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LIBRARIES & LEGAL RESEARCH

Is the shipwreck I found in Lake Michigan mine?

GREAT LAKES SHIPWRECK LEGAL RESEARCH BASICS AND SOURCES

BY KINCAID C. BROWN

There have been approximately 6,000 shipwrecks¹ claiming an estimated 30,000 lives in the Great Lakes² and new shipwrecks continue to be located, such as the recently discovered Atlanta.³ There are many opportunities for divers, boaters, and other users of the Great Lakes to come across found and new shipwrecks. This article discusses the basic framework of federal, state, and other law governing these shipwrecks.

FEDERAL LAW

In 1988, the Abandoned Shipwreck Act⁴ (ASA) became law. Congress passed this law to affirm that the states have a responsibility for managing resources in state waters and submerged land (defined as “lands beneath navigable waters”).⁵ These resources specifically include shipwrecks “which have been deserted and to which the owner has relinquished ownership rights with no retention.”⁶ Management of shipwreck resources was important for the states for recreational, educational, tourism, research, and biological sanctuary reasons.⁷ The federal government asserted title over the abandoned shipwrecks but then transferred title to the state in whose submerged lands the shipwreck was located.⁸

The ASA also directed the National Park Service to publish guidelines that would ensure the management of and access to shipwreck resources while also recognizing interests in shipwreck discovery and salvage.⁹ These guidelines were published accordingly

and provide the states with advice on how to effectively manage shipwrecks in the waters they control including the location and identification of shipwrecks, determining if a shipwreck is abandoned (so that it meets the criteria of the ASA), protecting shipwrecks, and providing sports divers access to shipwrecks.¹⁰ While the National Park Service guidelines are advisory, they note that state shipwreck management programs were to be consistent with the spirit of the guidelines.¹¹

MICHIGAN LAW

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) estimates that approximately 1,500 shipwrecks are located in state waters.¹² State law regarding the management of Great Lakes shipwrecks is set in Part 761 of the Michigan Compiled Laws governing aboriginal records and antiquities.¹³ Pursuant to the ASA, Michigan reserves title to “abandoned property of historical or recreational value found on the state owned bottomlands of the Great Lakes.”¹⁴ For the purposes of the statute, Lake St. Clair replaces Lake Ontario in the definition of “Great Lakes” because Lake Ontario does not touch the state.¹⁵

In an effort to protect the historical and recreational value of Great Lakes shipwrecks, it is illegal to remove, alter, or harm a shipwreck or property in the vicinity of a shipwreck without a permit.¹⁶ Possible penalties include fines and imprisonment along with the confiscation

of watercraft and other equipment used in the crime.¹⁷ However, It is permissible to recover abandoned property without a permit if it is not located in the vicinity of a shipwreck and the recovery can be accomplished by hand without mechanical assistance.¹⁸ In order to adhere to the purposes of the ASA and protect recreational uses of the Great Lakes, Michigan law affirms the right of recreational divers to access the bottomlands and visit shipwrecks — assuming divers do not engage in prohibited activities.¹⁹

The statute also created the permit system necessary to administer interactions with shipwrecks in the Great Lakes bottomlands.²⁰ This permit system is now available online²¹ and permits are approved by EGLE and the Michigan Department of State with the advice of the Underwater Salvage and Preserve Committee established by the statute.²² The committee's purpose is to provide technical advice to the government regarding shipwreck salvage and preservation activities.²³

Michigan law calls for the creation of Great Lakes bottomlands preserves that are established to protect one or more shipwrecks or "other features of archaeological, historical, recreational, geological, or environmental significance."²⁴ These preserves may not individually exceed 400 square miles and the total amount of preserve area may not be more than 10% of the total bottomlands except for the Thunder Bay Great Lakes Bottomlands Preserve, which was created separately as a national marine sanctuary.²⁵ To date, 13 bottomlands preserves have been established, protecting 7,200 square miles of bottomlands — an area larger than Connecticut and Rhode Island combined.²⁶ Salvage permits for artifacts within a preserve may only be granted for historical or scientific purposes or when recovery will not degrade the preserve.²⁷

THE LAW IN OTHER GREAT LAKES STATES

Other states bordering the Great Lakes have similar statutory schemes. Wisconsin retains title to "submerged cultural resources," establishes bottomland preserves, and has set penalties for damaging or removing objects.²⁸ Illinois reserves the right to regulate and excavate archaeological resources²⁹ including shipwrecks³⁰ and prohibits the disturbance of such resources.³¹ Ohio retains ownership of abandoned property in Lake Erie³² including shipwrecks,³³ has a permit system for salvage,³⁴ establishes submerged lands preserves,³⁵ and statutorily affirms recreational diving rights.³⁶ Minnesota has not revised its archeology legislation to incorporate shipwrecks, but has published a preservation plan for the approximately 50 shipwrecks in its Lake Superior waters.³⁷ Finally, New York reserves the right to salvage archaeological objects and prohibits the removal of such objects.³⁸

ONTARIO LAW

The only Canadian province that borders the Great Lakes, Ontario protects shipwrecks by prohibiting archaeological field-

work, removing artifacts, or diving within 500 meters of a "marine archaeological site" without a license.³⁹ Marine archaeological sites are prescribed individually, such as to protect the wreck of the Edmund Fitzgerald in Lake Superior⁴⁰ and the wrecks of the Hamilton and Scourge in Lake Ontario.⁴¹ Ontario can also extend the prohibited diving area around a shipwreck for further protection; for example, the regulated areas around the Hamilton and Scourge are 750 meters.⁴²



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ENDNOTES

1. *Michigan Shipwrecks*, Mich Dept of Environment, Great Lakes, and Energy <<https://www.michigan.gov/egle/about/organization/water-resources/shipwrecks>> [<https://perma.cc/KT9C-TUEG>]. All websites cited in this article were accessed June 9, 2022.
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4. 43 USC 2101 *et seq.*
5. 43 USC 2102(f)(2) and 43 USC 2101(a).
6. 43 USC 2101(b).
7. 43 USC 2103.
8. 43 USC 2105(a) and 43 USC 2105(c).
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10. Abandoned Shipwreck Act Guidelines, 55 Fed Reg 50116 (December 4, 1990).
11. *Id.* at 50120.
12. *Michigan Shipwrecks*.
13. MCL 324.76101 *et seq.*
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16. MCL 324.76107(1) and MCL 324.76109(1).
17. MCL 324.76107 and MCL 324.76117.
18. MCL 324.76108.
19. MCL 324.76113(a).
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23. *Id.*
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25. MCL 324.76111(5) and MCL 324.76111(7).
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27. MCL 324.76112(4).

28. Wis Stat § 44.47 (1997).
29. 20 Ill Comp Stat 3435/1 (2018).
30. 20 Ill Comp Stat 3435/02(a) (2018).
31. 20 Ill Comp Stat 3435/3 (2018).
32. Ohio Rev. Code Ann. § 1506.33 (2015).
33. Ohio Rev Code Ann § 1506.30(A) (2013).
34. Ohio Rev Code Ann § 1506.32 (2015).
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37. Marken et al, *Beneath Minnesota Waters*, Minnesota Historical Society (June 1997) <<https://mnhs.gitlab.io/archive/shipwrecks/www.mnhs.org/places/nationalregister/shipwrecks/mgmtplan/plan0697.html>> [<https://perma.cc/JTZ7-2MYG>].
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39. Ontario Heritage Act, RSO 1990, c O 18, s 48(1).
40. Ontario Heritage Act, Marine Archaeological Sites, O Reg 11/06, s 1(2).
41. *Id.*, s 1(1).
42. Ontario Heritage Act, Alternate Distances, O Reg 11/06, s 2.

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