before you today on behalf of the more than 190,000 members of the National Trust in strong support of efforts to protect historic shipwrecks, an irreplaceable part of America's heritage. As the Congressionally chartered leader of the nation's private sector historic preservation movement, the National Trust has taken a continuing and strong interest in matters relating to the preservation of our maritime heritage.

For the past 10 years, the National Trust has maintained an active maritime preservation program, in which marine archeology is an important part. We have worked with archeologists, museum professionals and diving enthusiasts to encourage the identification, protection and preservation of underwater archeological resources.

Most recently, the Trust has completed a fund raising assessment for the exploration and study of the U S S Monitor and is represented on the Monitor Project Planning Committee, helping to provide guidance to NOAA on what promises to be a model effort in marine archaeology. Currently, the Trust is developing a textbook and training course for federal and state managers of historic resources to acquaint them with the special issues of historic shipwreck management.

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The Current Situation

Over the past several months our Department of General Counsel has undertaken a review of the impact of federal admiralty law on historic shipwrecks and their contents. We have found that the combination of conflicting federal case law and continuing

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uncertainty by state governments on the extent of their authority to regulate salvage has combined to create a situation where historic shipwrecks and the valuable historical information they contain are essentially unprotected

This legal situation is worsened by the increasing availability of technologies that will aid the location of shipwrecks. These technologies will hasten the rate of discovery and the rate of destruction. Historic shipwrecks are, without doubt, the single most endangered category of historic resources in our nation today.

Historic shipwrecks are subject to salvage operations that do not protect their value as archeological sites and results in the loss of crucial data on the discovery, exploration and development of this nation. In addition, valuable information about maritime technology, international and inter-regional trade, and the seafaring life is being lost forever.

Salvage operations that fail to adequately map the underwater location of objects and vessels forfeit the information that trained scientists could gain from studying the relationship of objects to each other. Where recovery techniques fail to recover all of a vessel's contents -- both those objects that have market value and those of scientific value -- archeologists lose pieces of the complex puzzle that is the story of a vessel and its times. Finally, where proper conservation techniques are not employed to a vessel and its contents, the rapid deterioration of ancient materials denies archeologists the ability to compare materials from one find with others.

Some examples serve to illustrate this loss.

The U S S Cairo, a civil war gunboat was lifted from the Yazoo River near Vicksburg, Mississippi by salvors using cables that severely damaged the ship and dumped its contents onto the river bottom. The hull's remains sat unconserved for years. The nation's ability to study this window to the past was lost forever.

The Alvin Clark, a 19th Century schooner, raised by salvors in 1969 sits today rotting in Menominee, Michigan because no conservation plan was developed or funded.

Most recently, treasure salvors mutilated, in a vain attempt to recover treasure, the H M S Debraak, an English military vessel that sank off the coast of Delaware in 1797. Lifted by cables without benefit of a proper cradle, salvors ripped into the hull and dropped much of its contents and interior on the sea floor. The salvors then employed a clamshell bucket to dump the remains of the vessel into a road construction rock sorter to sift for treasure.

These techniques denied archeologists the information that proper exploration might have gained such as knowledge of the modifications made to this Dutch built vessel by the English and the story of the treatment of Spanish captives and their cargo by the English ship's crew

Mr Chairman, as a nation we would not tolerate a commercial enterprise that bulldozed Gettysburg and then dumped the remains through a sifting machine to recover any valuable objects Yet this is exactly what current law allows treasure hunters to do to our nation's maritime legacy This legacy is not the property of any syndicate of investors, daredevil treasure seekers or, even, well meaning sportsmen It is the property of the nation as a whole and the nation as a whole is not currently protecting its interests in the heritage of historic shipwrecks

#### Needed Action

For these reasons we welcome the Committee's interest in developing effective legislation that will provide for the protection and management of historic shipwrecks and their contents located within the territorial waters of the United States In our opinion, any legislation that will reverse the current situation must have three basic ingredients

- First, the legislation must remove historic shipwrecks from the jurisdiction of federal admiralty law The admiralty courts, a part of the judicial branch of government, are not an appropriate place to house the executive function of protecting and managing historic resources Neither do the admiralty courts have the archeological expertise to make important decisions in this area
- Second, any legislation must seek to vest the authority to regulate the exploration and salvage of historic shipwrecks in the states State governments throughout this nation are seeking such authority and several have distinguished records of achievement in the maritime archeology area One example is the state of Texas's exemplary recovery of the 1554 sunken Spanish fleet and its careful study and conservation of artifacts
- Third, any legislation to protect historic shipwrecks should be consistent with the federal-state-private partnership established by the National Historic Preservation Act of 1966 This law established the basic framework for the nation's historic preservation program, of which nautical archeology is a part Under this program, approved state programs are given primary responsibility to make preservation decisions for historic and archeological resources

Legislative Comments

Measured against these principles, we believe that the Committee should look to H R 74, "The Abandoned Shipwreck Act of 1987", as the basis on which to take action in this area. By shifting historic shipwrecks out of admiralty law, this bill takes an important step in providing the necessary protections for our irreplaceable heritage of historic shipwrecks. We commend Congressman Bennett and the co-sponsors of this legislation for their interest in this issue and their efforts over several years to reform this area of the law.

The National Trust would like to recommend certain modifications to H R 74 that will make this legislation more consistent with the principles outlined above. While the transfer of regulatory authority to state governments should be the ultimate goal of any legislation in this area, consistency with the National Historic Preservation Act demands that such a transfer of authority be predicated on states having effective mechanisms and procedures for exercising regulatory authority.

Where states lack the capacity or procedures to regulate historic shipwreck exploration and salvage, their exercise of regulatory authority would be insufficient to guarantee the protection of the national interest in these cultural resources. Under the National Historic Preservation Act, state governments may exercise primary responsibility for designating and protecting historic properties and archeological sites where they meet established standards. Today, all states, territories and the District of Columbia meet such standards and are full participants in the national historic preservation program.

Similarly, legislation to protect historic shipwrecks should demand an achievement of minimum standards prior to a transfer of authority to regulate and protect historic shipwrecks. Where states are unwilling or unable to meet minimum standards and assume immediately the regulatory authority, federal management is necessary. Such management is most appropriately vested in the National Park Service.

The National Trust is convening a panel of experts in the field of nautical archeology to study and recommend standards for state assumption of regulatory authority. The group is scheduled to meet during the week of May 11. Based on this group's work, we anticipate that the National Trust will be able to make recommendations in this area to the Committee by June 1. We urge the Committee to await these recommendations prior to taking any final action on this legislation.

In addition to these comments, the National Trust believes that the definitions of resources protected by H R 74 should be expanded to be more consistent with the National Historic Preservation Act and the intent of the legislation to protect historic shipwrecks. Currently, H R 74's protections are

limited to shipwrecks located on submerged lands where wrecks are included in the National Register of Historic Places or are determined eligible for inclusion in the National Register. In addition, no such wreck is protected unless the public has been given adequate notice of its location.

This definition leaves unprotected any shipwreck where designating authorities do not receive any notice of the discovery in order to make a formal eligibility determination or nomination of the property to the National Register of Historic Places.

Under the National Historic Preservation Act of 1966, all properties are protected whether listed or eligible for listing. No formal determination of such eligibility is required for protections to apply. Public notice of the location of archeological sites is not required so that sites can be protected from vandalism. Likewise, such notice in the case of historic shipwrecks is counter to the purposes of the legislation. Publication of a wreck's location may make it more vulnerable to inappropriate exploration and destruction.

We therefore recommend that the legislation be modified to protect any shipwreck whether located on submerged lands or imbedded in such submerged lands where that shipwreck is listed in or eligible for listing in the National Register of Historic Places. This definition would eliminate both the requirement for a formal determination of eligibility and public notice and, therefore, would protect all historic shipwrecks.

Although we do not agree with the maintenance of historic shipwreck administration in federal admiralty court, we commend several provisions of H R 2071 to the Committee for consideration. In particular, we agree with the bill's application of standards for salvage and our panel of experts will certainly consider the specific standards contained in the bill. In addition, we support the bill's recognition that some sites may best be left untouched to await future advances in recovery and study technology. Finally, H R 2071 recognized correctly that penalties are needed to prevent unauthorized exploration and salvage of historic shipwrecks.

In conclusion, we reiterate our commendation of the Committee's interest in this legislation and are available to assist the Committee in its work. We appreciate the opportunity to appear before you and look forward to working with the Committee in the future.

# TIMELINES Inc

HISTORIC PRESERVATION ANALYSIS & PLANNING

## Testimony in Support of H R 74

My name is Michael Roberts I am President of Timelines, Inc , a historic-preservation planning, analysis, and management firm based in Groton, Massachusetts I am currently managing five major archaeological projects one of which is an underwater project, plus several smaller projects I am here today to document the possibility that professional archaeologists and commercial salvors can develop effective working relationships, recovering significant elements of our nation's maritime history while meeting the investment needs of the supporters of commercial salvage I've been for the past three years Project Manager for the testing of an archaeological site off Wellfleet, Massachusetts, known as the Whydah site This site is the location of a pirate ship wrecked in 1717, and as such represents not only a historic resource but an important landmark in the salvage and recovery of materials Critical elements of the project to date have been the documentation of this site's eligibility for the National Register of Historic Places and the obtaining of a permit to recover material from the site from the U S Army Corps of Engineers The site is continually threatened not only by weather fishermen and treasure seekers but by natural deterioration Accordingly, a memorandum of agreement among the Corps of Engineers, the Advisory Council on Historic Preservation, the Massachusetts State Historic Preservation Officer and the salvor was developed and is currently being implemented In addition, the salvor is, and has been since the project's beginning, working under permit from the Massachusetts State Board of Underwater Archaeological Resources Both permits subject all actions of the salvor to review for compliance with historic preservation standards regarding personnel, documentation, and final reporting

As a member of the Society of Professional Archaeologists, I have the responsibility to see that the code of ethics and standards of research performance of the organization are implemented in the project This project is anticipated to last for several more years and I am confident that the archaeological work done will meet or exceed the standards of any underwater archaeological project performed to date As can be imagined, we are under heavy scrutiny by our peers and indeed we are aware that if we should we fail our professional reputations will be in jeopardy However, I can testify that the project is comfortably nested within the Federal and State regulatory process and is moving ahead with both archaeologists and commercial salvors working in close cooperation toward the mutual goal of

documenting and reporting to the public on this significant historic resource. I believe that this project can and should act as a model for cooperation between archaeologists and commercial salvors. The key to failure is arrogance. The key to success is communication and mutual education by the commercial interests and the archaeological community so that both elements of the team may set goals and understand the requirements for meeting the goals of each. Once this communication is established, in a proactive as opposed to a reactive way, I believe that important elements of the past need not be lost if remains are recovered by a commercial venture.

It is important to understand one other point. In my view, underwater archaeology is archeological research and is no different from terrestrial archaeology whether it be urban, desert, wet site, historic or prehistoric. Archeological research has a well marked and clear goal--the understanding of our past. The only differences are the environment, the cost, and the appeal of underwater archaeology to the general public. These are problems that must be dealt with, just as hazardous waste must be dealt with in urban archaeological sites or as scorpions must be dealt with in desert archaeology. The search for the past, however, hasn't changed.

We hope to prove in the project I am currently managing that good, solid anthropological research can be accomplished on an underwater archaeological site that has not only historical significance but an intrinsically valuable object assemblage which, to the archaeologist, is just another piece of the puzzle, helping us to understand the lives of these particular people and the nature of their times. Indeed, one of the interesting questions that this particular site may help us deal with is the role of smuggling and piracy in stabilizing the Colonial economy in the face of the idiosyncratic behavior of the British Parliament. Piracy may have allowed certain groups of people to function independently of Britain and thus gain the habit of independence. However, since these activities were illegal, very little was written about them. Our understanding of this important part of our nation's history may only be obtainable through archaeological research--in this case, underwater archaeological research. I believe we have demonstrated in the Whydah project that Federal regulators, the States, the archaeological community, and commercial salvors can work together effectively, which is the goal of this Bill. Thank you!

TESTIMONY BY ANNE GIESECKE,  
 LEGISLATIVE DIRECTOR FOR THE UNDERWATER SOCIETY OF AMERICA,  
 BEFORE THE SUBCOMMITTEE ON OCEANOGRAPHY APRIL 21, 1987,  
 ON H R 74 AND H R 2071, BILLS APPLYING TO ABANDONED AND HISTORIC SHIPWRECKS

The Underwater Society of America is the largest volunteer sport diving organization in the United States. Established in 1959, the Society now has over 8,000 members. Since its incorporation, the Society has promoted the enjoyment of diving and acted as spokesman and protector of the sport.

In 1983 we made a commitment to represent the interests of the sport diving community, a sizable group, which, previously had no effective voice in the discussion of shipwreck bills. The Diving Equipment Manufacturers Association along<sup>w. th</sup> other sport diving organizations joined our efforts in 1984. The language in H R 74 which protects the rights of sport divers is a direct result of our persistent efforts. We are here today to testify in support of H R 74 and to oppose H R 2071.

The primary purpose of H R 74 is to recognize each state's authority to control the excavation of state lands for the purpose of recovering embedded and historic shipwrecks. The bill accomplishes this purpose by declaring that the state has title to shipwrecks which are either embedded in submerged lands or coralline formations, or are eligible for the National Register of Historic Places.

The bill is needed for two reasons. First, there is a clear need for management. Environmental conflicts often occur when treasure hunters are looking for

shipwrecks. Dynamiting of coral reefs, dredging of endangered turtle nesting habitat, excavation of shellfish beds, and disruption of recreational swimming and diving are examples of the activities that the states need to control. The bill meets this need by clearly stating that the state has title to the land and all that is embedded in the land. The bill addresses the state's right to permit the excavation of state land, and the state's right to spend money on the creation of underwater parks,<sup>on</sup> the conservation of recovered artifacts, on public education, and on displays about shipwreck sites.

The second reason the bill is needed is to decrease the costs to the state caused by unnecessary litigation. State authority has been challenged in Federal Court on six occasions. In one case the Court assumed jurisdiction over the excavation of state land for the purpose of recovering shipwrecks, without regard for environmental or recreational concerns. More than 35 cases are still pending. If H R 74 passes no future litigation on this jurisdictional question will add to the \$20 million that state taxpayers have spent. Moreover, H R 74 will not cost the Federal government any money and will not expand the Federal bureaucracy.

The state's ability to issue or deny permits for activities on state lands is essential to good management. An after the environmental damage has been done case-by-case Federal Court approach to each archaeological site would be burdensome to those states attempting to manage intensively used areas such as ports and state parks.

Over the years, states have worked closely with sport divers, they have recognized that sport divers are discovering and studying historic shipwrecks and are

also major contributors to many local economies. At least 80% of the known shipwrecks have been discovered by sport divers, 15% by state projects and fisherman, and 5% by treasure hunters.

If H R 74 passes we expect that states will continue to protect historic shipwrecks and encourage sport diving on wrecks. States such as Michigan, Vermont, South Carolina and Florida have encouraged sport diving by producing publications, creating underwater parks, placing moorings near wrecks, and sinking ships as dive sites.

Since the 1950s, the states have managed historic shipwreck archaeological sites as part of their historic preservation programs and, since 1966, have applied minimum national standards to their management efforts. These standards define what is historic and set forth management procedures that incorporate 1) public participation on decision-making boards, and 2) public hearing and appeals processes. Historic shipwreck projects are eligible for grants and, in addition, 13 states provide monetary compensation to private sector profit groups. There have been problems in the past involving state permits and contracts, yet these conflicts have been judiciously resolved by state courts, and citizens have always had a forum for conflict resolution.

States already administer shipwreck archaeological sites, there is no need to substantively distort the Federal Court system, which applies to ships and cargoes that are in imminent danger, to administer archaeological sites. H R 2071 should be titled the admiralty lawyer enrichment act. The bill makes a show of protecting shipwrecks while it actually acts to increase the size of state and federal budgets, expand bureaucracies, and enhance opportunities for lawyers.

The establishment of a complex court filing system will require increased tax support for the Federal Court and increased state taxes to support state participation. Sport divers are understandably adverse to paying higher taxes for the purpose of being excluded from dive sites. There are probably only two commercial operators working in the United States who might benefit from this salvor subsidy on mining old wet wrecks. There are more than 2.5 million sport divers who stand to lose access to their favorite dive sites.

On a specific of the bill, the 75 year construction criteria is arbitrary and unworkable. When one dives on a pile of broken timbers that were once a ship, it is impossible to tell if it had been constructed 75 years ago or 74 years and 364 days ago. The construction of many local fishing and trade ships was never recorded and that is precisely what makes them so interesting. From another perspective, the specter of this system applied to a prehistoric canoe stuck in the river bank of a state park is amusing because it is so unreasonable.

Based on current figures, only about 5% of the 12,000 or so wrecks that are 75 years old will be defined as historic. The historic shipwrecks are mostly prehistoric canoes, canal boats, and steamboats with mundane cargoes such as cloth and shovels. Archaeological excavation of these sites is being accomplished by sport divers and college students. Every year more than 25 groups sponsor over 50 projects to map and recover shipwrecks. However, most of the local fishing boats, barges, ferries, and work boats that are lying on the bottom are not of interest to the treasure hunter or the archaeologist, but are a major source of recreational interest to sport divers.

The bill attempts at increased cost to do what the states have been doing better for twenty years. We oppose H. R. 2071.

As an alternative, conditioning the state's authority to own shipwrecks would also require the development of a costly Federal bureaucracy. If the state's authority is conditioned, in any manner, an administrator such as the state Governor, the Secretary of the Interior, or the Secretary of Commerce must determine that the state law meets the conditions of the Federal law. If the state law is found to not meet the conditions of this Act, then 1) the Secretary of the Interior, the Secretary of Commerce, or the Advisory Council on Historic Preservation could provide a regulatory system to be administered by the state until a new law is passed, or 2) the Secretary of the Interior or the Secretary of Commerce could act as a trustee for the state and administer a regulatory system until he approves a new state law, or 3) the Federal Court could make case-by-case determinations concerning historic shipwrecks until state law is found to comply with the Federal law.

In conclusion, continuation of the assignment of title to abandoned historic shipwrecks to the states is the simplest, clearest management system. With title, the expenditure of state funds for administration of permit systems, the conservation of materials for public benefit, and the transfer of title to certain artifacts would be most clear. Any international claims to historic shipwrecks in state waters would be foreclosed.

The sport divers and other interested groups who know their own interests and their own resources should be allowed to continue to evolve appropriate systems to manage their state's shipwrecks. The management system for a prehistoric canoe in North Dakota need not be the same as the system for a Spanish galleon in Florida or a World War II fleet in Truk Lagoon. We support H. R. 74.

TESTIMONY BEFORE THE OCEANOGRAPHY SUBCOMMITTEE,  
HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE

BY

PETER E. HESS

April 21, 1997

Good afternoon. I would like to thank the House Oceanography Subcommittee for the opportunity to testify before you today on H.R. 74, the Abandoned Shipwreck Act of 1997 and H.R. 2071, the Abandoned Historic Shipwreck Protection Act of 1997. My name is Peter Hess, I am a sport diver and amateur underwater archaeologist, I am also an attorney who has worked on litigation for the salvage rights to historic shipwrecks, representing in various cases the salvor, the state, and the sport diving public.

It is my ardent belief that H.R. 74 is an ill-conceived piece of legislation which will, rather than protect historic shipwrecks, encourage their clandestine excavation. H.R. 2071, on the other hand, promotes cooperation among the government, private enterprise and the diving public in the archaeological exploration of historic shipwrecks and maintains a proven legal system, the admiralty court, for resolution of conflict over the resource. The two bills really boil down to this: Will Congress enforce confrontation or cooperation?

I would now like to comment on H.R. 74 from a legal perspective. The Abandoned Shipwreck Act is, in effect, a Constitutional amendment because it abolishes federal admiralty jurisdiction and claims for salvage rights to historic shipwrecks. Article III, Section 2, the Constitution grants exclusive federal jurisdiction to all admiralty and maritime cases. Is an

admiralty attorney, I find it hard to understand how a bill which would abolish over two hundred years of federal common law jurisprudence, in the nine years during which it has been considered, has yet to be examined by any Congressional judiciary committee.

I am also troubled by the wholesale assertion of title to a vast but largely unknown class of lost and abandoned property. Fifth Amendment governmental "taking" and "just compensation" questions notwithstanding, there seems to be a perception that by awarding title of shipwrecks to the states, somehow this will ensure the wrecks' protection. My experience as Deputy Attorney General in Delaware proved otherwise.

The State of Delaware and the salvor of U.S.S. DeBraak -- a reputedly treasure-laden British brig which sank off Cape Henlopen in 1778 -- were parties to an admiralty action in the United States District Court. Although the Court gave the State complete and unfettered discretion to oversee its salvage, the State ignored any accepted archaeological practices and sanctioned yanking the wreck's fragile hull structure from the seafloor. The lifting cables sliced through the waterlogged wood and any artifacts which had remained aboard were spilled off during the lift. None of the reportedly vast treasures were found, now Delaware is left with the albatross which is the splintered remnants of DeBraak, without the funds or ability to properly preserve and display it. Thus, even where state ownership of an historic shipwreck is undisputed, there is no guarantee that proper archaeological excavation will take place.

On the other hand, had DeBraak been salvaged pursuant to U.S. 2071, the salvor's economic incentive would have been to comply with archaeological guidelines as closely as possible. Such a controversial operation as

wrenching the hull from the seafloor would most assuredly have not taken place, and sport divers would have been able, following the completion of salvage, to visit the site of one of the Atlantic's most legendary wrecks

I would now like to discuss the proposed bills from a sport diver's perspective. Sport divers, numbering in the millions, are by far the largest group of citizens affected by the legislation. On the East Coast, the Gulf, and the Great Lakes virtually all scuba diving is done on shipwreck sites. Contrary to earlier testimony alleging support among sport divers for the Abandoned Shipwreck Act, among the several hundred divers whom I know personally, there is uniform and strident opposition to H.R. 74.

The admiralty court which H.R. 74 would eliminate recognizes the rights of sport divers and has guaranteed them access to shipwreck sites. A recent decision from the U.S. District Court for the District of Delaware resolved conflicting claims by sport divers and a commercial salvage firm for the right to recover English ironstone china from a nineteenth century sailing vessel wrecked at the mouth of Delaware Bay. The court held that the sport divers' organization, Ocean Watch, had demonstrated that its members had been diving and recovering antique china plates and dishes from the so-called 'China Wreck' for over fifteen years, and were therefore entitled to permanently enjoin the commercial salvage of that popular sport diving and fishing site. Indian River Recovery Co. v. The China, 102 F.R.D. 393, 645 F.Supp. 141 (D. Del. 1985, 1986).

The China Wreck case was the first in which sport divers intervened in opposition to a commercial salvage claim as well as the first judicial recognition of our right of access to historic shipwrecks. H.R. 74 will destroy the precedential value of the China Wreck decision -- a ruling which was won solely through the hard work and dedication of the local clubs and divers who had formed Ocean Watch. Of the many governmental entities and

national organizations whose representatives have testified today, not one stepped forward to offer financial, legal or even moral support to Ocean Watch. The sole exception was the Atlantic Alliance for Maritime Heritage Conservation, which not only donated money to the sport divers' cause, but also took an active role in the litigation as amicus curiae.

The Atlantic Alliance, which endorses E.P. 2071, has been a leader in training sport divers in the science and methodology of underwater archaeology. In cooperation with the states of New Jersey, New York, Ohio, and Florida, the Alliance has utilized trained sport divers to explore and document historic shipwreck sites. These states have recognized the value of working with sport divers to voluntarily perform archaeological research which the state could not otherwise afford.

Sport divers are justifiably suspicious of wholesale state ownership of shipwrecks. State ownership has rarely meant active resource management; instead it has amounted to the prohibition of exploration and recovery under the threat of criminal sanctions.

In Georgia, for example, the state had shown no interest in the wreck of CSS Nashville, a Confederate blockade runner partially submerged in a tidal river. In fact, the state had dynamited the wreck as a hazard to navigation! A group of sport divers interested in the Civil War began to research and dive the wreck, despite the dangerous currents and near zero visibility. The cross section of nautical artifacts which they recovered and preserving were put on display in a local museum. The state, oblivious to the valuable archaeological work performed voluntarily, ordered the divers to cease and desist their salvage activities and seized the artifacts which had been recovered. The divers, Frank and Paul Chance, and David Topper, have since published a book, Tangled Machinery and Charred Relics, which details their

historical research and archaeological salvage of CSS Nashville. This is precisely the type of public participation in shipwreck archaeology which would be encouraged and promoted by H R 2071 -- yet under a state ownership scheme endorsed by H R 74, their work was condemned by the state bureaucracy.

As if the Nashville fiasco was not enough, Georgia has subsequently enacted regulations governing submerged cultural resources which virtually ensure that sport divers will not participate in state-sanctioned exploration for and recovery of shipwreck sites. Such ill-advised legislation has been introduced in several other states as well. This myopic view of underwater archaeology only promotes the clandestine excavation of shipwrecks and guarantees that the information and artifacts recovered from them will never be accessible to the public.

The incredible recent discoveries of the motherlode of the Atocha and the wreck of the Titanic demonstrate the rich archeological potential of modern undersea exploration. Increasing public interest and active participation in such discoveries is a trend which Congress cannot ignore. As new technology improves man's ability to explore the underwater realm, it is inevitable that sport divers will continue to make important discoveries of shipwreck sites and will wish to properly excavate them. H R 2071 guarantees the private individual an economic incentive for the archaeological documentation of a shipwreck site. Unlike H R 74, H R 2071 promotes cooperation, instead of confrontation, among the government, private enterprise, and the diving public.

## NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

Suite 332 Hall of the States  
444 North Capitol Street NW  
Washington D C 20001

(202) 624 5465

April 23, 1987

The Hon Mike Lowry, Chairman  
House Subcommittee on Oceanography  
H2-531 House Office Building Annex 2  
Washington, D C 20515

RE HR 74

Dear Representative Lowry

The National Conference of State Historic Preservation Officers supports HR 74 on abandoned shipwrecks, introduced by Charles Bennett of Florida. The NCSHPO supports the bill for the reasons listed below and in the enclosed testimony for the record.

- 1 Abandoned, historic shipwrecks are historic resources that merit equal protection under law
- 2 American admiralty law currently obstructs even the consideration of preservation alternatives for historic shipwrecks
- 3 The States are the appropriate managers of historic shipwrecks. State governments currently manage natural resources on submerged lands. States currently manage all historic resources within their boundaries. Over 35 states already have state laws protecting submerged historic resources.
- 4 HR 74 contains explicit provisions to involve the State Historic Preservation Officers in the determination of historic significance of shipwrecks with the Secretary of the Interior.
- 5 HR 74 will allow for both private exploration of historic shipwrecks and preservation of significant artifacts.

The National Conference is concerned about recent proposals to change the ownership transfer mechanism. The National Trust has suggested delaying transfer to the States until the NPS certifies State competence to manage shipwrecks. This would mean ownership and management responsibility resting with the NPS for an indeterminate period of time. Such an action is inappropriate.

ADMINISTRATORS OF THE NATIONAL HISTORIC PRESERVATION ACT IN THE FIFTY STATES  
THE DISTRICT OF COLUMBIA THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN  
MARIANAS ISLANDS THE TERRITORIES OF AMERICAN SAMOA GUAM AND THE VIRGIN  
ISLANDS AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS

Letter Lowry, 4-23-87, page 2

1 States are competent, already, to manage historic shipwrecks

Over 35 States have legislation to protect resources

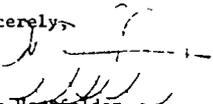
The threat to historic shipwrecks comes from current admiralty law clouding the title, preventing State legislation from working

2 The NPS does not have the capability to manage an unknown number of historic shipwrecks, respond to and monitor permits to dive on wrecks, and develop and run a program to certify the capability of States to manage shipwrecks The existing NPS maritime needs are underfunded

The NPS lacks the enforcement capability of States to patrol State waters Without enforcement capabilities, historic shipwrecks would be far more vulnerable to treasure hunters National Park Service ownership would surely restrict the ability of States to control treasure hunters under State law

For over five years, preservationists, led by the Society for Historical Archeology and including the SHPOs, have worked on shipwreck legislation The bill has been drafted to strike a balance between preservation and sport diving The ownership transfer mechanism in the bill provides an efficient means to maintain that balance

Sincerely,



Eric Hertfelder  
Executive Director

cc Paul Putz  
J Rodney Little  
Jacob Thomas  
Helen Hooper  
Ann Giesecke  
J Jackson Walter

## PRESERVATION

*Action*

STATEMENT OF  
 NELLIE L. LONGSWORTH, PRESIDENT  
 PRESERVATION ACTION  
 BEFORE THE SUBCOMMITTEE ON OCEANOGRAPHY  
 COMMITTEE ON MERCHANT MARINE AND FISHERIES

APRIL 21 1987

Mr. Chairman and members of the Subcommittee:

Preservation Action, the national citizens lobby for historic preservation and neighborhood conservation, is pleased to present this statement to the Subcommittee as it begins its deliberation over legislation to adequately protect historic shipwrecks as important but fragile clues to our nation's glorious maritime history.

Preservation Action is a membership organization supported by individuals, organizations, and corporations in all 50 states concerned with the preservation and conservation of the built environment. We have a Board of Directors of 174 members and a nationwide network of volunteer advocates who are leaders in their own communities on preservation issues. Maritime preservation has been a concern of many members and there will be strong and vocal grassroots support for a good piece of legislation to protect historic shipwrecks. There will be opposition to a bill that does not change the current methods of shipwreck protection since much is being lost due to the pecuniary rather than historical or archeological motivation of many salvors and the difficulty in rectifying abuse when it occurs.

Preservation Action has reviewed H. R. 74 as introduced in the House and finds provisions which we will support wholeheartedly. We applaud Mr. Bennett and the co-sponsors for presenting the Subcommittee with a good working document. We concur with the provisions that remove historic shipwrecks from the jurisdiction of admiralty law. Archeological decisions should not be assigned to the judicial branch of government when there is already responsibility for historic resources assigned to the Executive branch of government. Department of Interior.

Past experience with jurisdiction under admiralty law provides evidence that professional underwater historical data gathering from wrecks is often compromised by the court system approach. The time involved in scheduling court proceedings is lengthy and the upshot for archeology and history is simply that delay puts the artifact at risk. The solution to this is simply that greater attention will be paid to the historical value of the shipwreck if there is clearly mandated executive authority to manage and control access and salvage while historic determinations are undertaken.

Secondly, we support the provision which gives the management authority to regulate the activities inherent in the exploration of shipwrecks to the states. Some states have established programs that insure sensitive treat-

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Subcommittee Hearing Statement  
Page 2

ment and study of sites wrecks and artifacts in the pursuit of historical research Other states have not shown adequate concern about the damage which is done when treasure hunters dismember remains in the search for items of market value not historic value The H M S Debraak is a recent example of a bungled salvage operation operating with state approval

Dispite the unevenness of states protection of shipwrecks there is uniformity of protection of historic resources above and below ground in compliance with the Historic Preservation Act With the adoption of a system of minimal standards, underwater resources will be treated as another equal historic resource The final authority of course to insure uniformity of state program protection should rest with the National Park Service again in line with historic preservation law

The technology involved in discovering submerged shipwrecks has changed dramatically over the years and discovery by any means should initiate procedures and a "time window" to establish whether such a wreck is in fact eligible for the National Register Provision for such protection is clearly in line with Section 106 of the Historic Preservation Act which triggers review of proposed undertakings to determine the effect on resources listed or eligible for the National Register of Historic Places as a condition for federal funding permitting or licensing

We have a great deal of difficulty with HR 2071 since the retention of jurisdiction under admiralty law would only exacerbate a system which does not work well under present conditions Other protection ideas within this bill however should be explored for inclusion in the final bill to protect our underwater historic resources

Preservation Action appreciates the magnitude of the task facing the subcommittee in its deliberation of this important issue Recreational diving salvage and historic documentation are competing interests which must be respected managed and balanced between federal/state/local government authorities and private sector rights The final test for the subcommittee must be the resource are we protecting an opportunity to carefully document and recover valuable historical and cultural data for all citizens of our nation or will we allow a few to benefit from the "return to commerce" notion supported by the salvage industry? Can we find a system where the rights of all parties are respected yet managed in such a manner so all are winners in the final analysis?

Preservation Action supports HR 74 with recommended amendment



American  
Association  
of  
Museums

Statement Submitted by  
The American Association of Museums

to

The Subcommittee on Oceanography  
Committee on Merchant Marine and Fisheries  
U S House of Representatives

on

H R 74  
The Abandoned Shipwreck Act

April 21, 1987

1225 Eye Street  
Northwest  
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The American Association of Museums appreciates the opportunity to comment on H R 74, the Abandoned Shipwreck Act of 1987. The AAM represents the interests and concerns of museums of all kinds, including art, history and science museums, zoos, botanical gardens, planetariums and maritime museums. Founded in 1906, AAM fosters the development and improvement of the museum profession and serves its 10,000 institutional and individual members in a variety of capacities. Collectively and individually, America's museums reflect a variety of aspects of human existence and foster myriad cultural and scholarly activities. Museums represent the nation's cumulative interest and efforts to save and preserve our history, our technology, our natural resources and our creative endeavors for the public benefit now and in the future.

Through several acts of Congress in recent years, the nation's public policy has strongly embraced the need for a federal presence in the protection of natural, historical and archaeological resources. Further, the federal government has taken an essential role in assisting museums and other cultural institutions to undertake the critical task of preserving artifacts of artistic and historical significance. However, one valuable resource of both archaeological and historical import that does not receive such treatment and is in need of protection from potential destruction and exploitation are historic abandoned shipwrecks.

The Abandoned Shipwreck Act provides the necessary protection of abandoned shipwrecks in state waters. This bill would remove shipwrecks of historic importance found on submerged lands from the jurisdiction of federal admiralty.

law Unlike archaeological sites on land, the ability of states to manage sites on their submerged lands is not explicitly stated in U S law Hence, in absence of federal recognition of the special nature of historic shipwrecks, these wrecks are subject to admiralty law whereby a "finders-keepers" theory awards wrecks to commercial salvors or others establishing a claim to them for the purpose of personal gain This "finders-keepers" system directly contradicts laws protecting archaeological sites on land that prohibit salvage, looting and commercial exploitation

Admiralty law was developed for a worthwhile and necessary purpose, a need that it continues to effectively serve in many situations However, changing attitudes toward cultural preservation of all kinds, combined with the rapid development of underwater technology, have demonstrated that exceptions to admiralty law are necessary

Historic shipwrecks attract archaeologists, sports divers and treasure salvors for a variety of reasons - exploration, scientific inquiry, and recreation Yet, if commercial mining of these wrecks remains unchecked and they continue to fall prey to any and all who may assert claim to them, few historic underwater sites will be left for current and future generations of scholars, underwater explorers and enthusiasts, and the general public

An important component of this bill is the provision that calls upon the Advisory Council on Historic Preservation to assist the states and the federal government in establishing guidelines on the care of historic shipwrecks found

in each state's domain. In establishing these guidelines, the Council will seek the advice of all groups that have an interest in abandoned shipwrecks - archaeologists, salvors, sports divers and historic preservationists - to ensure that each group will have input on how shipwrecks are to be managed and protected. These guidelines will serve to strengthen currently existing laws that have already been passed by many states to protect their underwater resources.

The United States may be the only nation in the world with a substantial number of historic shipwrecks that has not enacted legislation recognizing the importance of protecting these resources. As a world leader in the development of human achievement and the preservation of its heritage, the United States must establish a responsible federal policy on historic abandoned shipwrecks that provides for the orderly and archaeologically sound excavation of sites when salvage takes place.

To maritime museums, who collect, curate, preserve and exhibit objects of maritime and marine history and archaeology, and indeed to all of the nation's museums whose mission is to collect and preserve the evidence of human culture and the natural world, this bill is a major contribution to the protection of these treasured resources. The American Association of Museums urges the passage of H R 74, and looks forward to working with the Merchant Marine and Fisheries Subcommittee on Oceanography on this legislation, as appropriate, in the months ahead.

THE ABANDONED HISTORIC SHIPWRECK  
PROTECTION ACT OF 1987

Testimony Prepared for the U S House of Representatives  
Committee on Merchant Marine and Fisheries  
Room 1334, Longworth House Office Building  
Washington, D C 20515

Submitted by

Gordon P Watts, Jr  
Director of Underwater Research  
Department of History  
East Carolina University  
Greenville, North Carolina 27834

This benefits present and future generations of divers, dive service enterprises, and, through association, the nondiving public without direct access to the Isle Royal shipwrecks. The concept has received wide support among conservation-conscious divers aware of the fact that unprotected sites are quickly destroyed and lose their attraction. The public has a right to the public domain but, let us hope, not to destroy it.

The bill, HR-74, under consideration by the Subcommittee on Oceanography of the Committee on Merchant Marine and Fisheries could, if enacted, provide the first significant and badly needed step in protecting our submerged cultural resources. It would clarify confusion related to the ownership of shipwrecks and other submerged cultural resources created at least in part by adjudication of salvage claims to historic shipwrecks made in accordance with admiralty law. In addition, the bill would strengthen State legislation passed by more than two dozen States in an effort to protect and manage resources within their territorial jurisdiction.

The fact that elected representatives of more than two dozen States have enacted protective legislation testifies to the broad concern for our underwater archaeological sites. Each of these States is aware of national preservation policy and criteria for historic resources, identifying those resources delegated to the States for management, and need only separate historic vessel remains from modern wrecks.

This can be simply and effectively done by identifying historic shipwrecks as those vessels lost more than 100 years prior to the present. Special designations could be used to protect unique or historically significant modern ship remains.

Each State has or can, as necessary, develop the administrative capability to manage their submerged cultural resources without qualifications on their authority. Any qualifications should relate to specific vessels or classes of vessels that are to remain under the jurisdiction of the Federal Government. Every State is certainly capable of addressing, if they have not already addressed, the specifics of resource definition, public, scientific, commercial access, and management policy.

Because of the nature of the problem of resource protection and management, the bill under construction need only address shipwreck sites located within the territorial jurisdiction of the States. The first step in solving that problem is to remove historic vessels from the jurisdiction of admiralty law conceived without regard for shipwreck values extending beyond the traditional considerations for protecting lives and property. Today we recognize that historic vessels have value beyond those considerations that prompted the passage of admiralty laws.

As stewards of the past, we **MUST** recognize that value and move with deliberate responsibility to preserve and develop this legacy.

Seafaring has been a powerful force in the formation of America's unique national heritage. We as Americans take considerable pride in our maritime traditions and in the activities, events, and individuals that contributed to their development.

Today shipwrecks, one of the most important legacies of our seafaring heritage, are being destroyed. The remains of historically significant vessels are rapidly being destroyed by development and salvaged with little or no regard for their tremendous historic value and potential public benefit. If shipwreck resources and the invaluable record of our past they preserve are to benefit all those who share our common maritime heritage, a vehicle for preservation and responsible management must be created.

Recent Federal court decisions have ruled that historic vessel remains are subject to salvage claims under the jurisdiction of admiralty law. These decisions have provided commercial treasure salvors with access to historic shipwreck sites previously afforded protection by State and Federal legislation. As a result of confusion surrounding these legal decisions, a commercially motivated minority has been able to engage in the destruction of historic resources that should only be utilized in responsible scientific, historic, educational, and recreational programs designed to generate benefits for all those with interests in our seafaring heritage.

In spite of treasure-hunting rhetoric calculated to cloud the issue with emotional charges, the commercial salvage of historic shipwrecks squanders the resource for the benefit of a small but vocal minority. In the process of destroying a shipwreck site to recover marketable commodities, knowledge--the real value of the resource--is lost forever. Our heritage is being sacrificed to satisfy economic demands conveniently and deliberately confused in the public image with free enterprise.

Free enterprise is not the issue. The real issue is whether we as a Nation are willing to see this important and irreplaceable aspect of our past destroyed to satisfy the shortsighted commercial interests of treasure hunters or whether those resources will be protected and managed to benefit the broadest spectrum of both present and future generations of Americans.

If we are not willing to make the kind of commitment to preservation and resource management that has alone been responsible for the survival of our natural and other historic resources, our generation may well be the first and last to benefit from submerged cultural resources as an important and nonrenewable legacy from the past.

Protective legislation based on the concept of shipwrecks as historically valuable resources is essential. The interests of the American public are not served or protected by the individual conscience. This fact has been effectively demonstrated by the need for and positive results of laws passed to protect our natural resources, public health and safety, and historically sensitive architectural environment.

It is unrealistic to assume that commercially motivated treasure hunters are going to voluntarily act in the best interests of the American public. Evidence of their activities to date confirms this fact. Florida, a State which in submerged cultural resources, serves as an example. There treasure hunting has destroyed the archaeological record associated with entire fleets wrecked transporting New World resources to Europe in the 18th century. Aside from widely distributed collections of treasure, little evidence of the information preserved on plate fleet wrecks exists to enhance our understanding of the past.

Where wrecks are responsibly investigated and managed, the contrast is quite striking. Only a cursory examination of the archaeological investigation of Old World shipwreck sites in the Mediterranean is required to recognize how much we can learn from controlled investigation and how much has been sacrificed in search of profit.

In Texas, where preservation of underwater archaeological sites receives exemplary support, historical and archaeological investigations of 16th century plate fleet vessels have produced scientific and public benefits for all Americans. In addition to a number of scientific and historical volumes, films and exhibits take the story of the 1554 tragedy to thousands of people each year.

The activities of the National Park Service provide another example of the public benefit that accrues from responsible investigation and resource management. The protection, investigation, and development of shipwreck sites in Isle Royal National Park illustrate what can be done within an effective legal framework.

Shipwreck remains at Isle Royal have been scientifically investigated to recover and develop their historical significance and recreational potential. The wrecks have been opened to the diving public with facilities and source materials to enhance the experience of examining each vessel. Disturbance of the wrecks is not permitted. This insures that divers visiting Isle Royal decades from now will be able to share in the excitement of examining vessel remains that have not been compromised or destroyed by either looting or commercial salvage.

STATEMENT OF MARYLAND GOVERNOR WILLIAM DONALD SCHAEFER  
TO THE U S HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON OCEANOGRAPHY  
OF THE COMMITTEE ON MERCHANT MARINE AND FISHERIES

I appreciate this opportunity to give the Subcommittee my views on the proposed Abandoned Shipwreck Act of 1987 (H.R. 74). This proposal has stimulated considerable discussion and interest in Maryland, and the opportunity for comment provided by this hearing is welcome.

In the past, Congress has provided leadership in protecting our historic archeological heritage through the passage of such landmark legislation as the Antiquities Act of 1906, the National Historic Protection Act. These laws have greatly reduced the destruction of historic and archeological sites on federal land and on land affected by federal undertakings. However, maritime archeological resources vital to our understanding of the history of our nation are in still in jeopardy.

States and the federal government should take immediate steps to avoid the increasing destruction of significant historic shipwrecks, and to eliminate the costly litigation which has come to characterize the issue. Simply by removing shipwrecks which are eligible for the National Register of Historic Places from the salvage provisions of U.S. Maritime Law, H.R. 74 and S. 858 would permit states and the federal government to use the existing historic preservation program and mechanisms to effectively manage these threatened resources.

In Maryland, we have identified a wide diversity of submerged sites, from inundated prehistoric villages and early colonial forts and towns, to forgotten wharfs and docks, and a wide range of shipwrecks. Through historical documentation, we have identified over 750 shipwrecks in the Maryland portion of the Chesapeake Bay alone. Of these, over 100 predate 1800, and more than 300 date to the nineteenth century. We barely have begun to assess the number of historic shipwrecks along Maryland's Atlantic shoreline.

Among these documented shipwrecks, several examples can serve to illustrate their extreme significance to the history of Maryland and the nation the vessel that carried Father Andrew White on his 1642 mission to the Piscataway Indians, the 1656 wreck of the vessel that carried John the Emigrant, great-grandfather of George Washington up the Potomac, a small vessel that was carrying military supplies for the Maryland Revolution of 1689, two Revolutionary War-period ships of the Maryland naval fleet sunk by the British off Cedar Point in 1781, two vessels of the Spanish fleet wrecked off Assateague Island in 1750, and eighteen vessels representing almost the entire American fleet of Commodore Joshua Barney which was scuttled just before the burning of Washington in the War of 1812. Many more unique and irreplaceable examples could be sited.

The chemical composition and nature of siltation in Maryland waters has left most early shipwrecks substantially intact and not collapsed, but even organic materials such as leather and cloth which normally disintegrate can be retrieved. To date, the low visibility of the waters of the Chesapeake Bay has largely discouraged commercial salvors from searching for historic shipwrecks.

However, with recent advances in technology, we are witnessing increasing interest from commercial salvors. One case involving a purported eighteenth century Spanish shipwreck on Maryland's Atlantic Coast has required review by the federal courts. On more than one occasion, even well intentioned, but uncontrolled salvage operations have resulted in the destruction of historic shipwrecks and artifacts when they were removed from their protective overburden and exposed to the elements. Maryland has been fortunate, because the issue of shipwreck salvage has been a problem only in the past few years. However, as more books are published on the shipwrecks of the Chesapeake, the stress on these nonrenewable resources will increase. Recent experience in neighboring Delaware when the eighteenth century ship DeBraak was discovered and commercially salvaged points to both the unique shipwrecks of the region and the problems which arise when states do not have clear title to wrecks in their waters. In Maryland, I have recognized the imperative need for some type of state effort to preserve our maritime heritage and have moved forward to establish a state maritime archeology program. This program will study, protect and interpret the wealth of maritime resources in Maryland waters, but the program will be severely handicapped if federal legislation is not forthcoming to vest clear title to significant historical shipwrecks with the states. Without this legislation, we will be unable to carry out our program which is designed to serve all the citizens of Maryland, rather than the handful of commercial salvors who would "mine" our sites for artifacts.

Finally, I urge the Subcommittee, in considering the implementation of the Act, to resist the impulse to set up any special federal mechanisms or bureaucracy. Historic shipwrecks do pose special problems, but from a governmental perspective they are fundamentally identical to upland historic sites and properties. The identification, evaluation and protection of historic properties provided for in the National Historic Preservation Act should be the governmental infrastructure to deal with historic shipwrecks. Over the years, the State/Federal partnership involving the gubernatorially appointed State Historic Preservation Officers, the Department of the Interior and the Advisory Council on Historic Preservation has developed efficient and effective means of identifying and protecting truly significant historic and archeological properties. In fact, this existing system has dealt on numerous occasions with cases involving the protection and appropriate salvage of historic shipwrecks. Any new responsibilities that devolve from this legislation can should be handled within this existing, flexible, and effective partnership.

Just as the Chesapeake Bay's nonrenewable natural resources must be protected from waste and destruction, so must we protect our nonrenewable cultural resources. Passage of this legislation and effective implementation will provide the necessary tools to accomplish the task. I appreciate the opportunity to provide my comments and urge your favorable consideration of this legislation.

Statement by Warren C Riess,  
Maritime Historian, Nautical Archaeologist, and Sport Diver  
Submitted to  
The House Committee on Oceanography  
on Abandoned Shipwreck Legislation HR 74 and HR 2071  
April 25, 1987

Mr Chairman, I strongly support HR 74 and do not support HR 2071. Historic shipwreck sites in America, usually found underwater within a few miles of the coast, are an important reflection of our past. Though there are few accessible sites left, their contents are a significant resource of information about our cultural heritage.

Unfortunately, consolidated historic shipwreck sites are not only limited in number and non-renewable, but they are quickly being destroyed by professional and amateur salvors. HR 74, by giving jurisdiction of these sites to responsible state and federal agencies and encouraging the states to enact protective legislation, may save the remaining historically significant sites for study. HR 2071 would signal the all-out wanton destruction of the remaining historic sites underwater, and would set a precedent for similar actions on America's dry historic sites.

HR 74 would enable present and future citizens of the United States, and indeed the world, to acquire a wealth of information from the remaining historic shipwreck sites. Federal agencies are already establishing high standards for work on historic shipwrecks, such as the National Parks Service in the Great Lakes and NOAA on the *Monitor*. Some states have already begun programs to regulate their shipwreck sites and they are requiring strict control of the investigation of historic shipwrecks.

For example, Maine provides guiding participation with universities and sport divers to study the remains of the Revolutionary War privateer *Defence*. The site investigation, whose interpretive phase is still underway, has already produced much information about American colonists on land and sea during the Revolution. The colonists' economic

stature, eating habits, concept of personal space, and even their foot diseases have been illuminated by the careful study of this one shipwreck site. This study was conducted by a handful of professional archaeologists, historians, and other scholars, assisted by many students from various universities, approximately 60 sportdivers, and many other volunteers.

This project is only one example of what the public, universities, and state and federal agencies are trying to accomplish with historic shipwreck sites. However, recent rulings by admiralty courts and dedicated looting by salvors may completely destroy the information hidden in the remaining sites.

As a curator at a major maritime museum, I am occasionally asked detailed questions by young people, the general public, and scholars about various types of ships and their crew. In contrast to what I can now tell them about American privateers, I can only shake my head about Spanish galleons and pirate ships in colonial America. We rely on sketchy remaining documents, because the only located Spanish galleons and pirate ships are presently being blown apart by professional salvors. The states are hampered from protecting the sites by the ambiguous position of shipwrecks within the present legal system. Without HR 74 the states have been forced to wait or tread lightly, while salvors pillage in order to sell our heritage for souvenirs.

I support HR 74, which will provide needed protection to unique information about our history.



**THE ATLANTIC ALLIANCE FOR MARITIME HERITAGE CONSERVATION**

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**POSITION STATEMENT**

The Atlantic Alliance for Maritime Heritage Conservation is principally concerned with the development of educational and research programs designed to bring together professionals and interested concerned members of the general public in an effort to conserve and protect historic shipwrecks as an integral part of our Nation's maritime heritage.

We believe the most effective way to provide protection for shipwrecks and shipwreck sites is not by enacting new Federal legislation, but by allowing and facilitating each State to work-out appropriate resource management procedures particular to their own individual situations. As the several States have widely different types of problems relating to shipwrecks, wreck diving and commercial salvage, the State Legislatures should be left to formulate their individualized shipwreck conservation/preservation programs without intervention from the Federal Government.

We further believe that all State statutes should contain adequate safeguards guaranteeing the right to dive on shipwrecks to all responsible recreational divers and shipwreck salvors interested in participating in the discovery, preservation and conservation of maritime America. We believe it is important that the American diving public be built into the decisionmaking processes at the State and Federal levels of

*A Non Profit Educational Corporation*

government This involves becoming a part of regional surveys to inventory and assess shipwreck populations, the drafting of rules and regulations governing public and private sector access to wreck sites, the monitoring and enforcement of conservation procedures designed to protect sites, and the research of the sites themselves

The leadership of The Atlantic Alliance for Maritime Heritage Conservation strongly urges its membership nationwide and all concerned citizens to contact their respective elected representatives in the U S Congress and State Legislatures to certain their feeling are known Local archaeologists associated with State governments, universities, and museums should be contacted so that the archaeological community will learn what Atlantic Alliance archaeological divers and other competent divers can do to assist in the preservation of historic shipwrecks as 'time capsules' of the past

12/15/86 -

Date

THE ABOVE STATEMENT WAS READ IN A PUBLIC FORUM AT THE 3RD ANNUAL NATIONAL SHIPWRECK ARCHAEOLOGY CONFERENCE AT BALLY'S IN ATLANTIC CITY, NJ AND REPRESENTS MY OWN PERSONAL VIEWS, BUT THERE ARE DIFFERENCES OF OPINION AMONG THE MEMBERSHIP AND DIPLOMATS --

*James P. Jones*  
12/15/86

00000



WILLIAM DONALD SCHAEFER

## EXECUTIVE DEPARTMENT

March 23, 1987

The Honorable Charles E. Bennett  
House of Representatives  
Washington, D C 20515

Dear Congressmar Bennett

I appreciate your kind letter about my support for your legislation to protect historic shipwrecks

As you know, I have encouraged members of the Maryland Congressional Delegation to cosponsor your bill and I will work with them and you to develop a strategy to help ensure its passage. Toward that end, if you would find it helpful, I would be happy to arrange a tour of an historic site in Maryland for you and other members of Congress.

A first-hand view of a site can be very helpful in providing members with an example of how important your legislation is for protecting our maritime history.

If you are interested in such a tour, please have a member of your staff contact Monica Healy or Ken Mannella of my Washington Office at 638-2215 and they will assist in making the necessary arrangements.

With best wishes,

Sincerely,

Governor

STEVE COWPER, GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

April 21, 1987

The Honorable Michael Lowry  
Oceanography Subcommittee  
House of Representatives  
H2-541 House Office Bldg  
Annex II, Washington, D C 20515

Dear Congressman Lowry

This letter is to express strong support for the proposed Abandoned Shipwreck Act of 1987 (H R 74). My administration is interested in Alaska's maritime historic resources receiving the same protection as is already provided to historic resources on land.

The threat to Alaska's resources is real. This summer a salvager is preparing to recover artifacts from historic shipwrecks in Alaska state waters. Because of the conflict between Federal maritime salvage laws and the Alaska Historic Preservation Act, the State will have to enter into costly litigation to protect its maritime historic resources from looting and destruction.

H R 74 gives the states authority over historic shipwrecks in state waters and submerged lands and would make Federal law more consistent with existing State law. The Alaska Historic Preservation Act includes heritage resources "situated on land owned or controlled by the State, including tideland and submerged land" (As 41 35 020).

Thank you for your consideration of the State of Alaska's views on this issue.

Sincerely,

A handwritten signature in cursive that reads "John W Katz for".

Steve Cowper,  
Governor

cc The Honorable Ted Stevens  
The Honorable Frank Murkowski  
The Honorable Don Young  
The Honorable Norman D Shumway  
Commissioner Judy Brady

**VERMONT DIVERS INC.**

Arthur B Cohn

RD#1

Fairfield, Vermont 05455

Mr Kurt Marshall  
House Sub-committee on Oceanography  
House Annex 2  
Washington, D C

April 24, 1987

To the Members of the House Sub-Committee on Oceanography,

I am addressing you on the historical shipwreck legislation now before the sub-committee. Having worked as a diving instructor, professional diver, attorney and historian for many years, I have been actively involved with many issues of shipwreck salvage, documentation and management. In recent years I have worked with the states of Vermont and New York to help develop a framework for the responsible management of these historic properties.

I start from the premise that underwater historic properties are an irreplaceable cultural legacy that Federal and State officials have a responsibility to protect for this and future generations. You are the trustees and custodians of a record of human events and objects that must be regulated for the benefit of All the people. The handful of entrepreneurial treasure salvors, using the banner of American free enterprise, should not be permitted to treat these submerged cultural resources as a private commodity. How would the committee view someone showing up at the Saratoga Battlefield with a backhoe to do excavation with the avowed purpose of selling the artifacts they found? What is it that gives protected status to land sites and antiquities which suddenly dissolves when water is added over the resource? That is not to say treasure salvors should be denied access to all shipwrecks, it is to say that their activities need to be properly regulated to insure that their short term interests are properly balanced with the long term interests of the public.

I have been a scuba diving instructor (NAUI and PADI) since 1974 and have operated a dive shop from 1976-1982. I feel I am part of and understand the sport diving community. It is my experience that anytime the issue of legislation is raised, the diving community has a knee-jerk negative reaction. To the diving community, any legislation is bad legislation.

*In this case, those fires have been fueled by special interests and those who don't know what they are talking about, who have translated the pending legislation into a bill that will potentially limit divers' activity. The sport divers have become the sheep for the special interests who want these public historical treasures to remain available to themselves as private commodities under Admiralty law. The sport divers forget or don't know that it was a claim filed by a treasure salvor under Admiralty Law which restricted sport divers from diving several popular sites in Delaware just a few years ago.*

Management of the nation's submerged cultural resource by the States does not guarantee a flawless program that will be the best of all things to all people, however, there is no reason to believe that state jurisdiction will prevent divers from diving on historical shipwrecks. In most cases the states will be in a better position to arbitrate the complex issues that arise from the management of submerged historic properties within their jurisdiction. Vermont and Michigan have responded to the underwater resource management challenge by creating programs called "Underwater Historic Preserves" that actually encourage divers to visit historical shipwrecks safely and responsibly. The only restriction to divers is the casual removal of artifacts from the historical shipwrecks, a restriction that is rooted in the superior rights of the public to the information they yield. Massachusetts has created an administrative body which addresses the hard questions of salvage rights vs. public interest and many other states have begun to address these issues in a positive way. These precedents promise a more thoughtful and specific management strategy than the federal government can provide. With time, money and jurisdiction the state programs have the potential to preserve, protect, interpret and share these wonderful resources long term for a broad population.

Treasure salvors, divers and administrators will come and go, but the information and recreational potential of historic properties is ongoing. I submit that the law of Admiralty is the wrong forum to determine the equities of underwater historic properties, and that Admiralty law was never intended for that purpose. These resources require a public policy framework, not a framework that was designed to address "the concerns of the business of carrying goods and passengers by water" (The Law of Admiralty, Gilmore). The state's historic preservation mechanisms, while not perfect, will do a better job in managing these resources. They are

closer to the issues and already have related responsibilities for land sites I predict that as these programs develop divers will gain greater access to historical shipwrecks and the public's interests in these historic properties will be better served.

I ask that you support the shipwreck legislation now before you and protect these irreplaceable treasures for future generations.

Thank you for considering my arguments. Please feel free to call on me if I can be of any further assistance in this important debate.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthur B. Cohn".

Arthur B Cohn

## SHEEHAN PHINNEY, BASS &amp; GREEN PROF ASS N

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April 24, 1987

Subcommittee Oceanography  
 U S House of Representatives  
 Washington, D C 20515

Attention Curt Marshall

Re H R 74, Abandoned Shipwreck Act

Dear Mr Chairman

As a sports diver with an amateur interest in nautical archaeology, I see passage of the Abandoned Shipwreck Act as critical to the preservation of our maritime heritage and for the protection of the rich archaeological data often found at underwater and intertidal sites

The Abandoned Shipwreck Act would effectively remove those archaeological resources which happen to be found under-water and embedded within public lands from the inappropriate legal treatment normally accorded distressed vessels under admiralty law. There is no common public policy underlying the preservation of archaeological sites and the returning to commerce of the imperiled cargo of wrecked vessels. Although admiralty law may well and properly serve the latter, it is singularly irrelevant to policies of archaeological and historical preservation.

During the Summer of 1986, I worked as a volunteer diver on an ancient shipwreck in Portsmouth, New Hampshire. The project was under the supervision of professional archaeologists associated with the Maritime Archaeological and

Subcommittee Oceanography  
April 24, 1987  
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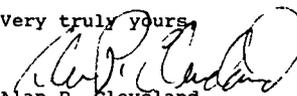
Historic Research Institute, and 100% funded by private donations through the Greater Portsmouth (N H ) Community Foundation. The purpose of the project was to survey what has proved to be the earliest sea-going vessel constructed in Colonial New England (circa 1690's), and of enormous archaeological importance.

Notwithstanding this wreck contains nothing of extrinsic value, but only a few surviving timbers, some shattered pottery, pipestems and glassware, and a handful of congealed pitch and rope, the site is continuously subject to disturbance and molestation by irresponsible divers who feverishly imagine a coin or whole pot on the coffetable if only they dig up enough of the area. The only result has been to irreparably destroy vital information concerning the development of our community's, and this nation's, earliest maritime heritage. Apparently this mindless strip-mining of our cultural heritage is fully permitted under present law, for it is going on in full view of a major Coast Guard facility not 500 yards away. The Coast Guard says nothing can be done. Meanwhile, the earliest discovered vessel of colonial manufacture is being torn apart.

If this indiscriminate pillaging of our cultural heritage were to occur on land, we would see it for what it is -- barbarism -- and find it intolerable. Passage of H R 74, would end this irrevocable waste, and assure public access to that archaeological data now embedded in our public lands as a public resource.

Thank you for the opportunity of permitting me to comment favorably on passage of the Abandoned Shipwreck Act. We request this letter be included in the Committee Report as part of the legislative record of the Act.

Very truly yours,



Alan P. Cleveland

APC/pvm

## NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

Suite 332 Hall of the States  
444 North Capitol Street NW  
Washington D C 20001

(202) 624 5465

April 30, 1987

The Hon Mike Lowry, Chairman  
Subcommittee on Oceanography  
H2-531 House Office Building Annex 2  
Washington, DC 20515

Dear Representative Lowry

The purpose of this letter is to clarify some of the issues presented at the April 21st hearing on H R 74 and H R 2071 We would appreciate inclusion of the following remarks as a supplement to our written testimony

- (1) The U S Constitution supports the claims of the States to their territory in Article IV, Section iii and Amendment 10
- (2) The states are properly land and resource managers The states have facilitated and will continue to facilitate multiple use of the submerged lands for a variety of commercial, recreational, and scientific purposes for the public benefit The purpose of the Federal Court or any court is to resolve conflict situations
- (3) Federal Courts disagree about the need for archaeology The judge in the Cobb Coin, Inc v Unidentified, Wrecked and Abandoned Sailing Vessel, 525 F Supp 186(S D Fla 1981) decision did acknowledge some minimal and undefined requirement for archaeological excavation However, in another opinion, a Texas judge clearly states, "The Court declines to hold them [the salvors] to the standard of expertise required of marine archaeologists, as the State has urged " Platoro Limited, Inc v The Unidentified Remains of a Vessel, etc 518 F Supp 816 (1981)
- (4) The Federal Court sitting in admiralty deals with commercial operations and the recovery of commercial property One example is the Indian River Recovery Co v The China, 108 F R D 383, 645 F Supp 141 (D Del 1986, 1986) case A copy of the decision is enclosed A commercial salvor made a claim on a wreck frequented by sport divers The court determined that charter-boat operators and sport divers had found and used the wreck for commercial purposes and should be allowed to continue their slow but steady salvage activity Neither recreation nor historical significance is a trigger for court decisions

ADMINISTRATORS OF THE NATIONAL HISTORIC PRESERVATION ACT IN THE FIFTY STATES  
THE DISTRICT OF COLUMBIA THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN  
MARIANAS ISLANDS THE TERRITORIES OF AMERICAN SAMOA GUAM AND THE VIRGIN  
ISLANDS AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS

Letter Lowry, 4-30-1987, page 2

(5) Florida, South Carolina, New Jersey, Massachusetts, the Northern Mariana Islands, and Delaware have all written contracts with private sector groups for the recovery of potentially historic shipwrecks

Recently, the DeBraak project in Delaware has made the news. The DeBraak was excavated and is being conserved under a contract between the State of Delaware and a limited partnership, Sub-Sal, Inc. Sub-Sal Inc is entitled to 75% of the net value of the site.

Last summer, after extensive recovery of artifacts, the remaining hull of the ship was raised. Planning and careful analysis of how this important historic artifact was to be handled resulted in specific written procedures. Unfortunately, at the last minute, the salvors did not follow the agreed-upon procedures. Nevertheless, the hull was brought up intact and is being conserved, and the state and Sub-Sal Inc are continuing to work with the well preserved and significant historical collection to maximize the public benefit of this three-year project.

We also note that the DeBraak was located in a busy commercial ship channel. The freighter traffic created hazardous diving conditions in already treacherous waters. The depth of 83 feet with a one to six knot current and zero fixability required that highly qualified divers be hired to work on the project. The site was never safe for sport diving.

(6) Many states are working hard to try new and different ways of preserving heritage and history. H R 74 will allow states to continue this exciting and productive process.

(7) All proposed state legislation goes through a public review process. There are hearings, meetings, public notices and votes by elected officials. Any legislation dealing with historic preservation and archaeology interests a broad range of people. States make a serious effort to understand all points of view on these issues before any action is taken. Participation in the process by any interest or individual is welcome and encouraged.

(8) We understand that the State of Georgia is submitting material to present the Chance case and the legislation dealing with shipwrecks in Georgia. Chance and Topper v Certain Artifacts Found and Salvaged from the Nashville a k a the Rattlesnake, her engines, etc 606 F Supp 801 (S D GA, Affirmed, 775 F 2d 302, 11th Cir 1985)

(9) The states have worked cooperatively with a variety of sport diving groups and will continue to encourage historical research, recreation and economic development.

Thank you very much for this opportunity to further clarify issues surrounding abandoned shipwrecks, and some of the specific cases cited during the hearing.

Sincerely,

Eric Hertfelder  
Executive Director

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

INDIAN RIVER RECOVERY CO ,	)	
	)	
Plaintiff,	)	
	)	
v	)	Civil Action 85-315 CMW
	)	
THE CHINA, her appurtenances,	)	
furniture, cargo, etc ,	)	
	)	
Defendant	)	
	)	
v.	)	
	)	
OCEAN WATCH,	)	
	)	
Intervenor	)	

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Bayard J Snyder, Esquire of  
Phillips and Snyder, Wilmington, Delaware  
Attorney for Plaintiff

Patrick Scanlon, Esquire of  
Barros, McNamara & Scanlon, Dover, Delaware  
Attorney for Intervenor

William C Smith, Esquire, Special Counsel,  
The Atlantic Alliance for Maritime Heritage Conservation,  
Washington, D C  
Amicus Curiae

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O P I N I O N

Wilmington, Delaware  
September 30, 1986

  
 WRIGHT, Senior Judge

This is a maritime action, in which plaintiff Indian River Recovery Company, Inc ("IRRC") and intervenor Ocean Watch, a not-for-profit corporation formed by sport scuba divers, charter-boat operators and fishing boat captains, seek the right, exclusive of each other, to dive upon and to salvage the remains of a nineteenth-century shipwreck.

The wreck, popularly called the China Wreck because of its cargo of English ironstone dishes, is located on the floor of the Delaware Bay between Lewes, Delaware and Cape May, New Jersey, in the federally administered "contiguous zone," outside the territorial limits of both Delaware and New Jersey

The procedural posture of the case is set forth in the Court's earlier opinion permitting Ocean Watch to intervene 108 F.R D 383 (D Del 1986) IRRC seeks exclusive salvage rights to the China Wreck Ocean Watch has moved for a permanent injunction to prohibit IRRC from salvaging the wreck commercially Ocean Watch does not seek commercial salvage rights to the vessel

After a one-day hearing that elicited facts necessary to decide the remaining issues, and for the reasons set forth below, the Court will grant Ocean Watch's motion to enjoin IRRC from commercially salvaging the China Wreck The Court also will dismiss IRRC's salvage action against the China Wreck

I   FACTS

The Court's earlier opinion sets forth the facts surrounding the discovery of the China Wreck by the National Oceanographic and Atmospheric Administration ("NOAA") in 1970. Word of the discovery quickly spread throughout the scuba diving community. Sport divers immediately began diving upon the wreck and bringing to the surface the accessible ironstone dishes, cups and saucers that comprised the ship's cargo.

Thousands of divers, including Robert W. Tattersal, president of Ocean Watch, and Eugene B. Hastings, Sr., who has built his business on diving the China Wreck, have made the shallow forty-foot dive during the last fifteen years and have brought to the surface over ten thousand pieces of its ironstone china cargo. The wreck provides the relatively rare opportunity for inexperienced divers to recover souvenirs of their dives -- pieces of ironstone china that recently have washed from beneath the mostly-buried hull of the wreck. Expert testimony revealed the ironstone china aboard the wreck to have little, if any, intrinsic or market value.

No individual sport diver ever surrendered any artifacts from the wreck to the custody of the District Court or requested a salvage award from the Court.

On May 29, 1985, IRRRC filed a complaint against the China Wreck requesting exclusive rights to dive upon and salvage it under the maritime theories of salvage and finds. Upon discovery of a warrant of arrest affixed to the wreck, the sport

scuba diving community joined with fishing boat captains to form Ocean Watch for the purpose of preventing IRRC from obtaining exclusive rights to dive upon the wreck and from possibly destroying the wreck by its salvage attempts. The sport diving members of Ocean Watch assigned all their salvage rights to the organization. Ocean Watch successfully moved to intervene in the action, and has alleged competing claims of salvage and finds.

## II JURISDICTION

This case is properly before the Court under federal admiralty and maritime subject-matter jurisdiction. 28 U.S.C. § 1333 (1982). IRRC filed its complaint alleging both in rem jurisdiction over the vessel and in personam jurisdiction over any parties, such as Ocean Watch, that claimed an interest in it.

The vessel lies almost 11 miles east of Lewes, Delaware, outside the territorial limits of the State of Delaware, whose territory is identical to that of the United States District Court for the District of Delaware. Fed. R. Civ. P. Supp. Admiralty Rule E(3)(a) requires that "process in rem and of maritime attachment and garnishment shall be served only within the district." The only process served in this matter is upon the vessel, outside the District of Delaware. No party has served process upon any artifact from the vessel that was brought into the District of Delaware.

The complaint properly alleges in personam jurisdiction over parties claiming an interest in the vessel, and Ocean Watch is the only other party to claim an interest. Service of the

warrant of arrest outside the territorial limits of the District of Delaware is insufficient for the commencement of a salvage action against the wreck or its contents. The Court thus lacks in rem jurisdiction over the vessel and its artifacts. See Platoro, Ltd v The Unidentified Remains of a Vessel, 508 F 2d 1113 (5th Cir 1975) (in rem jurisdiction must be established at time action filed for exception to Admiralty Rule E(3)(a) to attach later), cf Treasure Salvors, Inc v The Unidentified, Wrecked and Abandoned Sailing Vessel "Nuestra Senora de Atocha ", 546 F Supp 919 (S D Fla. 1982) (in personam jurisdiction over competing salvors combined with vast array of artifacts properly arrested within district amounted to a "qualified jurisdiction in rem which was likely to ripen into full in rem jurisdiction ") 1 (on remand)

### III DISCUSSION

The common law of finds governs this action. The law of finds is based upon the concept of animus revertendi -- the owner

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1The situation here differs from that in Treasure Salvors in which the United States District Court for the Southern District of Florida recognized a quasi-in-rem jurisdiction over the wreck of The Atocha. There, the contents of the ship, recovered from outside the district, were brought within the district, where several artifacts from the ship earlier had been arrested. Each artifact brought ashore was placed in the custody of the Court 546 F Supp at 928-929. The Court reasoned that eventually the entire contents of the vessel soon would be placed in its custody within the district, and so retained a quasi-in-rem jurisdiction over the contents of the vessel that would ripen into in rem jurisdiction as the salvors brought the last items ashore.

Here, no items recovered from the China Wreck have been arrested within the District of Delaware. Fed R Civ P Supp Admiralty Rule E(3)(a) limits the Court's in rem jurisdiction.

has no intention of returning <sup>2</sup> A demonstration of possession and control of abandoned property is a prerequisite to an award of title under the law of finds Hener v United States, 525 F Supp 350, 356 (S D N Y 1981)

The law, however, does not require one who discovers abandoned property actually to have it in hand. The law protects the rights of persons who discover abandoned property, and who are actually engaged in "reducing it to possession", to complete this project without interference "In order to acquire a legally cognizable interest in lost or abandoned property, a finder need not always have 'manual' possession of the thing," holds the Fifth Circuit. "Rather, a finder may be protected by taking such constructive possession of the property as its 'nature and situation permit '" Treasure Salvors v Unidentified Wrecked, and Abandoned Sailing Vessel, 640 F 2d 560, 572 (5th Cir 1981) (citation omitted)

Since discovery of the wreck, sport diving members of Ocean Watch regularly have engaged in the salvage of the ship's cargo Ocean Watch's charter-boat-captain members rely upon the wreck's availability as a diving destination for a substantial portion of their business Ocean Watch, moreover, has shown its ability to salvage the vessel's cargo by hand removing china

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<sup>2</sup>The law of finds generally results in an award of title to a sunken vessel and her cargo Hener v U S, 525 F Supp 350, 356-57 (S D N Y 1981) In this case, however, the Court lacks in rem jurisdiction over the wreck, so the only rights awarded to the China wreck are those of Ocean Watch vis-a-vis IRRCC

pieces continually exposed to the actions of currents and tides. This method not only guarantees the integrity of the vessel's structure as an artificial reef for abundant marine life, but assures at least fifteen, and perhaps fifty, more years that the wreck can be used for recreational and commercial fishing and diving.

IRRC's short-term commercial salvage operation is not intrinsically superior. One of the fundamental policies underlying the maritime law of salvage, under which IRRC asserts its claim to the wreck, is to return the salvaged items to the stream of commerce. Testimony in this case reveals that the founders of Ocean Watch recovered over ten thousand artifacts from the ship which they several times attempted to market without success. The dive boat and fishing boat captain members of Ocean Watch instead have succeeded in making the salvage operation itself a viable commercial enterprise. Sport divers who pay to visit the wreck come home with artifacts they have salvaged themselves, while fishermen pay charter boat captains to take them to a productive fishing site.

Members of Ocean Watch began to use and possess the China Wreck fifteen years before IRRRC's late arrival. Ocean Watch has proven its ability to salvage the wreck in a manner that provides substantial recreational enjoyment and commercial success. It has every intention of continuing to use and possess the wreck as it has in the past, and to salvage it in a way that benefits the sport-diving and fishing communities. Ocean Watch has established its superior rights to dive the China Wreck under the law of finds, and is entitled to an order permanently enjoining IRRRC from commercially salvaging the wreck.

The overwhelming majority view holds that district courts, in an admiralty action, have authority to issue a permanent injunction, pursuant to Fed R Civ P 65. The Fifth Circuit's conclusion is the one most often quoted:

The Chancellor is no longer fixed to the wool-sack. He may stride the quarterdeck of maritime jurisprudence and, in the role of admiralty judge, dispense, as would his landlocked-brother, that which equity and good conscience impels.

Compania Anonima Venezolana De Navegacion v A J Perez Export Co, 303 F 2d 692, 699 (5th Cir ), cert denied, 371 U S 942 (1962). The unification of law and admiralty rules in 1966 vested district courts with the power to grant equitable relief in admiralty cases, particularly injunctions. McKie Lighter Company v City of Boston, 335 F Supp 663, 666-667 (D Mass 1971) ("Whatever may have been the situation before the 1966 unification of admiralty with other civil actions, today a United States

District Court in an admiralty controversy has power to issue an injunction restraining a maritime tort ") Cf , Eddie S S Co Ltd v P T Karana Line, 739 F 2d 37, 38-39 (2d Cir 1984) (declining, in dicta, to adopt or reject the reasoning of the First and Fifth Circuits that admiralty courts can issue injunctions )

Although this modern rule contradicts the historical segregation of admiralty and equity, the Circuit Courts believe the Supreme Court, which has remained silent on the question, would not today adopt the old rule The First Circuit, in the most thorough review to date of the power of courts to issue permanent injunctions in admiralty, concluded

We find no constitutional, statutory or policy reasons of substance for recognizing a continued limitation upon the power of federal courts sitting in admiralty, nor does it seem likely that the Supreme Court would today adhere to the traditional rule

Pino v Protection Marine Ins Co , 599 F 2d 10, 14-15 (1st Cir 1979), citing Swift & Co Packers v Compania Colombiana Del Caribe, S A , 339 U S 684 (1950) and Vaughan v Atkinson, 369 U S 527, 530 (1962) See also Lewis v S S Baune, 534 F 2d 1115, 1121 (5th Cir 1976), Rule 1, Fed R Civ P , 14 Wright & Miller, Fed Practice & Procedure § 3671 at 273 (1976), Colby, Admiralty Unification, 54 Geo L J 1258, 1268 (1966), Stern, Hays & Lang, Inc v M/V Nili, 407 F 2d 549, 551 (5th Cir 1969), American River Lines, Inc v Central Soya Co , 534 F Supp 246, 248 (1981), Complaint of Valley Towing Service, 629 F Supp 139, 147 (E D Mo 1985)

In deciding whether or not to grant permanent injunctive relief, a court should consider (1) whether plaintiff has prevailed on the merits, (2) whether the balance of equities favors the moving party, and (3) what form the injunctive relief should take Philadelphia Welfare Rights Organization v O'Bannon, 525 F Supp 1055, 1057 (E D Pa 1981), Philadelphia Citizens in Action v Schweiker, 527 F Supp 182, 193, rev'd on other grounds, 669 F 2d 877 (3d Cir 1982)

Allowing IRRC to salvage the wreck would permanently damage intervenor Ocean Watch, and would contravene the public interest. The equities and the merits counsel in favor of a permanent injunction enjoining IRRC from commercially salvaging the China Wreck.

This Opinion constitutes the Court's Findings of Fact and Conclusions of Law in accordance with Federal Rules of Civil Procedure 52(a).

An Order will enter in conformity with this Opinion.



*The Commonwealth of Massachusetts*  
*Executive Office of Environmental Affairs*  
*Department of Environmental Quality Engineering*  
*Board of Underwater Archaeological Resources*  
*One Winter Street Boston Mass 02108*

April 30, 1987

The Honorable Representative Mike Lowry  
 Chairman Subcommittee on Oceanography  
 U S House of Representatives  
 Washington D C 20515

Dear Representative Lowry

The Massachusetts Board of Underwater Archaeological Resources would like to express its strong support for H R 74 the Abandoned Shipwreck Act of 1987, which is currently before the Subcommittee on Oceanography. The Board does not support the alternative version sponsored by Mr. Shumway.

This Act, H R 74, would ensure that certain historical shipwrecks, such as those included on or eligible for listing on the National Register, would be protected from depredation under the laws of the state in which the historic wrecks lie. Secondly, the act would serve to prevent a substantial amount of litigation over the title to certain wrecks, since the title to shipwrecks specified in Section 6 of the bill would be given by the United States to their respective states.

The Massachusetts Board of Underwater Archaeological Resources is mandated to encourage the discovery and reporting of and to protect and preserve historical, scientific, and archaeological information about resources within the coastal waters of the Commonwealth. The Board's function is to regulate and oversee the excavation activities of shipwrecks off Massachusetts' coast.

The Abandoned Shipwreck Act is necessary to resolve disputes and questions over the authority of state governments to manage and regulate historic shipwrecks within state waters. The Submerged Lands Act of 1953 gave states title to the lands and natural resources within three miles of their coasts. Recent controversies have centered on whether the U S Government granted title of shipwrecks to states under the 1953 law.

H R 74 recognizes the importance of preserving the states' important underwater resources by declaring that the Law of Salvage does not apply to these shipwrecks. Furthermore, guidelines for the appropriate archaeological treatment and preservation of important shipwrecks would be developed by the Advisory Council on Historic Preservation as a result of this legislation.

The Massachusetts Board of Underwater Archaeological Resources urges favorable action on the Abandoned Shipwreck Act of 1987 (H R 74). Your support for

this bill would be appreciated by the archaeological, historic preservation,  
and diving communities

Thank you for your consideration of this matter I look forward to hearing  
from you

Sincerely

A handwritten signature in cursive script that reads "Louis Pacheco". The signature is written in black ink and is positioned above the printed name and title.

Louis Pacheco  
Director

L7/v17

cc The Massachusetts Congressional Delegation

76-615 (212)