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## Legislation and the Management of South Carolina's Historic Shipwrecks and Submerged Cultural Resources: from Something to Something Else

For 25 years South Carolina has taken a leadership role in North America for programs managing historic shipwrecks and submerged cultural resources. The state developed some of the earliest legislation in the United States for the protection of these resources. The state's program and legislation have been molded by various influences. These include sport divers, the state legislature, the federal government, and legal challenges in local court. Cultural resource management and legislation in South Carolina have evolved as a result of these influences and provide a foundation for future activity in the state.

South Carolina's coastline extends some 187 miles from North Carolina to Georgia. Inlets, bays, and estuaries increase the actual shore of the state to over 758 mi. in length (Shalowitz 1964). The sandy, shifting sea bed remains shallow (less than 30 ft. in depth) three to five mi. from the shore and only deepens to twice that depth from 12 to 25 mi. offshore. From the 16th century, the inlets and bays of South Carolina's coast were visited by vessels of exploration, colonization, war, and commerce. Many of these early ships failed to successfully negotiate the constantly shifting and often treacherous shallows, some were carried ashore in storms, and still others sank in battle. They became permanent reminders of the dangers of the coastal waters. Of the hundreds of vessels that sank or were otherwise wrecked on South Carolina's coast, only a few score have been located and investigated by archaeologists.

Many of the submerged archaeological sites in the state are not located on the coast. They rest in the 11,100 linear mi. of navigable rivers, streams, and waterways that flow through the

state. A whole range of site types, including wrecked and abandoned water craft, are to be found along these waterways.

In the Submerged Lands Act of 1953, Congress granted the individual states ownership of all constantly inundated land beneath navigable waters within the boundaries of the respective states (United States Congress [USC] 1953 § 1311(a)). In South Carolina the area of this land totals some 2900 mi<sup>2</sup>. The state also claims title to, and therefore responsibility for, the cultural resources which lie on, or are embedded in, that land (South Carolina Legislature [SCSL] 1976b). The demands made by several special interest groups, including sport divers, archaeologists, the historical preservation community, developers, and professional treasure hunters, on the state's finite resources, notably historic shipwrecks, are increasing with every passing year (Amer 1993:6).

South Carolina's first law regulating salvage of shipwrecks was passed in 1968 (SCSL 1968). The law, entitled "Shipwrecks and Salvage Operations," was written by a shrimp boat operator a lawyer, and a diver to have their rights as discoverers of "a blockade runner" protected from other potential salvors. From this inauspicious beginning, the South Carolina Underwater Antiquities Act of 1976 was written and passed that year. The Act, amended in 1982, reasserted the state's jurisdiction over lands submerged beneath its navigable waterways as well as its sovereign control over submerged cultural resources within that jurisdiction. The Act also made the South Carolina Institute of Archaeology and Anthropology (SCIAA) custodian of those cultural resources and defined an historic archaeological site as one that has been abandoned or unclaimed for longer than 50 years (SCSL 1976a).

The law sought to regulate the use of the state's submerged cultural resources through a system of licensing. Two licenses governed searching for and salvaging historic archaeological sites, and one license regulated the surface collection of artifacts and fossils. While the first two licenses clearly referred, exclusively, to commercial salvage activities, the hobby license

reflected a responsible view of dealing with the multiple-use pressure imposed on the resource base (Albright 1985; Amer and Steen 1988). Sport divers who purchased a hobby license were permitted to collect artifacts and fossils not embedded in submerged lands but were obliged to report their finds to the state. By allowing divers to buy into a licensing program whereby they reported finds to the archaeologists, the state would benefit from the information while the divers got what they wanted - the goodies.

The 1976 Act was quite progressive for its time, and South Carolina was among the first states to develop legislation for the management of its submerged cultural resources, notably shipwrecks. However, an internal review of the program in 1987 indicated that there were problems and deficiencies inherent within the legislation and its implementation. For instance, of the 40 or so search and salvage licenses issued between 1976 and 1986, all but one of the operations were commercially based and precious little research data was generated from the work. Furthermore, the Act was difficult to enforce partially due to a lack of specific regulations thus leaving the law, rather than the artifacts, open to interpretation.

The results of the 1987 review indicated that few licensed divers were actually reporting their collecting activities to the state, and those who took the time to complete and send in reports apparently did so solely because they were required to do so by law. Furthermore, the review suggested that the information contained in the hobby diver reports was next to useless as an archaeological data base because it was being gathered and reported by individuals untrained in identification and interpretation of cultural resources.

The review spurred a two-pronged course of action. First, during the review of the 1982 Act, formal procedures for reviewing and monitoring licensed activities were instituted. These procedures included public hearings for all search and salvage applications. Second, a drive was made to improve the quality of information being generated by the program. Information on the nature and location of submerged cultural resources was

the only real benefit of the hobby licensing system. This process culminated in 1989 when Lynn Harris was hired to run the newly developed SCIAA Underwater Archaeology Division's Sport Diver Archaeology Management Program (SDAMP).

SDAMP was developed to correct the deficiencies in the earlier program by becoming proactive in the management of the state's submerged cultural resources and the sport diver's impact on that resource. This educational program also fills a need that was not addressed in the law. This has been accomplished through the development of weekend archaeology field training courses for hobby divers and members of the interested public and production of an avocational archaeology manual as well as through public lectures, distribution of a quarterly newsletter, and opportunities for course graduates to participate in field projects conducted by the division.

While this re-evaluation of the program emphasized education, two other events took place which brought to a head the need to revise South Carolina's underwater legislation. One was a testing of the strength of the state's underwater antiquities act, while the second was the passage of the federal Abandoned Shipwreck Act in 1987 (ASA).

On 29 December 1987, a Complaint in Admiralty was filed in United States District Court for the District of South Carolina by an individual requesting title to, and custodianship of, an abandoned shipwreck in South Carolina state waters (U.S. District Court for the District of South Carolina [USDC of SC] 1987). The plaintiff asserted that the wreck, a steamship cargo vessel which grounded and wrecked off Hilton Head, South Carolina, was not in state waters due to its location being more than three miles from the beach. An arrest warrant was issued in federal court that same day for seizure of the vessel and the individual granted custodianship and the right to salvage the wreck and its contents. Two days later a second partnership filed an intervening claim against the wreck and a counterclaim against the plaintiff (USDC of SC 1987a).

The vessel in question was not laden with gold, nor was it of particular historical significance. The SS *Lawrence* was a 576 ton steamship carrying a cargo of general merchandise from Baltimore bound for Savannah, Georgia, which went ashore in a storm on 11 February 1899 near the entrance to Port Royal Sound. Much of the cargo was jettisoned in an attempt to lighten the vessel and thereby float her off, but to no avail. Agents for the owners, Merchants and Miner's Transportation Company, visited the wreck a week after the disaster and declared the vessel and its contents a total loss. The company opted to cut its losses and concentrate on refloating the SS *State of Texas*, another of their vessels sunk the same day in Chesapeake Bay (*Savannah Morning News [SMN]*, 14 February 1899:3; 15 February 1899:6 and 8; 20 February 1899:8).

The cargo carried by SS *Lawrence* represents a wide range of turn-of-the-century consumer goods. The vessel itself was fitted with a screw propeller which represented advanced technology at a time when steam propulsion was still in its infancy.

For years, sport divers, believing the site to be outside state jurisdiction, had dived the 6-m deep wreck recreationally and collected souvenirs from the cargo, much of which remained intact within the forward hold of the hull (Harris 1992). Items recovered included South Carolina Dispensary bottles, preserves, stockings (still wearable) and toilet paper (not serviceable, but recognizable).

An attempt was made by salvors, in 1984, to illegally salvage the contents of the wreck with the use of explosives and heavy machinery (Tower 1986:44-45). The state prepared a case against the perpetrators but was obliged to withdraw in 1986 when more compelling matters arose. That same year an application was made to the state by another individual to salvage the site. However, final decision on the application was put on hold pending the outcome of the state's investigation of the 1984 activity. In 1987, the state was again approached to issue a license to salvage the vessel. It was while this application was under review that the applicant

sought and received the right to salvage the wreck under Admiralty law. This latter attempt provided the state an opportunity to make a new case and test the strength of the state's underwater antiquities law.

In August of 1988, eight months after the initial action was filed, the State of South Carolina was granted leave to intervene in the action in order to assert its claim of jurisdiction over the site of SS *Lawrence* (USDC of SC 1988a). The year-long case hinged around who had jurisdiction over the vessel. Many sport divers believed it to be in federal waters (Tower 1986:45). At least two individuals, who had applied to the state for salvage rights, believed the site was in state waters in spite of the last applicant convincing a federal judge that the wreck lay outside the state Territorial Sea. However, federal determination of the state's Territorial Sea, pursuant to the Submerged Lands Act of 1953 and as shown on NOAA charts (US Department of Commerce [USDC] 1978), clearly placed the wreck within South Carolina's purview.

The problem lay with an apparent ambiguity in the South Carolina Underwater Antiquities Act of 1982 that put it at odds with the federal definition of territorial boundaries in regards to the state. The federal government determines the 3-mi. limit with reference to the coastline and certain low tide landmarks. In this particular case the landmark is a small sandbar which is within 3-mi. of the shore. Its presence would extend the boundary a further 3-mi. However, the 1982 law defined the state's territorial boundaries as "measured seaward from the mean low water one marine league from the Atlantic seashore..." (SCSL 1976a). The salvor's legal council argued that the Atlantic seashore is a well-defined term referring to the mainland and not to "a small, isolated and submerged sandbar, completely surrounded by ocean and subject to the vicissitudes of the sea..." (USDC of SC 1988b).

Through this litigation state officials proved that the little sandbar did exist and an expert witness from NOAA testified regarding the federal procedure for determining territorial boundaries. The federal definition prevailed and the

state was again granted title to the hotly sought after SS *Lawrence* (USDC of SC 1989). The incident was an expensive lesson which exemplified only some of the problems in the state's underwater antiquities act.

While this drama was unfolding, the ASA was signed into law (USC 1988). This Act asserts U.S. title to certain abandoned shipwrecks in state waters and transfers title to the state in or on whose submerged lands the shipwreck is located. Furthermore, the ASA clarifies the state's management responsibility of those shipwrecks and asserts that the Law of Salvage and the Law of Finds does not apply to those wrecks. The passage of the act provided an appropriate juncture to revise the state underwater legislation. The ASA and the National Park Service Guidelines, which were then being developed under authority of this Act, could provide guidance and form a framework on which to redraft the state's legislation.

South Carolina is a legislative state. To add regulation to an existing law involves the same process as amending that law or completely redrafting it. The decision was made to do the latter and amend the entire 1982 Act.

The process of drafting, revising, and getting the bill passed afforded the state's submerged cultural resource managers an opportunity, for the first time, to hear what other agencies, colleagues, and the public really felt regarding the state's internal management of their maritime heritage. The process involved seeking advice from other South Carolina state agencies which play a role in the management of state resources, as well as agencies in other states which have management responsibility for their shipwrecks and submerged cultural resources. The South Carolina Office of the Attorney General was consulted regarding consistency with other state statutes. Other colleagues with experience in managing cultural resources were also solicited. From their input and using the federal act and National Park Service draft guidelines, a bill was drafted.

A series of meetings was held with sport divers, dive clubs, and dive shops, the general public, and special interest groups to solicit com-

ments on the bill's content. Public response to the draft varied. Predictably, a few of the "hard core" salvors or individuals who felt they had received unfair treatment from the state in the past were against the whole thing, saying it was unconstitutional. Some of the public were ambivalent as long as their right of access to submerged sites was not impeded. They wanted their heritage protected from looting and destruction but wanted to be able to collect artifacts from the sites in their area. However, the majority of licensed sport divers at the meetings were supportive of the intent of the bill, if not with some of the proposed restrictions.

Much of the sport diver's concern was focused on fossil collecting (predominantly shark teeth) in the rivers, not shipwrecks. Few sport divers dive the waters off the state's coast where visibility is low and ocean currents are often treacherous.

Nevertheless, state officials felt that some compromise was appropriate to garner support for the bill. For instance, Civil War relic hunters are very active around the Charleston area. Three individuals met with three Low Country senators and convinced them that the bill was a poor idea. The stumbling block was over the state's jurisdiction. For years the relic hunters had been excavating, defusing, and collecting unexploded artillery shells from the marshes surrounding Civil War fortifications. The 1982 Act did not affect their activities, the law claiming jurisdiction below mean low water, and the marshes were obviously above that line. However, the land between high and low water is also, in fact, state owned and administered by the South Carolina State Budget and Control Board which defers to the SCIAA on matters of cultural resources within their jurisdiction. The new bill sought to formalize that arrangement; it would affect the Civil War buffs. As the senators with whom they had met sat on the subcommittee handling our bill, we felt it prudent to compromise by reverting to the 1982 reading of the state's jurisdiction. Instantly, the Civil War group was on our side and wrote letters to the House and Senate supporting the bill. By the end of the public meetings the state archaeolo-

gists had general support for the bill, with the exception of a few divers, dive shops, and salvors.

Final passage of the bill on 12 June 1991 was a compromise between Senate and House support for the individual's right of access and recovery of abandoned cultural material on state submerged lands and the protection of those resources. The 28-page South Carolina Underwater Antiquities Act of 1991 re-asserts the state's jurisdiction and defines it in relation to, and makes it consistent with, federal definition of the Territorial Sea and state's boundaries. It further outlines the state's responsibility toward the cultural and paleontological resources beneath the state's waters and encourages both scientific and recreational usage of those resources. The Act delineates specifically under what conditions and for what purposes access to submerged cultural resources may be allowed and defines which activities require a license (SCSL 1976a).

The Act provides for three licenses. The hobby license, similar to that license under the previous Act, permits collection activities which involve temporary, intermittent, recreational, small-scale, non-commercial search and recovery of cultural and paleontological material that is not embedded in state submerged lands and that can be recovered solely by hand. The three types of hobby licenses, individual, instructional, and weekend, allow licensed divers to collect reasonable numbers of artifacts but specifically restricts the usage and recovery of cultural material from historic shipwreck sites.

Two exclusive licenses are provided for individuals wishing to excavate or otherwise disturb embedded submerged archaeological or paleontological property. An intensive survey license is required to survey and test a specific area for such property. If positive results are achieved from that activity, a data recovery license may be issued to excavate a site, subject to application, a public hearing, and the applicant meeting certain criteria specified in the law. The provisions of the exclusive licenses are designed to retain the scientific, recreational, and aesthetic character of the sites and immediate environment. Requirements include the continuous pres-

ence and oversight of an archaeologist (or paleontologist) employed by the licensee on the site during all licensed activities, appropriate treatment of the resource, and the restoration of the impacted submerged land following completion of the activity.

The law distinguishes between commercial and non-commercial activities. The SCIAA may approve an exclusive license application from a commercial applicant but delay issuance until certain conditions have been satisfied including assurance of appropriate conservation and curation treatment of all data from the site, posting a performance bond to guarantee that the research plan is carried out appropriately, and the final disposition and title of all data agreement concerning.

Further, the act provides for enforcement, penalties for violations, and provisions regarding the discovery of human remains. It also provides that the Institute shall "establish and maintain an educational program for the training of interested members of the public in the identification, recordation, and registration of submerged archaeological historic property, and certify those who have successfully completed such training" (SCSL 1976b).

The 1991 Act has been challenged once. This turned out to be a misreading of the Act by a salvor, and the challenge was dropped. Another salvor withdrew his application on the basis of being unable to comply with the new standards. Since passage of the 1991 Act, the state has been approached several times by would-be salvors, some in search of the apocryphal bodacious bounty of bullion which the Confederates allegedly lost while pulling out ahead of Sherman's forces. However, no applications for intensive survey or data recovery have been filed with the South Carolina State Archaeologist Office since passage of the state's 1991 Act, suggesting that something is working right.

Since 1987, the Underwater Archaeology Division of SCIAA has placed increased emphasis on improving and working toward consistent management of all cultural resources, specifically historic shipwrecks submerged beneath the state's waters. The 1987 challenge to South Carolina's

law and the passage of the ASA the following year, provided the necessary impetus and framework on which to revise the state's submerged cultural resource legislation.

We have been working with other state agencies to include cultural resource protection in their legislation, regulations, management plans, and to develop memoranda of agreement to formalize our respective roles. Starting this year we are targeting the various law enforcement agencies in the state with advisories explaining the importance of shipwrecks and submerged cultural resources and the nature of the law. We are also requesting their active participation in a drive to monitor and enforce that law. South Carolina is a small enough state and has a large enough contingent of law enforcement officers to make this practical. At the same time the division will be increasing its presence on the water visiting frequently dived areas and checking for hobby diver licenses.

Development of a broad-based public education program has allowed us to build public support for the protection and non-destructive usage of the state's historic shipwrecks and maritime sites. Public response to the program has been very positive. Already three groups of hobby divers in the state and one group from Tennessee, all who have successfully completed the field training course and received certificates, are conducting multi-year survey projects on shipwrecks and riverine sites. Two of these projects are non-destructive surveys and both have published reports. Information from those projects and from quarterly hobby reports from the approximately 470 active, licensed hobby divers in the state is currently being data-based to provide more efficient management of the resources.

In the wake of cuts in state allocations, the Underwater Archaeology Division has been conducting projects and inventories of maritime sites with increasing support from volunteers, land owners, and historical societies. The active participation of these groups provides not only the funding and logistical support necessary to conduct the research but involves the local community in the research and preservation of their heritage.

In South Carolina our goal is to ensure the responsible use of the shipwrecks and other archaeological and paleontological resources in our state. The reality is that artifact and fossil collecting probably will never cease. The only real benefit the state gets out of this activity is information, contrary to the prevalent public perception that what we really want are the "goodies." It is up to each state to provide the education necessary to disabuse the public of that perception and allow collectors to make a significant contribution to the management and interpretation of their heritage. It is also each state's responsibility to enforce its cultural resource protection laws and convince the public that collecting the heritage bit by bit is a privilege, not a right. There is little doubt that there is a place for avocationalists in our field, but the benefit they provide must be balanced against the destruction they wreak. Legislation can address part of the problem. It is up to all of us, sport divers, collectors, salvors, developers, and cultural resource managers alike, to be part of the solution.

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