

2018

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Wolanin, Tyler, "The Abandoned Shipwrecks Act in Florida" (2018). *School of Public Policy Capstones*. 47.  
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## The Abandoned Shipwrecks Act in Florida

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May 1<sup>st</sup>, 2018

## EXECUTIVE SUMMARY

The Abandoned Shipwrecks Act is a 1988 federal law that grants states jurisdiction over abandoned shipwrecks in their territorial waters. The intention of the law is to allow states to form historic preservation regimes to protect historic shipwrecks from looters and salvagers. One of the most important beneficiaries of this law is the state of Florida, with the longest coastline in the continental United States and a history of attempts to protect historic shipwrecks.

This law has been criticized since inception for removing the profit incentive for salvors to discover new shipwrecks. The Act has been subjected to a considerable amount of legal criticism for the removal of jurisdiction over shipwrecks from federal admiralty courts, but it has not received attention from policy scholars.

The purpose of this study is to test the Abandoned Shipwreck Act against criticism from prominent Florida treasure hunter Mel Fisher: that the legal change would lead to the discovery of fewer shipwrecks by salvors. It accomplishes this by investigating the timeline of Florida's grants of salvage permits, known as Exploration and Salvage Contracts prior to the 1980s and known as 1A-31 permits in the past few decades. These permits are charted on a yearly basis. Additionally, this study interviews archaeologists, salvors, and state officials in Florida, asking them to evaluate the effectiveness of the Act.

This study finds that there has been a decline in the number of permits issued by the State of Florida subsequent to the Act's passage, in comparison to the number issued in years prior to its passage. Interview data shows that practitioners, though having some criticism of the Act, do not think that it has led to any reduction in wreck discovery. They offer other explanations for the fluctuation in wreck discovery, including technological advances. Though the reduction cannot definitively be traced back to the passage of the Abandoned Shipwreck Act, it does mark the issue for further policy study, to determine the effects of the Act on the ocean floor and not merely in the courtroom.

## INTRODUCTION

Since its passage in 1988, the Abandoned Shipwrecks Act (“the Act”) has been a target for criticism from salvors. One of the most common criticisms is that, by removing the profit motive for salvage, it will reduce the incentives for shipwrecks to be sought out. Florida is a state that still has a legal salvage industry, making it an excellent source of data on shipwreck discovery.

This paper attempts to answer the question of if the Abandoned Shipwrecks Act has reduced the discovery of shipwrecks. The data used to answer this question is the number of commercial salvage permits issued by the state each year, from the 1930s to the present. Additionally, qualitative data comes from interviews with practicing archaeologists, salvors, and Florida state officials, who were asked about their experiences and evaluations of the Act.

This paper will first cover the historical and legislative background of the passage of the Act. Subsequently, it will discuss academic work on the Act. This is mostly in the form of criticism in legal journals, and is devoid of assessments of the Act as public policy. After a discussion of the research methods and information on shipwreck permitting, the paper will discuss the quantitative data from that permitting, which shows a reduced number of permits granted after the passage of the Act, compared to the number granted prior. This will be followed by a detailed discussion of the results of the interviews, where the Act is largely praised by archaeologists, who also question the existence of salvage operations at all. Conversely, salvagers discuss the heavy-handedness of the state. Final conclusions will be drawn, exploring

different interpretations of the data. Policy conclusions, including the options of a radical expanding or contraction of the legal salvage regime, will conclude the paper.

## BACKGROUND

The Abandoned Shipwrecks Act is tied closely to the state of Florida. The Act was intended to address a nationwide problem; but the inciting incident that spurred Congress to act was the 1985 discovery of the *Nuestra Señora de Atocha*, a Spanish treasure galleon that sank in a 1622 hurricane off the coast of the Florida Keys. The wreck was discovered by professional treasure hunter Mel Fisher, who won a legal battle against the State of Florida to claim ownership of the wreck. The Abandoned Shipwreck Act was passed later in the decade in response to this controversy, and subjected shipwrecks to the jurisdiction of the state if they were found to be “abandoned.” Subsequent Congressional findings hold that this authority had already been vested in the state by the Submerged Land Act of 1953, and that the Abandoned Shipwrecks Act formalized this arrangement, upheld by a minority of admiralty court cases (NOAA, p. 2).

This was a change from the previous status quo, which subjected salvage finds to admiralty law, with claims settled in federal court. States that made legislative efforts at historic preservation occasionally prevailed in federal admiralty court, but more often salvors were victorious. Many salvors, including Mel Fisher, opposed any change away from this paradigm, on the grounds that they would have less claim to shipwrecks they discovered. In addition to the obvious financial incentives involved in preserving this status quo, it was argued that many shipwrecks were discovered only because salvors had this financial incentive to discover them, and the legal change would remove this incentive and lead to the discovery of fewer shipwrecks.

Mel Fisher's importance to the existence of the Abandoned Shipwreck Act cannot be overstated. His *Atocha* find was what led to the Act's passage, which he militated against continuously. Born far from the ocean in Indiana, Fisher nevertheless was interested in diving from childhood. A military veteran and farmer in California, Fisher managed to turn his diving hobby into a business. He switched from SCUBA training to treasure-hunting in the early 1960s, and moved to Florida for a job. After other major treasure finds, Fisher discovered the *Atocha* in 1985, after over a decade of searching (Mel Fisher's Treasures, accessed 2018).

The Abandoned Shipwreck Act was not passed on its first try. The bill was introduced in three successive Congresses before being signed in to law in early 1988. The first bill was H.R. 3194, introduced in 1983 by Rep. Walter Jones, Democrat of North Carolina. This bill passed through the House of Representatives, but made it no further in the Senate than the Committee on Energy and Natural Resources ("H.R. 3194," Congress.gov). The bill was stymied after a secret hold was placed by Senator Paula Hawkins of Florida, who would later receive several thousand dollars by Mel Fisher in the form of donations to her (failed) re-election campaign (Kleeberg 2007. p. 21).

The 1985 version of the Act was introduced by Rep. Charles E. Bennett, of Jacksonville ("H.R. 3358," Congress.gov). This bill was the subject of a considerable amount of media coverage, especially of the testimony by Mel Fisher. An article in the *Christian Science Monitor* provides a handy timeline of events. At the time that Fisher discovered the *Atocha*, Florida state law entitled the state to 25% of the salvage of an abandoned shipwreck. Fisher challenged this law in admiralty court and won. Re-establishing state jurisdiction, which had been usurped by the Admiralty courts, was the impetus for the introduction of the Abandoned Shipwreck Act, as it gave more powers to states for historic preservation. The *CMS* article describes the battle lines:

“State officials are joined in their opposition to admiralty law's jurisdiction by a growing chorus of archaeologists alarmed by the possibility that some historically priceless wrecks may be carelessly dismantled or even destroyed in the hasty search for gold. They say concern has been heightened by the swelling interest in treasure hunting after Fisher's find...salvors implacably oppose a state role in overseeing shipwreck excavation, however. They say state control of shipwreck salvaging would ultimately cause the wrecks to be declared off limits for amateur divers and erstwhile treasure hunters.” (Osterlund, 1985).

This article and others appeared in mid-1985, prior to committee hearings. After an article in the *Washington Post* quoted some of Mel Fisher's talking points, J. Barto Arnold III, Chairman of the Advisory Council on Underwater Archaeology, wrote back to the paper.

“[The story] misrepresents a bill... the Abandoned Shipwreck Act of 1985 would give states the right to manage historically significant shipwrecks in their waters, but The Post characterized it as “federal legislation still pending that would give the federal government exclusive rights to all shipwrecks. The story quoted treasure-hunter Mel Fisher's response to the bill: ‘if it passes, it is going to shatter a lot of little kids’ and big kids’ dreams.’ But the fact is, this bill would not affect salvaging outside state waters, but only the limited number of wrecks of special historic significance within state waters...the legislation is a response to a growing concern that respect for historic treasures of the deep will be brushed aside by the new enthusiasm and technology for salvaging ancient shipwrecks.” (Arnold, 1985).

In October of 1985, the House Committee on Merchant Marine and Fisheries, Subcommittee on Oceanography heard testimony on the bill. Mel Fisher testified that “it would be a shame to take away the romantic adventure of discovery,” and that the bill is “a nationalization of the salvage industry.” (Daniel, 1985). The impact of technological advances

were again raised, with then-Congresswoman Barbara Mikulski of Maryland noting that advances in submarine and sonar technology have led to increasing number of wreck discoveries, and advocating for regulations to protect them. Senator Hawkins was “conspicuously” absent from the hearing, having been lobbied heavily by archaeologists the day prior to it despite historically being an ally of the salvage community (Bowers, 1985).

Subsequent to these hearings, the bill was forwarded to the full House committee, but progressed no further in that legislative sessions (“H.R. 3358,” Congress.gov). There was an Abandoned Shipwreck Act of 1986 introduced into the Senate, but this also made it no farther than a subcommittee (“S.2569.” Congress.gov) The successful bill, the Abandoned Shipwreck Act of 1987, was introduced in the House by Rep. Bennett and in the Senate by Senator Bill Bradley of New Jersey. Upon introduction, Sen. Bradley explained the necessity of the bill as follows:

The issue boils down to whether historic shipwrecks are abandoned ships in marine peril, or natural resources. The United States is the only country in the world with a substantial number of historic shipwrecks that does not have a federal law recognizing the importance of preserving some of these sites. There is no federal law requiring orderly and archaeologically correct excavation when salvage does take place. Instead, a finders-keepers principle applies to all shipwrecks in our waters. While this rule makes sense in matters of ongoing maritime commerce, it is as obviously inappropriate for underwater archaeological sites as it would be for ancient ruins on land. Under the current system, federal courts ...[with jurisdiction under Admiralty law] ... have substantial policymaking power, which has resulted in uneven judgements about the historical value of shipwrecks (Bradley, 1987).

The bill passed the Senate in late 1987, and was referred to the House of Representatives. After subcommittee hearings, devoid this time of Mel Fisher's presence (though his commentary on the law was published elsewhere), the bill was voted on by the House in late March of 1988, when it failed to receive the 2/3rds of votes necessary for passage (263 votes in favor, 139 against). The vote required a two-thirds majority, as it suspended normal House rules to pass a Senate bill (Congressional Record, 1988). Two weeks later, the bill was offered again, this time with an opportunity for members to offer amendments. Though the amendments offered (to have the bill only cover shipwrecks on the National Register of Historic Places, to ensure that law enforcement could access shipwrecks to enforce narcotics laws, and to mandate the allowance of recreational exploration) were voted down, it appears that the bill's initial defeat was merely a protest of procedures preventing debate. This is affirmed by speeches in opposition to the vote, such as by Texas Congressman Jack Milton Fields, Jr. Fields said in remarks that "Frankly, this bill has no business being considered under suspension of the rules. It is flawed in a number of important ways, and members of this body should have an opportunity to offer amendments to improve it...I urge my colleagues to vote "no" on this bill so that it can be considered, as it should, in the normal and proper legislative manner" (Fields, 1988). The bill passed on the second try on a vote of 340 in favor and only 64 against, after following normal legislative procedure this time ("S.858," Congress.gov).

The bill headed to President Ronald Reagan for his signature. Despite a letter-writing campaign by salvage companies, (United Press International, 1988) he signed the bill, and it passed into law in April of 1988.

After the passage of the Act, states were definitively allowed to protect shipwrecks with their own legislation. Florida already had a substantial legal infrastructure in place, and this was

added to after the Abandoned Shipwrecks Act's passage. Florida's antiquities law is the Florida Historical Resources Act, which encompasses preservation policies and archaeological discoveries. Under the law, salvors must apply for permits to investigate and to remove material from shipwrecks, pending the state's approval. It is an investigation of these permits that make up the bedrock of this study.

### QUESTION

The inspiration for using permit data to measure the impact of the Abandoned Shipwrecks Act comes from commentary made about the act by one of its most prominent critics at the time of its passage, treasure hunter Mel Fisher. In an article published in the Columbia Law Journal, "The Abandoned Shipwreck Act: The Role of Private Enterprise," Fisher bemoans that "only a handful of elitist archaeologists and state bureaucrats will control all the knowledge to be gained from shipwrecks." He says of the act,

"This bill ignores the fact that hundreds of thousands of abandoned shipwrecks that are "embedded" or "substantially buried" have no social or cultural value as long as they remain in the seabed. They are simply abandoned, abandoned by the archaeologists and state officials who have done nothing in the last thirty years, abandoned by the Congress of the United States since this bill has been enacted into law. It is a simple fact that with bureaucratic archaeologists in control, the era of private enterprise recovery of ancient shipwrecks will be over. It has been demonstrated that privately funded expeditions have played an important role in recovering these shipwrecks (Fisher, 1987, p. 376).

This commentary provides a criticism of the act that can be assessed using data from the Florida Secretary of State's office. Has the Abandoned Shipwrecks Act reduced the number of shipwrecks discovered? This data point, beyond any economic assessments of tourism dollars or legal assessments of the effectiveness of state courts compared to federal admiralty courts, allows for a clear analysis of the Act as public policy: whether it has reduced the number of shipwrecks discovered, as Fisher and other critics (as found in a review of the academic literature on the subject) feared that it would. The qualitative interview data further adds to the context that administrators of the law operate within, and reveals praise and criticism from salvors who operate within the law and archaeologists who see their work affected by its existence. These voices provide a useful set of data for policymakers to consider.

#### LITERATURE REVIEW

Most of the academic literature on the Abandoned Shipwrecks Act is found in legal journals. Legal discussion of the Act focuses on topics such as subsequent litigation and the override of maritime law that are beyond the scope of this article other than what has been noted in the background section. Despite this legal commentary, there are no data-based analyses of the Act available in the literature. There are, however, responses and rebuttals to legal commentary, and an academic survey that includes Florida in its investigation of the Act's effects on historic preservation offices throughout the country, and legal works that touch on the act's effectiveness through gathering of qualitative data.

There are some academic investigations that are useful for the purposes of policy analysis. Dr. Anne Giesecke wrote several articles in support of the ASA's passage when it was before Congress, and wrote an article entitled "The Abandoned Shipwreck Act Through the Eyes

of its Drafter” in 1999, analyzing the law’s effectiveness in its tenth-year anniversary of passage. Dr. Giesecke was an employee of the Interior Department who helped to draft the act, and also testified in favor of its passage. This article describes the act as successful in having reduced the amount of litigation surrounding shipwreck ownership, allowing states to spend more money on shipwreck preservation. The article also describes a rapid proliferation in state programs relating to maritime preservation, as well as a proliferation of private entities such as maritime museums, following the passage of the law. Another legal assessment of the effectiveness of the Act came in a similar timeframe, with Russell Murphy’s 2003 article “The Abandoned Shipwreck Act of 1987 in the New Millennium: Incentives to High Tech Piracy?” In this article, Murphy posits three models of response to the Act by treasure hunters: Compliance, Negotiation, and Piracy. Murphy found that there are strong incentives to take the “Pirate” route of unsanctioned treasure hunting (and cites anecdotal evidence that some salvors pursue this option, though we must only take him at his word on this). This is another example of the primary criticism of the Act.

As noted, many other articles have been published in law journals criticizing the Abandoned Shipwreck Act. These articles can be reviewed briefly, as they discuss questions that are beyond the scope of this investigation (most of these relate to the Act’s preemption of admiralty law). When they do touch on policy questions, many legal articles, such as those by Nathan Murphy (“Scuttle the Abandoned Shipwreck Act”) and David Owen (“Good-Bye to Salvage in the Territorial Sea”) claim as Mel Fisher did that the Abandoned Shipwreck Act disincentivizes discovery of shipwrecks, as there is no financial incentive involved. Some, such as by Sherri Braunstein (“Shipwrecks Lost and Found at Sea”), also claim that the Act supposes a nonexistent incentive for states to preserve these wrecks, while the Act only gives states the *ability* to preserve them.

In “Are Criticisms of the Abandoned Shipwreck Act Anchored in Reality?” Shelly McGill addresses these critics of the Act. She argues that the Act applies to shipwrecks that are not the primary focus of salvagers, namely “those which are historically valuable, but may or may not contain currency or marketable artifacts. (McGill, 2005, p. 118).” She also states that the legal process was changed by the Act so that a salvor does not have to fight off competing claims; and that the financial risk has been exaggerated because of how much early research takes place using libraries and archives, not (expensive) boats and submarines. McGill also addresses the claim that states are not incentivized to preserve the wrecks that are discovered, noting that these objections are based on philosophical underpinnings and are not borne out by reality (such as the high number of states creating preservation programs). As she says in her conclusion, “the opposition’s arguments make sense intuitively, but more detailed analysis reveals that they are overstated and presumptuous. (McGill, 2005, p.123).”

The articles noted have mostly revolved around legal criticisms of the Act, and have debated the question of the Act’s possible reduction of shipwreck finds. One article, “The Abandoned Shipwreck Act of 1987 and the Reaction of State Historic Preservation Offices,” attempts to investigate a larger context. Another of the few academic to gather qualitative data on the Abandoned Shipwreck Act, the article is a survey in 1991 of state historic preservation offices, carried out by Kelly and Gary Victor and published in *The Geographical Bulletin* (the data being a survey of historic preservation personnel). This survey was intended to determine the reaction of state historic preservation offices to the Act’s passage, as they would bear most of the burden for the implementation of the new responsibilities given to the states by the Act. Many state historic preservation offices, including that of Florida, viewed the act’s passage positively; similarly, many states expressed concern about the presumed lack of availability of

federal funding for new historic preservation efforts, including Florida. Commentary from Florida's historic preservation office included that they "have strongly supported such legislation since its initial draft" and that "recreational access to shipwreck sites has never been restricted in Florida waters." (Victor and Victor, 1991, p. 24). At that time, Florida already had salvage permits and underwater parks, while very few other states did. Florida, with its extensive coastline and maritime history, was ahead of the curve in enacting a legal framework around salvage and archaeology, starting as early as the 1960s (Price, interview, 2018).

This paper thus breaks new ground on the subject of the Abandoned Shipwreck Act. An analysis of the effectiveness of the Act is important to determine if criticism of the Act is accurate, specifically that it has reduced the number of shipwrecks discovered. Despite the legal commentary on the Act, no investigation has included looking at any form of quantitative data, though others have gathered qualitative data. This paper therefore fills an important niche in the academic literature surrounding the Abandoned Shipwrecks Act.

#### METHODS and SAMPLE

This study focuses on a clear data source: the number of shipwrecks discovered per year, as measured in the number of E&S and 1A-31 permits issued by the Florida government in that year. Additionally, it uses interview data from archaeological and salvage practitioners who work within the confines of the Abandoned Shipwrecks Act and Florida law.

The 1A-31 permit, as described in the chapter of the same name, is a permit "for exploration and recovery of historic shipwreck sites by commercial salvors on state-owned sovereignty submerged lands (Florida Administrative Code, Ch. 1A-31.0012)." These permits serve as a clear indicator of how many wrecks have been discovered, or are undergoing archaeological

work. The state issues two types of permit: an exploration permit, which allows the collection of “remote sensing and visual information...without excavation or bottom disturbance,” and a recovery permit, which allows “more extensive excavations and [the recovery of] archaeological materials” after a wreck has been documented (Florida Administrative Code, Ch. 1A-31.0062).

The 1A-31 permit was phased in beginning in 1987, the same year as the passage of the Act. Prior to this bureaucratic mechanism, there was the Exploration and Salvage program (E&S), beginning in the 1920s. This program required salvors to sign a contract or lease with the state for the right to work on the shipwreck (Price, interview, 2018). For this study’s purposes, the two permits have been lumped together, and the count has simply been of “permits per year” without distinguishing between the permit options. As the permits were not used simultaneously, the results had no danger of being tainted by repetition or crossover.

Use of this data source to evaluate the number of shipwrecks discovered does not come without possible drawbacks. Shipwrecks may be discovered and left unreported, or salvaged illegally. Additionally, due to a robust history of salvage and shipwreck exploration, it is possible that any reduction of shipwreck discoveries subsequent to the introduction of the Act may simply result from the fact that there are decreasing number of abandoned shipwrecks to discover. This hypothesis and other explanations of the data will be explored more thoroughly later, but it is important to bear in mind that “number of permits applied for” is not a perfect analogue for “number of shipwrecks discovered.”

In addition to analysis of the 1A-31 records, this paper has solicited interviews with archaeologists, salvagers, and state employees who have worked with the Act in Florida. These interviews were solicited by contacting the heads of salvage companies that work with “treasure hunting” and not just routine salvage work, as well as the archaeological departments of both the

Florida Secretary of State's office and of the state's major research universities. The interview was in response to several open-ended questions requesting information on the interviewee's experiences and opinions relating to the Act (see Appendix B). Solicitations of these interviews also included requests to pass the interview questionnaire to other knowledgeable practitioners, a form of snowball sampling. Fourteen solicitations were made, with six responses.

## FINDINGS

An assessment of the number of permits applied for per year (see Appendix A) shows that there has been a reduction in the number of permits applied for in the years subsequent to the passage of the Abandoned Shipwrecks Act. There were 208 permits applied for in the years prior to the ASA's passage in 1989, and 86 applied for in the years subsequent. This averages to 3.8 permits per year prior to the Act's passage, and 3.2 per year in the subsequent years.

However, this data is skewed by the early years of permitting, which only saw one permit (in those years, a contract) applied for in the 1930s, and less than 40 applied for prior to 1960. A more representative sample can be found by analyzing the decade prior to the Act's passage, and the decade subsequent. From 1979 to 1989, 63 permits were applied for, and from 1990 to 2000, 47 were applied for. This averages to 6.3 per year in the decade prior, and 4.7 in the decade subsequent, a 25% reduction in the number of permits applied for.

In addition to analyzing this quantitative data, there is qualitative data available in the form of interview responses from archaeologists who have had experience working with the Abandoned Shipwreck Act and the Florida Historical Resources Act. One commentary came from Dr. Elizabeth Benchley, Director of the Archaeology Institute at the University of West Florida. She says that, though the Act's title transfer to states is "not an ideal situation," the law

“at least clarifies that historic wrecks must be managed as historic resources that create artificial reefs, and that there are multiple stakeholders to be considered in managing them (Benchley, interview, 2018)” Dr. Benchley goes on to say that

“I am not aware of any professional archaeologists in Florida who are willing to work with salvors... Another factor is that the salvors groups have put pressure on the politicians to keep the law the way it is. Although salvors rarely find new ships, they retain (and sometimes transfer) rights to search areas. They seem to make money by convincing new donors that treasure is always there to be found, and so their investments are likely to pay off soon!” (ibid).

Her commentary provides considerable context to the administration of the law. Though Chapter 1A-31 provides for archaeological work to be done alongside salvage, Dr. Benchley contends that no professional archaeologists are willing to do this work. Furthermore, her statements on the financial and political practices of salvors is greatly at odds with the way salvors present themselves, and strongly contradicts Mel Fisher’s statements about salvage activities. It is possible that the Act has caused these perverse incentives whereby salvors simply attempt to convince investors that treasure is right around the corner on sites that the salvors already own; but if this is the case then the salvors seem to have acclimated to the situation, if they have exerted political pressure to maintain the current law.

Other members of the Florida archaeological community have echoed Dr. Benchley’s praise of the law. One interview subject was Della Scott-Ireton, of the Florida Public Archaeology Network and formerly an employee of the Bureau of Archaeological Research. She says that the Act “is pretty strong...it was also very forward-thinking in mandating states to enable public access, and, further, in encouraging the development of interpreted tourism to sites.(Scott-Ireton, interview, 2018)” She also says that “the law is what gives ‘teeth’ to the

ability to protect the sites and gives jurisdiction to law enforcement (ibid).” Chuck Meide, of the Lighthouse Archaeological Maritime Program and also a former state archaeologist, says that “The strength of the ASA is that it affords legal protection to wrecks of ships that were privately-owned and lie in state waters. Such ships further out to sea have no legal protection from looters or treasure hunters where they fall to a ‘finders keepers’ mentality, which leads to non-archaeological salvage and a loss of information. Sites in state waters are titled to the state which potentially can prevent looting or treasure salvage (Miede, interview, 2018)” He continues,

“without ASA all wrecks in Florida would potentially be lost to salvors and looters...

These laws have lead to financial and institutional support of research on archaeological sites by the state and other groups including universities, museums, and non-profit research organizations, and the well-organized management of archaeological sites for the public good. Over the last thirty years Florida has become an epicenter for maritime archaeological research through strong public-private partnerships and public support for archaeological preservation and research. This is in large part because of [the ASA and the Florida Historic Resources Act] (ibid).”

It is not only archaeological activists who have positive reviews of the Act. Current employees of the Bureau of Archaeological Resources, who preferred to keep their responses anonymous, also noted the usefulness and successes of the laws. One, an archaeologist at the Bureau of Archaeological Research, notes that the law has “decreased unsanctioned salvage of historic shipwrecks,” and that the “[Florida Department of State] now has the means to closely monitor salvage activities concerning historic shipwrecks (Anonymous, interview, 2018).” A second employee of the Department of Archaeological Resources said that “the main strength of the ASA is that it assigned title of shipwrecks to state governments. This effectively delegated the

supervision of submerged shipwrecks to state governments. This allowed for more effective management (Anonymous, interview, 2018).”

In addition to their opinions on the law, the interview subjects were asked about Mel Fisher’s contention, echoed in legal criticism of the law, that the Abandoned Shipwrecks Act would reduce the number of shipwreck discoveries. All interview subjects agreed that the law has not suppressed the discovery of new shipwrecks, including the practicing salvor who was interviewed (Sinclair, interview, 2018). However, the subjects each had different takes on the idea. Della Scott-Ireton said that that law had “absolutely not” prevented wrecks from being discovered. “These laws have nothing to do with decisions to legitimately search for and discover shipwrecks, or with their subsequent historic preservation...if these laws hinder commercial salvors bent on destruction of shipwrecks for personal gain, then perhaps the salvors need to rethink their motivations (Scott-Ireton, interview, 2018).”

Chuck Meide said he was “not sure how the argument could even be made that these laws could possibly have reduced the discovery of sites.” Meide says,

To the contrary, these laws have led to the discovery of many, many shipwrecks. Because of the FHRA, there are grants that support archaeological research. And the FHRA empowers the Division of Historical Resources and Bureau of Archaeological Research to, among other things, conduct archaeological surveys and support private groups conducting surveys. This has led to the discovery of dozens and dozens, perhaps hundreds of sites.... Even the treasure hunting program regulated by the state, as counterproductive as it is for preserving archaeological sites, has resulted in the discovery of shipwrecks. (Miede, interview, 2018).

The current employees of the Bureau of Archaeological Research also did not think that the Act reduced wreck discovery. One noted that there was “not necessarily a direct correlation between the two,” and that “if anything, it has reduced the unchecked destruction of historic wrecks/sites.” They note that their department “continues to receive calls from the public about potential new archaeological sites (Anonymous, interview, 2018)” The other also does not think that the law has reduced wreck discoveries, but “there is no effective ways to measure this (Anonymous, interview, 2018).” However, “many shipwrecks and archaeological sites have been discovered since either act was put into law.” This commentary is backed up by my review of the data provided, but only to a point. Review of the data on 1A-31 permits shows a drop-off in salvage permits requested after the introduction of the Act, as noted above. This does not, however, take into account archaeological permits, and also does not take into account multiple permits requested on one wreck. As will be discussed subsequently, there are other possible explanations for the changing rate of permit requests.

Commentary from the members of the archaeological was broadly favorable toward the Abandoned Shipwreck Act and the Florida Historic Resources Act. The only member of the salvor community, James Sinclair of Maritime Research and Recovery, had a different view of the law’s effectiveness, and of the administration of the Florida Department of State. He says that the Abandoned Shipwreck Act is “a muddled piece of legislation that seems to give ‘abandoned’ shipwrecks within a state’s waters to the state, however with the passage of various marine sanctuary acts and the Submerged Military Craft Act, these rules are often unclear.” In discussing the state’s preservation efforts, he says that “far from being static and ‘preserved,’ these sites are under steady decay,” and notes “the environmental vulnerability of near-shore wreckage.” He proposes a preservation regime based on “private/public partnerships that

combine the [funds] of venture capital with the aims of historic preservationists” as an alternative to the state-controlled regime. He has criticisms specifically of Florida’s administration of shipwreck law, saying that there is a “vast disparity” in the bureaucratic processing between salvage permits and archaeological permits. Sinclair says “a public records request showed that some public orgs were permitted in as little as 48 hours whereas even qualified private sector entities’ permits were months in coming or were denied for spurious reasons. This has highlighted a systemic bias within the [Florida Department of Historic Resources] and the [Florida Bureau of Archaeological Research] and has been ongoing for decades (Sinclair, interview, 2018).”

The archaeological respondents had further commentary on the Act. Some of this commentary was critical (though on a much smaller scale than Sinclair’s description of the act as a “muddle”), but for the most part, the criticism was of the larger policy and archaeological context that the Act operates within. Della Scott-Ireton laments the existence of the 1A-31 permit allowing salvage, comparing it to efforts at wildlife protection. She says,

“there is no rule that allows certain people to hunt for and kill the endangered Florida Panther. The panthers are protected by law and are seen as a resource that "belongs" to all Floridians, with intrinsic value as a part of our state's natural heritage that should be protected. Just because some people might be able to sell their skins for profit is not reason enough to allow their destruction. How are shipwrecks different? They also are endangered, have limited numbers, are not growing back, and are part of our heritage. Further, they actually stand to benefit Floridians through providing economic advantage as sustainable heritage tourism attractions if they are preserved (Scott-Ireton, interview, 2018).”

Her prescription is that more education is necessary to affect a cultural shift in the way that changes popular conceptions of shipwrecks and treasure hunting. She says in her interview, “I believe that education, outreach, and engagement are much more effective than laws by themselves. Archaeologists and resources managers fight daily against decades of treasure hunter propaganda, exaggerated media stories, and gullible people who believe they have a chance to get rich quick. Education about the realities of historic shipwrecks, their value to local communities as heritage tourism attractions, and their worth as tangible remains of our common maritime past seems to hold the key to long-term preservation by promoting stewardship and a conservation message (Ibid.)”

Chuck Meide also laments the existence of the salvage community in entirety. He describes this as the weakness of the Abandoned Shipwrecks Act, “that it allows the state to decide that such wrecks can be salvaged by commercial treasure hunters...the [Florida Historic Resources Act] in part outlines how legal treasure hunting will be carried out and regulated by the state. This is its prime weakness as a law, because treasure salvage is perhaps the greatest threat to Florida’s archaeological resources.” Meide notes that “treasure salvage is seen by virtually all professional archaeologists as unethical because it is non-scientific and equates to a severe and irreparable loss of knowledge that could otherwise have been saved if excavated by the scientific principles and methods of archaeology. (Meide, interview, 2018).”

Other commentaries on the broader context that the policy operates within come from the two state employees who responded. One laments that the law does not go far enough in a literal sense, saying that “The Abandoned Shipwreck Act unfortunately only protects shipwrecks in state waters. It does not protect other types of archaeological sites and does not extend to the US EEZ [Exclusive Economic Zone] or international waters... [The Florida Historic Resources Act]

picks up where the ASA left off and protects ALL archaeological resources on state lands and in state waters. It too does not, however, extend to the US EEZ (Anonymous, interview, 2018).”

Both state employees also bring up an important point regarding the pace of wreck discovery. When discussing the idea that wreck discovery may have been hindered by the act, one pointed out that “many wrecks on Florida’s east coast were discovered because of the advent of scuba and other technological advances.” The other current employee notes that “technological advances and increased number of surveys have increased the number of shipwrecks discovered (Anonymous, interview, 2018).” These points are in support of the contention, noted earlier, that there is “no correlation” between the passage of the act and the number of wrecks discovered, and “no effective way to measure” if the act reduced discovery. These are important points to consider when reviewing the data on shipwreck discoveries before and after the Act’s passage.

The six interview participants brought a wealth of commentary to the discussion of the Abandoned Shipwreck Act. With a sample skewed heavily toward the archaeological community, it was important to have commentary from a salvor, and Mr. Sinclair’s criticisms of the Act and of the Florida Department of Archaeological Resources provided a welcome perspective. Without investigating the same documentation that he cites, it is beyond the scope of this paper to determine if permits requested by nonprofits pursuing archaeological work are in fact processed faster than commercial salvage permit requests.

A subject that came up between several interview participants was that the Abandoned Shipwrecks Act was not the only legislation affecting the work of maritime salvage and archaeology in Florida waters. Della Scott-Ireton, Chuck Meide, and James Sinclair all raised the

Sunken Military Craft Act,<sup>1</sup> a 2004 law that prohibits “disturbance” of military craft owned by the US government (i.e. any American military shipwreck) as well as foreign military wrecks within US waters. This includes a roster of over 17,000 wrecks around the world. The SMCA does provide for a permitting program to allow “controlled site disturbance...for archaeological, historical, or educational purposes (Naval History and Heritage Command, accessed 2018).”

The existence of the Sunken Military Craft Act is one factor that leads salvors such as James Sinclair to describe the legal context of maritime archaeology/salvage as “unclear.” The Abandoned Shipwrecks Act does not operate in a vacuum, and policymakers seeking modifications to the law must keep in mind that the law interacts with a massive network of state and federal policies, and that unintended consequences can lead to administrative, political, or legal difficulties for those who work with the law.

Mel Fisher’s testimony, cited earlier in the paper, was critical of the elitism of academic archaeologists. These interview responses see archaeologists returning fire, with many harsh words for the salvage and treasure-hunting sector. This is likely due to the view that salvors work at cross-purposes to archaeologists when it comes to wreck sites, removing valuable items from their historical context and fundamentally changing the site itself in the process. The archaeologists interviewed opposed the entire existence of the salvage sector in this context, and were not in support of the 1A-31 permit’s existence at all. However, many salvagers claim to take a scholarly approach to the research and surveying of sites, with Mel Fisher citing his work with museums (Fisher, 1987, p. 377) James Sinclair’s call for cooperation between the archaeologically-minded state and salvagers may be a necessary dialogue to further the cause of preserving historic shipwrecks.

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<sup>1</sup> Though each of them cites a slightly different title for the law

Another takeaway from the interviews was that each of the two sides of this conflict views the government as an operative of the other side. Sinclair alleges bias against salvors in the Florida bureaucracy's operations, and claims a long history of this. Prof. Benchley claims that popular wisdom in the archaeology community has salvors lobbying for the laws to remain as they are, and that their money comes from re-selling the rights to the same wreck sites repeatedly. These allegations of government collusion with the opposing community seem to serve as further indicators of the need for a dialogue between salvors and archaeologists, though the academic and commercial salvage communities are so diffuse that it is possible that some minority of each community could be working as nefariously as indicated. However, Sinclair's allegations of bias against the Florida government could be easily proven or disproven by investigating documentation; though perhaps there is a simple explanation such as the fast-tracking of some applicants because they have applied multiple times in the past.

This conflict lends weight to Della Scott-Ireton's commentary that increased education on maritime archaeology is in order. Admittedly, her comments were made in the spirit of discouraging commercial salvage operations, and dealing with the "propaganda" of the glamour of treasure-hunting. This romanticized view of the practice extends as far as the legal publications criticizing the Abandoned Shipwrecks Act, which often begin by citing the evocative view of shipwrecks and pirate treasure in the popular imagination and cultural milieu. This view in the public imagination may serve as political support for the current salvage regime, or political opposition to any effort to change it to reduce salvage activity. Scott-Ireton's advocacy of archaeological education may be a necessary precondition for any major revamping of the legal regime by policymakers.

One of the most important points to arise from the interviews was the note that there are many other factors that could affect the rate of shipwreck discovery beyond crediting or blaming the Act, including improvements in technology. This is an important factor to keep in mind when analyzing quantitative data: a basic knowledge of the timeline of the introduction of SCUBA and other technological advances relating to diving should provide another dimension of analysis.

*The International Handbook of Underwater Archaeology* has a timeline of “Deepwater Technology and Exploration.” There are several advances listed during the timeframe that we have analyzed (from the 1950s to the present day, ignoring the few outliers in the 1930s and 40s). They include:

“‘Technical diving’ techniques and PC-based decompression tables develop[ing], allowing recreational divers to push beyond depth limitations of conventional recreational SCUBA” in the 1980s.

“[Remotely-Operated Vehicles] become workhorses for many deepwater activities including shipwreck investigations” in the 1980s to 1990s (Broadwater, 2002).

Many other advances are listed that could be characterized as milestones, but these advances have been selected because they are paradigm shifts that took place within the period surrounding the introduction of the Abandoned Shipwrecks Act. These technological changes could be as responsible as the legal changes for the reduction in salvage permits requested. It is possible that advanced technology such as ROV’s was more likely to be used by large research universities than salvage companies, even well-funded ones, and as such, technological improvements led more to increased academic archaeological activity than they did salvage and treasure-hunting activity. Whatever the case may be, the interview subjects’ point cannot be ignored: technological changes are an important factor to keep in mind when investigating the history of shipwreck discoveries.

## CONCLUSION and RECOMMENDATIONS

As noted in the literature review, the Abandoned Shipwrecks Act is the subject of continuing criticism from legal experts. Many of these criticisms are based on an improper chronology of the law and a lack of understanding of the law's intent, and relation to the Submerged Lands Act of 1953. Setting aside the legal merit of these criticisms, it is vital to investigate the Act in other contexts, especially in the context of its effectiveness as public policy. If the Act is found to be ineffective public policy as well as legally problematic, it is a clear sign that Congress should consider its overhaul on a national level. Additionally, policymakers in Florida can use this assessment to consider their own approach to shipwreck salvage and preservation, and consider accordingly.

The topic could certainly be subject to a considerable increase in policy-based research. In Florida, this research could integrate information on 1A-31 permits, as in this paper, and 1A-32 permits, used by archaeologists for their dive. The use of both sources of data would lead to a more complete picture of rates of shipwreck discovery.

It would be wise for Congress to take more than just Florida's experiences into account when judging the effectiveness of the Abandoned Shipwrecks Act. Future investigators would be advised to research the Act's implementation in other states, including if those states also saw a decline in shipwreck discoveries subsequent to the Act's passage. Comparisons between different regions and different coasts would be valuable in assessing the Act's impacts; differing results could lead federal and state policymakers to consider if the Act has different impacts on different coastlines, and on different maritime contexts. For example, the Great Lakes region has a very different maritime history than does Florida, and the ships on their bottomlands reflect this

difference (Graf, interview, 2018). Different state governments will have different bureaucratic mechanisms for implementation of their state law relating to shipwrecks, so it is possible that other measurements can be used beyond the number of permits applied for. Additionally, other states do not allow the same legalized salvage that Florida does. This may present difficulties in comparison of data between states, but it would also provide a richness of data to analyze, and the differences themselves would showcase differing approaches on the state level.

Policy options for Florida or the national level vary, and depend on if policymakers want to accommodate the needs of salvors or of archaeologists. Some pro-salvage ideas come from critics of the act, such as Russell Murphy. In his article (cited above), Murphy suggests several legal reforms to incentivize compliance with the Act, all of which involve mandated rewards for private discoveries. This is similar to proposals raised by Mel Fisher during his testimony in 1985. Fisher advocated for his own proposal, which would have granted the government a portion (up to 20%) of artifacts discovered in a wreck, but would not have given title to the cargo. Dr. Robert Ballard, discoverer of the wreck of the *R.M.S Titanic*, pushed for a compromise that would “regulate shipwreck salvage operations without destroying the salvagers’ rights to find and excavate some materials.”<sup>2</sup> These proposals likely would not pass muster with archaeologists, except as a necessary compromise, as any amount of salvage is destruction of archaeological data.

On the other end of the spectrum, the archaeologists interviewed expressed opposition to the entire salvage regime, so a policy reform on that side could involve a curtailment or abolition of the 1A-31 permit entirely, and allow no commercial salvage of Florida’s abandoned shipwrecks. Such an action would have to be coupled with stronger enforcement of salvage rules,

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<sup>2</sup> Daniel, Leon. “Treasure Hunter Opposes Shipwreck Bill.”

to prevent any possible uptick in pirate salvage. Policies could also be enacted around Della Scott-Ireton's plea for more education, to bring about a cultural shift in the way that shipwrecks and salvors are viewed, toward greater respect for archaeological work. Finally, though many salvors claim to involve archaeologists and follow sound archaeological practices, laws could mandate archaeological involvement in salvage activity.

The findings of this study would seem to indicate that the Act has led to a reduction in the number of shipwrecks discovered, as predicted by Mel Fisher and by many legal criticisms of the Act. This reduction has been visible over both the long and the short term, and is especially prominent when controlling for the early years when very few permits were issued.

It is possible that there are other factors that have led to a reduction in the number of permits requested. There are not new Spanish Galleons growing from the ocean floor like coral; it is to be expected that over time, a diminishing number of new discoveries will be made. Additionally, the Act may have driven new findings "underground," to illegal salvage. This "pirate" activity is one legal possibility forward-mapped by Murphy in his 2003 article, though there does not seem to be much contemporary journalistic evidence of its occurrence. However, the factor most often cited by interview subjects was an improvement in diving technology, this could have a distortive effect on the number of discoveries, with a surge in discoveries after new diving inventions, eventually tapering out as the number of undiscovered wrecks decreases. Additionally, it is possible that although fewer permits were issued, there were a larger number of permits applied for in total, some of which were denied. In any event, though the numbers would indicate a decrease in shipwreck finds subsequent to the Act's passage, there are many reasons to assume that this correlation does not imply causation.

The maritime history of Florida and of the United States deserves protection from government entities, and that protection should be evaluated based on its effectiveness. If criticism of the Abandoned Shipwreck Act is backed up by data, as is possible in this instance, it would be prudent to investigate what public policy changes should be made to the Act.

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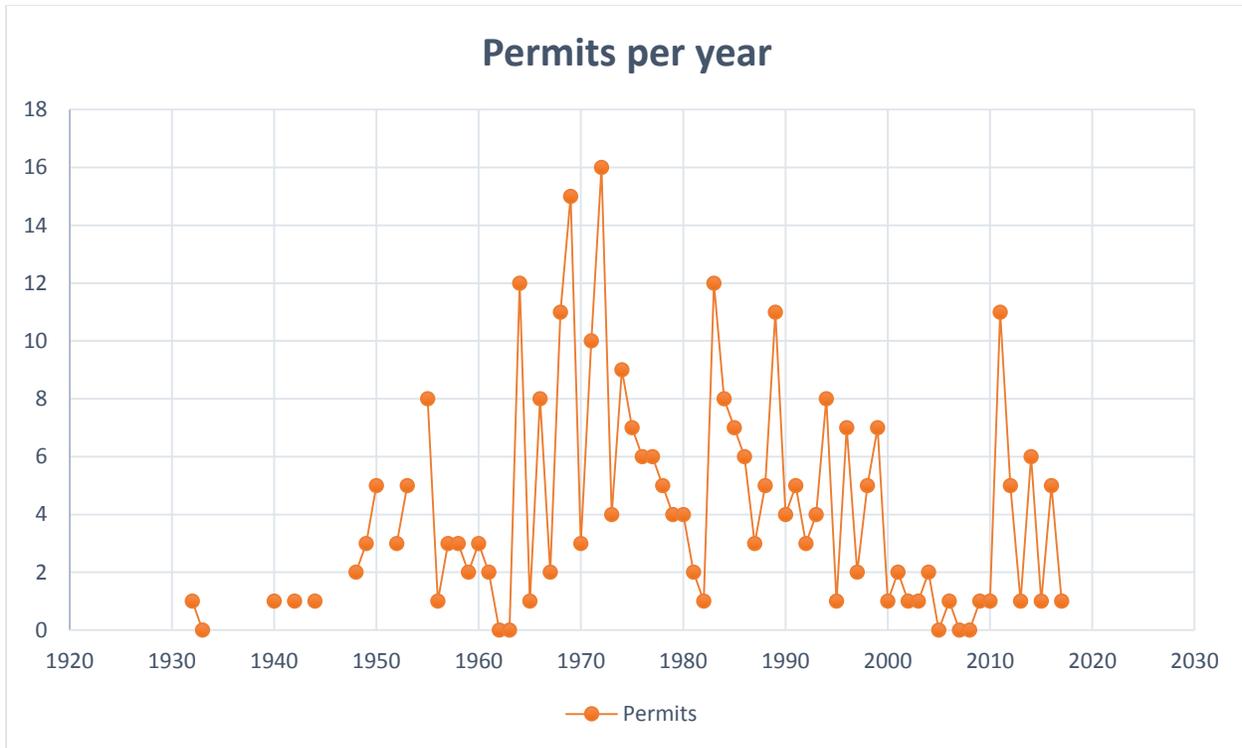
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## APPENDIX A



## APPENDIX B

Survey questions:

- What are your experiences working with the Abandoned Shipwrecks Act and/or the Florida Historical Resources Act?
- What is your opinion on the strengths and weaknesses of the Abandoned Shipwrecks Act and/or the Florida Historical Resources Act?
- Do you think the Abandoned Shipwrecks Act and/or the Florida Historical Resources Act have reduced looting of or damage to Florida's shipwrecks?
- Do you think that the Abandoned Shipwrecks Act and/or the Florida Historical Resources Act have reduced the number of shipwrecks discovered?