

A large, dark, and heavily damaged shipwreck is the central focus of the image. The ship's hull is visible, showing significant structural damage and rust. It is resting on a dark, jagged rock formation. In the background, the ocean is visible under a grey, overcast sky. A small figure of a person stands on the left side of the rock formation, providing a sense of scale to the massive size of the wrecked vessel.

LAW & ETHICS

Protection and Ownership

Module 6: Laws governing wreck protection and underwater archaeology in the PNW of the United States.



LAW & ETHICS

This module uses heritage laws in the USA to discuss the ethics and legal issues associated with underwater heritage sites.

By the end of this module you will learn:

- How attitudes have changed relative heritage shipwrecks over time.
- Relevant federal and state laws.
- How vessel ownership and salvage rights relate to heritage protection.
- Your role in heritage protection.

HISTORICAL WRECK DIVING

The history of wreck diving throughout the world is a story of changing attitudes towards underwater heritage sites.

1960s

- Souvenir collection
- Trophies and bragging rights
- “Saving” artifacts from rotting away
- Absence of professional or academic interest

1980s

- Awareness of impact from collectors
- Dwindling heritage value
- Poor preservation of removed artifacts

2000s

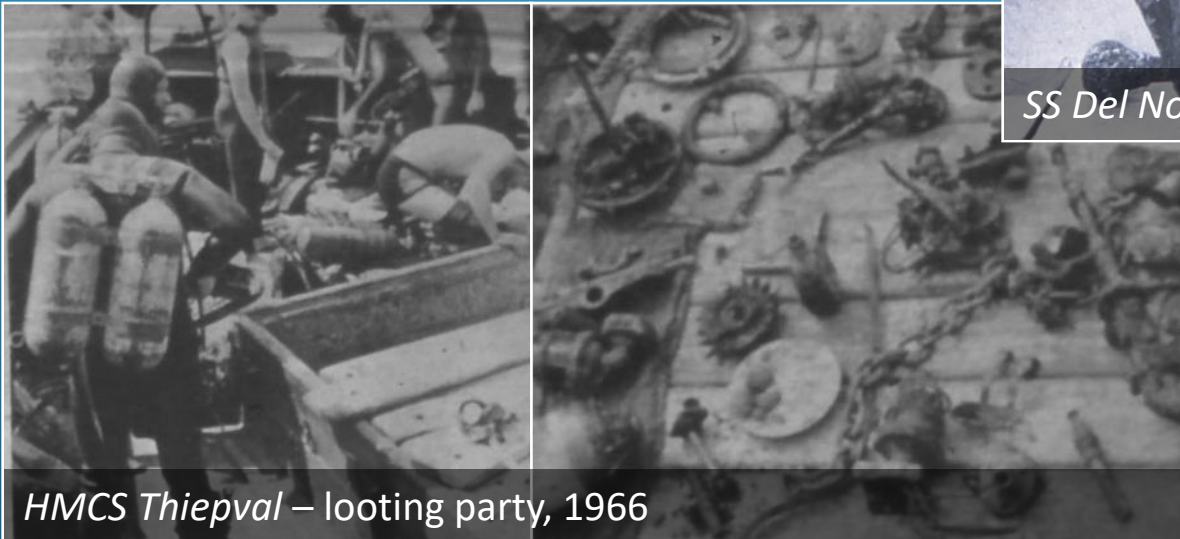
- Reputations built on documenting
- Stronger legislation
- High-tech searches
- High-profile projects & professional interest

HISTORICAL WRECK DIVING

In the 1960s and 1970s, collecting trophies was what wreck diving was all about. Bells, portholes, steam valves, deadeyes – all the best stuff – ended up as souvenirs.



SS Del Norte – souvenir collection dives, early 1970s



HMCS Thiepval – looting party, 1966

HISTORICAL WRECK DIVING

Even the UASBC removed artifacts just to keep them from private collections!

- ▶ obtained permits
- ▶ kept records
- ▶ applied conservation treatments
- ▶ situation still far from ideal



Ericsson porthole collected by UASBC

RAISING AWARENESS



UASBC gives a TV interview in the 1970s.

The UASBC and other concerned organizations began a public education campaign to end the looting of shipwrecks in the 1970s.

Sport divers quickly embraced the new ethics.

Legal protection was still years away.

CHANGING PERCEPTIONS

- ▶ “Look, but don’t touch” is the modern wreck diving ethic.
- ▶ Looting artifacts damages sport diving by taking away the very artifacts we dive to look at.



The *Point Grey* propeller gives the wreck its distinctive character.



Ericsson bell – the thrill is in finding, not collecting.



UNDERSTANDING IMPACTS

International **academic studies** demonstrate that:

- ▶ Undisturbed underwater sites can remain **preserved for centuries**.
- ▶ Sites reach an **equilibrium** with their environment.

UNDERSTANDING IMPACTS

Consequences of artifact collection or looting may not be obvious:

- ▶ Searching for artifacts made from long-lasting material like brass or stone **damages more delicate material.**
- ▶ Most recovered artifacts require **extensive conservation treatment** once removed from underwater.



Brass signal gun from the *Dora*.



Remnants of brass bell from SS *Iroquois*.



UNDERSTANDING IMPACTS

Preserved, *in situ* contexts are even more valuable than individual artifacts.

- ▶ The arrangement of preserved fittings can indicate a wreck's dimensions & its **identity**.
- ▶ Arrangement of objects and structures indicates a **site's function** and can describe a shipwreck event.

Mast rings from the *Orpheus* laying *in situ*.

UNDERSTANDING IMPACTS



A wreck's heritage value may not be obvious.

Historical expertise and cultural knowledge are important.

This abandoned fish packer was once a World War II submarine chaser.

Documenting Canada's war effort has heritage value.

OWNERSHIP

Under the law, a shipwreck is always owned by someone, no matter how old it is. Ownership can also rest within a community where a site represents cultural heritage.

A Vessel

- The registered owner
- A state government
- Insurance company
- Salvors
- Descendants or successor company

Cargo

- Various owners
- Various insurance companies
- Salvors

Personal Items

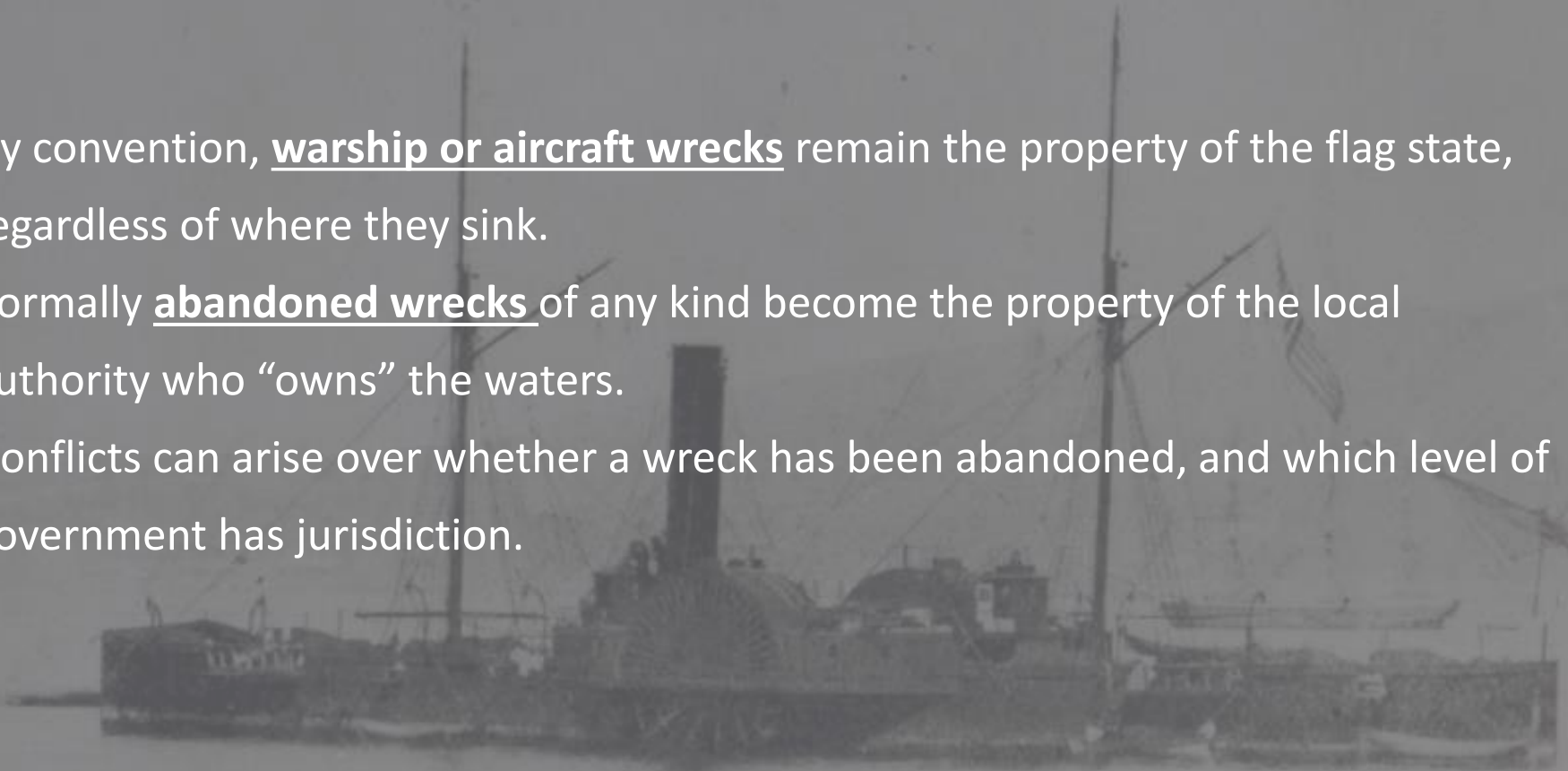
- Wreck survivors
- Casualties' descendants

Cultural Heritage

- Site of cultural practices (e.g., reefnet fishing).
- Inherited ownership (e.g., hereditary fishing site).
- Unextinguished title.

WRECK OWNERSHIP

- ▶ By convention, warship or aircraft wrecks remain the property of the flag state, regardless of where they sink.
- ▶ Formally abandoned wrecks of any kind become the property of the local authority who “owns” the waters.
- ▶ Conflicts can arise over whether a wreck has been abandoned, and which level of government has jurisdiction.





LAW & ETHICS

The value of underwater cultural heritage sites is recognised in the 1982 Law of the Sea Convention (Duty to Protect) and more recently the **2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage.**

By this convention, member states agree to protect all underwater heritage within their territorial and international waters.

Note that Canada, the USA and UK participated in its negotiation but are not parties for various reasons.



UNESCO CONVENTION ON THE PROTECTION OF THE U/W CULTURAL HERITAGE 2001

Key Provisions :

- States shall preserve underwater cultural heritage for the benefit of humanity.
- The preservation in-situ of UCH shall be considered as the first option before authorizing or engaging in disturbance activities.
- Research and Recovery of underwater cultural heritage shall be conducted consistent with scientific standards including conservation and curation in a manner that ensures its long-term preservation.
- Underwater cultural heritage shall not be commercially exploited.

LEGAL PROTECTIONS FOR SHIPWRECKS IN U.S.

❑ Admiralty Law

(has been applied in the high seas, e.g. Titanic)

❑ Federal Laws

- National Historic Preservation Act

(establishes register of historic places)

- Abandoned Shipwreck Act

(State Submerged Lands)

- Sunken Military Craft Act

(Protects US wherever located)

- Marine Sanctuaries Act

(within EEZ/continental shelf)

❑ State Laws

(State submerged lands, including freshwater)



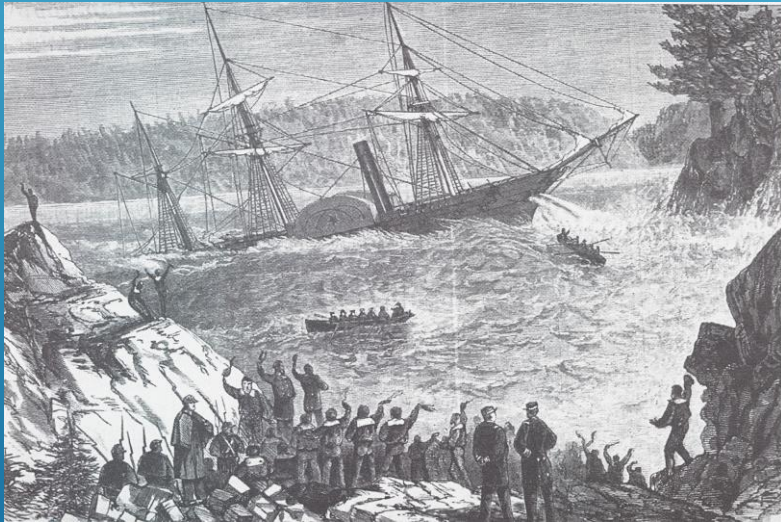
ADMIRALTY MARITIME LAW

Admiralty law or maritime law is a body of law that governs cases arising at sea generally private maritime disputes.



- ❑ Admiralty Law was developed to encourage the rescue of vessels in peril, in order to save lives and property and discourage looting.
- ❑ Since the advent of scuba, the law has been extended beyond recent marine casualties to abandoned and historic shipwrecks and their cargo.
- ❑ Since the enactment of the Abandoned Shipwreck Act Law of salvage has been limited to shipwrecks outside state owned or controlled submerged bottom lands and US Marine Protected Areas.

NATIONAL HISTORIC PRESERVATION ACT (1966)



USS Saranac Sinking, Illustrated London News

The National Historic Preservation Act establishes a process to preserve historic properties and resources in the US and abroad.

This act established several institutions: Advisory Council on Historic Preservation, State Historic Preservation Office, National Register of Historic Places.

The National Register of Historic Places is the nation's official list of districts, sites, buildings, structures, and objects worthy of preservation.

NHPA CONTINUED

To be eligible for listing, a site must be 50 years old and historically significant. Sites are the locations of significant events and include Shipwrecks

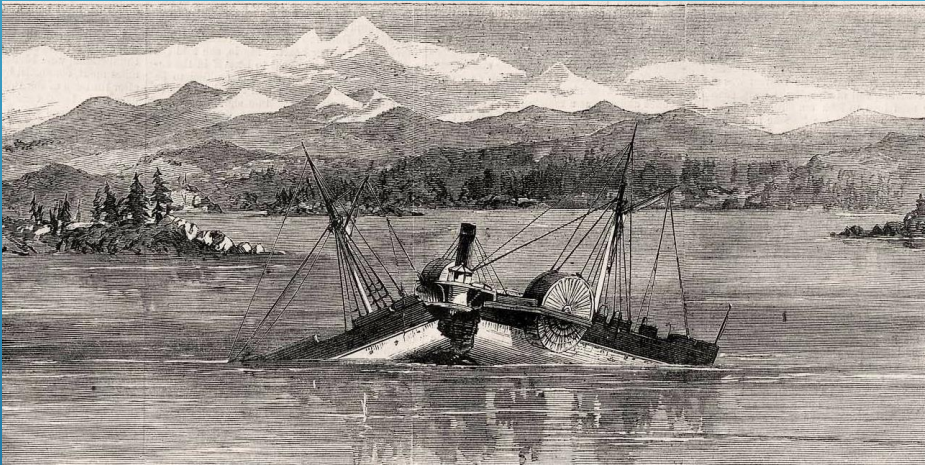
Sites are not automatically protected by being on the Register.

Preservation is sought through a process that requires federal agencies to avoid or minimize adverse impacts. States may or may not choose to enact protection for listed historic places.

The Washington State law enables protection if a site is listed on either the National or State register.



ABANDONED SHIPWRECK ACT (1987)

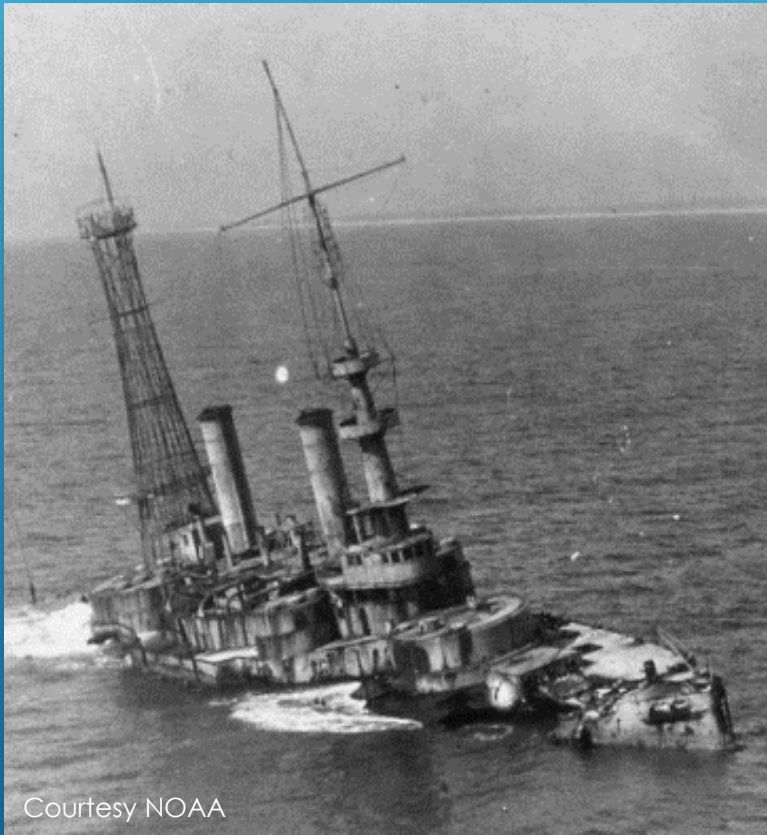


Illustrated London News

- The United States asserted title to any abandoned shipwreck that is embedded in submerged lands of a State (Section 6).
- The title of abandoned shipwrecks is transferred to the State in or on whose submerged lands the shipwreck is located. (Section 6 c.)
- The law of salvage and the law of finds do not apply to abandoned shipwrecks located on state bottom lands. (Section 7.)

Note: the US and foreign governments retain title to their sunken public vessels unless expressly abandoned so the ASA is not applicable but the SMCA is likely applicable .

SUNKEN MILITARY CRAFT ACT (2004)



Courtesy NOAA

- Confirms right, title, and interest of U.S. in and to any sunken military craft anywhere in the world.
- Includes military aircraft.
- Provides authority to protect state craft from another country that lie within the 200 mile U.S. EEZ.
- Encourages development of international agreements to protect sunken state craft.
- This is a federal law that trumps the law of salvage and finds, and has supremacy over state law.

NATIONAL MARINE SANCTUARIES ACT (1972)

National marine sanctuaries are protected waters that include habitats such as rocky reefs, kelp forests, deep-sea canyons, and underwater archaeological sites.



15 national marine sanctuaries and Papahānaumokuākea and Rose Atoll marine national monuments. Diving is encouraged and does not require a permit. The Monitor NMS permit requirement is only exception.

National Marine Sanctuary Regulations Re: Underwater Cultural Heritage.

- ▶ Prohibits removal or injury of historic sanctuary resources (UCH) without permit.
- ▶ Prohibits digging or any alteration of the seabed including salvage.
- ▶ Enforcement of regulations upheld in Admiralty Court superseding any rights under salvage law.
- ▶ No Law of finds, because historic sanctuary resources are protected and managed - heritage not abandoned.
- ▶ This is a protective tool available to states with sanctuaries in their submerged lands and waters.

Note: Trawling is allowed in these areas and causes significant damage to UCH



STATE OF ALASKA

The Alaska Office of History and Archaeology (OHA) administers the management of archaeological, historic, and architectural resources of Alaska

The Alaska Historic Protection Act (AS 41.35) addresses the protection and management of cultural resources on all state lands, including submerged lands.

Ownership (AS 41.35.020)

The state of Alaska lays claim to all historic, prehistoric, and archeological resources (including shipwrecks) situated on land owned or controlled by the state, including tideland and submerged land.

Groups other than the state may be permitted to take possession of the resources, provided they can prove that they have adequate facilities to do so and meet requirements for conservation and curation.



ALASKA CONTINUED.

Historic Resources (AS 41.35.230)

“historic, prehistoric, and archeological resources” includes deposits, structures, ruins, sites, buildings, graves, artifacts, fossils, or other objects of antiquity which provide information pertaining to the historical or pre-historical culture of people in the state. (Shipwrecks are considered a historic resource)

Unlawful Acts (AS 41.35.200)

It is illegal to appropriate, excavate, remove, injure, or destroy, any historic, prehistoric, or archeological resources of the state without a permit from the commissioner.

Permits (AS 41.35.080)

Any person wishing to conduct removal of artifacts or any sort of archaeological investigation on state lands requires a permit. Archaeology permits are issued by the Office of History And Archaeology (OHA).

Only issued to qualified parties and only if the findings are made available to the public.



STATE OF WASHINGTON

The Department of Archaeology and Historic Preservation Office (DAHP) is responsible for Underwater Cultural Heritage in Washington State.

The Revised Code of Washington (RCW) Chapter 27.53 addresses Archeological Sites and Resources.

Definitions (RCW 27.53.30 (8))

Historic underwater archaeological resources which are listed in or eligible for listing in the Washington state register of historic places (RCW 27.34.220) or the national register of historic places as defined in the national historic preservation act of 1966, are protected.

The term *historic archaeological resources* is also only applied to properties on the two registers.



SS Catala Ocean Shores

STATE OF WASHINGTON

Disturbing Archaeological Resource or Site (RCW 27.53.060)

You need an archeological permit from the Department of Archaeology and Historic Preservation to remove or excavate any submerged historic shipwreck or historic aircraft or to remove any archeological object from such sites. Private land excavations also require a permit and disclosure of material in encouraged and confidential.

Discovery of Historic Archaeological Resources on state-owned aquatic lands. RCW 27.53.100

If you discover previously unreported historic archeological resources on, in, or under state-owned aquatic lands, you may register it with the Department of Archaeology and Historic Preservation. Registration of such finds gives you a right of first refusal to future excavation and recovery permits granted by the Department for the resources for five years from the date of registration. For “aquatic lands” the state has the right to first refusal of salvage permits to any new sites discovered.

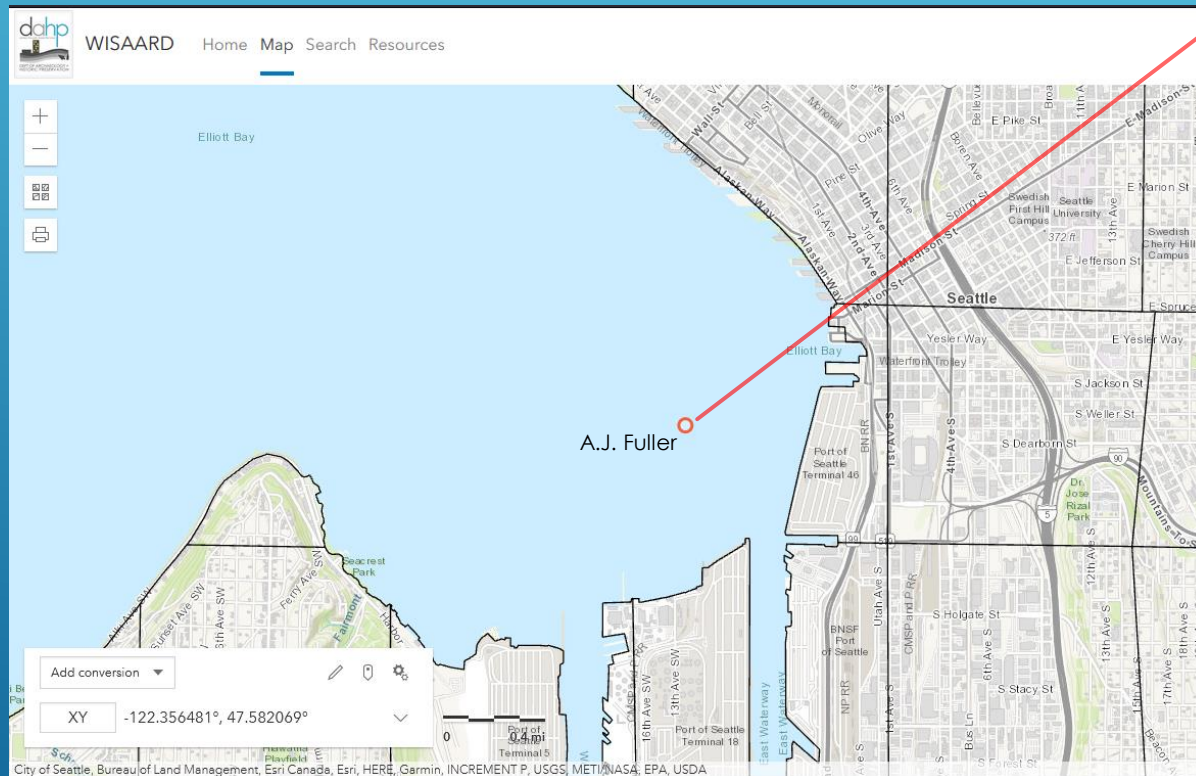
Contracts for discovery and salvage of state-owned historic archaeological resources. RCW 27.53.110

You also need a contract from the Department to salvage state-owned historic shipwrecks or historic aircraft, which includes all such resources abandoned for 30 years or more on, in, or under the surface of any public lands or waters owned by or under the possession, custody, or control of Washington State.

Washington State Register of Historic Places

210 Wrecks are recorded in the State Register. You can view them using the dahp Wisaard application.

<https://dahp.wa.gov/historic-preservation/find-a-historic-place>



Maritime

Maritime Resource Name

A.J. Fuller

Admiral Benson

Alaska Reefer

Alaskan

Albatross (built 1897)

Albatross (built 1912)

Alehea or Alahea

Alice

Alice B

Al-Ind-Esk-A-Sea

Alitak

Aloma

Alvenes

America

Andalusia

Anna Foss

Anna Porter

Apollo

Atka Queen

Austria

Bettie M

Blanco

Boss

Bretagne

Bugara, USS

Bunker Hill (North)

Bunker Hill (South)

Burton

C. L. Taylor

Cabezon

Camden

Cassandra Adams

Catherine M.

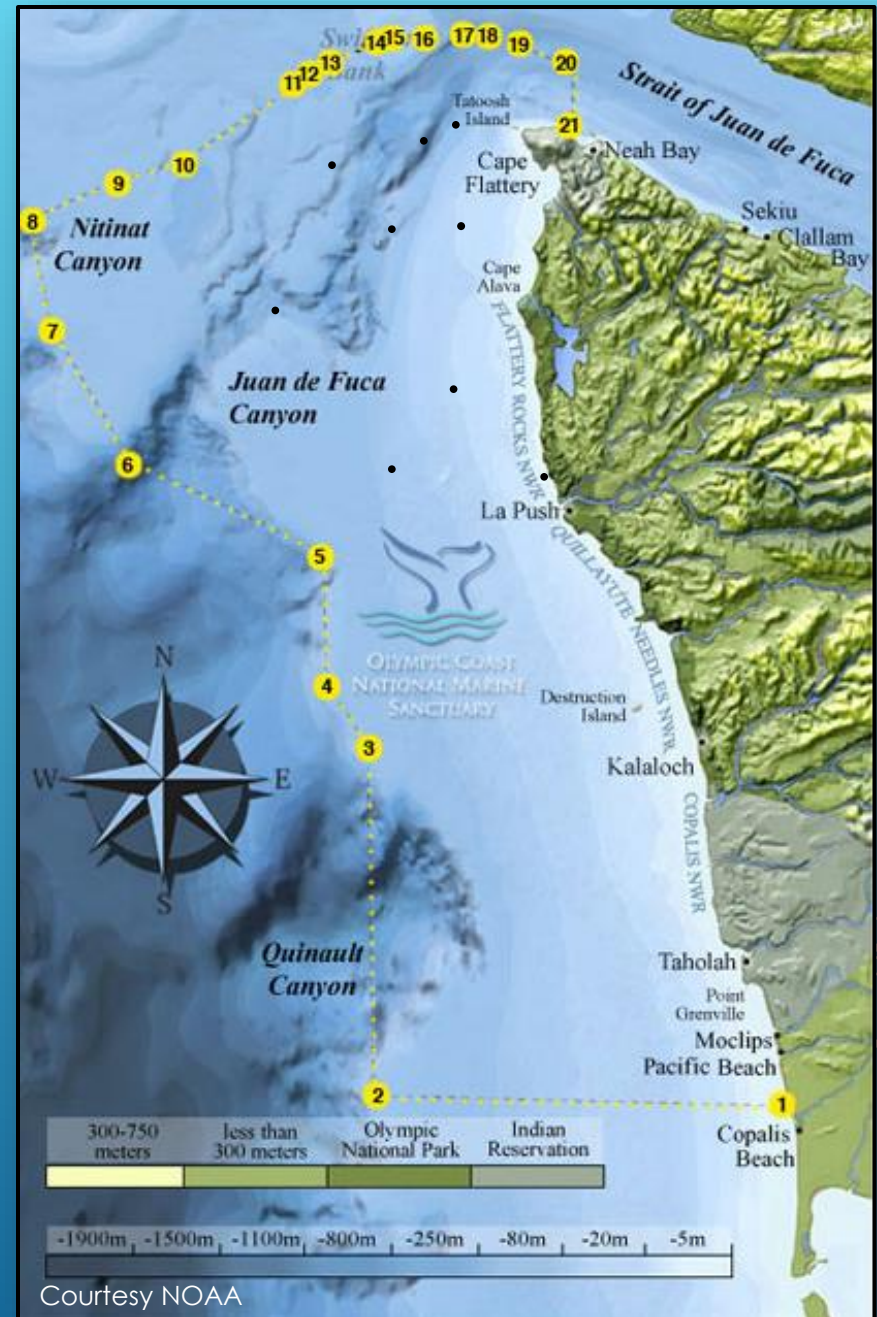
Note: Map will only display one wreck at a time.

Washington State is home to one of the 15 Federal U.S. National Marine Marine Sanctuaries.

Many of the wrecks recorded on the Washington State Register occur on the west coast.

These Shipwreck resources are protected.

Diving within sanctuaries is encouraged. The Monitor site on the East Coast is the only site that prohibits diving without a permit.



Oregon

STATE OF OREGON

The Oregon Parks and Recreation Department has overall responsibility for the state's Heritage Programs through its State Historic Preservation Office (SHPO).

The Oregon Revised Statute (ORS) Chapters 358 and 390 deal with Archeological Objects and Sites.

Definitions (ORS 358.905)

"Archaeological Site" means a geographic locality in Oregon, including but not limited to submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects.

In Oregon, an archaeological site is greater than 75 years of age and includes shipwrecks.



© Robert Bradshaw

Peter Iredale, Fort Stevens State Park

STATE OF OREGON

Prohibited Conduct (ORS 358.920)

A person may not excavate, injure, destroy or alter an archaeological site or object or remove an archaeological object located on state public or private lands in Oregon unless that activity is authorized by a permit.

Permits (ORS 390.235)

Only a qualified archaeologist may apply for an archaeological permit in the state of Oregon.

NO PERMIT NEEDED

If disturbing a site or removing artifacts is restricted, what can divers do, legally?

Divers can sightsee, inspect, explore, photograph, conduct a reconnaissance survey, or otherwise use and enjoy underwater cultural heritage sites.

Divers can also nominate vessels to the National or State Register initiating protection for these sites. Step 1 is to contact your State Historic Preservation Office.

I would like to thank Ole Varmer from NOAA and Caroline Blanco from the National Science Foundation for assisting me with this presentation.

Jacques Marc