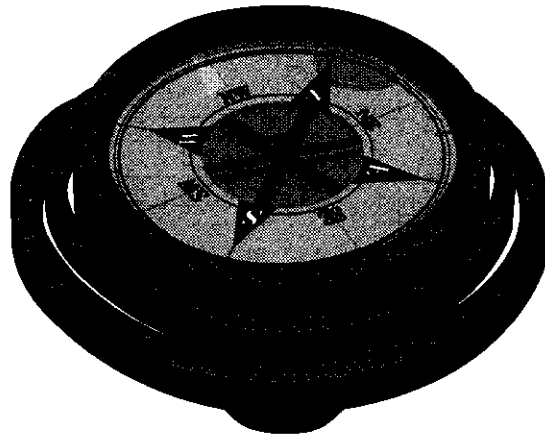




*New York Sea Grant
Policy Planning Symposium*

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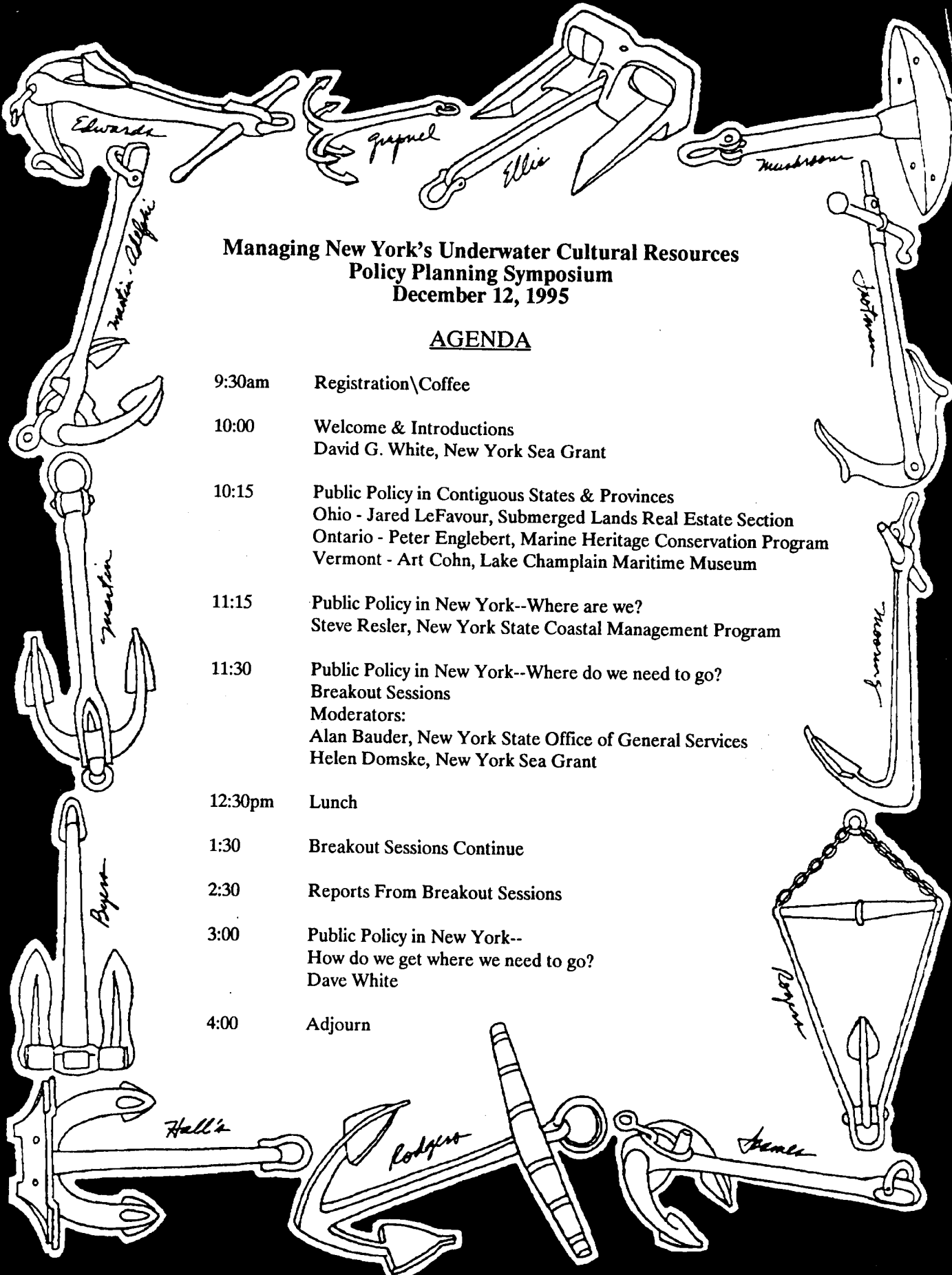
Managing New York's
Underwater
Cultural Resources



December 12, 1995
Turf Inn-Holiday Inn
Albany, New York

Symposium Coordinator:
David G. White
New York Sea Grant

Moderators:
Alan Bauder, New York State Office of General Service
Helen M. Domske, New York Sea Grant



**Managing New York's Underwater Cultural Resources
Policy Planning Symposium
December 12, 1995**

AGENDA

- 9:30am Registration\Coffee
- 10:00 Welcome & Introductions
David G. White, New York Sea Grant
- 10:15 Public Policy in Contiguous States & Provinces
Ohio - Jared LeFavour, Submerged Lands Real Estate Section
Ontario - Peter Englebert, Marine Heritage Conservation Program
Vermont - Art Cohn, Lake Champlain Maritime Museum
- 11:15 Public Policy in New York--Where are we?
Steve Resler, New York State Coastal Management Program
- 11:30 Public Policy in New York--Where do we need to go?
Breakout Sessions
Moderators:
Alan Bauder, New York State Office of General Services
Helen Domske, New York Sea Grant
- 12:30pm Lunch
- 1:30 Breakout Sessions Continue
- 2:30 Reports From Breakout Sessions
- 3:00 Public Policy in New York--
How do we get where we need to go?
Dave White
- 4:00 Adjourn

Managing New York's Underwater Cultural Resources

Currently, in New York State, much of the guidance related to management of underwater cultural resources comes from old, antiquated laws and regulations. Although assumptions abound, explicit policy is non-existent. A strong, well-defined policy may be needed in New York State to enhance the use, protection and preservation of underwater cultural resources that exist.

To address this need, New York Sea Grant in cooperation with an ad-hoc committee consisting of members from the New York State Departments of Education, Environmental Conservation, State, and Offices of General Services and Parks, Recreation, and Historic Preservation, sponsored a one-day symposium entitled, *Managing New York's Underwater Cultural Resources*, on December 12, 1995, at the Turf Inn-Holiday Inn in Albany, New York.

This symposium was designed to provide the opportunity for representatives from agencies and organizations to clarify issues and develop a unified approach to manage underwater cultural resources effectively. The symposium provided valuable opportunities for developing lines of communication and building partnerships among various groups and agencies.

Symposium Goals:

- 1.) To identify information available and needed in underwater cultural resources management public policy.
- 2.) To begin formulating public policy guidelines that would be consistent with the interests and objectives of agencies and organizations throughout the state.

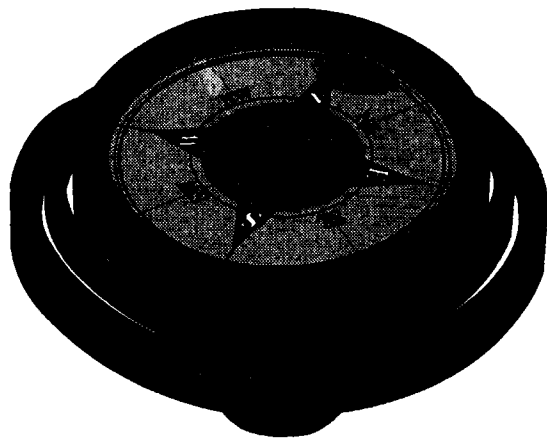
Symposium Format:

The symposium began with presentations by policy makers from New York, Ohio, Vermont, and Ontario, Canada, who have worked with underwater cultural resources and submerged preserves. These experts shared their past experiences and provided information that was to be used during working sessions. The working sessions focused on developing and formulating public policy needs related to underwater cultural resource management.

Working groups then reconvened to share the outcomes of their sessions. Their recommendations and ideas were shared and reviewed by the overall group during a summary session.

This report provides an overview of the presentations and information developed at the symposium. It also includes information from the workgroups and lists views shared by the symposium participants.

Participants



Symposium Participants

Bateaux Below, Inc.: Terry Crandall, Joe Zarzynski

Hartgen Archeological Associates: Thomas Jamison

Intrepid Sea-Air-Space Museum: Jerry Roberts

Lake Champlain Maritime Museum (Vermont): Art Cohn, Eric Tichonuk

New York Sea Grant: Helen Domske, David White

New York State Divers Association: Paul Cornell, Maria Macri, David Millard

New York State Education Department: Phil Lord

New York State Office of General Services: Alan Bauder, John Carstens

New York State Office of Parks, Recreation, Historic Preservation:
Bruce Fullem, Mark Peckham

New York State Department of Environmental Conservation:
John Keating, Lee Kiernan, Charles Vandrei

New York State Department of State, Coastal Management Program:
Renee Parsons, Steve Resler

Ohio Department of Natural Resources: Jared LeFavour

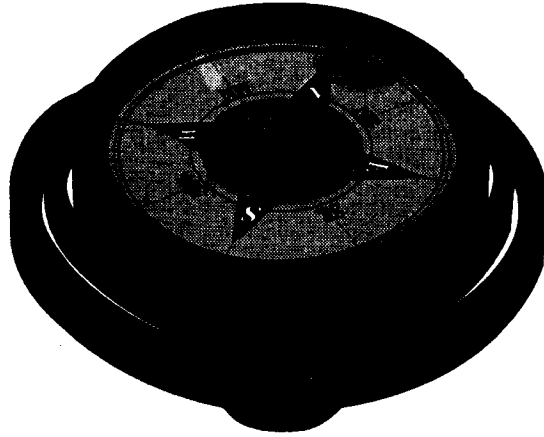
Ontario Marine Heritage Program (Canada): Peter Englebert

Oswego Maritime Foundation: Phil Church, Marc Lopata, Tom Raesbeck

St. Lawrence River Historical Foundation: Dennis McCarthy, Kathi McCarthy

Underwater Maritime Consultants, Inc.: Mike Ritenour, Dave Robinson

Background



Symposium Participants

Bateaux Below, Inc.: Terry Crandall, Joe Zarzynski

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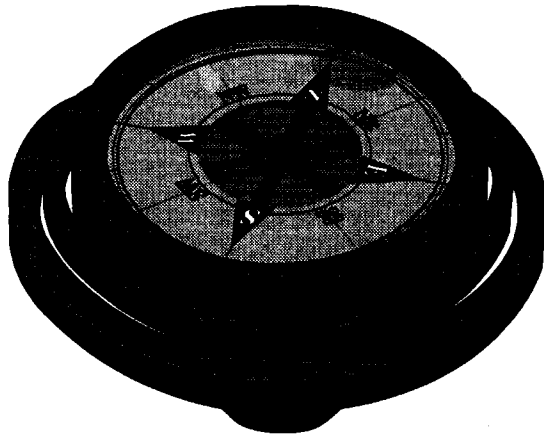
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Public Policy Presentations



Jared LeFavour
*Submerged Lands Coordinator, Ohio Coastal Management Program,
Division of Real Estate and Land Management
Ohio Department of Natural Resources*

Jared LeFavour presented an overview of Ohio's program, including information on existing laws. He suggested that laws should be written in "everyday" language to make them more understandable. Noting that resources are recreational, historical and archaeological, he stated that underwater cultural resources are "non-renewable" and "that once the item is gone it is gone forever."

Education was described as the "key" to the success of the Ohio program. LeFavour stated that "education is for everybody, not just for divers, but regulators as well." Knowing that every dive site cannot be policed, he described how divers are asked to leave the shipwreck the way they found it. If the divers abide by their request to "take only pictures and leave only bubbles," they will be able to "maintain a resource that is valuable to everyone."

He talked about successful projects including brochures and a poster designed to educate divers about the importance of underwater resources. Indicating that there can be a pendulum swing from no regulation to absolute regulation, he discussed some of the successful regulations that Ohio relies upon.

The zebra mussel was mentioned for its role in clearing up Lake Erie, but it was also blamed for covering up many of the wrecks that dot the bottom. LeFavour pointed out that in some places, "you don't even know you are on a wreck" due to the zebra mussel infestation.

LeFavour pointed out the unique nature of freshwater wrecks, indicating that items must be conserved once they are removed from the water. Unlike saltwater wrecks that deteriorate in their briny environment, freshwater wrecks remain relatively unaltered until removed from their watery resting places. He mentioned that many divers are unaware of the conservation efforts necessary to preserve these valuable resources and they "take these items and they end up in the back of their garage."

The final portion of his presentation dealt with Submerged Lands Preserves and the authority to create a preserve. In Ohio, preserves may or may not contain a shipwreck and there may be salvage operations included in the process. Salvage efforts must deal with historical interest and the Historic Preservation Office. LeFavour mentioned that there has only been one salvage permit issued to date, to retrieve a free-standing anchor.

For his conclusion, LeFavour stated, "the one thing we will continue to do in Ohio is educate. That is the ultimate key."

LAKE ERIE SUBMERGED LANDS AND ABANDONED PROPERTY

1506.30 Definitions

As used in sections 1506.30 to 1506.37 of the Revised Code:

(A) "Abandoned property" means a submerged aircraft; a submerged watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of a submerged aircraft or watercraft; the personal property of the officers, crew, and passengers of a submerged aircraft or watercraft; the cargo of a submerged aircraft or watercraft that has been deserted, relinquished, cast away, or left behind and for which attempts at reclamation have been abandoned by the owners and insurers; and submerged materials resulting from activities of prehistoric and historic native Americans.

(B) "Lake Erie" means that portion of the waters and lands of Lake Erie belonging to the state as provided in section 1506.10 of the Revised Code.

(C) "Historical value" means the quality of significance exemplified by an object, structure, site, or district that is included in or eligible for inclusion in the state registry of archaeological landmarks authorized under section 149.51 of the Revised Code, the state registry of historic landmarks authorized under section 149.55 of the Revised Code, or the national register of historic places.

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CONSERVATION OF NATURAL RESOURCES

(D) "Marine surveyor" means a person engaged in the business of mapping or surveying submerged lands and abandoned property.

(E) "Mechanical or other assistance" means all manmade devices used to raise or remove artifacts from abandoned property, including pry bars, wrenches and other hand or power tools, cutting torches, explosives, winches, flotation bags, lines to surface, extra divers buoyancy devices, and other buoyancy devices.

(F) "Recreational value" means value relating to an activity in which the public engages or may engage for recreation or sport, including scuba diving and fishing, as determined by the director of natural resources.

(1991 H 264, eff. 3-2-92)

Cross References

Abandoned property defined, 149.56

1506.31 Submerged lands preserves

(A) In order to provide special protection for abandoned property and features and formations in Lake Erie having historical, archaeological, recreational, ecological, geological, environmental, educational, scenic, or scientific value, the director of natural resources, with the approval of the director of the Ohio historical society, may adopt rules in accordance with Chapter 119, of the Revised Code establishing Lake Erie submerged lands preserves. A preserve may be established for any area of submerged lands that contains a single watercraft or aircraft of historical value, two or more watercraft or aircraft constituting abandoned property, or other features of archaeological, historical, recreational, ecological, environmental, educational, scenic, scientific, or geological value other than sand, gravel, stone, and other minerals and substances authorized to be taken and removed in accordance with section 1505.07 of the Revised Code.

Any rule adopted under this division shall describe the area included in the preserve so designated and the abandoned property or features of archaeological, historical, recreational, ecological, geological, environmental, educational, scenic, or scientific value found in the preserve. Each preserve shall encompass the designated area and within that area shall extend upward to and include the surface of the water. Any number of preserves may be designated; however, an individual preserve shall not exceed three hundred square miles in area and the total area of all submerged lands designated as preserves shall not exceed ten per cent of the total submerged lands of Lake Erie.

(B) When establishing a preserve under division (A) of this section, the directors of natural resources and the Ohio historical society shall consider all of the following factors:

(1) Whether creating the preserve is necessary to protect either abandoned property or significant underwater features possessing historical, archaeological, recreational, geological, ecological, environmental, educational, scenic, or scientific value;

(2) The extent of local public and private support for creation of the preserve;

(3) If the purpose of the preserve is to be recreational, the extent to which preserve support facilities such as roads, marinas, charter services, hotels, medical hyperbaric facilities, and rescue agencies have been developed in or are planned for the coastal area that is nearest the proposed preserve;

(4) Whether creating the preserve will conflict with existing or potential removals of sand, gravel, stone, or other minerals or substances authorized to be taken and removed in accordance with section 1505.07 of the Revised Code.

(C) The director of natural resources, with the approval of the director of the Ohio historical society, may establish policies and may adopt rules in accordance with Chapter 119. of the Revised Code governing access to and the use of any preserve established under division (A) of this section. The director of natural resources shall limit or prohibit access to abandoned property in a preserve only if one of the following conditions is met:

(1) The site of the abandoned property is biologically or ecologically sensitive or is hazardous to human safety.

(2) Any abandoned property of significant historical value in the preserve is extremely fragile and in danger of collapsing.

(3) Any abandoned property of historical value in the preserve is suffering extensive deterioration or attrition due to prior unregulated access.

(4) The director of natural resources has agreed to limit access during the term of a permit issued under section 1506.32 of the Revised Code at the request of the holder of the permit who is recovering, altering, salvaging, or destroying abandoned property in the preserve in accordance with the permit.

(1991 H 264, eff. 3-2-92)

1506.32 Permit for recovery, alteration, salvage, or destruction of abandoned property

(A) Except as otherwise provided in division (B) of this section, any person who wishes to recover, alter, salvage, or destroy any abandoned property that is located on, in, or in the immediate vicinity of and associated with a submerged watercraft or aircraft in Lake Erie shall obtain a permit to do so from the director of natural resources that also has been approved by the director of the Ohio historical society. A permit shall authorize the operation on, in, or in the immediate vicinity of and associated with only the submerged watercraft or aircraft named in the permit and shall expire one year after its date of issuance. To apply for a permit, a person shall file an application on a form prescribed by the director of natural resources that contains all of the following information:

(1) The name and address of the applicant;

(2) The name, if known, of the watercraft or aircraft on, in, or around which the operation is proposed and a current photograph or drawing of the watercraft or aircraft, if available;

(3) The location of the abandoned property to be recovered, altered, salvaged, or destroyed and the depth of water in which it may be found;

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(4) A description of each item to be recovered, altered, salvaged, or destroyed;

(5) The method to be used in the operation;

(6) The proposed disposition of any abandoned property recovered, including the location at which it will be available for inspection by the director of the Ohio historical society for the purposes of division (C) of section 1506.33 of the Revised Code;

(7) Any other information that the director of natural resources or the director of the Ohio historical society considers necessary.

(B) A person may recover, alter, salvage, or destroy abandoned property from Lake Erie that is located outside a Lake Erie submerged lands preserve established under rules adopted under section 1506.31 of the Revised Code without obtaining a permit under this section if the abandoned property is not attached to or located on, in, or in the immediate vicinity of and associated with a submerged watercraft or aircraft and if the abandoned property is recoverable by hand without mechanical or other assistance.

(C) Immediately after receiving a permit application, the director of natural resources shall send a copy of it to the director of the Ohio historical society who shall review it for approval pursuant to division (D) of this section. If the director of natural resources determines that an application submitted under division (A) of this section is incomplete, he shall so notify the applicant in writing and shall specify the additional information that is needed. If the director of the Ohio historical society needs further information, he shall notify the director of natural resources, who shall notify the applicant in accordance with this division. The applicant may resubmit the application following receipt of the notice.

(D) The director of the Ohio historical society shall approve, conditionally approve, or disapprove an application. If he determines that the abandoned property to be recovered, altered, salvaged, or destroyed has historical value in itself or in conjunction with other abandoned property in its vicinity, he may conditionally approve or disapprove the application. If he conditionally approves an application, he may impose conditions on the permit in accordance with division (E) of this section. The director of the Ohio historical society shall notify the director of natural resources of his approval, conditional approval, or disapproval within fifty days after receiving the application. If the director of the Ohio historical society does not respond within fifty days as prescribed in this division, the application is deemed approved by him.

(E) The director of natural resources shall approve, conditionally approve, or disapprove an application. If he determines that the abandoned property to be recovered, altered, salvaged, or destroyed has substantial recreational, ecological, environmental, educational, scenic, or scientific value in itself or in conjunction with other abandoned property or resources in its vicinity or that the operation will not comply with any policies established or rules adopted under section 1506.31 of the Revised Code governing access to and use of the Lake Erie submerged lands preserve, if any, in which the operation is proposed, he may conditionally approve or disapprove the application.

(F) Not later than sixty days after a complete application is submitted under this section, the director of natural resources shall approve, conditionally approve, or disapprove the application. The director of natural resources shall not approve or conditionally approve an application until it has been approved or conditionally approved by the director of the Ohio historical society under division (D) of this section. If either director conditionally approves an application, he shall impose on the permit such conditions as he considers reasonable and necessary to protect the public trust and general interests, including conditions that provide any of the following:

(1) Protection and preservation of the abandoned property to be recovered and of any recreational value of the area in which the operation is proposed;

(2) Assurance of reasonable public access to the abandoned property after recovery;

(3) Conformity with any policies established or rules adopted under section 1506.31 of the Revised Code governing access to and use of the Lake Erie submerged lands preserve, if any, in which the operation is proposed;

(4) Prohibition of injury, harm, or damage to the applicable submerged lands or to abandoned property not authorized for recovery, alteration, salvage, or destruction during and after the proposed operation;

(5) Prohibition against the discharge of debris from the watercraft, aircraft, or salvage equipment or limitation of the amount of debris that may be so discharged;

(6) A requirement that the permit holder submit a specific plan for recovery, alteration, salvage, or destruction to the director of natural resources prior to commencing the operation. The plan may include a discussion of measures that will be taken to ensure the safety of individuals who will recover, alter, salvage, or destroy or assist in the recovery, alteration, salvage, or destruction of the abandoned property and to prevent, minimize, or mitigate potential adverse effects on any abandoned property that is to be recovered or salvaged, any abandoned property that is not to be recovered, altered, salvaged, or destroyed, and surrounding geographic features.

(G) A permit holder may renew the permit by making application to the director of natural resources at least sixty days before the expiration date of the permit. The director of natural resources shall not issue a permit to another person to recover, alter, salvage, or destroy abandoned property that is the subject of a permit for which a renewal is sought unless the director of natural resources or the director of the Ohio historical society disapproves the permit renewal. The director of natural resources or the director of the Ohio historical society may conditionally approve or disapprove a permit renewal application in accordance with division (D), (E), or (F) of this section or if the permit holder has not made reasonable progress in undertaking the operation authorized by the original permit.

(H) Any person may appeal to the director of natural resources a decision under this section approving, disapproving, or approving conditionally a permit application or renewal application in accordance with Chapter 119. of the Revised Code.

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(I) The director of natural resources shall not issue and the director of the Ohio historical society shall not approve a permit under this section to recover, alter, salvage, or destroy abandoned property from Lake Erie that is located within a Lake Erie submerged lands preserve established under any rules adopted under section 1506.31 of the Revised Code unless the operation is for historical or scientific purposes or will not adversely affect the historical, cultural, recreational, or ecological integrity of the preserve as a whole.

(J) The director of natural resources may adopt rules in accordance with Chapter 119. of the Revised Code and establish and observe such policies regarding the public availability and use of applications submitted and permits issued under this section as will meet the legitimate requirements of the person who submits an application or to whom a permit is issued. Unless the director of natural resources determines that revealing the location of abandoned property to which a permit or permit or renewal application³ applies is necessary to protect the abandoned property or the public health, safety, and welfare, the director of natural resources and the director of the Ohio historical society shall keep confidential and shall not release to any person the location of such abandoned property:

(1) During the time the application or renewal application is being processed;

(2) During the term of the permit or a permit renewal;

(3) Except as provided in division (J)(4) of this section, for two years following the denial of a permit or renewal application;

(4) During the appeal of any denial of a permit or renewal application and for two years following the entry of any final order or judgment in the most recent appeal of the denial.

At the request of a permit holder, the director of natural resources may limit access to the site of abandoned property for which the permit was issued during the term of the permit.

(K) Except as provided in division (B) of this section, no person shall recover, alter, salvage, or destroy abandoned property in Lake Erie having a fair market value of one hundred dollars or more unless the person has a permit issued for that purpose under this section.

(1991 H 264, eff. 3-2-92)

Cross References

Penalty: 1506.99(B)

1506.33 Ownership of abandoned property

(A) Except as otherwise provided in divisions (B) and (D) of this section, the ownership of and title to all abandoned property that is submerged in Lake Erie are in the state, which holds title in trust for the benefit of the people of the state.

(B) Any person who recovers or salvages abandoned property from Lake Erie without a permit as provided in division (B) of section 1506.32 of the

³So in original; should this read "a permit or permit renewal application"?

Revised Code shall file a written report with the director of the Ohio historical society not later than thirty days after the recovery or salvage if both of the following apply:

- (1) The property is valued at more than ten dollars;
- (2) The property has been abandoned for more than thirty years.

The report shall list all such abandoned property that was recovered or salvaged and shall describe its location at the time of recovery or salvage.

The person shall give the director or his authorized representative an opportunity to examine the property for ninety days after the report is filed. If the director determines that the abandoned property does not have historical value, he shall release it to the person who recovered or salvaged it.

(C) Any person who recovers or salvages abandoned property from Lake Erie in accordance with a permit issued under section 1506.32 of the Revised Code shall file a written report with the director not later than ten days after the recovery or salvage. The report shall list the abandoned property that was recovered or salvaged and shall describe its location at the time of recovery or salvage.

The person shall give the director or his authorized representative an opportunity to examine the property for ninety days after the report is filed. The property shall not be removed from this state during that period without written approval from the director. If the property is removed from the state without the director's written approval, the attorney general, upon the request of the director, shall bring an action for its recovery.

(D)(1) If the director determines that any abandoned property listed in a report filed under division (C) of this section has historical value, he shall not release it to the permit holder.

(2) If the director determines that any abandoned property so listed does not have historical value and if the abandoned property does not consist of coins, currency, or both that were intended for distribution as payroll, the director shall release the abandoned property to the permit holder. The permit holder shall remit to the treasurer of state an amount equal to ten per cent of the value of the abandoned property. The treasurer shall credit fifty per cent of the moneys so received to the fund provided for in section 149.56 of the Revised Code and fifty per cent to the Lake Erie submerged lands preserves fund created in section 1506.35 of the Revised Code.

(3) If the director determines that any abandoned property so listed does not have historical value and if the abandoned property consists of coins, currency, or both that were intended for distribution as payroll, he shall release at least sixty per cent, but not more than eighty per cent, of the abandoned property to the permit holder. The director may sell or otherwise transfer ownership of and title to any abandoned property retained by him under division (D)(3) of this section. Proceeds from any such sale shall be credited to the fund provided for in section 149.56 of the Revised Code.

(1991 H 264, eff. 3-2-92)

1506.34

CONSERVATION OF NATURAL RESOURCES

1506.34 Powers and duties of natural resources director

(A) The director of natural resources, with the approval of the director of the Ohio historical society, shall establish policies and may adopt rules necessary to implement and administer sections 1506.30 to 1506.37 of the Revised Code. Not less than forty-five days prior to adopting a rule under this section or section 1506.31 of the Revised Code, the director of natural resources shall send a copy of the proposed rule to the director of the Ohio historical society, who shall promptly review it. Not more than thirty days after receiving the proposed rule, the director of the Ohio historical society shall return the rule to the director of natural resources together with his written approval or disapproval of the proposed rule. If he disapproves the rule, he shall explain the reasons for his disapproval and any amendments to the rule he considers necessary to obtain his approval. The director of natural resources shall not adopt a rule under those sections that has not been approved by the director of the Ohio historical society. If the director of the Ohio historical society does not respond within thirty days as prescribed in this section, the rule is deemed approved by him.

(B) The director of natural resources shall inform the public of the requirements of sections 1506.30 to 1506.37 of the Revised Code and any policies established and rules adopted under them. In complying with this section, the director may establish or conduct educational programs or seminars, print and distribute informational pamphlets, and provide detailed information to organizations that conduct scuba diving training programs.

(C) The director of natural resources may hire or contract with a marine archaeologist, a marine historian, a marine surveyor, or any combination thereof for the purposes of implementing and administering sections 1506.30 to 1506.37 of the Revised Code and any rules adopted under them.

(1991 H 264, eff. 3-2-92)

1506.35 Revocation or suspension of permit; contraband; Lake Erie submerged lands preserves fund; civil actions; enforcement powers

(A) The director of natural resources may suspend or revoke, in accordance with Chapter 119. of the Revised Code, a permit issued under section 1506.32 of the Revised Code if the permit holder has done either of the following:

(1) Failed to comply with sections 1506.30 to 1506.37 of the Revised Code, any rules adopted under those sections, or any provision or condition of his permit;

(2) Damaged abandoned property other than in accordance with the provisions or conditions of the permit.

(B) Any motor vehicle, as defined in section 4501.01 of the Revised Code, watercraft, as defined in section 1547.01 of the Revised Code, mechanical or other assistance, scuba gear, sonar equipment, or other equipment used by any person in the course of committing a third or subsequent violation of division (K) of section 1506.32 of the Revised Code shall be considered contraband for the purposes of sections 2933.42 and 2933.43 of the Revised Code,

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1506.35

except that proceeds from the sale of such contraband shall be disposed of in the following order:

- (1) To the payment of the costs incurred in the forfeiture proceedings under section 2933.43 of the Revised Code;
- (2) To the payment of the balance due on any security interest preserved under division (C) of section 2933.43 of the Revised Code;
- (3) To the payment of any costs incurred by the seizing agency under section 2933.43 of the Revised Code in connection with the storage, maintenance, security, and forfeiture of the contraband;
- (4) Fifty per cent of the remaining money to the credit of the Lake Erie submerged lands preserves fund created in division (C) of this section and fifty per cent of the remaining money to the Ohio historical society for deposit into the fund created pursuant to division (C) of section 149.56 of the Revised Code.

(C) There is hereby created in the state treasury the Lake Erie submerged lands preserves fund. The fund shall be composed of moneys credited to it under division (B)(4) of this section and division (D)(2) of section 1506.33 of the Revised Code, all appropriations, contributions, and gifts made to it, and any federal grants received by the department of natural resources for the purposes of sections 1506.30 to 1506.37 of the Revised Code. The director of natural resources shall use the moneys in the Lake Erie submerged lands preserves fund solely to implement and administer sections 1506.30 to 1506.37 of the Revised Code.

(D) The director of natural resources may request the attorney general to, and the attorney general shall, bring a civil action in any court of competent jurisdiction for any of the following purposes:

- (1) To enforce compliance with or restrain violation of sections 1506.30 to 1506.37 of the Revised Code, any rules adopted under those sections, or any permit issued under section 1506.32 of the Revised Code;
- (2) To enjoin the further removal of abandoned property or archaeological material from Lake Erie;
- (3) To order the restoration of an area affected by a violation of sections 1506.30 to 1506.37 of the Revised Code or of a permit issued under section 1506.32 of the Revised Code to its prior condition.

Any action under this division is a civil action, governed by the Rules of Civil Procedure.

(E) A peace officer of a county, township, or municipal corporation, and a preserve officer, game protector, park officer, or watercraft officer designated under section 1517.10, 1531.13, 1541.10, or 1547.421* of the Revised Code, as applicable, may enforce compliance with sections 1506.30 to 1506.37 of the Revised Code, any rules adopted under those sections, and any permit issued under section 1506.32 of the Revised Code and may make arrests for violation of those laws, rules, and permits.

(1991 H 264, eff. 3-2-92)

*So in original; should this read "1547.521"?

1506.36

CONSERVATION OF NATURAL RESOURCES

1506.36 Other rights not affected

Sections 1506.30 to 1506.35 of the Revised Code do not limit the right of:

(A) Any person to engage in recreational diving in Lake Erie, except at a site of abandoned property to which the director of natural resources has limited access during the term of a permit pursuant to division (J) of section 1506.32 of the Revised Code;

(B) Any person to own any abandoned property submerged in Lake Erie that was recovered before the effective date of this section or released to the person under division (B) or (D) of section 1506.33 of the Revised Code;

(C) The department of natural resources or the Ohio historical society to recover or contract for the recovery of abandoned property in Lake Erie;

(D) Any person to take and remove sand, gravel, stone, or other minerals or substances from and under the bed of Lake Erie in accordance with section 1505.07 of the Revised Code.

(1991 H 264, eff. 3-2-92)

1506.37 Submerged lands advisory committee

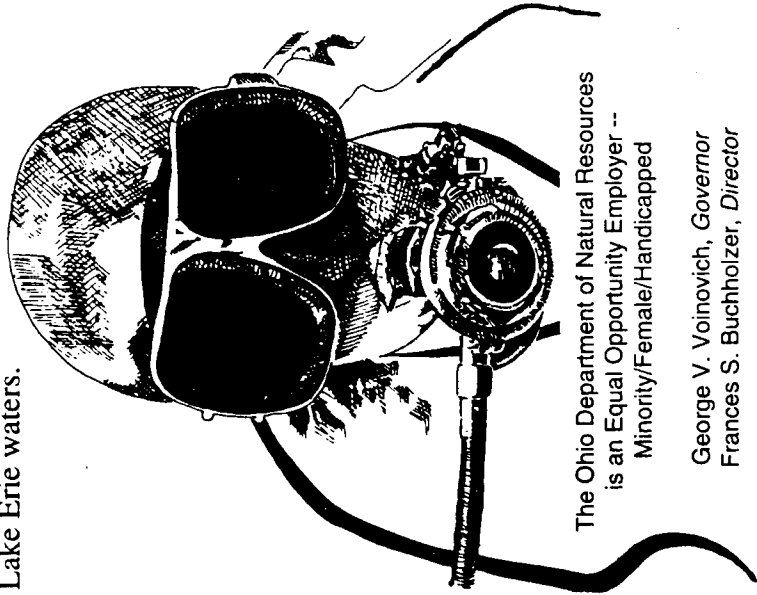
There is hereby created the submerged lands advisory committee, which shall consist of nine members as follows: the director of natural resources or his designee; the director of the Ohio historical society or his designee; and seven members appointed by the governor who have an interest in or are knowledgeable about the preservation of submerged resources, at least two of whom shall be experienced in scuba diving and at least one of whom shall be a professional salvor or marine surveyor. Other appointments may include, without limitation, maritime historians, underwater archaeologists, and charter boat operators. Initial appointments shall be made within ninety days after the effective date of this section. Of the initial appointments made by the governor, two shall be for terms ending one year after the effective date of this section, two shall be for terms ending two years after the effective date of this section, and three shall be for terms ending three years after the effective date of this section. Thereafter, terms of office shall be for three years, with each term ending on the same day of the same month as did the term that it succeeds. Each member shall hold office from the date of his appointment until the end of the term for which he was appointed. Members may be reappointed. Vacancies shall be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which his predecessor was appointed shall hold office as a member for the remainder of that term. A member shall continue in office subsequent to the expiration date of his term until his successor takes office or until a period of sixty days has elapsed, whichever occurs first. The board shall elect a chairman annually from among its members.

The committee may make recommendations to the coastal resources advisory council created in section 1506.12 of the Revised Code, the department of natural resources, the Ohio historical society, and the members of the general assembly regarding all of the following:

WHY SHOULD WE LEAVE THE ARTIFACTS WHERE THEY LIE?

The artifacts that we leave behind today will be there for our children tomorrow.

The legacy we leave today will educate our children; they too will be able to see and touch and study the unique maritime history of the Great Lakes and Ohio - as it remains in real life - not in books or television pictures, but in the real, always changing, relics found under Lake Erie waters.



The Ohio Department of Natural Resources
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George V. Voinovich, Governor
Frances S. Buchholzer, Director

*This publication was funded by monies
from the Lake Erie Submerged Lands Fund*



The Ohio Submerged Lands Act may be enforced by any peace officer of a county, township, or city, a park officer, watercraft officer or game warden.

Anyone who recovers Property in violation of this law is subject to fines and possible confiscation of diving equipment. You can help preserve the maritime heritage of Lake Erie by reporting violations of the law to your state or local law enforcement agencies.

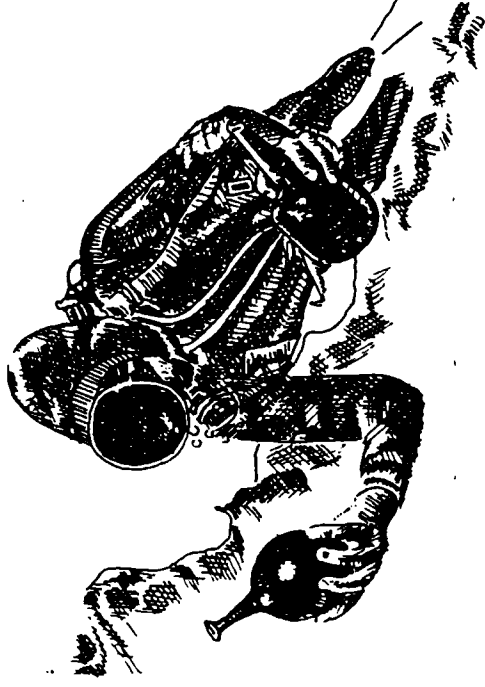
**Learning More: You can read this law itself:
Ohio Revised Code Section 1506.30-1506.99.
Ask at your local library.**

**Contact the Submerged Lands Advisory
Committee through the Ohio Department
of Natural Resources at:**

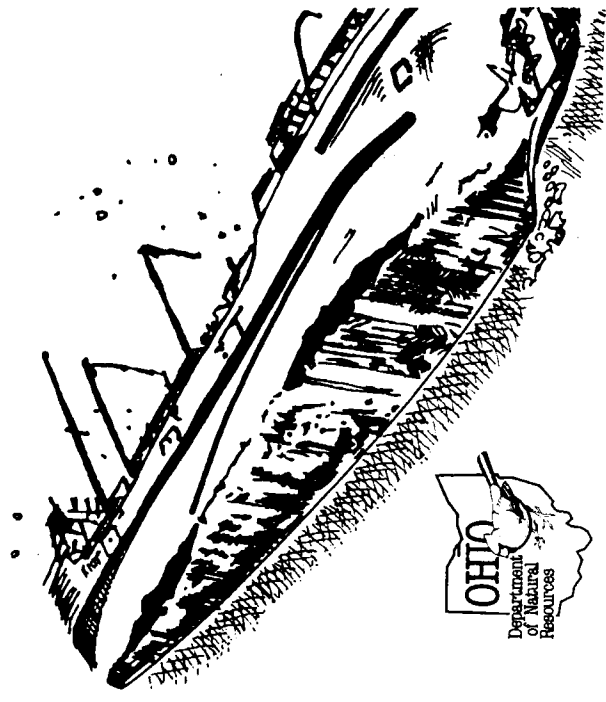
**ODNR
Office of Real Estate & Land Management
Coastal Management Section
Fountain Square Bldg. C-4
Columbus, OH 43224
(614) 265-6380**

Contact the Ohio Historical Society at:

**Ohio Historic Preservation Office
1985 Velma Ave.
Columbus, OH 43211
(614) 297-2470**



DIVERS, SHIPWRECKS AND OHIO LAW



The Ohio "Shipwreck Law"

Background

In 1987, the United States Congress adopted the Abandoned Shipwreck Act, which stated that the United States holds title to all abandoned shipwrecks in the U.S. territorial waters and transferred title of such wrecks to the states in which they are located. It was then up to states to enact laws to manage their underwater resources. After much discussion, the Ohio legislature passed the law governing Ohio shipwrecks in 1991.

What does this law do?

The law governs management of certain submerged property under the Ohio waters of Lake Erie, to which the State of Ohio holds title in trust for all the people of the state. This trust property ("Property") is any part of a sunken ship or aircraft (if the owners or insurers aren't still trying to get them back), anything from the ship or aircraft, and Native American artifacts.

The law does three separate but related things; it (1) prohibits uncontrolled recovery of Property, (2) provides a procedure for the issuance of salvage permits where appropriate, and (3) provides a procedure for designating underwater preserves.

1. How does the law affect the Sports Diver today?

Dive and Look is OK. Generally, recreational diving is not affected. You can dive and observe anywhere in the lake. The old diving slogan still applies: "Take nothing but pictures, leave nothing but bubbles."

No Dive and Grab. Do not remove from the water, alter, or destroy Property submerged under Ohio Lake Erie waters. Remember, "Property" is any part of a sunken ship or aircraft, anything from the ship or aircraft, and Native American artifacts or structures.

2. What if I want to salvage artifacts from a shipwreck.

You can start the process of obtaining a Salvage Permit by writing to the Ohio Department of Natural Resources.

As a general rule, a diver cannot recover Property without a Salvage Permit.

The only exception is if the Property is NOT located on or near a sunken watercraft or aircraft and if the Property is recoverable by hand without mechanical or other assistance such as a lift bag. If such Property is more than 30 years old and is valued at more than \$10, the diver must file a written report of the find with the director of the Ohio Historical Society no later than 30 days after the recovery.

3. Underwater Preserves. The law also provides for establishment of underwater preserves, such as those established by the state of Michigan, to protect Property and underwater features of the lake that have special value. No preserve has yet been designated in Ohio. You may have some suggestions on whether and where preserves should be established.

How to Have a Say. This pamphlet is provided by the Submerged Lands Advisory Committee. The Ohio Law specified that a Committee of citizens be set up to make recommendations about enforcing the law to the Ohio Department of Natural Resources ("ODNR"), the Ohio Historical Society, and the state legislature. Committee members were appointed in 1993; meetings are open to the public. Divers are on the Committee. We welcome suggestions to help preserve our underwater heritage for tomorrow's divers. Contact the Committee by writing to:

ODNR

**Office of Real Estate & Land Management
Coastal Management Section
Fountain Square Bldg. C-4
Columbus, OH 43224**



Peter Englebert
Marine Heritage Conservation Program
Ontario, Canada

The presentation began with a historical overview of Ontario's Marine Heritage Conservation movement. From its beginning, more than 20 years ago, Marine Heritage Conservation has gone from dealing with problems of wreck-stripping and site looting to an established entity that is responsible for formulating policy.

Englebert gave credit to the Save Ontario Shipwrecks (S.O.S.) group in Toronto, who were pioneers responsible for sowing the seeds for the Marine Heritage Conservation movement in Ontario. S.O.S. was responsible for doing workshops, developing training programs and assisting with projects.

Much emphasis was placed on public policy and strategic policy, which Englebert considered an expression of government policy. He spoke of policy outcomes and stated that, "if policy is wrong -- change it." He urged respect of everyone's point of view and stressed that "this must be all inclusive."

Englebert stated that "policy is not a logical, linear process." He offered the following framework, which includes: 1.) Why? 2.) Process philosophy 3.) Problem-solving methodology (technical input) and 4.) Political input. He called for an "educated, even-handed application of policy."

Referring to the destruction of fresh water artifacts, he described the three steps in the life of an artifact: "on the wreck, on the dive boat and eventually in the garbage." He stressed that a conservation plan must be developed to preserve artifacts that have been, or will be, removed from wrecks.

Englebert discussed the Heritage Act and outlined many of its components, including the authority to keep site locations confidential. He covered information on the licensing process and spoke about the report that must be prepared by license holders. He talked about "Heritage Wrecks" and what is involved with diving on these wrecks.

The final portion of his presentation dealt with underwater resources, and how they have different values to divers and historians. He stated that the process "has to be inclusive and that all stakeholders must be involved." Englebert said that there must be a "clear and comprehensive role for the stakeholders involved."

He concluded by stating that the most important element is to keep "the best interest of the resource" in mind. This approach keeps the process in perspective and ultimately leads to a sound program of marine heritage conservation.

Art Cohn

Lake Champlain Maritime Museum

State of Vermont - Coordinator of the Underwater Preserve Program

In his overview of underwater cultural resources, Art Cohn explained that "shipwrecks are not the only thing involved in underwater cultural resources." He said that "docks, wharfs, and military weapons" are also included. In fact, he stated that "everything from dugout canoes to large military ships" are involved and that "the mix of resources is extraordinary." According to Cohn, if "you attempted to make a complete list, you would certainly leave something out."

Cohn spoke of "an evolving management strategy." He stated that "anyone can find a shipwreck - that is the easy part. What do you do with it?" He said that the management strategy "must take a long range view."

In describing the unique nature of the freshwater habitat, Cohn stated that "the environment is stable and often artifacts are best left where they were." Unfortunately, he described how a diver from Indiana found artifacts that were left in their original location and removed them. The diver was charged with the crime.

Cohn described an interesting shoreline survey that was conducted in Vermont. He described a number of valuable historic finds, including "caissons from the 1777 Great Bridge." In his overview of the Underwater Preserve Program, Cohn indicated that numerous artifacts have been removed, conserved and shared with the public.

He views these underwater resources as "public resources." Cohn stated that "if we do not share the resources with the public, there is no reason for them to care about the resources and fund them."

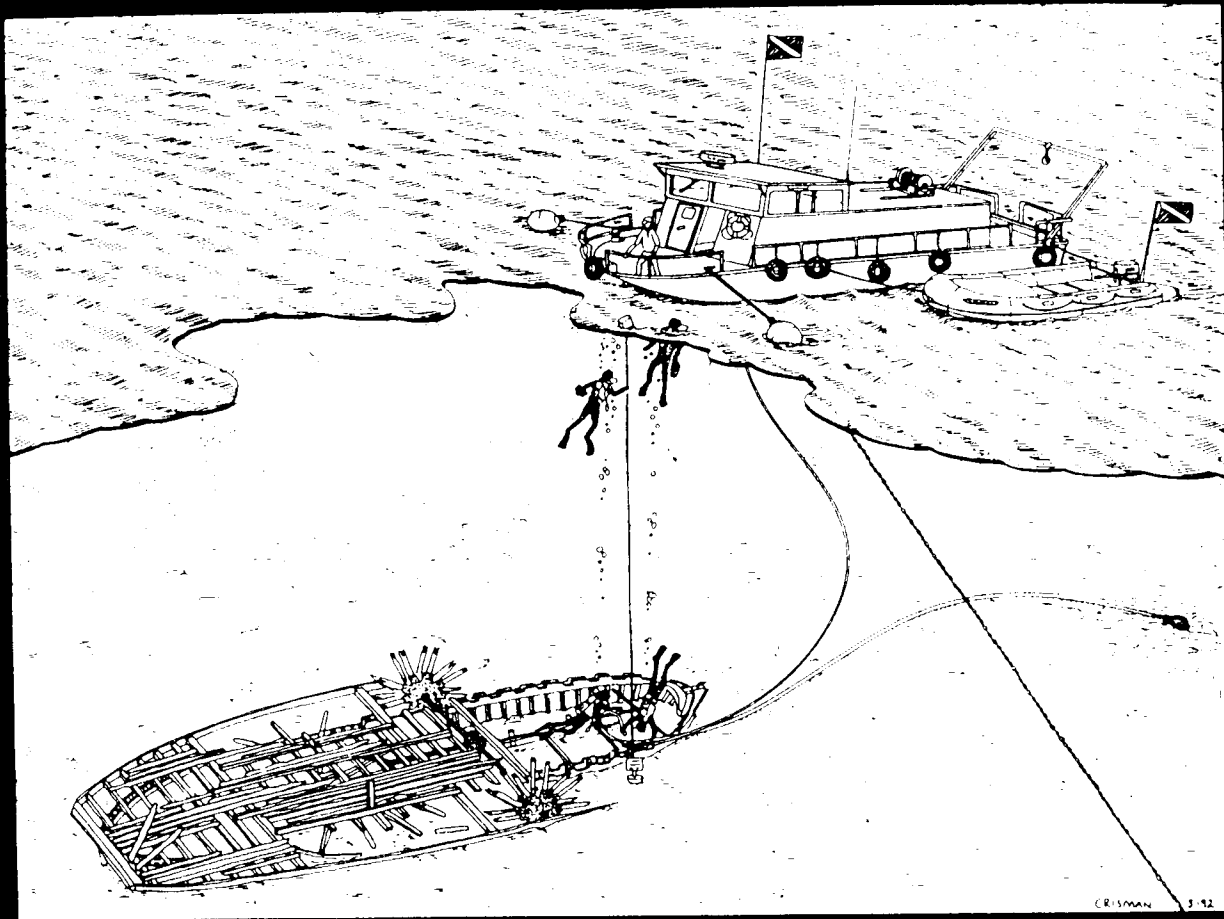
While describing the Vermont survey efforts, Cohn mentioned that "survey technology has improved greatly." He also stated that "zebra mussels have shuffled the deck in terms of preservation efforts." He indicated that the timetable for survey efforts has been altered by the discovery and spread of zebra mussels in Lake Champlain.

His presentation also focused on the cooperative efforts that Vermont and New York have been involved with for 20 years. He expressed a commitment to this cooperative spirit and his presence at the symposium demonstrated his willingness to share his expertise.

One of the most successful projects that Cohn described was Vermont's seasonal buoy system designed to take divers to the wreck. He stated that there have only been "three recorded acts of vandalism" on the wrecks and that the project is self-policing.

Art Cohn also stressed that "the best interest of the resource must be the most important consideration." His talk echoed the importance of education and the need to involve different stakeholders in the process.

The Journal of Vermont Archaeology



Published by the Vermont Archaeological Society

Twenty-fifth Anniversary Issue

Lake Champlain Nautical Archaeology Since 1980

By Kevin J. Chrisman and Arthur B. Cohn

Introduction

At first glance Vermont seems an unlikely locale for the study of North American maritime history, but Lake Champlain, the ribbon of fresh-water extending along the state's western boundary with New York, is perhaps the best location on this continent for studying the past 300 years of inland water transportation. The lake's rich archaeological heritage can be attributed to two factors: its strategic location between the Hudson and St. Lawrence rivers, and the cold, dark, preserving conditions beneath the surface of the water. It has been our privilege to study this sunken legacy over the past fourteen years, and to bring to light, through the medium of ship plans, photographs, and publications, some of the ships, artifacts, and history lost over the past two and one-half centuries.

The maritime history of Lake Champlain can be divided into three eras: the era of military struggles and naval squadrons, the era of commerce and merchant fleets, and the era of recreational boating. The first period essentially began with the shot fired by Samuel de Champlain at a band of Iroquois warriors on July 29, 1609. Over the next one hundred and fifty years the skirmishing between Native Americans was transformed into a contest for the North American continent between France and England, a contest that culminated in General Jeffrey Amherst's invasion of French-controlled Lake Champlain in 1759 and conquest of Canada in 1760. Peace on Champlain's waters was short-lived. The outbreak of the American Revolutionary War in 1775 brought eight years of renewed conflict and, in 1776, the Battle of Valcour Island, where the patriot-traitor Benedict Arnold managed to successfully delay a British invasion of the rebelling colonies. The settlement and stirrings of industry and commerce that followed in the wake of the Revolution were interrupted by yet a third conflict on the lake's waters, the War of 1812. Although relatively brief, this war witnessed U.S. Navy Commodore Thomas Macdonough's

victory after a desperate naval battle on the placid waters of Plattsburgh Bay. The conclusion of the war in late 1814 also marked the end of the 200-year era of warfare on Lake Champlain.

The nineteenth century was to be Lake Champlain's "Golden Era" of waterborne commerce. During this period the lake churned with the wakes of hundreds of merchant vessels of all descriptions: steamboats, canal boats, scow ferries, merchant sloops and schooners, horse ferries, tugboats, and untold numbers of lesser craft. Throughout most of the nineteenth century the lake was also on the cutting edge of new maritime technology, the most spectacular and best-remembered being the smoke-belching steamboats that carried tourists, immigrants, businessmen and families up and down the length of the Champlain Valley. Of greater economic importance, although perhaps less-remarked, were the canals, an advance in technology that joined Champlain's waters with the Hudson River in 1823 and the St. Lawrence River in 1843. The Champlain and Chambly canals provided a cheap, dependable connection between Vermont and the rest of North America, and floated an incredible range of materials in and out of the region, including coal, timber, iron ore, grain, hay, stone, and manufactured goods.

The third era in the lake's written history began with the introduction of the railroad to the Champlain Valley in the late 1840s. This new form of transportation initially served as a complement to the existing passenger trade on the lake, but with the introduction of new rail lines and more miles of track the use of Lake Champlain as the region's primary artery of transportation gradually tapered off. Steamers and canal boats would continue to navigate the lake and canals well into the twentieth century, but by the end of the nineteenth the railroad's primacy in the passenger- and freight-hauling business was complete. The twentieth century has seen Lake Champlain emerge, after a period of disinterest and neglect, as a center for recreation, for fishing, for swimming, and especial-

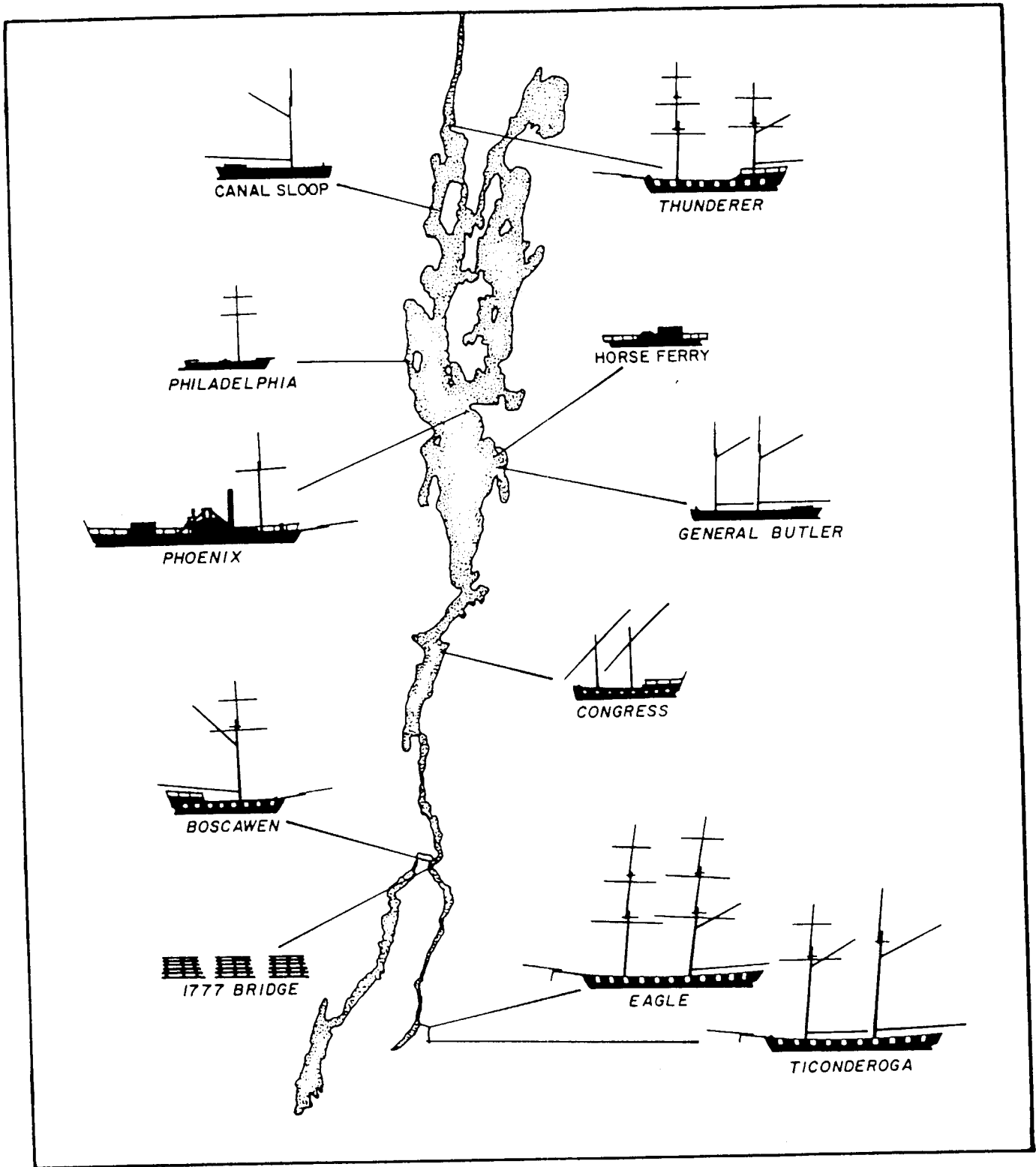


Figure 1. *Historic Ships of Lake Champlain and Their Locations.* Drawing by K. Crisman.

ter for recreation, for fishing, for swimming, and especially for sail and motor boating.

The fleets of warships, steamers, merchant ships and canal boats have long since departed from the surface of the lake, but fortunately for us they have not passed entirely into oblivion. Over the centuries disasters large and small sent scores of vessels to the bottom. Sinkings were occasionally the result of dramatic naval battles or the ever-present hazards of collision, fire, and storm, but the greater number appear to have been the result of decay, neglect, and old-age working on the planks and frames of a wooden hull. Once a vessel went to the bottom, it entered what is essentially a cold, dark vault, ideal for the preservation of wood and other organic materials. Thus, with the passing years the lake bottom has acquired a collection of ships and artifacts, a collection with much to tell us about maritime technology and shipboard life over a span of three centuries. The sunken relics of naval battles and commercial enterprises have always fascinated residents and tourists of the Champlain Valley, but this interest has not always worked to the long-term benefit of the relics. From the middle of the nineteenth-century onward, wrecks sunk in shallow water have been dragged onto land to be inspected; in most cases the wrecks were either cut into souvenir pieces and fashioned into rocking chairs and canes, or simply left out in the weather, where they quickly disintegrated into splinters and dust. Examples of vessels lost or severely damaged in this fashion include Amherst's 1759 brig *Duke of Cumberland*, a gunboat from Benedict Arnold's squadron of 1776, and the first steamboat on the lake, the *Vermont I*. The notable exception to the list of vessels that were destroyed after salvage is Arnold's gundelaw *Philadelphia*, sunk during the Battle of Valcour Island in 1776. This vessel was discovered by Lorenzo Hagglund in 1935 and raised to the surface with her mast still standing upright. Hagglund kept the *Philadelphia* intact and under cover, and upon his death in 1960 her ownership passed to the Smithsonian Institution, where she may be seen today.

Development of the new field of nautical archaeology in the 1960s and 1970s and renewed interest in the sunken history of Lake Champlain together contributed to the start of a systematic program of archaeological research on lake shipwrecks in 1980. In that year the non-profit Champlain Maritime Society was formed in Burlington, Vermont, to bring together divers, historians, and archaeologists and facilitate underwater archaeological studies. The Society's inaugural project, the recording of the second steamship on Lake Champlain, the *Phoenix*, served as the

model for all subsequent projects. Heeding the negative examples of early salvage efforts, the Maritime Society did not attempt to bring *Phoenix* or any other wreck to the surface, but instead concentrated on recording them *in situ* with measurements, sketches, photographs, and video footage. In this way the vessels remained in the preserving environment of the lake, while the information they contained could be recovered, analyzed, and shared with both maritime scholars and the general public. The "non-intrusive" approach has thus far proved highly effective for learning about wooden ships, and has at the same time minimized damage to fragile hulls.

As historical and archaeological studies accumulated an increasing quantity of data and maritime-related artifacts, and as interest in lake history expanded, the need for some type of museum to serve as a center for lake research and public education grew ever more apparent. This need was met in 1985 with the formation of the Basin Harbor Maritime Museum, located on the lake at Basin Harbor, Vermont (the name was changed in 1989 to the Lake Champlain Maritime Museum to better reflect the institution's mission). The Champlain Maritime Society merged with the museum in 1987, and the work begun with the *Phoenix* study has continued, with each season's field and archival research steadily adding to our knowledge of ship design and construction, shipboard life, and regional military and economic history.

In the decade and a half since the *Phoenix* project, researchers working for the Maritime Society and Maritime Museum have been able to locate and study examples of nearly every type of vessel that ever floated upon Champlain's waters (Figure 1). The many spectacular finds are making it possible to write a new and more detailed history, one that concentrates on the ships and on the people, some famous and many unknown, who sailed upon the "mountain waves" of Lake Champlain. The following is a chronological look at the recent archaeological studies both above and below the waters of Lake Champlain, beginning with the earliest wreck yet excavated, the French and Indian War sloop *Boscawen*.

THE ERA OF WARFARE ON LAKE CHAMPLAIN

The French and Indian War

A Vermont Division for Historic Preservation-Champlain Maritime Society survey of the waters between Fort Ticonderoga, New York, and Mount Independence,

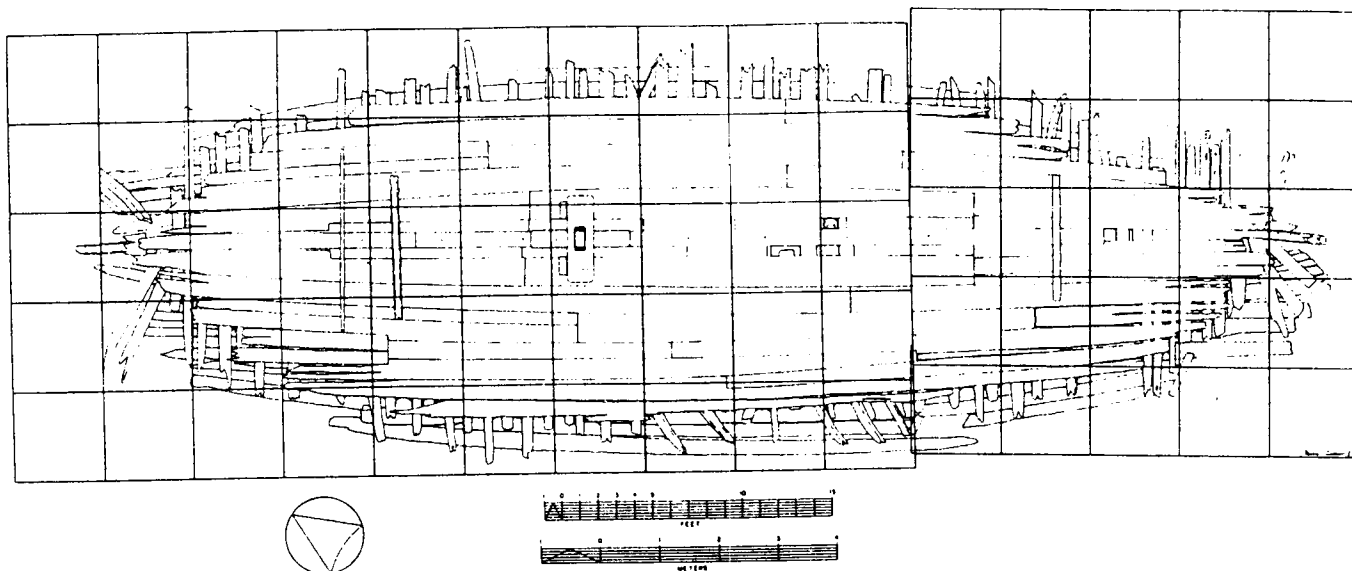


Figure 2. Plan of the British Sloop *Boscawen*, as Excavated in 1984-1985. Approximately forty percent of the original hull structure was still intact on the bottom of the lake. Drawing by K. Crisman.

Vermont, in 1983 revealed, among other things, the remains of three small, and clearly very old wooden vessels (Fischer, ed. 1985:37-39). Test excavations in the largest of the vessels yielded a small collection of ship's hardware and military items which, together with the hull's construction and the location of the site, indicated that the wreck was almost certainly of an eighteenth-century vintage, and probably dated to the French and Indian War period. This was truly a momentous find, for it was the earliest wreck yet discovered in the lake, and was in fact among the first large ships to be built in the Champlain Valley.

In the crucial year of 1759, the fifth year of the French and Indian War, British General Jeffrey Amherst led an army from New York down Lake George to its outlet at Ticonderoga. The outnumbered French forces at Fort Ticonderoga (called Carillon by the French) and at nearby Fort St. Frederic blew up their works and retreated northward, counting on their small naval force of three sloops and a schooner to prevent the British from advancing into Canada. Amherst had foreseen the need for his own navy on the lake and brought with him cannon, rigging, colonial shipwrights, and Royal Navy Captain Joshua Loring. During the late summer and early fall of 1759 two warships took shape at the landing below Fort Ticonderoga, the 18-gun brig *Duke of Cumberland* and the 16-gun sloop *Boscawen*. Loring sailed with these in

early October and quickly gained control of the lake after forcing the French to scuttle their three sloops. The lateness of the season delayed Amherst's conquest of Canada until 1760. After the war a portion of the British fleet was decommissioned at Ticonderoga and allowed to sink at anchor.

Because almost nothing was known about the design, construction, and shipboard arrangements of any French and Indian War lake ships, the Maritime Society decided to excavate the large vessel found in 1983 (this vessel was believed to be the sloop *Boscawen*). This project was a joint venture between the Maritime Society and the Fort Ticonderoga Museum, with permission for excavation granted by the State of New York. Between 1984 and 1985 a total of nine weeks were spent systematically digging out the interior of the wreck, recording artifacts, and measuring hull timbers. Although the vessel was abandoned rather than sunk while in service, it nevertheless yielded a remarkable range of artifacts, including rigging elements, munitions, tools, and the personal belongings of the crew (Krueger, et al. 1985; Crisman 1988:142-147).

The hull remains (Figure 2) indicated that the *Boscawen* was strongly if hurriedly built, employing white oak throughout and adequate numbers of iron bolts and spikes and wooden treenails to fasten the timbers together. The sloop was originally about 75 to 80 feet

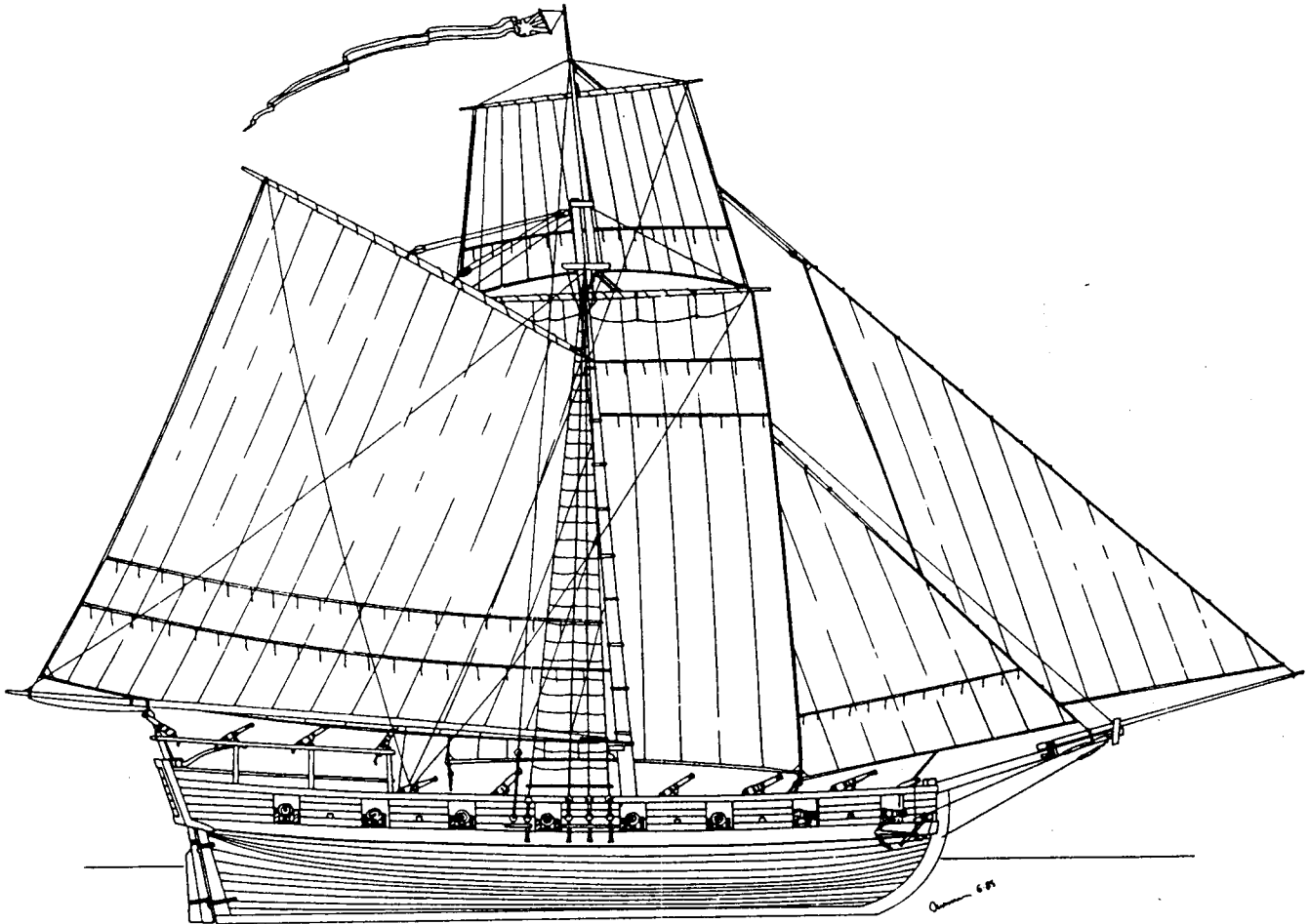


Figure 3. A Conjectural Profile of the French and Indian War Sloop *Boscawen*. Drawing by K. Crisman.

(22.86 - 24.38 m) in length on deck, and about 24 feet (7.31 m) in breadth (Figure 3). This little warship must have been incredibly crowded with her complement of 110 soldiers and sailors. Research on the *Boscawen* continues (the artifacts are currently the subject of four master's theses in the Nautical Archaeology Program at Texas A&M University), and it is clear that the hull and artifacts will continue to yield new insights into colonial-era shipbuilding and the naval contest on the lake in 1759.

The Revolutionary War

The Revolutionary War witnessed a desperate shipbuilding race on Lake Champlain during the summer and early autumn of 1776, as American forces under General Benedict Arnold attempted to stave off a British invasion

of the Champlain Valley by hastily assembling a motley fleet of sloops, schooners, row galleys and gundelows at Skenesboro (now Whitehall), New York. Their opponents at the same time constructed a superior fleet of warships at St. Johns, Quebec, and in early October advanced down the lake. The two squadrons confronted one another on the western side of Valcour Island, and after a day-long battle the outgunned and battered fleet of Arnold fled down the lake, where most of the ships were subsequently captured or scuttled (Cohn 1987:97-112). Although a tactical defeat for Arnold, the battle did delay the British invasion for an entire year. In the summer of 1777 the British again advanced down the lake, captured the American fortifications at Fort Ticonderoga and Mount Independence, but then met utter defeat and capture at the Battles of Bennington and Saratoga. The 1776-1777

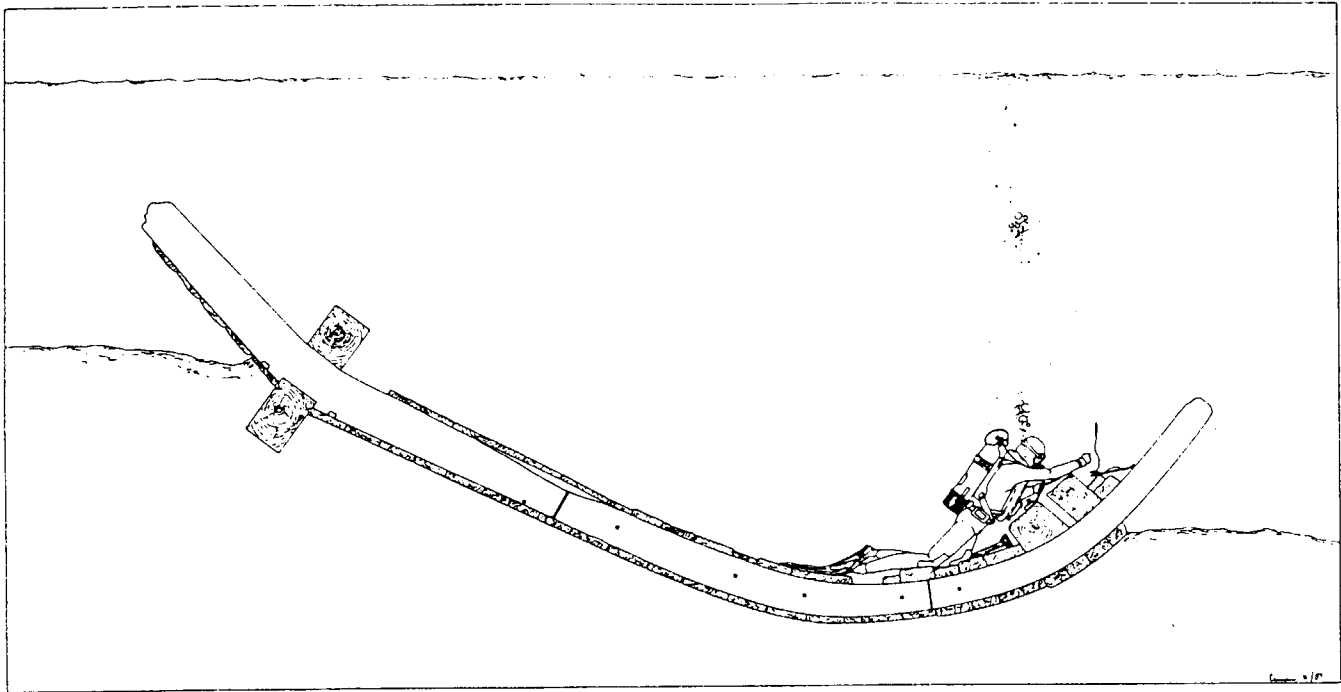


Figure 4. A Section View of the U.S. Navy Brig Eagle at the Midship Frame, View Aft. This transverse section shows the shape of the widest frame on the hull. The Eagle fell over on her port side as she sank; the keel and keelson (the bottom of the hull) are visible on the left, while the diver is measuring some of the deck-supporting timbers at the top of the port side. Drawing by K. Crisman.

campaigns on Lake Champlain were undoubtedly crucial to the American victory in this war.

The 1776 naval engagements left the debris of Arnold's fleet scattered down the central portion of the lake, and many of the sunken hulls were salvaged in earlier decades by historians and souvenir-hunters. In addition to the intact gundelaw *Philadelphia*, recovered wrecks included the schooner *Royal Savage*, two additional *Philadelphia*-class gundelaws, and parts of Benedict Arnold's flagship, the galley *Congress*. With the exception of the *Philadelphia* none of these hulls now exists in other than fragmentary condition. In 1984 a Champlain Maritime Society-sponsored sonar survey re-located the remnants of Arnold's *Congress* in Vermont waters, but further archaeological study of the galley's hull has not yet begun.

Other Revolutionary War-era wrecks remain to be discovered. The British radeau *Thunderer* was reportedly wrecked off Alburg, Vermont, in 1777, but surveys in the general area of her loss have not yet pinpointed her location (Cohn, ed. 1984). A joint Lake Champlain Maritime Museum-Woods Hole Oceanographic Institution sonar survey of the central lake in 1989

searched for one or two *Philadelphia*-type gundelaws scuttled by Arnold in deep water; a number of nineteenth-century finds were revealed by the sonar, but the gundelaws have not yet been found.

The same Vermont Division for Historic Preservation-Maritime Society survey that located the sloop *Boscawen* in 1983 also produced evidence of the floating bridge that connected the American fortifications of Mount Independence and Fort Ticonderoga in 1777. The evidence consisted of about twenty stone-covered log caissons on the lake bottom which were used to anchor the bridge sections in place. Survey divers also found cannon shot near the Vermont shore, but the study of these finds was limited to preliminary mapping and detailed measurements of one caisson (Fischer, ed. 1985:41-46; Crisman 1986:16-19). Work on the 1777 bridge and the muddy lake bottom surrounding Mount Independence resumed in 1992 after Vermont State Police arrested an Indiana diver who was looting artifacts from the site. The new initiative combined sonar and magnetometer surveys with diver inspections; systematic examination of the lake bottom produced a 12-pounder iron cannon, the iron wheel from a gun carriage, a complete French mus-

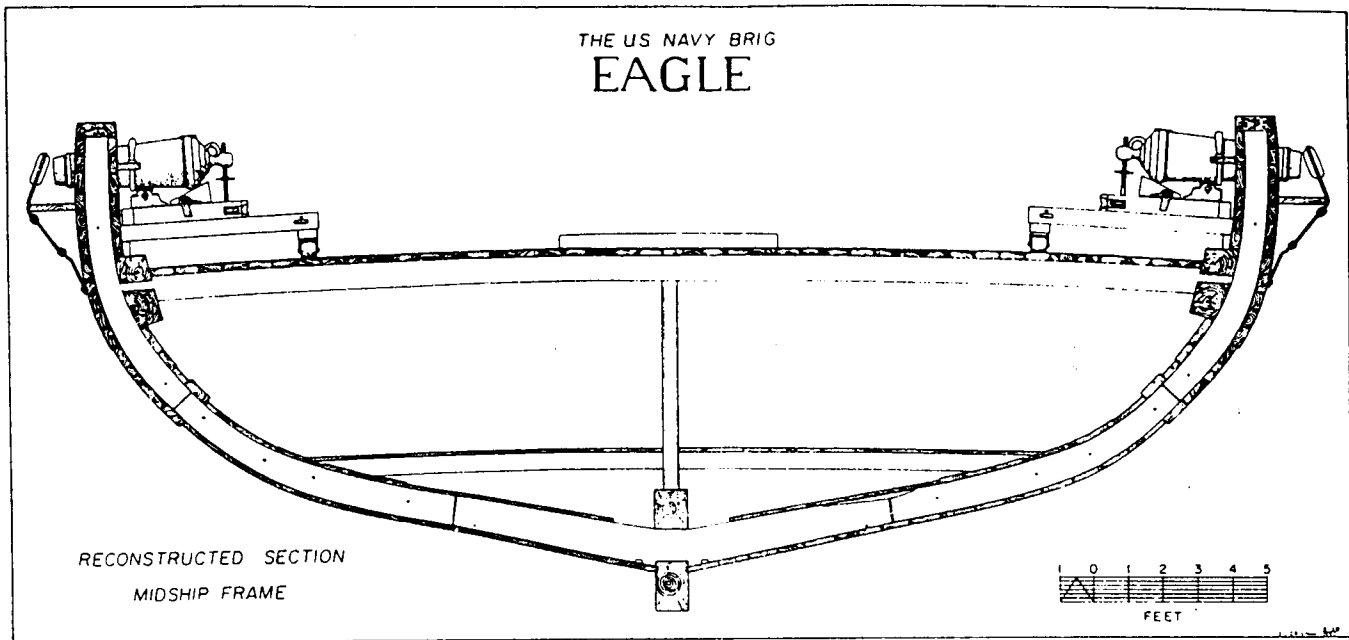


Figure 5. *Reconstructed Midship Section of the U.S. Navy Brig Eagle.* This drawing shows the same frame as Figure 4, with the missing starboard side and deck added. *Eagle* was a large warship for her time, measuring 117 feet, 3 inches in length and 34 feet, 9 inches in moulded beam, but had a shallow-draft hull to safely navigate the shoals of Lake Champlain. Drawing by K. Crisman.

ket, a cluster of 8-inch mortar bombs, various types of cannon shot, and a collection of entrenching tools (Cohn 1992). A special appropriation by the Vermont State Legislature enabled a team of Lake Champlain Maritime Museum-Institute of Nautical Archaeology divers to return to the site in 1993 to complete the survey, recover and conserve all artifacts, and turn them over to the Vermont Division for Historic Preservation for eventual display to the public. While analysis of the Mount Independence finds is just beginning, evidence suggests that they were probably thrown into the lake during the British withdrawal from the southern lake in 1777.

The War of 1812

The naval race on Champlain in 1814 produced the largest warships to ever sail the lake; it also resulted in one of the hardest-fought and most decisive battles of the War of 1812. The Champlain Valley was essentially ignored by both Britain and the United States during the years 1812 and 1813, but by the summer of 1814 the British had gathered a strong army of veteran troops in Canada and with their newly-enlarged squadron (consisting of a 36-gun frigate, a 16-gun brig, two sloops, and thirteen gunboats) planned a punitive expedition up the New York side of the

lake. In the path of this juggernaut were a small force of U.S. Army troops fortified at Plattsburgh, New York, and the ships of Commodore Thomas Macdonough. Macdonough, aided by the celebrated New York shipwrights Noah and Adam Brown, had spent the previous months building a respectable naval force a Vergennes, Vermont; it consisted of a 26-gun ship, a steamer hull converted to a 17-gun schooner, a 20-gun brig, a sloop, and six gunboats. The opposing navies were about evenly matched.

Macdonough moored his ships in Plattsburgh Bay in early September and there awaited his foes, who sailed into view at dawn on September 11, 1814. The two-and-one-half-hour battle that ensued was fought at anchor, at point-blank range, and the damage to ships and the loss of men was immense. The British frigate, her commander dead and her hold filling with water, eventually lowered her flag, followed by the brig and two sloops; the thirteen British gunboats fled back to Canada. The invading British army then retreated hastily back across the border, and the Americans gained a victory that silenced British demands for territorial concessions and led to an honorable peace. After the battle Macdonough's ships were taken to Whitehall, New York, where within a few years their green-timbered hulls decayed and sank at anchor.

The study of Lake Champlain's War of 1812 fleet began in 1981 with the documentation of the 17-gun schooner *Ticonderoga*; this vessel had been raised in 1959 and placed on display behind the Skenesboro Museum in Whitehall. While somewhat battered and deteriorated, the wreck was nonetheless a storehouse of information on early nineteenth century ship construction techniques (Crisman 1983). Information from Whitehall residents led to a search of the nearby Poultney River, where the remaining ships of the 1814 squadron lay under several feet of extremely murky water. The 1981 diver survey of the Poultney turned up the remains of an American gunboat, part of the British brig *Linnet*, and most of the portside of the U.S. Navy 20-gun brig *Eagle* (Figure 4).

The *Eagle* was a particularly intriguing find, for she had been built and launched by Adam Brown and a crew of 200 shipwrights in the brief span of nineteen days during the months of July and August of 1814. No plans, descriptions, or detailed illustrations of this ship existed, and so a two-year program of underwater recording was begun in 1982 by archaeologists working for the Champlain Maritime Society and the Vermont Division for Historic Preservation. Working in visibility that could only be measured in inches, divers spent a total of five weeks measuring the form and dimensions of each of the *Eagle's* timbers; the diver notes were then used to draft a full set of plans of the brig, both as she existed in 1983 and as she would have appeared on the lake in 1814 (Cohn, ed. 1984:47-72; Fischer, ed. 1985:13-19). Evidence of numerous shipbuilding shortcuts was encountered in the hull, including the use of weaker, rot-prone woods for primary structural timbers and the omission of certain internal reinforcing timbers (Crisman 1987; Cassavoy and Crisman 1988:182-186; Crisman 1991b). Like many of Lake Champlain's warships, *Eagle* was built to fight one battle, and the long-term durability of her hull had to be sacrificed to the exigencies of the moment. Despite these shortcuts *Eagle* was a strong, well-designed vessel, and her completion in time for the Battle of Plattsburgh Bay made Macdonough's victory possible (Figure 5).

THE ERA OF COMMERCE ON LAKE CHAMPLAIN

Lake Champlain's great age of waterborne commerce in the nineteenth century was preceded by thousands of years of Native American trade and nearly two centuries of expanding European commercial activity. Attempts by French and English colonists to establish farms, towns,

and industries in the Champlain Valley were twice thwarted by devastating wars, but the close of the Revolutionary War in 1783 brought permanent settlement and the peaceful expansion of agriculture, industry, and shipping. Until the War of 1812 regional trade centered on Canadian markets, due to the lack of a navigable waterway to the south, but the disruptions of the war and the opening of the Champlain Canal in 1823 would turn the focus of commerce southward to New York City, an orientation that would remain even after the opening of the Chambly Canal on the Richelieu River in 1843.

During the nineteenth century a fantastic array of watercraft plied the lake, their hull forms and propulsion systems each adapted to fit a particular function: transportation of passengers between Canada and New York, ferryage of people and livestock across the lake, conveyance of cargoes between lake ports, and shipment of raw materials and goods through the canals. Archaeological study of the various classes of lake vessels has greatly expanded our knowledge of the ships, people, cargoes, and economic activity of an earlier age.

Lake Sloops and Lake Schooners

The earliest, and most enigmatic type of large merchant craft to navigate Champlain's waters were the "lake sailers," sloops and schooners that spent their entire careers transporting cargoes between lake ports. This category includes all commercial sailing craft existing prior to the opening of the Champlain Canal in 1823, and those vessels built after 1823 that were too large to fit through the canal locks. Most sailing craft on Lake Champlain were fitted with a fore-and-aft rig, either on a single mast (a sloop) or on two masts (a schooner); the fore-and-aft rig is both economical (it requires a relatively small crew) and maneuverable (an advantage in narrow bodies of water). Dozens of lake sailers were built and operated during the nineteenth century, but plans or detailed descriptions of them are rare, and few examples have been found on the bottom of the lake. No examples of early, "pre-canal" lake sloops have ever been found.

Two lake schooners dating to the second quarter of the nineteenth century have been located and examined by archaeologists: the *Water Witch* and the *Sarah Ellen*. The former was originally built as a small steamer in 1832, converted to a schooner in 1836, and lost in a squall with a load of iron ore in 1866; her intact hull has been found in Vermont waters and was studied by a joint Maritime Museum-Institute of Nautical Archaeology team in 1993

(Crisman and Cohn 1993a). The 80-foot-long *Water Witch* contained several distinctive features, including a wooden windlass at the bow, two small cargo hatches on the main deck, and a raised quarterdeck with an open rail around it and a housing for the companionway that led into the stern cabin. Although relatively shallow and broad in hull form the *Water Witch* was an elegant vessel, and her 34-year career is certainly a testament to the quality of her construction.

The *Sarah Ellen* was built in 1849 and went down in a winter storm in 1860 with a load of stone, and her captain and his wife. The schooner sank in the broad lake, in 300 feet

of water, and is currently inaccessible to divers. The wreck was discovered in 1989 during the Maritime Museum-Woods Hole Oceanographic Institute sonar search for Arnold's missing gundelows, and remotely-piloted submarines were used to inspect and video-record the hull in 1989 and again in 1992. The 73-foot-long *Sarah Ellen* proved remarkably similar to the *Water Witch* in her deck layout and general appearance. The bowsprit was buried under the mud, and her foremast fell over when she hit the bottom, but the mainmast was still standing upright (Figure 6). Improved undersea technology should permit detailed recording and analysis of this vessel in the future.

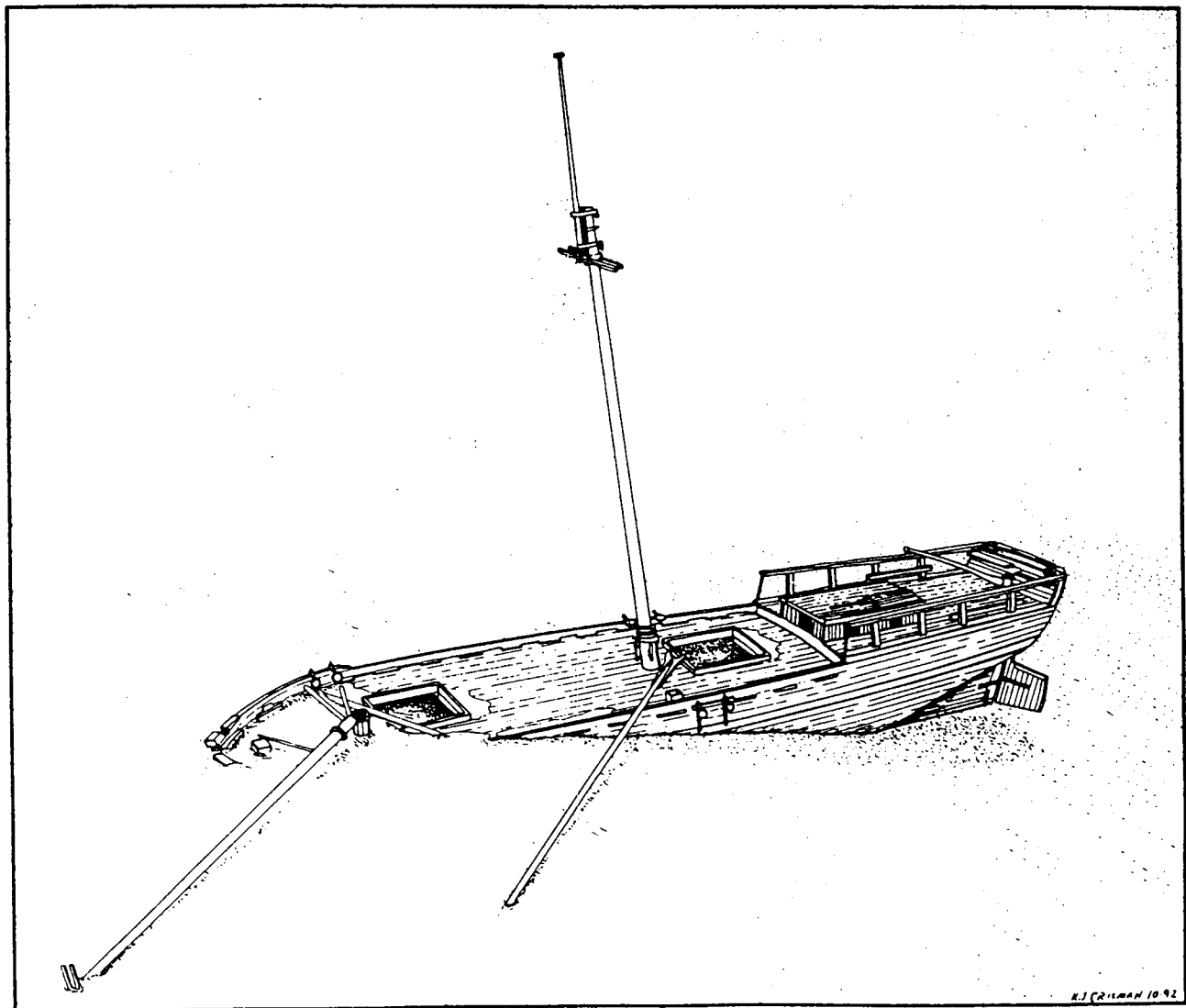


Figure 6. *The Lake Schooner Sarah Ellen on the Bottom of Lake Champlain. The Sarah Ellen sank in 300 feet of water and ploughed bow-first into the bottom. This perspective view is based on the dimensions listed in her enrollment documents and on video footage recorded with a remotely-operated submarine. Drawing by K. Crisman.*

Steamboats

Lake Champlain's entry into the age of steam began in 1809 with the launch of the little *Vermont I* at Burlington, Vermont. The second commercially-successful steamer built in the United States (Robert Fulton's 1807 *North River* was the first), *Vermont* was the first of thirty passenger-carrying sidewheel steamers to ply the lake between 1809 and 1853. In an age when boiler explosions and catastrophic collisions routinely took a fearsome toll of steamship passengers on the western rivers and Great Lakes, Lake Champlain's steamers maintained a remarkably safe record over nearly a century and a half of operations. The accident with the greatest loss of life occurred in 1819 when the lake's second steamboat *Phoenix* burned, and six passengers and crew drowned; the loss of the 258-foot-long *Champlain* in 1875 was spectacular — her opium-addicted pilot ran her into a mountainside — but fortunately did not result in any fatalities.

The discovery of the charred hulk of the *Phoenix* off Colchester Shoal in 1978 proved to be the catalyst for the formation of the Champlain Maritime Society, for the strong interest in the wreck on the part of historians, archaeologists, and divers highlighted the need for some type of central organization to study and protect the lake's archaeological resources. The Society's week-long field study of the *Phoenix* in 1980 yielded a plan showing the current appearance of the wreck, a set of conjectural recon-

struction plans that showed the steamer as she probably looked in 1819 (Figure 7), and a published report on the history and archaeology of the vessel (Davison, ed. 1981). The *Phoenix* appears to be the earliest wreck of a steamship to have been archaeologically studied (Simmons 1988:191-192).

The wrecks of other steamboats have been found in the lake, but to date they have seen only limited investigation. The remains of six large sidewheelers dating from the 1820s to the 1870s lie in the "steamboat graveyard" off Shelburne Point, Vermont, and were the subject of a Champlain Maritime Society-sponsored survey in 1983 (Fischer, ed. 1985:55-62). The wreck of the ill-fated steamer *Champlain* lies off Westport, New York, and underwent preliminary mapping as part of a Maritime Museum nautical archaeology field school in 1993.

Towed Canal Boats and Sailing Canal Boats

Canal boats were by far the most numerous type of large wooden vessel to ply the waters of Lake Champlain in the nineteenth and early twentieth centuries, and their role in the transportation network of the Champlain Valley was crucial. Two types were built: towed "standard" canal-boats (which depended on mules to pull them through canals and steamers to pull them over open waters), and sailing canal boats (which also employed mules when in canals, but deployed folding masts and a dropping center-

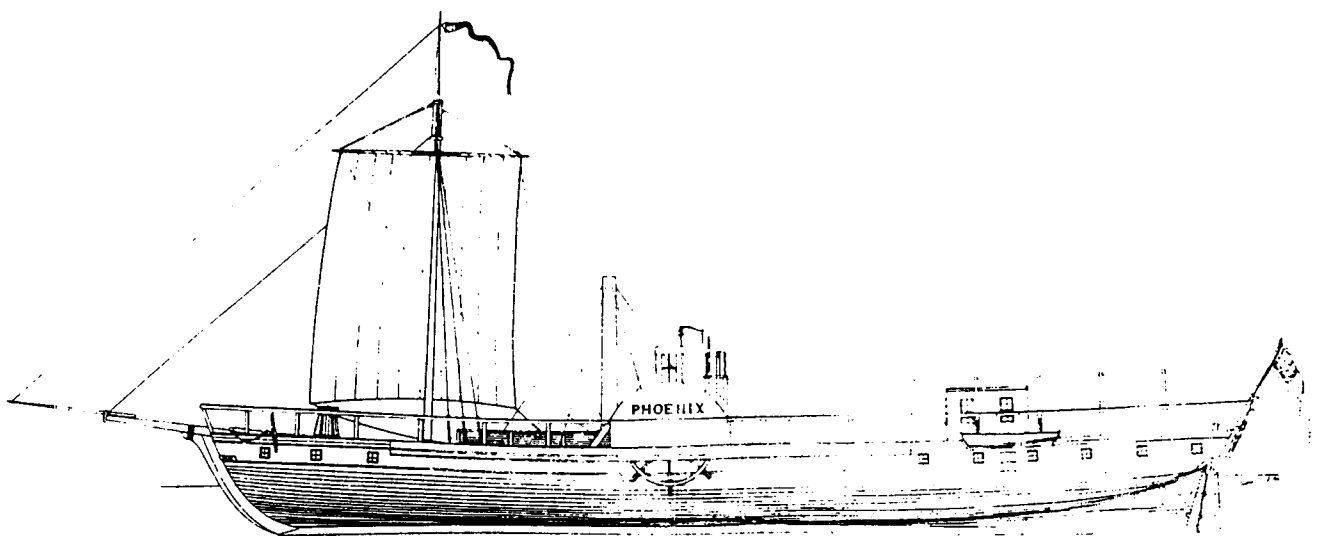


Figure 7. Reconstructed Profile of the Steamboat *Phoenix* (1815-1819). The second steamer on the lake, *Phoenix* burned to the waterline in 1819 with the loss of six lives. Drawing by K. Crisman.

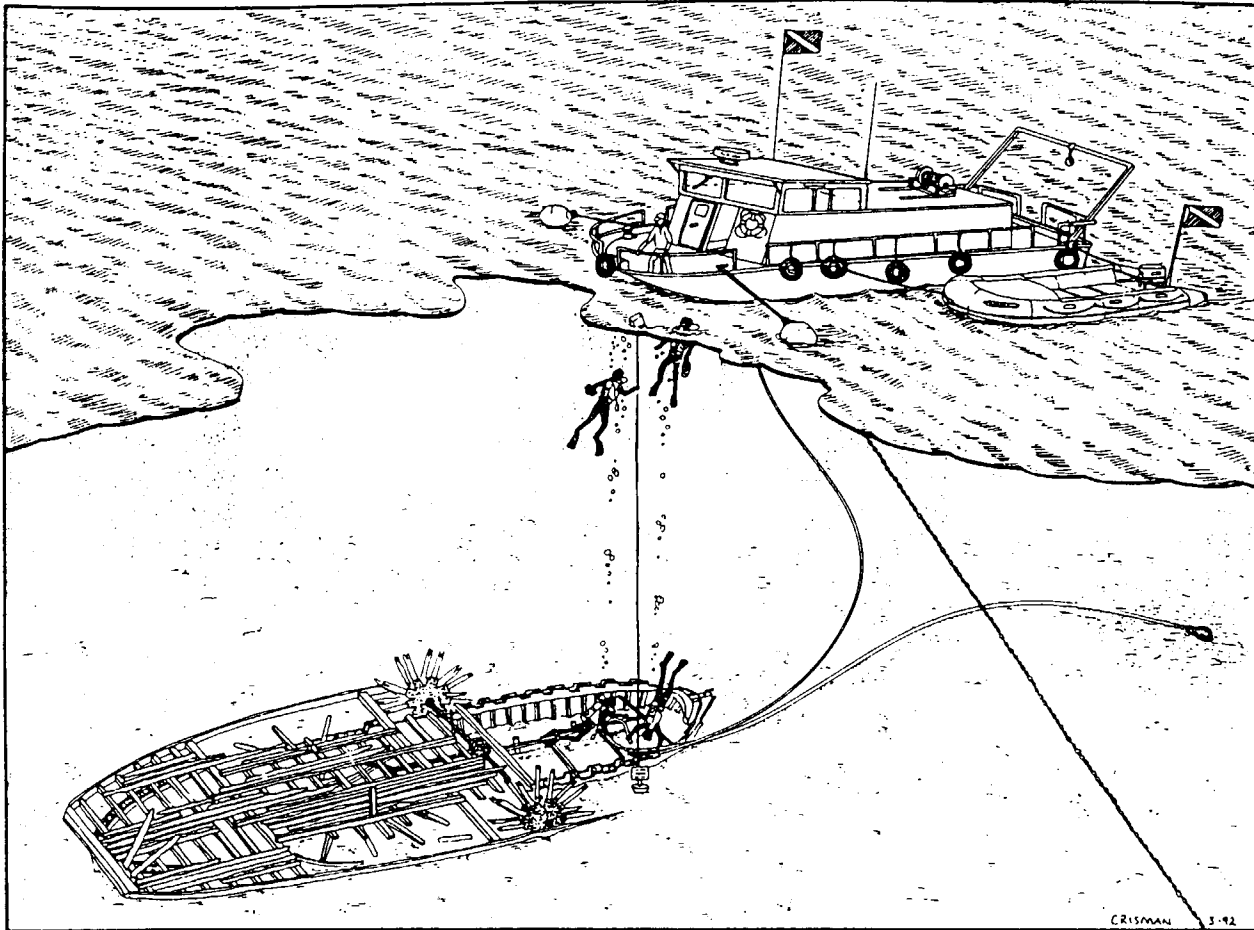


Figure 8. *The Burlington Bay Horse Ferry Wreck*. Drawing by K. Crisman.

board to sail upon the open lake). Many of the wrecks found on the bottom of the lake in recent years have been of standard or sailing canal boats, which is not really surprising considering their great numbers, awkward, relatively unseaworthy hull forms, and light construction. The standard canal boat wrecks thus far examined indicate that these vessels were built in a range of sizes (reflecting changes in lock dimensions over time), and with an astounding diversity of hull forms and construction techniques. Some were assembled with the common, plank-on-frame method of construction, while others were built of thick planks edge-fastened with long iron bolts, using no interior framing at all. Some canal boat wrecks exhibit a moulded bow and transom stern, others are double-ended, and still others have sterns that resemble a square box. One feature common to canal boats is their extreme length-to-breadth ratio, which averages about 6:1. While several standard canal boat wrecks in the lake have undergone preliminary recording, more study of this important class of commercial vessels is needed.

In contrast to the limited studies of standard canal boats, the design and construction of Lake Champlain's sailing canal boats have been documented by intensive studies of several well-preserved shipwrecks. These include unidentified canal sloops sunk off Isle La Motte and North Beach in Burlington Bay, and two canal schooners sunk in the greater Burlington Bay area, the *General Butler* and the *O.J. Walker*. All four vessels had the long, narrow hulls typical of canalboats, a moulded bow and stern, a dropping centerboard contained in a trunk amidships, and "tabernacle" structures for stepping the masts on deck (Cohn, ed. 1984:19-40; Fischer, ed. 1985:21-36; Crisman 1986:27-32). The North Beach Wreck differed from the others by having her central section assembled in the frameless, edge-fastened plank method rather than in the plank-on-frame mode of construction (Cozzi 1992). Historical studies of this heretofore obscure vessel type now indicate that sailing canal boats were common during the second and third quarters of the nineteenth century, and served as a fast, efficient means of shipping goods direct-

ly between northern lake ports and New York City (Cohn and True 1992).

Horse-powered Ferries

One of the most exciting finds in the lake during the 1980s was the well-preserved wreck of a horse-powered sidewheel ferryboat in Burlington Bay (Figure 8). It is the only near-complete example of this type of craft ever to be found and studied by archaeologists. The remains of the ferry were recorded with a photomosaic as part of a Maritime Society-sponsored preliminary survey in 1984 (Shomette 1989), and the hull and machinery underwent excavation and intensive study between 1989 and 1992 (a project co-sponsored by the Vermont Division for Historic Preservation, the Lake Champlain Maritime Museum, and the Institute of Nautical Archaeology).

The horse ferry found in Burlington Bay was one of about ten built and operated on Lake Champlain between the late 1820s and the 1860s. Her machinery was of a type invented and patented in 1819 by Barnabas Langdon of Troy, New York: the horses walked upon a large, horizontal wheel or turntable placed beneath the deck, and through a system of gears and power shafts turned the sidewheels (Figure 9). The ferry measured 63 feet in length, and was powered by two horses standing on opposite sides of the turntable. The condition of the hull and the artifacts found within it together suggested that the ferry saw many, many years of service, and was likely scuttled when she was no longer worthy of repair. The name of this ferry and the period of her service are not known (although she was probably built around 1830). It is certain that she did not operate out of Burlington, for the central portion of the

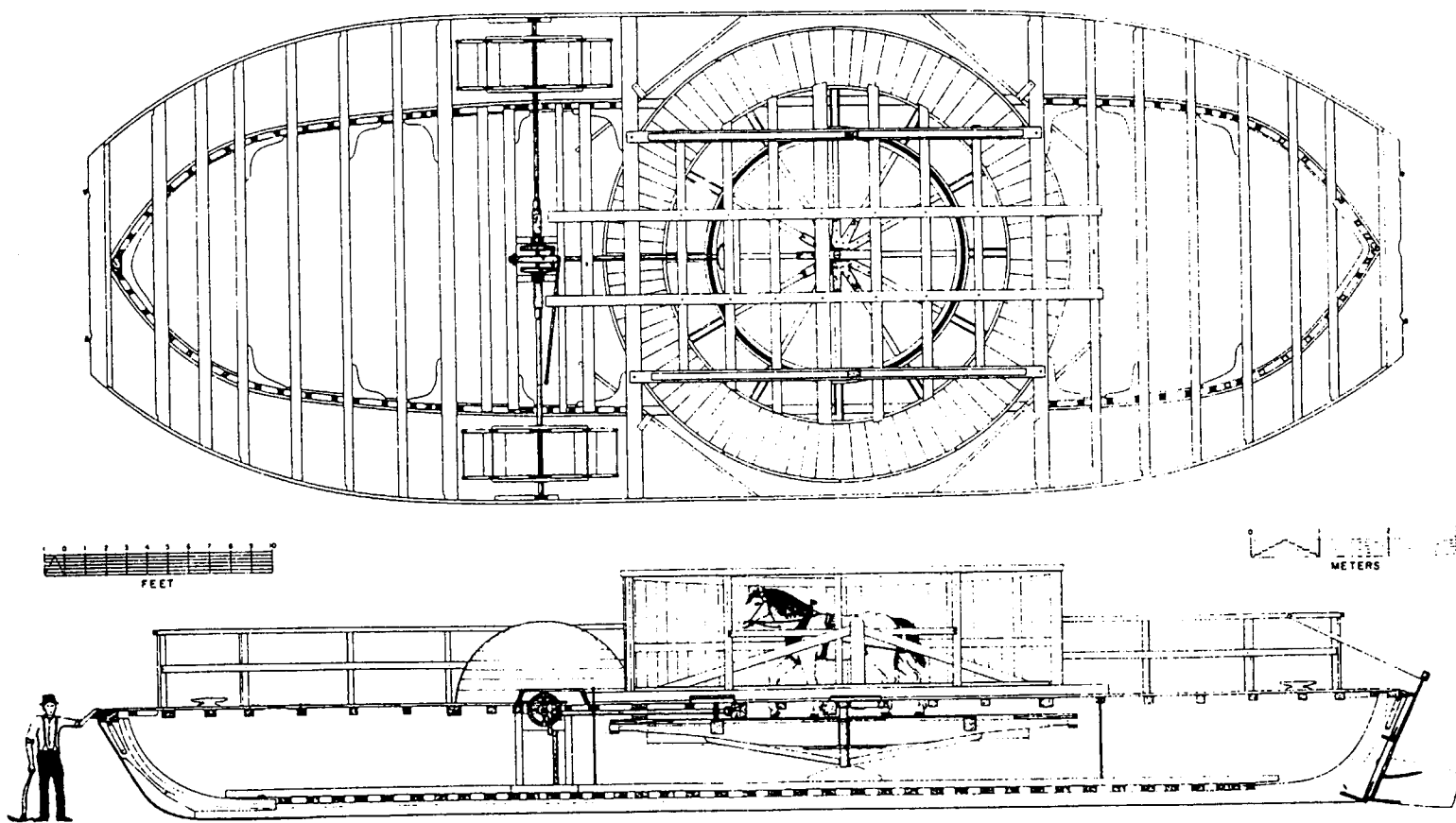


Figure 9. Reconstructed Plan of the Horse Ferry's Deck and Interior Profile. The ferry's deck was cut through on each side to permit the horses to stand directly upon the turntable. Drawing by K. Crisman.

lake is too wide and rough to cross with a two-horsepowered ferryboat (Crisman 1990; Crisman 1991a; Crisman 1992; Crisman and Cohn 1993).

Conclusion

Our knowledge of Lake Champlain ships and maritime history has expanded greatly since the first archaeological dive on the *Phoenix* in 1980. Each shipwreck has provided new evidence for changes in design, construction and outfitting over the past 250 years, and each has led us to re-examine the historical record and draw new conclusions about the nature of warfare, commerce, and everyday life on the lake. Through publications, exhibits, lectures, and participation of volunteers in archaeological projects the Champlain Maritime Society, the Lake Champlain Maritime Museum, and other lake research organizations have worked to share this wealth of new knowledge with historians, archaeologists, and the public.

The archaeological resources of Lake Champlain, though bountiful, are nonetheless finite, and protection of shipwrecks from inadvertent damage or intentional vandalism has been one of the prime concerns of the participants in the underwater research. Lake Champlain's sport divers have fortunately taken a strong interest in preserving wrecks in the same condition as they were found, and the Vermont Division for Historic Preservation has created a system of underwater historic preserves that provide easy diver access to a number of spectacular wreck sites, including the *Phoenix*, the *General Butler*, and the horse ferry. With good management and a measure of luck the ships described here, and those yet to be found, will be around for the enjoyment and education of future generations.

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LEGISLATION AND LAWS AFFECTING SHIPWRECKS IN NEW YORK

U.S. Abandoned Shipwrecks Act

The Abandoned Shipwrecks Act of 1987 applies to all territorial waters of the United States. The Act was adopted to change the way the United States, the states and the courts were addressing and managing shipwrecks under Admiralty and Maritime laws and laws of finds. Prior to the adoption of the Abandoned Shipwrecks Act, finders of previously unknown or unfound wrecks were able to salvage most wrecks with little interference from federal or state regulation, except where a federal or state interest in the find could be determined. Federal or state interests in shipwrecks were usually determined after wrecks were "discovered," the discovery was made public, and the identification and significance of the wreck became known. In many cases, the wreck or its cargo, and historic and archaeological resources and information associated with the physical positioning of the wreck and its cargo, was destroyed during attempts to identify the wreck, recover artifactual material for identification, and determine private, state or federal interests in the wrecks. Decisions regarding ownership or other interests were usually determined on a case by case basis under admiralty law and the laws of finds. Where the owners or agents of the owners no longer existed, or where all interests in a wreck were discontinued, the law of finds under admiralty law was used to determine ownership. In such cases, ownership was often given to the finder of the wreck or the first person to file as the finder in court and assert ownership. Federal, state and private interests in shipwrecks were often determined after the finder filed for ownership and the "find" became known through the courts. In many cases, court decisions adversely affected public recreational access to and other interests in abandoned historic shipwrecks.

Because many historic, archaeological, biological or recreationally valuable shipwrecks were being destroyed by commercial salvors, speculators (treasure hunters) and recreational divers, and because of increased interest in shipwreck salvage, loss of shipwreck resources, and resulting federal and state court costs in determining ownership, interests, disposition of abandoned shipwrecks, and federal and state interests in shipwrecks, the Abandoned Shipwrecks Act was enacted to make clear that abandoned shipwrecks, submerged over a period of years without any active salvage attempts by identifiable owners of record, are the property of the United States. The Act simultaneously transferred the ownership of all vessels within a state's territorial limits or within three miles from shore on state or other publicly owned underwater lands to the states. Ships of war are excluded from the Act, and remain the property of the country that the ship sailed for at the time of its sinking, unless the government which owns the vessel relinquishes its ownership.

The Act also requires states to develop management plans that protect and maintain public recreational access to certain abandoned historic shipwrecks.

State Legislation

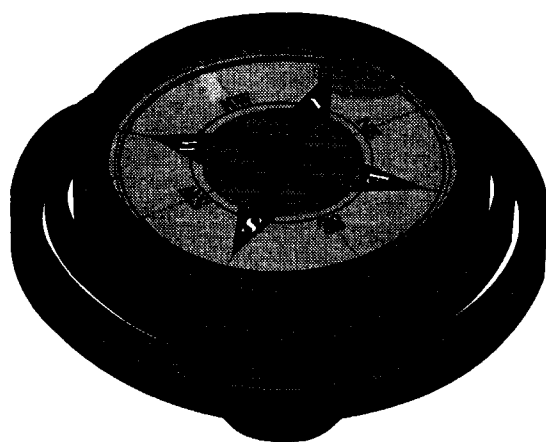
State policies relating to shipwrecks is a maze of laws, regulations and agency policies supported in the Navigation, Historic Preservation, Education, Environmental Conservation and Public Land Laws, their implementing regulations, and implementation of those laws and regulations by agencies and the courts.

Almost all shipwrecks in New York are on state owned or other publicly owned underwater lands and, pursuant to the federal Abandoned Shipwrecks Act, are the property of the state where clear private ownership of and commercial interests in the vessel cannot be established. The State Navigation Law was recently amended to recognize State ownership of and interests in certain abandoned historic shipwrecks, and to make it clear that the State Navigation Law pertaining to the private salvage of wrecks does not apply to abandoned historic shipwrecks. However, if the State determines that a vessel, its cargo, and its resting place has no value to the state as an historic, recreational, cultural or biological resource at its wreck location, it may be excavated, removed or salvaged by whomever establishes ownership, custody or control of the wreck, with permission from the appropriate state agencies. If there is some public value in the wreck, its cargo, or site, or if it is in imminent danger of being destroyed in its wrecked location, the decision to excavate, remove, conserve and/or dispose of the wreck and its cargo would be based on a careful survey of the wreck and its site, an assessment of the environmental effects of excavating the wreck, a financial feasibility study, and an equitable distribution of the wreck and/or its cargo between federal, state, interstate, and international interests and the salvors. The finders/salvors may, in many cases keep some of the material recovered from wrecks, sell it for profit, or display it at their own facilities or on loan to other facilities. Public benefits are often provided by leaving abandoned historic shipwrecks intact at their wreck locations in order to preserve them as historic and recreational resources.

Laws of Finds

The laws of finds, which have often been applied in Admiralty cases, apply to abandoned wrecks or other items where there is no established owner, or where the owner has relinquished all interests to a wreck. The laws generally apply in conjunction with Admiralty Law to establish salvage rights to wrecks. The finder of an abandoned wreck, after establishing the identity of the wreck and after establishing that there is no owner of record, may petition a court for possession of the find. Most shipwrecks were salvaged under the laws of finds until recent times, when new federal and state legislation affecting historic shipwrecks and other cultural and recreational resources and their values were recognized. The laws of finds relating to shipwrecks within the territorial limits of the states are restricted by the federal Abandoned Shipwrecks Act, federal and state historic and cultural preservation laws, education law, and other laws applying to shipwrecks or other cultural, architectural, archaeological, historic, recreational, or biological resources.

Summary of Breakout Sessions



Two "breakout groups" were established and charged with focusing on the need for development of public policy related to underwater cultural resource management in New York. What follows is a synopsis of the issues, concerns, and opportunities identified.

Group I

Moderator: Alan Bauder, New York State Office of General Services

Issues discussed:

- * Marine vs. Fresh water user groups
- * Liability concerns - General Obligation Law
- * Removal of artifacts by tours and organized groups
 - some outside 3 mile limit, some within limit
- * State laws are outdated.
- * What is or isn't significant?
- * Is there a database or list? (Lake George Inventory in process?)
- * Office of Parks, Recreation, Historic Preservation keeping inventory?
- * Funding opportunities
- * Trust vs enforcement (confidentiality)
- * Amnesty, recognition, registry, identification, education
- * No right to remove artifacts.
- * Designate "underwater preserves" with information, mapping, and rules of use
- * Stewardship
- * Types of preserves
- * Divers promote commerce and tourism
- * Need tour captain participation
- * Need Dive Shop participation
- * Need Dive Boat Association participation
- * New York State Divers Association
 - funding assistance
 - discovery source
 - willing to work together
 - educational newsletter
 - "permit and report" system
- * Formalize ad-hoc committee with full representation
- * Multi-agency jurisdiction not working
- * Need regional attention to address diversity
- * Streamline existing structure - study budget
- * Advance recreational diving - responsibly
- * Changes in education
 - need "non-government" influence
 - need community involvement
 - must educate legislature regarding commerce and benefits
- * P.R. campaign - let legislators know diving impact "lobby power"

Group II

Moderator: Helen M. Domske, New York Sea Grant

Issues discussed:

1.) Where do we need to go?

- * develop an "entry" point (political contract for action)
- * develop a value statement
- * needs/benefits
- * develop a management model based on a firm commitment of agency time and resources
- * make underwater cultural resources a state priority issue
- * build political support from the top (executive) level down
- * find out how to work in NYS (system) - how to "jump through the hoops"

2.) How can we work together to be more effective?

- * set up a clear agenda
- * improve communications/cooperation
- * set up policy priorities
- * speaking with "one voice"
- * face/deal with geo/political divisions - unique differences
- * different ecosystems fresh vs. salt water
- * develop a "vehicle" that invited all parties
- * provide information - press releases (from agencies)
- * utilize today's network as a "working group"- keep those lines open

3.) What policy guidelines do we need to formulate?

- * encourage use and preservation
- * include a balance between protection/use
- * management and wise use, formulate policy to reflect both
- * clearly state the rules for policy that reflect \$\$
- * fees permits
- * degree of significance - recreation, historic, open/closed, fragile, -- establish criteria
- * include non-diving community
- * access issues (future concerns - deep-water, ROV's, submersibles)
- * restriction-access
- * define resources as public property (stewardship of public resources)
public resources managed by state agencies
- * public responsibility - to assist the process
- * overall definition of what are the underwater cultural resources?
- * policy must reflect the creation of new sites - sinking "new" ships
- * creating habitat, viewing opportunities, divers, video camera - for tourists above
- * liability issue must be included

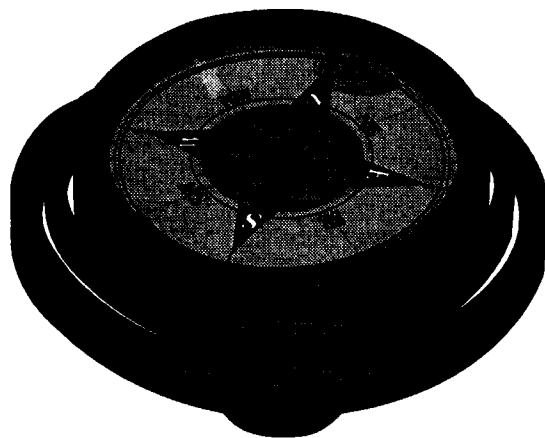
4.) What specific actions or activities can be implemented?

- * museum display (state museum) to highlight activities
- * develop a communication plan
(includes press releases, brochures, email, groups - listservers)
- * report from this meeting (document)
- * position paper: review existing position paper
status, mission, facts, opportunities, needs, plan of action.
- * Who will take the lead?

5.) How can we support/fund programs?

- * fees/permits
- * private sector - reasonable return on investments
- * support from volunteers - "In-kind" support
- * cooperative efforts with municipalities - town parks - land park, - underwater park
- * federal granting programs - coastal programs
- * possible state grants through local waterfront revitalization projects

Summary of Breakout Session Worksheets



Each symposium participant was asked to fill out a "breakout session worksheet." What follows are the responses provided.

Important Issues

Simplified, easy to understand policies. Cooperation of all concerned.

Management of submerged sites: Paleo-Indian sites submerged by glacial melt; sites submerged by dams. How do you manage unknown sites? How are they protected? For example, impact of construction underwater and into submerged soils.

Policies and laws must ensure a balance of preservation and wise use. Uniform public education program. Developing political support and actions for our goals.

Statutory protection of sites/wrecks are inadequate. Implementation of Abandoned Shipwreck Act in NYS. Clarify jurisdiction/formalize interagency coordination.

Underwater resource survey prior to report of Environmental Impact Statement for all projects related to waterfront or submerged lands. Education of municipal justices - as we have done with historians. Concerns for private property owners.

Decision-making infrastructure. Uniform presentation to public. Not "shipwreck," but "underwater cultural resources."

Need to develop a "position paper" on the opportunities/benefits. This paper should be put together by this group or subcommittee. Once prepared, it needs to be given to key legislators and government offices.

Amnesty Laws - regarding previous artifacts retrieved. Education at local level regarding law/heritage. Rewrite law defining what, if anything, can be taken. Feasibility study regarding preserves.

Liability Issue. Creation of public sector committee to create a position paper. Development of public private sector development timetable. Encourage public participation.

Understand public regulations - go beyond to improve this understanding and use. Extend "grass roots." Necessary to get word to governor and legislators - to provide direction for agencies. Must develop a functional policy statement.

More education, define laws on taking items from the later. Involve the sport diver as well as user groups. Define historical and nonhistorical.

Challenges/Concerns

More preserves. What can or can't be taken. Amnesty. Work closely with state.

Develop an ongoing communication plan to inform public and users. Overcome syndrome of creating a program, etc., and then not give it support to insure the program succeeds -- "feed" the

program. Don't just look at a shipwreck for recreation and archeology - explore other resources it has - scientific, educational, preservation, etc. NY State needs to address liability issues and clearly inform partners and users of the ramifications. Update historic preservation laws in NY. Promote stewardship of shipwrecks. Don't forget the importance of resource - remember to address impacts upon it by actions.

Lack of commitment. Lack of education. Group consensus not evident. Political climate - disinterest. Inaction - or action that is too late.

Anti-preservation attitudes. Multiple and competing state agencies. Out-dated laws. Inadequate resources for archaeology. What are the resources? Access. Uniform statewide mooring systems. Political support.

How to contact all stakeholders? Liability/legality. Fresh water vs. saltwater. Where to get answers? Increase or facilitate access? Priority: How to officially install buoys? Budget. Constituency building.

Identify all user groups. Foster communication. Minimize bureaucracy, red tape. Minimize regulations. Contrarily - assure continued government programs (sell to legislators). Inadequacy of laws to protect.

Confusing laws and regulations. How to balance access/preservation? How to get diverse groups/interests together? Funding/budget problems. Education or regulation? Which works better to limit artifact removal?

Need permanent coordination with clear lines of communication between state agencies. Mechanism to let users know how to use resources (education of diving and non-diving public and legislators). Need an entry point into the political arena.

Bureaucratic Burden Impasse vs. Single Agency. Do zebra mussels place a finite limit on certain wrecks? If so, should there be policy "priority adjustments", leading to expeditious decisions (removal)? How might previously removed artifacts be recovered from private "collectors," regardless of condition - to be catalogued, preserved, etc.? How do we conduct a complete survey of all presently known shipwrecks (preserves) and establish a library complete with values and importance as well as condition? How to accomplish some of the above tasks of educating, providing information exchange, etc.? Potential scope of collections management. Funding to commission or individual agencies? Salvage rights? NY vs other states? Needs-Benefit report.

Educate divers on opportunities and laws. Define policies - points of contacts regarding amnesty. Educate wreck divers at local level. Task force to survey shorelines of wreck/heritage sites. Tourism. Define \$\$ resources of scuba divers. Define private involvement possibilities. Control access. Liability/maintenance.

Submerged cultural resources are non-renewable. Preservation is the first priority. Fragmentation of NYS response to preservation/recreational development of underwater lands. Continuing

degradation of resources. Obsolete legislation, ambiguous definitions. Lack of education. Lack of central clearinghouse. Lack of data and planning information. Cannot protect resources which have not been identified or shared with users. Budget cuts. Lack of funding/staffing.

Catalysts/Opportunities

NYS has incomparable underwater resources. Careful management may support local economies. Economic benefits of diving/heritage tourism. Excellent not-for-profit groups, committed to success.

Need to have good communication. Contact person paid by pool of \$\$ from each agency, to get things up and going for a year. Position paper to governor and legislators.

Significant interest present and importance realized. Well established organizations to work with. Media interest and public awareness - example, Edmund Fitzgerald. Many partnerships already exist - good framework in place.

Public involvement process. Lead agency - task force comprised of government agencies and stakeholders. Update outdated laws. Public consent for education and funding. Define recreation/historical sites. Define submerged cultural resources. Determine criteria. Intermodal Surface Transportation Efficiency Act Tie in to economic development and tourism.

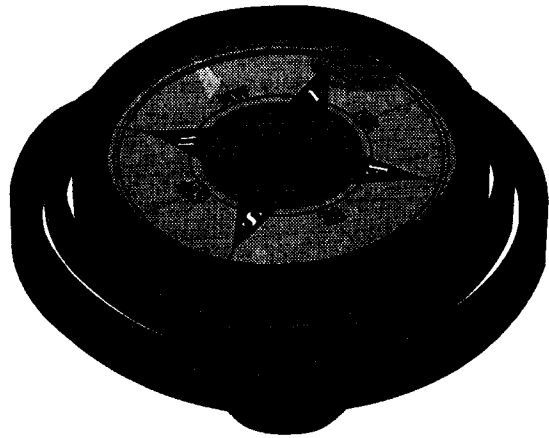
Stimulates economic development. Provides resources protection, natural, archaeological, etc. Identifies access opportunities. Public involvement. Draw on a number of groups who support the effort. Laws and policies already in place - importance already realized.

Decentralized networks for field support. Business and government activities are sources of much site impact. Therefore, could be sources of funding/management solutions. Interagency work groups. We need to demonstrate economic benefit of divers and potential to NYS, and how this can be enhanced (preserve, educate, promote dive sites, etc.).

Money that preserves would generate. Committee such as Ohio has to define and make new laws. Encourage divers to bring artifacts to the attention of the state. Form committee with all user groups as well as government.

Ohio model of one government agency with unique single jurisdiction. We need to track to the time table of zebra mussels in various locations to establish a framework of "periods of resources use." We need an amnesty period and a detailed place(s) and procedures for doing this. Another amnesty in order to gather and give credit to those involved in the discovery and removal wherein all documentation can be compiled. Make up a task force from among the constituents of today's gathering, augmented by local dive shop owners, etc. - provide regional sessions to reach out to divers.

Underwater Cultural
Resources
State Agency Authority



Sea Grant Underwater Cultural Resources Symposium

State Authority Over Submerged Resources

New York State has a number of laws, regulations and customs affecting submerged resources, including shipwrecks. Involved agencies include the Office of General Services, the Department of Education and its arm, the New York State Museum, the Department of Environmental Conservation and the Office of Parks, Recreation and Historic Preservation. These offices and agencies each have authority under certain circumstances which affects private and public access, use and exploitation of submerged resources.

There are also a number of federal laws and regulations which can play a role in the use of submerged resources. Most notably are the National Historic Preservation Act as amended 1992, the Abandoned Shipwrecks Act of 1987 and federal navigation laws.

New York State Office of General Services

The New York State Office of General Services (OGS) has authority pursuant to Article 6, Section 75 of the Public Lands Law for actions affecting State-owned lands under water. OGS approval must be acquired for the exploration, use or any other action affecting a shipwreck or other submerged historic, archeological or cultural resource located on the bed of a water body. Similarly, use or other action impacting other submerged resources such as biological (i.e. interesting flora or fauna species or habitat sites) or geophysical (i.e. rock formations, caves, etc.) resources may require authorization from OGS.

The State of New York's authority over under water lands evolves from the sovereign right of the Crown of England, which held title "to all lands under tidal and navigable water, not duly granted" prior to July 4, 1776. This title included major arms of the sea, such as bays and tidal rivers. The Crown's title could only be divested by: direct and special act of the king; special act or charter of the royal governor or through ancient adverse user, i.e., prescription or custom.

Such grants divesting title generally remove sovereign authority, except for specific conditions (such as the completion within a stated time period of a commercial structure that was the stated purpose of the grant). Therefore archival research must be conducted carefully to

determine the existence, extent and conditions of any such grants and whether they affect a given site of interest.

The authority over non-granted lands under water passed from the Crown of England to the State of New York (one of the original thirteen colonies) on July 4, 1776. Title to underwater lands outshore of the high water mark was vested in the State for the common benefit. This title is subject to federal right to regulate and improve navigation.

Grants of Lands Under Water

PUBLIC LANDS LAW

Article 6, Section 75 of the Public Lands Law provides for grants of land under water, authorizing "grants, leases, easements and lesser interests, including permits, for the use of state-owned land underwater and the cession of jurisdiction thereof consistent with the public interest in the use of state-owned lands underwater for purposes of navigation, fishing, bathing, and recreation; environmental protection; and access to navigable waters of the state; with due regard for the need of affected owners of private property to safeguard their property."

Outright grants of title have occurred only seldomly in recent years. State policy and regulation essentially limits disposition of the State's interest in submerged lands to easements, leases and permits or letters of authorization or no objection to specific activities. These lesser interests can be encumbered with conditions to protect the affected resource and avoid adverse impacts or significant diminution of the public interest in the resource.

OGS has worked in concert with other interested and involved agencies to establish several submerged preserves which provide controlled educational and recreational access to shipwrecks, including a very recent discovery of the French and Indian War warship *Land Tortoise*, which has been cited as the oldest intact American warship. This is the "newest" addition to several submerged preserves located in Lake George on the eastern edge of the Adirondack Park in northern New York. These were established through the cooperative efforts of local dive groups, educators, archeologists and historians and local, state and federal officials.

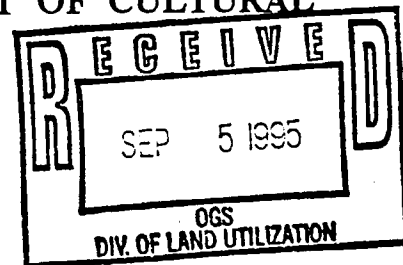
Department of Environmental Conservation

The Department of Environmental Conservation is responsible for the management of public lands within the Adirondack and Catskill Parks. In these areas of the state the Department is responsible for the management of park, recreational and historical sites, services and facilities. In this capacity the Department is defined as the Sixth Park Region. In state statute this authority is derived from Articles 9 (Lands and Forests), 41 (Sixth Park Region) and 43 (Lake George park Commission) of the Environmental Conservation Law (ECL). Outside of the parks the Department also manages lands included in the State Nature and Historical Preserve (Article 45 of the ECL). The Department's authority to protect historic shipwrecks stems from Article 3 of ECL (General Powers and Duties of the Commissioner).

Currently the Department manages three Submerged Heritage Preserves in Lake George. These sites were developed in partnership with Bateaux Below Inc., the Lake George Historical Association, the New York State Divers Association, Warren County, the Office of General Services, the State Museum and the Office of Parks, Recreation and Historic Preservation and the National Trust for Historic Preservation.

STATE EDUCATION DEPARTMENT -
INVOLVEMENT AND AREAS OF CONCERN RELATIVE TO AN
INTERAGENCY APPROACH TO THE MANAGEMENT OF CULTURAL
RESOURCES ON PUBLIC LANDS

Draft Prepared by Philip Lord, Jr. [1/91]



BACKGROUND

The New York State Museum, whose origins can be traced back to 1836, was formally organized in 1870 by special act of the State Legislature. This legislation formally charged the New York State Museum with its duties, which were broad in character.

Education Law section 233, part 1.

"All scientific specimens and collections, works of art, objects of historic interest and similar property appropriate to a general museum, if owned by the state and not placed in other custody by a specific law, shall constitute the collections of the state museum. The state museum shall be the custodian of the collections, shall perform standard curatorial, research and educational activities and a director appointed by the regents shall constitute its head."

In 1945, the New York State Museum was reorganized through an amendment to the Education Law that created the State Science Service. The State Science Service is the research and curatorial branch of the New York State Museum. Its duties are defined by the following legislation:

Education Law Section 235.

"There shall be maintained in the university a science service which shall be known as the state science service and the state geologist, paleontologist, botanist and entomologist shall constitute its staff together with such other scientists as the regents may employ or who are now employed by them. This service is empowered and directed to make available its services to all the departments of the state, and the residents of the state under such rules and regulations as the regents may prescribe and is empowered to engage in such scientific research as directed by law or by the regents and shall cooperate with scientific units or agencies of other states, the federal government, educational institutions and industry in the discovery, analysis and dissemination of scientific information."

In 1958, legislation amending Section 233 established a review and permit program for research, and created a mechanism for the protection of threatened archeological resources, on state lands.

Education Law Section 233, part 4 & 5.

"Except as otherwise provided in subdivision three of this section, no person shall appropriate, excavate, injure or destroy any object of archeological or paleontological interest, situated on or under lands owned by the state of New York, without written permission of the commissioner of education. A violation of this provision shall constitute a misdemeanor. The discovery of such objects shall be forthwith reported to the

commissioner by the state department or agency having jurisdiction over such lands."

"Permits for the examination, excavation or gathering of archeological and paleontological objects upon the lands under their respective jurisdictions may be granted by the heads of state departments or other state agencies to persons authorized by the commissioner of education for the purposes of the state museum and state science service, with a view to the preservation of any such objects worthy of permanent preservation and, in all cases, to the acquisition and dissemination of knowledge relating thereto."

The New York State Museum, as defined by legislation, is an educational institution engaged in the discovery, analysis, and dissemination of scientific and historical information. The importance and relevance of its research programs and collections in documenting the State's past and present and for assessing the State's future enable the State Museum to fulfill its responsibilities to the people of New York.

AGENCY CONCERNS

By legislative mandate, and over a century of tradition, the State Museum has been the research and collections agency of the State of New York, designated with a statewide focus, particularly where historical and archeological resources already under public jurisdiction are concerned. Being established within the State Education Department, the State Museum additionally dedicates itself strongly to the dissemination of knowledge through publications, educational programs and the maintenance of statewide data bases, including collections of artifacts and documents under its care.

There are, therefore, several concerns relative to public land resources which directly derive from this mandate.

There is the motivation that through research we move forward in developing an accurate and comprehensive statewide base in data from which to understand and interpret the history of New York. We are concerned, therefore, that the quality of archeological and scientific research be maintained at high professional levels, both in work by staff and in work by others for which we have responsibility.

A greater part of this data base now resides in archeological resources, and a most significant portion of those resources rest on the public lands of the State. Therefore an additional concern is that the rich archeological resources which remain yet to be discovered and investigated on the public lands of New York be preserved as part of that research data base, continuing for future generations the ability to study and understand the history of New York.

In addition, the translation of these resources, and of the data they may provide, into knowledge of benefit to the people of New York, as directed by law, remains a high priority of the State Museum. We are concerned, therefore, that research reports and publications available to a broad spectrum of the public issue from these research efforts and that maximum educational benefit result from access to and involvement with these resources.

The provisions of Education Law Section 233 and Section 235 provide for the protection of cultural resources on public lands, institute a program of controlled access to those resources for research, facilitate the maintenance of professional standards for research developed through projects engaging these resources, and foster efforts to interpret and disseminate the findings of that process of investigation.

We envision our role within future interagency efforts aimed at managing cultural resources on our public lands as one of quality control in the areas of research and collections with emphasis on professional standards of investigation, collections care and publication.

RESOURCES

Our resources consist primarily of facilities and staff. We have researchers and curators in the major relevant fields concerned with public resources and can assist in the evaluation of proposals for access to and investigation of those resources. We can contribute to the management of a program of research permits and research reports, and can advise in collections management areas. We maintain facilities for the management of collections and have the facility to translate collections and data into exhibits, educational programs and publications.

By virtue of our position in the State Education Department, and the legislative responsibilities which attend that position, we are at the hub of formal networks of regional and local historians, librarians and educators that facilitate the flow of information to and from our program staff. This enhances our ability to disseminate both scientific data and program management information.

Note: While we have mandated responsibility for collections derived from public lands activities, including inadvertent discovery as well as controlled archeological study, we cannot be expected to provide sufficient facilities and budgetary support to cover all possible needs in the area of collections management. It is critical that policy and procedures be developed to first minimize or eliminate the need for preservation of artifacts removed, for whatever reason, from their *in situ* situation, and to give priority for such preservation to documented collections from integrated sites undergoing professional archeological study.

SUMMARY
NEW YORK STATE DEPARTMENT OF STATE
NEW YORK STATE COASTAL MANAGEMENT PROGRAM
SHIPWRECKS AND OTHER UNDERWATER CULTURAL RESOURCES

Overview of the Coastal Management Program

The New York State Coastal Management Program (CMP), administered by the Department of State's Division of Coastal Resources and Waterfront Revitalization, was established pursuant to the federal Coastal Zone Management Act of 1972 (CZMA) and the State Waterfront Revitalization and Coastal Resources Act of 1981 (Article 42 of the Executive Law). These acts call for the coordinated, comprehensive, and full exercise of governmental authority over land and water uses in the coastal zone for the purpose of preserving and using coastal resources in a manner that balances natural resource protection and the need to accommodate economic development. To accomplish this the acts provide, in part, that all State and federal actions in the coastal zone shall comply with a single set of decision-making criteria, or policies.

The principal function of the CMP is to provide a framework for government decision making in the coastal area. As defined in the CZMA, a State Coastal Management Program includes policies to guide public and private decisions in the coastal area (CZMA section 304.(12)). It is a requirement of the CZMA that a CMP include enforceable policies to guide these decisions (the term "enforceable policy", as defined in Section 304.(6a) of the CZMA, means State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone). The CMP contains forty-four policies with which federal and state agencies must adhere and which serve as a reference for local government actions in the coastal area (CMP I-3). These policies are set forth in the State of New York Coastal Management Program and Final Environmental Impact Statement. In general, they either: 1) promote the beneficial use of coastal resources, by encouraging water-dependent use, expansion of ports and harbors, revitalization of waterfronts, and expansion of access and recreation opportunities; 2) prevent the impairment of certain coastal resources, including fish and wildlife habitats, dunes, beaches, islands and other natural protective features, wetlands, scenic areas, historic resources, and agricultural lands; or 3) provide for the management of activities which may impact coastal resources, including dredging, ice management, energy facility development, waste disposal, construction of erosion structures, and mineral resource exploration. The coastal policy statements, their attendant explanations and guidelines, and existing federal and State environmental and resource management laws provide the objectives and standards for the program. It is important to note that the consistency provisions of the CZMA and Article 42 of the Executive Law are regulatory provisions that apply to government decision-making. The coastal policies and these consistency provisions require that government agencies adhere to these standards when considering their direct, funding, or approval actions.

Implementation of the CMP is effectuated through three program components -- Local

Waterfront Revitalization Programs (municipal coastal programs that refine the CMP to suit local circumstances and needs), review of federal and State government actions for consistency with the policies, and the advocacy of projects and activities which implement specific coastal policies.

Authorization (core statutes) supporting the program

In 1981, the State Legislature enacted the Waterfront Revitalization and Coastal Resources Act (Article 42 of the Executive Law) to implement the CZMA at the state level (**Executive Law Article 42, added by Chapters 840 and 841 Laws of 1981**). The Act functions to coordinate policy and planning for the wise use and protection of the State's coastal resources (**Executive Law 910**). In that statute, the State Legislature recognized that the state's coastal areas were increasingly subject to the pressures of population growth and economic development, including the demands of industry, commerce, residential development, recreation and energy production. These competing demands have resulted in the loss of living marine resources and wildlife, diminution of open space areas, shoreline erosion, permanent adverse changes to ecological systems and a loss of economic opportunities (**Executive Law 910**). Article 42 seeks to insure "the proper balance between natural resources and the need to accommodate the needs of population growth and development" (**Executive Law 910**). The Act and its implementing regulations contain many of the State's coastal policies. New York's policies are enforceable through the Waterfront Act (**Executive Law Article 42**) and other existing state laws pertaining to environmental protection, development and energy facilities (see **authorities listed in CMP section II, following each policy explanation; CMP, Volume II**). The Coastal Area policies applicable to State agencies are codified in Section 912 of Article 42 of the Executive Law and its implementing regulations contained in 19 NYCRR Part 600.5.

The CMP policies are grouped into ten categories that address: 1) Development; 2) Fish and Wildlife; 3) Flooding and Erosion; 4) Public Access; 5) Recreation; 6) Historic Resources; 7) Visual Quality; 8) Agricultural Lands; 9) Energy and Ice Management; and 10) Water and Air Resources. They were developed after an exhaustive analysis of the full range of federal and state regulatory and decision-making standards contained in statutes, rules, regulations, and case law that affect the coastal area. These policies are explicit statements of existing state policy in the coastal area of the state, and were developed to provide clear and explicit statements of federal and state policy in the coastal area that are to be used in government decision-making.

Examples of Coastal Policies Directly Related to Shipwrecks and Other Underwater Cultural Resources

Three examples of existing State Coastal Policies that apply to shipwrecks and other underwater cultural resources are Policies 19, 21, and 23 of the CMP:

Policy 19 states: **Protect, maintain, and increase the level and types of access to public water-related recreation resources and facilities.**

Shipwrecks and certain other underwater cultural resources are recreational resources, and many are also cultural, historic, and often biological resources. Recreational diving is a type of access to these resources. This policy calls for achieving a balance among the level of access to a resource or facility, and the protection of resources. The term "access" means the ability and right of the public to reach and use public coastal lands and waters. Almost all underwater lands that shipwrecks and other underwater cultural resources lie on, or are embedded in, are public lands. The recreational diving community has indicated there is a need to protect and increase the level of recreational diving access to these resources.

Policy 21 states: Water-dependent and water-enhanced recreation will be encouraged and facilitated, and will be given priority over non-water-related uses along the coast.

Water-dependent and water-related recreation includes obviously water-dependent activities such as diving. Water-dependent and water-related recreation is to be increased provided demand exists for them, and these uses have a higher priority than non-coastal dependent uses, provided they are consistent with the preservation and enhancement of important coastal resources such as fish and wildlife habitats and historic and cultural resources (see Policies 19 and 23).

Policy 23 states: Protect, enhance and restore structures, districts, areas or sites that are of significance in the history, architecture, archaeology or culture of the State, its communities, or the nation.

Historic shipwrecks, other underwater man-made resources, and areas underwater of historic, archaeological, or cultural significance are valuable resources. Protection concerns not just specific shipwrecks, artifacts, or sites, but also areas of significance. The policy is not to be construed as a passive mandate, but must include active efforts to restore or revitalize these resources through adaptive reuse. The resources of significance are comprised of:

- (a) a resource in a federal or State park established, among other reasons, to protect and preserve the resource;
- (b) a resource on, nominated to be on, or determined eligible to be on the National or State Registers of Historic Places;
- (c) a resource on or nominated to be on the State Nature and Historic Preserve Trust;
- (d) an archaeological resource which is on the State Department of Education's inventory of archaeological sites;
- (e) a local landmark, park, or locally designated historic district located within the boundary of an approved local waterfront revitalization program;
- (f) a resource that is a significant component of an Urban Cultural Park.

Consistency of federal and State activities with Coastal Policies

Federal and State activities, including certain permit and other approval decisions, direct agency actions, and funding actions, are required by the consistency provisions of the federal and State Coastal Management Program legislation and regulations to be undertaken in a manner consistent these policies. Activities that would be inconsistent with these policies, whether directly undertaken by federal or State agencies, funded by these agencies, or requiring permits or approvals, may not be undertaken. State agency activities should also advance these policies in order to fully implement the Coastal Management Program.

Long Island Regional Element of the Coastal Management Program Relating to Shipwrecks

The State is currently completing its first regional coastal management program, for the Long Island Sound region. The policies of the draft Long Island Sound Coastal Management Program have been amended to reflect the unique circumstances and needs of the Long Island Sound region, as well as new State and federal legislation affecting the State and region. The regional program identifies the need to protect, preserve and manage abandoned historic shipwrecks by: identifying and conducting surveys of all shipwrecks in Long Island Sound; developing a management program to protect and preserve historic shipwrecks for the public either in place or, if conditions warrant their excavation, excavating and conserving them in an appropriate manner, and; guaranteeing public access to certain shipwrecks for water-dependent recreation.

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