

CITY OF UNALASKA



Unalaska 1816, apres Louis Choris, par Ayse Gilbert

UNALASKA HISTORIC PRESERVATION PLAN

1994-95 EDITION

UNALASKA HISTORIC PRESERVATION PLAN

1994-95 EDITION

Prepared
by
Nancy Gross

for
The Unalaska Historic Preservation Commission

This project was made possible by a matching grant from the Alaska Office of History and Archaeology of the Division of Parks and Outdoor Recreation, Department of Natural Resources and funding by the City of Unalaska.

CITY OF UNALASKA

Frank Kelty - Mayor

City Council

Doug Bagnell
Kris Flanagan
Gregg Hanson
Bev Reid
Sandra Moller
Shirley Marquardt
Chuck Firth (Term completed Oct. 1994)
Richard Carroll (Term completed Oct. 1994)
Dennis Robinson (Term completed March 1994)

Historic Preservation Commission

Cynthia Galaktionoff, Chairperson
Jeffrey Dickrell, Vice-chairperson
Patricia Lekanoff-Gregory, Secretary
Patricia Spalding

Lottie Roll (Term completed Feb. 1995)
Sharon Perillo (Term completed Nov. 1994)
John Lucking (Term completed Oct. 1994)
Marti Murray (Term completed Oct. 1994)
Betty Cook (Term completed Sept. 1994)
Terry Bennett (Term completed Sept. 1994)
Jim Touza (Term completed Feb. 1994)

Administration

Mark Earnest - City Manager
Mike Whitaker - Director Parks, Culture and Recreation
Lorri McDuffey - Administrative Assistant II, staff support to UHPC

CONTENTS

	Page
List of Maps	i
Illustrations	ii
Acknowledgements	v
Key Map, Unalaska Island	vi
Key Map, Amaknak Island	vii
I. INTRODUCTION	I-01
A. Historic Overview	I-06
II. EXISTING CONDITIONS AND TRENDS	
A. The Community	II-01
B. Historic Preservation Trends	II-03
III. ISSUES AND OPPORTUNITIES	
A. Incentives for Historic Preservation	III-01
B. Local Landmarks Program	III-03
C. Local Issues and Concerns	III-10
IV. GOALS AND OBJECTIVES	IV-01
V. IMPLEMENTATION	V-01
THEN AND NOW	V-02
ENDNOTES	V-05
VI. APPENDICES	
1. Bibliography	
2. Inventory of Historic Sites	
3. National Historic Preservation Act of 1966 (Sections 1,2 and 106)	
4. National Abandoned Shipwrecks Act	

Maps

	Page
Key Map, Unalaska Island	vi
Key Map, Amaknak Island	vii
Location Map, National Park Service	I-03
Plan Boundary	I-05
Aleut Highway Map	III-17

Illustrations

Figure		Page
1.	Early day Unalaska village, US.	I-04
2.	The vessel <u>Slava Rossiya</u> at Unalaska, about 1790. Drawing by Luka Voronin, UW Negative 12605, Special Collections Division, University of Washington Library.	I-09
3.	Unalaska Hut, from book of unpublished drawings of Alaskan scenes by Levashev 1767-68, COU.	I-12
4.	Habitation A Ounalacheka, from 1827 drawing by Kittlitz on Lutke's voyage around the world, 1826-29. Rare Book Collection, Lutke Historical Photo, acc. # C0024. Archives, Alaska and Polar Regions Dept., UAF.	I-16
5.	A.C. Co. Store with Russian cannons, J.E. Thwaites, COU.	I-19
6.	Early day A.C. Co. facilities showing the railway track between the warehouse on the dock and the open porched store, passing the two-story hotel, C.L. Andrews Collection, PCA 45-345, AHL.	I-20
7.	Latter day barabaras, approximately 1920, U.S. Coast Guard Collection, AHL.	I-21
8.	Russian Orthodox Church of the Holy Ascension and Bishop's House with the Russian School attached, U.S. Revenue Cutter Collection, PCA 79-63, AHL.	I-22
9.	Jessie Lee Home, 1990, NPS.	I-23
10.	N.A.C.Co. facility at Dutch Harbor, Early Prints, 01-295, AHL.	I-25
11.	Brick faced apartment building, COU.	I-26
12.	U.S. Navy personnel at the A.C. Co., US.	I-27
13.	Downtown Unalaska, from across the creek, COU.	II-01
14.	One of the proposed sites for the city's museum/library, COU.	II-02

Illustrations (Cont.)

Figure	Page
15. Terrazzo emblem from WWII Officers Club, now at Public Safety Building, COU.	II-03
16. Marco Roller Rink, COU.	II-04
17. Henry Swanson's home, now the Visitor Information Center, COU.	II-04
18. Interior of Aerology Building, MarkAir.	II-05
19. Grand Aleutian Hotel, COU.	II-06
20. Adaptive Reuse of WWII Building, USPS.	II-07
21. Jesse Lee Home buildings and unfinished paddlewheeler, between 1900 and 1910, COU.	III-03
22. Bishop's House, 1994, COU.	III-04
23. Manson Saltery, NPS.	III-05
24. Dorsey House, NPS.	III-06
25. Alice Moller House, NPS.	III-07
26. Totem Pole House, NPS.	III-07
27. Dr. Mushovic's Office, COU.	III-08
28. Alascom building, dating from the turn of the century, COU.	III-08
29. A.C. Co. Complex, Early Prints 01-3202, AHL.	III-09
30. The same view in 1994, COU.	III-09
31. Expedition Island, 1910, Boaz Collection, UAF.	III-11
32. Expedition Island, 1994, COU.	III-11
33. Harbor Activity 1994, COU.	III-14

Illustrations (Cont.)

Figure	Page
34. What Can We Learn?, NPS Archaeological Assistance Program.	III-20
35. Sitka Spruce Plantation, COU.	III-22
36. Expedition Island Park, COU.	III-22
37. Chapel of the Deep, National Archives.	IV-03
38. Dutch Harbor Panorama, 1910, Aleutian Chain Collection, acc. 72-114-20, UAF.	V-02
39. Dutch Harbor Panorama, 1994, COU.	V-02
40. Standard Oil Hill, WW II, Fred Machetanz Collection, acc. 73-75-144N, UAF.	V-03
41. Standard Oil Hill, 1994, COU.	V-03
42. Looking towards Standard Oil Hill, WWII, US.	V-04
43. Looking towards Standard Oil Hill, 1994, COU.	V-04

AHL = Alaska Historical Library

COU = City of Unalaska

NPS = National Park Service

UAF = Archives, Alaska and Polar Regions Dept., University of Alaska, Fairbanks

US = Unalaska School

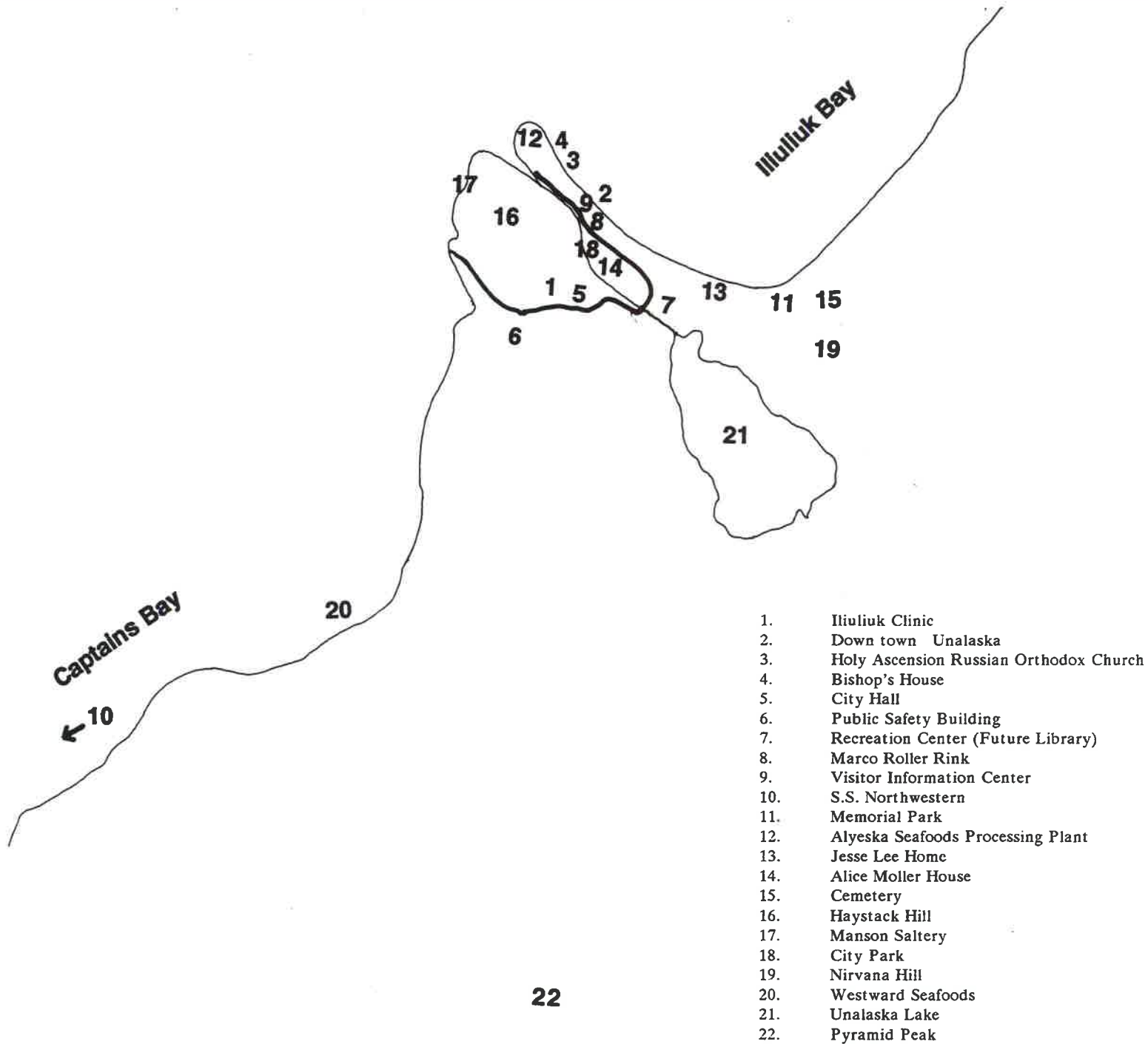
USPS = Unalaska School Photography Students

Acknowledgements

A number of people have been extremely helpful to me in this project. First of all, Linda Cook of the National Park Service was most generous in providing me with a diskette of the text and a number of the graphics of the original plan. I hope she will approve of the use I made. Andy Davis of the National Park Service provided me with a great deal of helpful information regarding cultural resources. Marti Murray of the Unalaska Historic Preservation Commission, whose idea it was to redo the plan, "now that we understand what it can do," was most helpful with comments and suggestions all along the way. Jo Antonson, the State Historian, gave me a number of tips on where to get information on various points in the plan as well as general support and encouragement. John Bishop and Scott Diener of the Unalaska Department of Planning gave some very thoughtful comments which I appreciated. Dennis Robinson and others at the Ounalashka Corporation provided valuable insights into the corporation's perspective of historic preservation in Unalaska which I tried to keep in mind as I was writing the plan. Patricia Smith, Librarian at the Unalaska School, graciously allowed me to look through the school's extensive photo collection and select some for reproduction here. Lorri McDuffey, staff support for the Unalaska Historic Preservation Commission, and Mike Whitaker, Director of the Department of Parks, Culture and Recreation of the City of Unalaska, provided all kinds of help, including sympathetic ears.

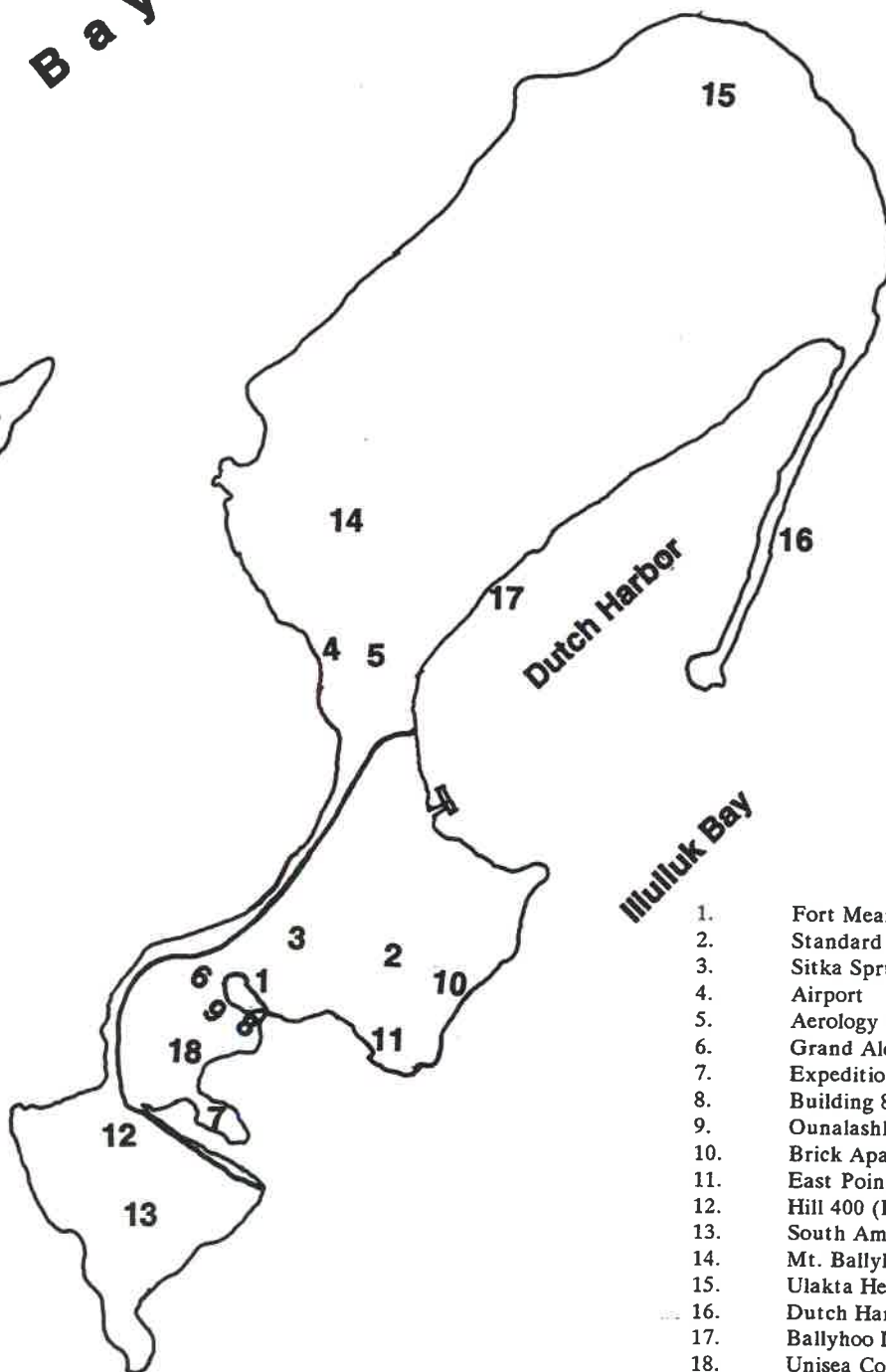
I hope that I have produced a document that the historic preservation commission can use for years to come, and that the public will use to gain new understandings of the challenge of preserving the tangible evidence of history in this dynamic community and come forward to participate.

Anchorage, Alaska
February 28, 1994



KEY TO GEOGRAPHIC FEATURES AND CULTURAL RESOURCES: UNALASKA ISLAND

U n a l a s k a B a y



1. Fort Mears
2. Standard Oil Hill
3. Sitka Spruce Plantation
4. Airport
5. Aerology Building
6. Grand Aleutian Hotel
7. Expedition Island
8. Building 820
9. Ounalashka Corporation Building
10. Brick Apartment Building
11. East Point Trees
12. Hill 400 (Bunker Hill)
13. South America
14. Mt. Ballyhoo
15. Ulakta Head
16. Dutch Harbor Spit
17. Ballyhoo Dock
18. Unisea Complex

KEY TO GEOGRAPHIC FEATURES AND CULTURAL RESOURCES: AMAKNAK ISLAND

I. INTRODUCTION

Purpose

In 1992 the Unalaska Historic Preservation Commission (UHPC) decided that the historic preservation plan for the community, which was completed in 1990, needed to be updated because of significant changes in the community and the continuing loss of important historic resources. The project was begun in the fall of 1993 and resulted in this edition of the plan.

The purpose of this plan is to educate the public about the history of the community, focusing particularly on the historic and cultural resources; and to make recommendations to decision makers at the local, regional, state, and federal levels of government and the private sector regarding protection of those resources for generations yet to come.

Definitions

Because it is important to make clear exactly what is intended when discussing historic preservation, definitions of some of the key phrases and concepts have been added here to assist the reader. Most of these definitions were taken from the Alaska Office of History and Archaeology's Guide to Programs and Services published in June 1993. A few are from the National Trust for Historic Preservation's Fact Sheet I-1, "The Basic Restoration and Renovation Vocabulary."

Certified local government - A local government which must pass a local landmark ordinance, establish a historic preservation commission, implement a historic resources inventory, and provide for public participation.

Cultural and/or historic resources - Deposits, structures, ruins, sites, buildings, graves, artifacts, fossils, or objects that provide information pertaining to history or prehistory.

Historic preservation - The protection or restoration of a property or site to save its historic character.

History - The study of people, places, and events that occurred since written records have been kept.

Preservation - Keeping or maintaining something to sustain its value for enjoyment and knowledge of future generations.

Rehabilitation - Adapting a historic property for contemporary use while preserving the features significant to its historic, architectural, and cultural values.

Relocation - Moving a building from its original site. This removes it from its historic setting, but sometimes that is the only way to preserve it.

Restoration - Returning a historic property to the way it looked during its period of importance.

Stabilization - The process of making a historic property that is unsafe and deteriorated, stable and weather resistant.

Background

Unalaska's history is one of the richest in the state, extending from the earliest days and including pre-contact times, the Russian Period, the Gold Rush, World War II and the postwar economic boom which has continued almost unabated to the present. The growth rate here is one of the highest in the entire nation, with population going from three hundred people in 1970 to 3,089 in 1990. It is urgent that the community take steps to preserve the tangible evidence of these earlier periods before they are removed or dwarfed by present day construction.

The population growth is a result of extremely intense industrial, warehousing and transportation development to support first Alaska king crab and later, tanner crab and bottom fish catching, processing and shipping. This support has taken the form of docks, offices, fueling stations, housing, warehouses, vessel repair facilities, equipment fabrication and repair shops, electronic sales and servicing shops, gear storage lots, and retail stores. Because the community is extremely hilly with the mountains plunging into the sea at many



Location Map

locations, level land suitable for development is at a premium. This second edition of Unalaska's Historic Preservation Plan will identify the truly significant vestiges of historical and cultural resources our community enjoys. Because many of the resources exist on privately owned land, the city and the public must be sensitive to that property ownership, and must be careful to enter private lands for use and/or enjoyment of historic and cultural resources located there only with the knowledge and approval of the property owner.

**PLEASE RESPECT PRIVATE PROPERTY.
DO NOT ENTER WITHOUT THE
PERMISSION OF THE OWNER.**

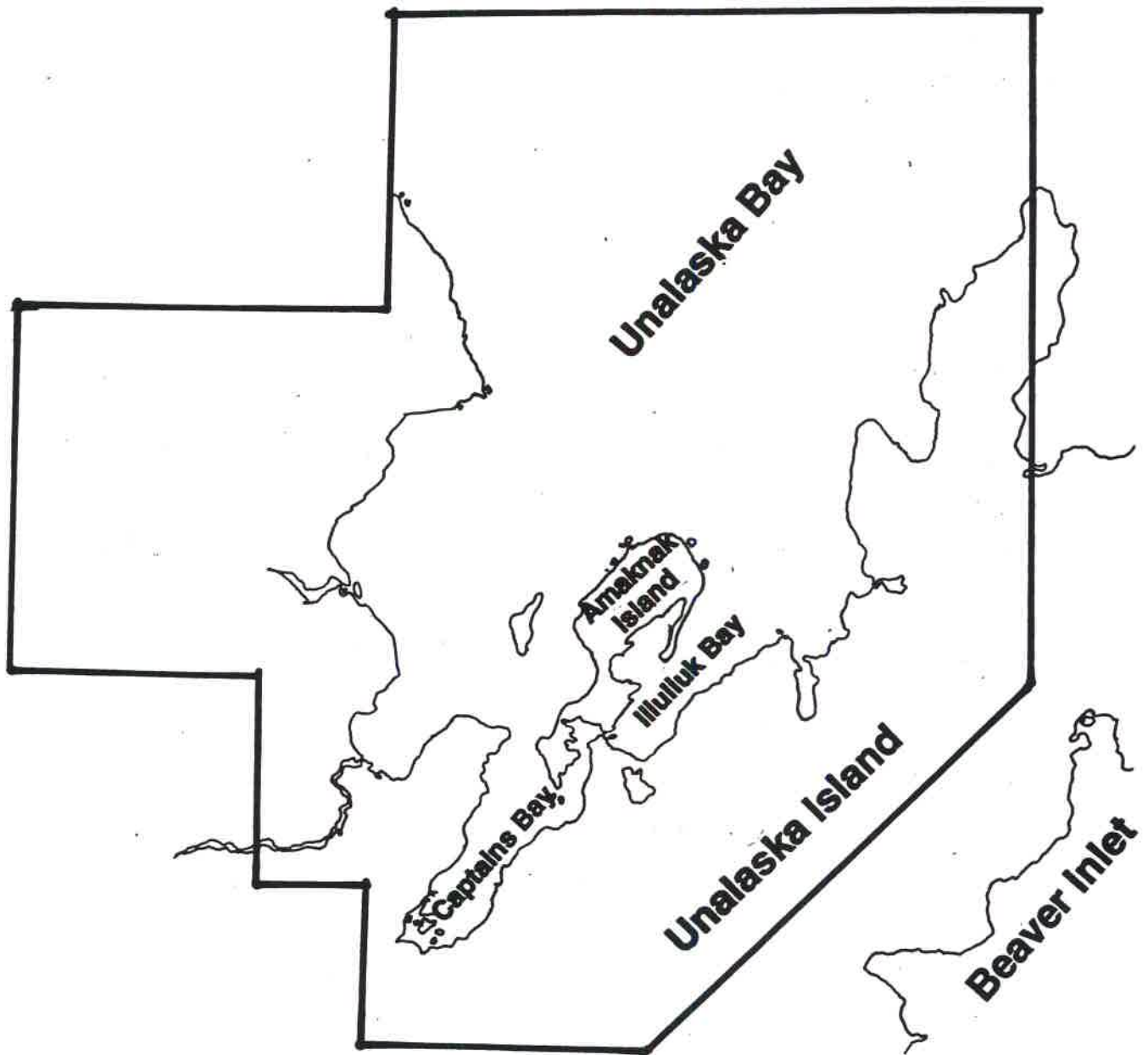
This community is fortunate to have three National Historic Landmarks (NHL). There are only about 2000 in the entire country. The NHLs are the Sitka Spruce Plantation on Amaknak Island planted in 1805-1807, the Holy Ascension Russian Orthodox Church and

Bishop's House, which date from the 1880's and 1890's, and the World War II facilities of the Dutch Harbor Naval Operating Base and Fort Mears.

Preservation of historic and cultural resources must not be the only goal. Rather, the purpose of historic preservation must be the illumination of the past and a passing on of the essence across history of this place, now called Unalaska.



Figure 1
Early day Unalaska village



APPROXIMATE PLAN BOUNDARIES
(includes all areas within Unalaska City limits)

A. HISTORIC OVERVIEW

"This section of the plan is taken from the 1990 edition of the plan written by Linda Cook except for minor changes of spelling, etc. and some information about the recent past."

Stretching between two continents, the Aleutian Islands supported a rich maritime culture shared by at least two distinct prehistoric Aleut peoples. Known to archaeologists and anthropologists as the Pre-Aleut or Paleo-Aleut and the Aleut or Neo-Aleut, these two peoples migrated and settled in the eastern and western regions of the Aleutian Islands at different time periods. The earlier Paleo-Aleut people, characterized by long facial features were possibly the first to occupy islands. A second people, the Neo-Aleuts, characterized by rounded, broader features later migrated from the east, integrating themselves with Paleo-Aleuts in the eastern islands. The Neo-Aleuts never reached the more remote isolated western islands of Attu, Shemya, and Agattu, where the Paleo-Aleut peoples existed intact until the period of Russian contact. Traditions attributed to Paleo- and Neo-Aleut culture existed between 2500 B.C. and 1800 A.D.

The oldest recorded site in the Aleutian Archipelago is on Anangula Island in Nikolski Bay, Umnak Island. The Anangula peoples occupied the island in 6000 B.C. and had a unique culture that predated the earliest estimate of Paleo-Aleut tradition. Artifacts studied through midden excavation revealed that while Anangula and Aleut stone technologies differed, all the Aleutian peoples shared a common maritime and island culture. Each race faced the same isolation, environment, and subsistence challenges associated with the Aleutian Islands.

The Aleuts, differing primarily in physical appearance, were culturally compatible and coexisted through a network of intertribal dependence and strife. They shared hunting practices and exchanged people for political, social, and economic purposes. At present there is no widely accepted theory to explain the development and identity of the Aleut peoples. In the last century new archeological information has contributed to the puzzle but

few scholars agree on little more than generalities. In 1877, William Dall presented the first prehistoric model for the Aleutians based on his own archeological investigations. Dall proposed that the peoples of the subarctic experienced three distinct periods, the Littoral, the Fishing, and the Hunting Periods.¹ Within these periods the Aleuts developed from a group of small communities with few possessions to a society founded on complex traditions of burial rights, hunting technology, and artisan carving.

By the mid-eighteenth century the Aleut peoples were well established when Russian ships happened upon the Aleutian Islands. Eager to find winter harbors, Russian crews ventured ashore to set temporary camps and encountered Aleuts on many of the coastal inlets. The first permanent Russian settlement in northwestern America was later established on Unalaska. The village was named Iliuliuk,² an adaptation of the Aleut word *ilulaq* meaning "dwelling together, harmonious"; the Russian names were *Gavanskoe selenie* and *Eguchshak*.³ In 1762, Stephen Glotof erected a temporary camp on the village site and Ivan Solov'ov established the permanent trading station in the 1770's.⁴ The settlement predated the larger eastern outposts at St. Paul Harbor on Kodiak and Novo'Arkhangel on Sitka and secured the rich sea otter furs of the Aleutian Chain for Russian exploitation. For the Russians, the village offered an administrative stronghold to rule the Bering Sea; for the indigenous Aleut people, Russian expansion shattered their rich culture and lifestyle.

Russian Exploration

*Russian Columbuses, having defied a sullen fate, shall open in the ice a new route to the East, and our Empire will reach to America.*⁵

Russian presence in the Aleutians began several decades before Solov'ov arrived in Unalaska. Eager to explore the lands to the east and sustain a lucrative fur and tea trade with China, Russia ventured into the Pacific in search of a far reaching western land bridge to North America. By conducting secret reconnaissance missions, Russia hoped to annex

northern territories and control the powerful fur market before rival European countries colonized northwestern America.

Beginning in 1728, Russian explorers charted the islands stretching across the Pacific Ocean in a series of government sponsored expeditions. Under Peter I, three expeditions explored and mapped the waters off the northeastern coast of Russia. Peter I appointed the Danish commander, Vitus Bering to lead the arduous expeditions. Bering had orders to sail north until he reached America and follow the coastline to a city under European rule.⁶ European and Russian cartographers and geographers in the seventeenth and eighteenth centuries believed that an indeterminate land mass extended to the North American continent. Russia concluded that once it reached this fictitious land bridge explorers could access the Pacific coast line from Canada south to Mexico.

It was not known if Peter I entirely supported this theory, but as czar, he desperately needed to increase the empire's failing treasury. The development of the fur trade market off the eastern coast of the Kamchatka Peninsula was an attractive economic option. While heading east in search of furs Bering explored a maritime route to the "unexplored" regions of America.⁷ During Bering's third and last voyage in 1741, the crew spotted the lush sea otter pelts that were to direct the course of Russian holdings in North America for the next 120 years.

In 1763, the court of Catherine the Great initiated a second series of secret voyages. These voyages continued to chart the Aleutian Islands and Alaska coastline in addition to monitoring Aleut and Russian relations and the exploitation of fur resources by private fur merchants called *promyshlenniki*. From an early date the Russian government encouraged private enterprise to invest in the fur resources; the great expense and the great risk associated with each voyage proved too much for the struggling treasury. One merchant Stephen Glotov, reached the islands of Unalaska and Unimak in 1759. His crew included director I. Solov'ov and tribute collector S. Ponomarev. After three winters on the island, Glotov set sail for Kamchatka with a cargo of sea otter pelts and over a 1000 fox pelts.⁸ Between 1772 and 1775 during his third and final trip to the island, Solov'ov pioneered the first permanent trading station in the Aleutians on Unalaska Island.

As word reached St. Petersburg that the money hungry *promyshlenniki* exploited Native populations, the government responded with still more reconnaissance voyages. In 1768, two naval officers Capt. Petr. K. Krenitsyn and Lt. Mikhail D. Levashev departed for the Aleutians under the guise of a third secret voyage. Krenitsyn and Levashev had orders to verify all recent discoveries by the *promyshlenniki* and to check on reports of Russian abuses. Designated "an Expedition to Survey the Forests in the Ural Mountains along the Kama and Belaia Rivers," the crown commissioned the commanders to annex the newly discovered islands. They wintered in temporary camps on Unimak Island and at Port Levashef.

The *promyshlenniki* thrived on the vast fur resources in the Aleutians. With so many opportunities to market high quality fur, merchants ignored government requests to explore further east in search of the American continent. As costs rose, fewer government voyages patrolled the Aleutians and land acquisition became less of a priority. Officials in St. Petersburg soon realized, however, that timing was critical in the worldwide race to annex North American lands. Finally in 1784 when G.I. Shelikhov established the second

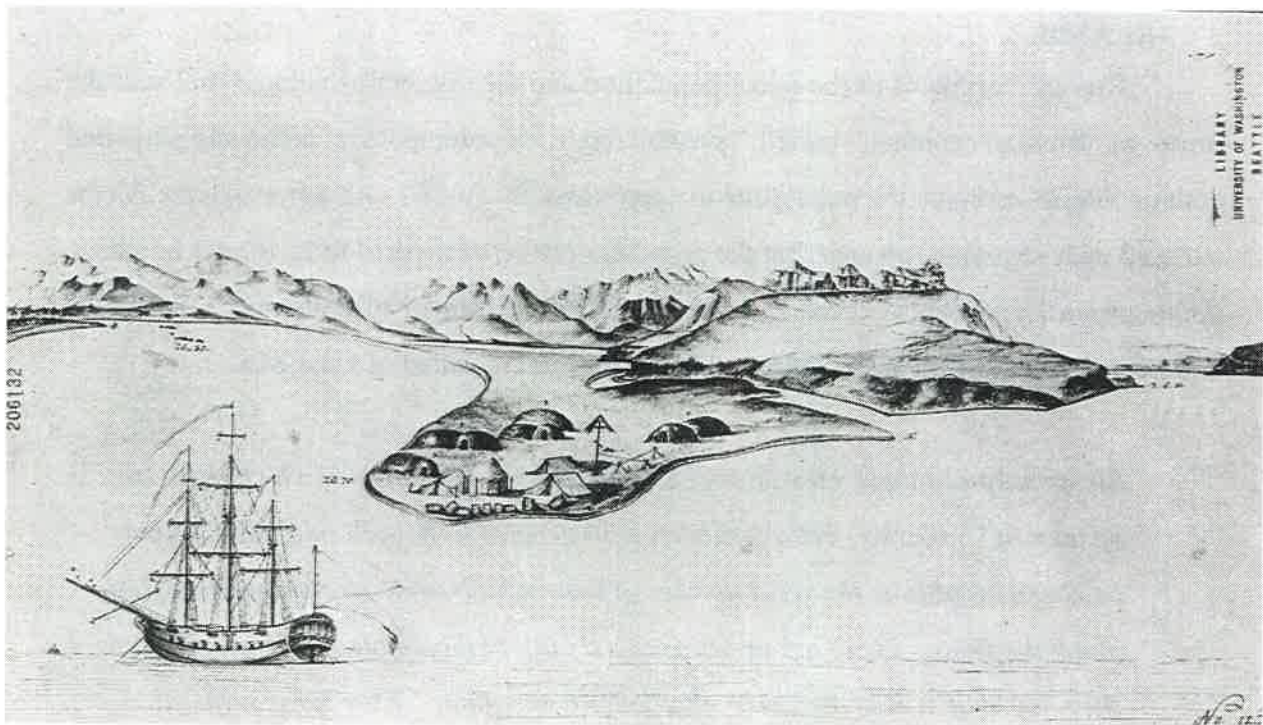


Figure 2
The vessel Slava Rossiya at Unalaska, about 1790.

permanent Russian settlement on the island of Kodiak, the Russian court secured a strategic outpost from which to explore the Northwest Coast of America. Shelikhov counted on the harvest of sea otter pelts taken from the southeast as well as increased access to the Alaska mainland to support his operations and establish more outposts.

The success of the Russian outposts in the Aleutians depended largely on the acculturation and exploitation of the Aleut. From an early date the *promyshlenniki* realized that only the Aleut hunter possessed the skill to successfully hunt the sea otter. They depended on the Aleut for manpower, housing, food, and women. After the 1780's when sea otter populations dropped, the Russians continued to rely on the Aleut. Russian labors were loathe to work for long periods in the harsh and remote Aleutian outposts and often only the most desperate chose Russian America over Siberia.⁹ By the early eighteenth century the Russian American Company recognized the need to sanction the Aleut people and took steps to integrate them into Russian culture. In so doing, the Russians established a stronger local infrastructure including churches and schools on outpost islands, including Unalaska.

The Aleut

Russian estimates of the Aleut population and the number of villages on Unalaska prior to Russian contact, varied considerably. Contemporary archaeologists and anthropologists estimate the population at approximately 16,000. All agree that the Aleuts suffered under Russian rule and that the population never recovered to its former numbers. Although earlier accounts existed, in 1768 and 1769, under order of Catherine II, Krenitsyn and Levashef recorded census information specific to the island of Unalaska.

Six or seven of these huts or yourts [yurts] make a village, of which there are sixteen in Unalaska. The islands seem in general to be well inhabited, as may be conjectured from the great number of boats which are seen continually plying along the shore. There are upwards of a thousand inhabitants on Unalaska and they say that it was formerly much more populous. They have suffered greatly by their disputes with the Russians, and by a famine in the year 1762;

*but most of all from a change in their way of life.*¹⁰

Father Ivan Veniaminov, Saint Innocent, provided one of the best references for Aleut culture. Veniaminov arrived at Unalaska in 1824 and spent the next ten years as priest and teacher to the Aleut. He documented village life and identified each of the twenty-four original villages on the island. By 1805 the number decreased to fifteen, and twenty-five years later only ten remained. Aleut tradition maintained that long before the Russians arrived every suitable site on the Unalaska District Islands had a village with between forty and seventy men. Men were counted by the number of single-hatch *baidarkas* or boats at the village.

Officials of the Russian American Company as well as travelers commented on the village of Unalaska and its inhabitants at different times, usually providing conflicting accounts. The greatest discrepancy in the historic accounts was the number of Aleuts in comparison to the number of Aleut dwellings.

In particular, as the Aleut population decreased over time, the number of Aleut dwellings increased. It was possible that Russian officials disbanded the larger communal *yurts*, erecting in their place individual huts or *barabaras*, at the same time that local populations suffered from exposure, hunger, labor, isolation, and hardship. Therefore, even though the number of Aleuts decreased, with the change in housing styles, there were more houses for fewer people. No examples of the traditional Aleut semi-subterranean house has survived and by the period of Veniaminov all pre-Russian contact style dwellings had disappeared.¹¹ Known by their Russian names as *yurts* and later the smaller *barabaras*, these earlier structures varied considerably in size and construction to accommodate communal families. The size of the village often corresponded to the size of the dwellings and from ten to forty families coexisted in the largest *yurts* throughout the long winter period. Less restricted by the cold in summer months, families moved to smaller dwellings and subsistence camps to fish and gather food.

Dwellings differed in size but shared several structural features. The preferred shape was rectangular, positioned lengthwise from east to west.¹² Wind, an inescapable element

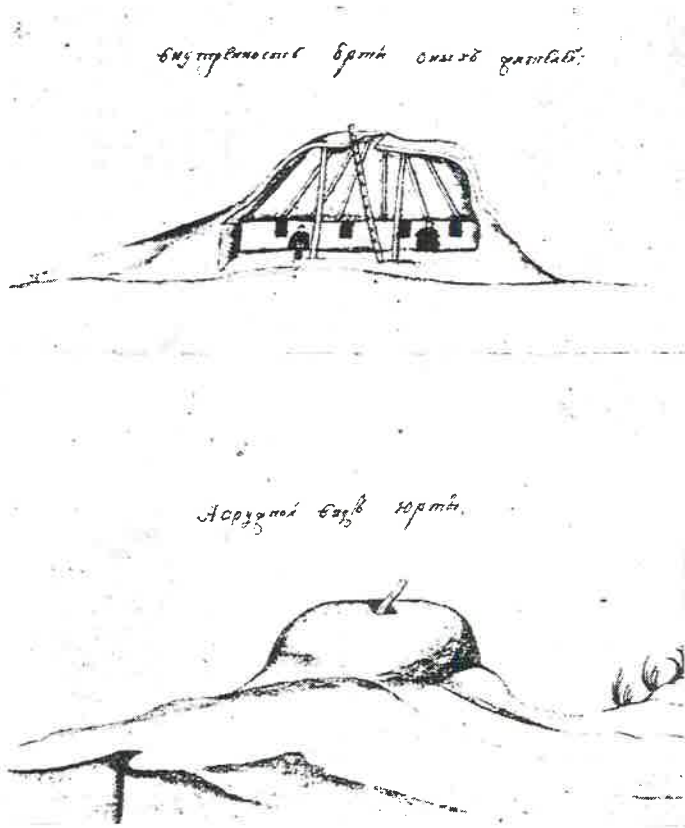


Figure 3

Inside and outside of Native hut, Unalaska. From book of unpublished drawings of Alaskan scenes by Levashev 1767-68, located in the Archives of the Hydrographic Section of the Ministry of Marine, Petrograd.

in the Aleutians, influenced building orientation and early builders positioned their dwellings on axis with prevailing winds. Floors were usually two to three feet below grade and the walls and roof were made of sod in an arched form. In the oldest dwellings whalebone carried the roof load and shored up the sod walls. Driftwood posts and poles later replaced the bone supports. From the beaches Aleuts gathered yew, cedar, and picea, a type of arctic evergreen driftwood, for structural supports as well as for boat frames and hunting lances.¹³ Dried grass and matting insulated the sod roofs. Multi-functional roof hatches provided the only opening into the dwellings. The hatch served as both entrance and exit

as well as window and smoke flue. Notched log beam ladders accessed the hatches from the below grade earthen floors. For this reason, passage in and out of the dwelling was limited to one person at a time. Hollowed into the earthen walls and concealed by grass wall mats were small secret hiding caches where children hid during raids.

Families divided the interior communal space into separate compartments which ran along the perimeter of the earthen walls. Each compartment was partitioned with posts and hanging mats. The central space remained open. The *toion* or honored headman of the group lived in the back or eastern compartment.¹⁴ The other families of the group occupied the remaining compartments according to rank and communal importance. One or more spiritual

totems or deities called *kadargargh* hung near the hatch to inspire the family hunter when he left and entered these early dwellings.

Housing Changes Under Russian Rule

Housing changed considerably after Russian contact. The nearest forest was 500 miles away and the Russians soon realized they needed to find an alternative to their traditional log cabin. The first Russian shelters on the island were no more than makeshift tents made from animal skins and an inverted *baidara*. To survive in the Aleutian climate and to establish a more permanent camp, they adapted the Aleut sod dwelling adding minor structural features until lumber arrived from outposts at Sitka and Kodiak. On Kodiak where lumber was abundant, buildings techniques ignored Native ingenuity and Shelikhov solicited the government to send to the colonies "a trained engineer, so that forts may be built in proper locations, and according to the rules of fortification."¹⁵

The crew on board Captain James Cook's third voyage were among the first explorers to describe the Russian settlement on Unalaska. In 1778 Cook's ships anchored in English Bay and Aleuts escorted several crew members to the Russian trading factory at Iliuliuk. The Russians greeted the English seamen in a large arch-shaped barrack. The building resembled a *barabara* but the construction was of "American lumber" (perhaps American larch *listvennitsa*) with a door at the south elevation near the west end. The roof was thatched with straw and dried grass. A net secured the thatch against strong winds. Light entered from the east through a mica glazed window and from a skylight glazed with animal intestine. The Russians lived in the east end and used the rest of the space for a storehouse. Higher ranking Russians and Kamscadales slept on bunks while the others simply spread furs and mats on the floor. The English noticed a locked storage building near the barrack which the Russians excluded from the tour of the buildings. The men concluded it contained furs. Two crosses painted white marked the east and west corners of the village site.

In the Aleut village on English Bay where Cook's crew visited there were approximately twenty arch-shaped huts covered with earth and dried grass.¹⁶ The huts were of two classes, small neat single-family dwellings and larger unkept dwellings. As

mentioned, under Russian rule two distinct changes happened at the same time, one was the gradual sometimes dramatic decrease in the Aleut population, the second was the transition from communal living to individual huts. The break down of the communal units into isolated families possibly facilitated Russian control over Aleut groups while rewarding certain sectors of the population and punishing others.

In 1786, eight years after Cook's visit, the Spanish landed on Unalaska and inspected the Russian settlement at Iliuliuk. They observed:

*Two warehouses which seemed to hold skins of otter, whale oil and various casks which the russians make use of in their fishery. In the whole establishment there is only one house, which has one large room which serves as barracks for all the Russians, and another small room in which Capt. Cuzmiche, lives, and near the house there are about 20 huts of Indians [sic] who are enlisted in the service of the Russians.*¹⁷

In the same year the Russian Captain Gavril A. Sarychev recorded four large Aleut *yurts* in the village of Iliuliuk.

In 1805 Chamberlain Nacelle Petrovich Rezanov toured the Russian colony outposts. At Unalaska he observed that "*iurts [yurts]* take the place of houses. Each of them contains several rooms with quite large windows. Outbuildings stand apart. As a whole, the accommodation in the *iurts [yurts]* is quite comfortable."¹⁸ Veniaminov stated, however, that Rezanov "ordered that *yurtas* be built in a manner he found more suitable."¹⁹ Rezanov viewed sub-terrain *yurts* as unsanitary and ordered that new houses be built above ground. Windows for ventilation and vertical doors replaced the multi-purpose roof hatch.²⁰ In addition to the barracks and storehouses, Rezanov observed a locksmith's shop and several gardens in the village.

Locals followed Rezanov's suggestions and by the 1820's the *yurts* in Iliuliuk incorporated many Russian comforts. They had windows and fireplaces and one visitor described them as having a "cleanliness which would do honor to many houses other than

just those at Unalaska."²¹ The French illustrator Louis Choris, less impressed when he visited the village a few years earlier in 1816 on the Kotzebue expedition, wrote:

*It contains a pitiful wooden church, four houses also of wood, and nearly thirty natives [sic] houses of sod. The population is composed of sixteen Russian and about 150 Aleuts.*²²

In 1808 Fedor Burenin, the Russian-American Company manager, constructed the first church in Iliuliuk. Company workers in Sitka felled and shipped the pine logs.²³ In 1825-26 Veniaminov constructed a new church replacing the earlier structure. It was called Holy Ascension, the first of three churches by that name to occupy the site. In 1858 Father Innokenty Shayashnikov (Shaisnikoff) built the second church. Father Shayashnikov, an Aleut from the Pribilofs, served the church in Unalaska from 1848 to 1883.

In 1834 Veniaminov described the village in the following manner:

*A wooden church with a bell tower, five wooden houses, and three wooden storehouses (magaziny), five houses covered with sod, and a cattle yard, all belonging to the company, which has an office here supervised by a manager. . . There are 27 yurtas belonging to the creoles [sic] and Aleuts. Residents here in 1834 were: Aleut males-90, female-106, total 196; beyond that, Russians and creoles [sic]-about 75, a total of 275.*²⁴

There was also a hospital, a cattle station, and an orphanage for girls which opened in 1825.

By the 1830's many of the interior earthen walls of the *barabara* were insulated with wooden boards and planks. A small entry was added to the entrance to serve as both kitchen and storeroom.²⁵ Flooring existed in a few dwellings and as did the occasional interior stove. In each village there was a community bath or steam house. Veniaminov commented that by the late 1830's many Aleuts found the post-1805 *yurt* construction inferior to the

traditional design. Low built windows and doors provided poor ventilation and they were never as efficient as the overhead roof hatch.

The Russian America Company

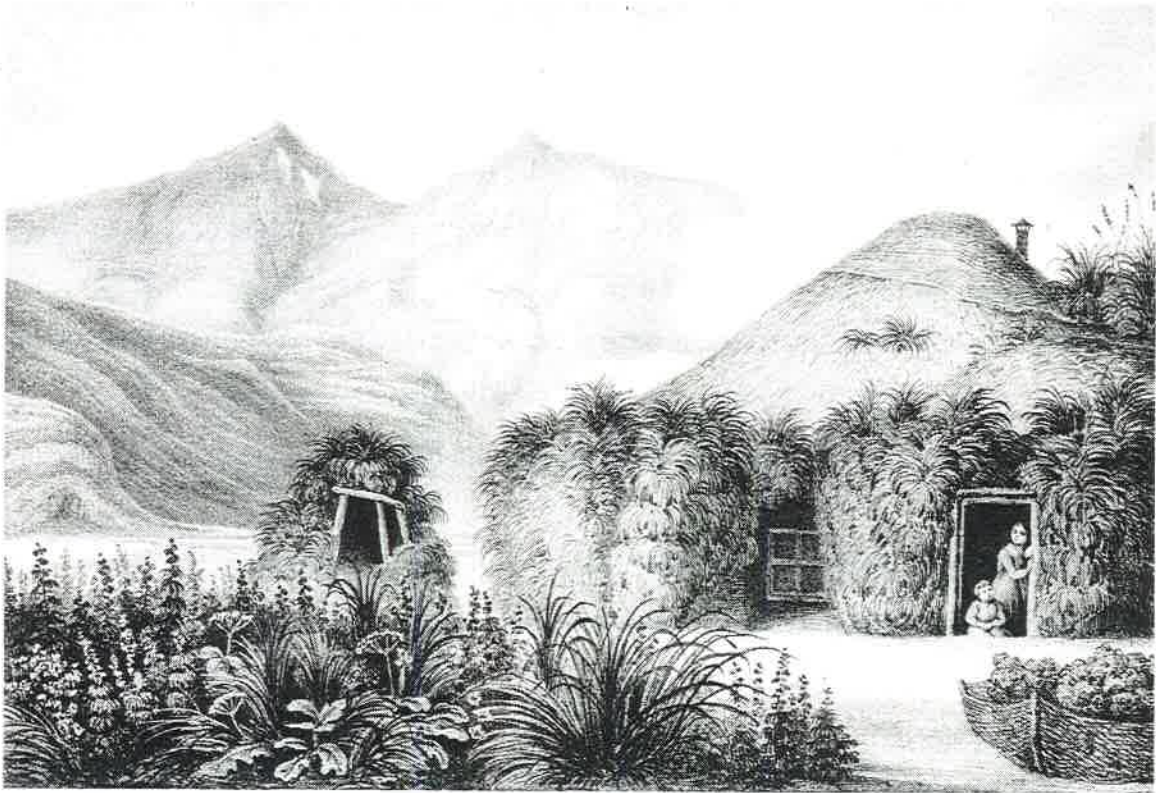


Figure 4

From 1827 drawing by Kittlitz on Lutke's voyage around the world, 1826 - 29.

The Russian America Company, founded in 1799, consolidated the smaller regional companies such as The Unalaska Company, established in 1791, into a major financial venture that monopolized the raw materials of the Russian colonies for nearly seventy years. The company also controlled the religious, cultural, social, and financial fate of its employees which often included most of the Aleut, Creole, and Russian population. Partially subsidized with government support, the company was able to expand into new markets to fuel the

economy when the sea otter furs became scarce. Relations with the Hudson Bay Company opened up American markets for Russian ice, fish, coal, and timber. Despite these efforts, the Russian colonies were unable to support and maintain the enormous territory and by the mid-nineteenth century the company was financially doomed. As government aid was cut back the company was helpless to defend its resources from the expanding American markets. American whalers, fisherman, and sealers frequented the unguarded Russian waters and in 1849 American whalers reported harvesting \$17.4 million from the Russian territory.²⁶ Whaling ships called into port at Unalaska for water and coal which established the port from an early date as an important fueling stop for commercial maritime traffic.

When the United States purchased the Russian colony in 1867 the Russian America Company was forced to liquidate its holdings and suffered major financial losses. During its seventy year reign the company shareholders managed to show a profit from the cheap Native and Russian labor who were forever indebted to the company. The company villages, including Unalaska, grew out of the financial demands and investments of the colonial fur trade. Village life, structure, buildings, and resources were imposed on the Aleut and the Russian America Company stronghold would be only the first of several outside interests to settle on the island and rebuild the local infrastructure.

Transfer into American Hands

*We could not go anywhere without their eager, anxious, speculative faces. Why not leave these islands as spots in which to hunt and angle, haul the seine, or tong the oyster and clam that wait to be lifted out of the water.*²⁷

In 1869 Special Indian Commissioner, Vincent Colyer filed one of the first reports on the new American territory. In the report, Colyer's aide I.A. Lagrange, described Unalaska as a village "mostly of sod houses, with about 300 inhabitants, three stores or trading posts and a handsome greek church." Apparently an earthquake destroyed a portion of the village several years earlier and it was rebuilt further up the "spit." No further reference has been

found to the earthquake but the buildings were well known. The company of Hutchinson, Kohl & Co., who assumed the assets of the Russian America Company in 1867-1868, owned the first of three stores on the island. A second store operated by the schooner General Harney opened in August 1868 and the third opened in May 1869. From the onset of American ownership, observers and commissioners appointed to the new territory marvelled at Unalaska's ideal harbor. As described in the 1869 report:

Iliouliouk [Iliuliuk], with the best harbor in Alaska territory. . . lying in the direct route from San Francisco to all the important islands, bays, and rivers, of the north is the true commercial centre of the territory. . . More custom house business was done there last summer than all the rest of the ports of the territory together. Every sea captain whom I met there wondered that Sitka, which is one hundred and ten miles out of the line of trade, and has no harbor at all, should be preferred before Iliouliouk [Iliuliuk] as the port for entry for the new collection district.²⁸

In 1868 the San Francisco based Alaska Commercial Company procured the assets of Hutchinson, Kohl & Co. In a government lease awarded in 1870 the Alaska Commercial Company acquired exclusive rights to harvest 100,000 fur seals a year from the Seal or Pribilof Islands over the next twenty years. Furs were stored on Unalaska in warehouses and shipped by steamship to San Francisco where they were sent by railroad to New York and then to the international fur auctions in London.²⁹ The company also opened a series of stores in Alaska and Siberia, one of which was located at Unalaska.

The next thirty years in Unalaska were ones of intense activity. There was competition between trading interests in Unalaska and company agents solicited the town as a major port of entry. Steamship lines transported seasonal tourists and travelers from San Francisco and the Pacific Northwest to explore the new U.S. territory. Mail steamers anchored at Unalaska to service both ships and companies. The Pacific whaling ships stopped at Unalaska to collect and send mail, unload whalebone, and refit. Illegal pelagic



Figure 5

Alaska Commercial Company store with Russian cannons. Some of the cannons are now displayed at the Alaska Commercial Company's new store in Unalaska/ Dutch Harbor.

sealing was highly lucrative and international sealers operated at large until the supply ship was full of furs, ready to return to a home port. These poachers, many of them Canadian and Japanese, succeeded in driving down the price of government furs by creating a competitive black market. By 1892 the U.S. Navy sailed to Unalaska to assist the American and British fleets of the Revenue Cutter Service in the patrol of the Pribilofs. Offenders were brought to port at the patrol headquarters and "lines of captured sealers often waited at anchor."³⁰

Like the Russian American Company, the Alaska Commercial Company established itself with a new battery of warehouses, houses, and wharfs. In Unalaska the company built new houses for its otter-hunters and their families.³¹ To maintain a loyal crew of Aleut hunters, the Company lodged the best in company houses. One exaggerated account mentioned forty Native frame houses built along the beach front all painted red.³²

New construction appeared in other company villages and changed the appearance of many Aleut and Russian settlements. At the Pribilof Islands, the Alaska Commercial Company built company houses for its employees. According to one company publication the new housing on the islands seemed without a doubt, utopian.

*In the place of the squalid, filthy habitations of the immediate past, [were] two villages, neat, warm, and contented. Each family lives in a snug frame dwelling; every house is lined with tarred paper, painted, furnished with a stove. . . a picture fully equal to the average presentation of any one of our small eastern towns.*³³



Figure 6

Early day Alaska Commercial Company facilities showing the railway track between the warehouse on the dock and the open porched store, passing the two story hotel.

To the dismay of company officials, however, many Aleuts adhered to their Native lifestyles in the new frame houses, paying little attention to the fresh new interiors. The Aleuts found the frame houses drafty and cold in comparison to the low-lying, earth-insulated *barabara*. As frame construction increased, fuel and heating became recurrent problems.³⁴

The six Alaska Commercial Company warehouses at the head of the wharf stocked merchandise to the rafters. They were two stories high and each warehouse housed dry



Figure 7

Latter day barabaras, approximately 1920.

goods, groceries, or fur. The fur house was probably the most impressive with bundles of baleen and "hundreds of hair-seal skins, some of which the hair had been shaved, the rest still retaining it."³⁵ Upstairs over a thousand fox skins hung from the rafters.³⁶ The company also stocked walrus ivory, swans' down, wolf, red fox, beaver, and muskrat. As there were few

roads in the village and only paths between houses and the beach trail along the water's edge, the company laid a small railway track from the wharf to the store on the bay front.



Figure 8

The Russian Orthodox Church of the Holy Ascension and Bishop's House with the Russian School attached. The school burned in the late 1960's.

Employees shuttled merchandise back and forth from the store to the warehouses. A second railway later existed on Amaknak Island to service the North America Commercial Company dock.

In 1880 the Alaska Commercial Company built Father Shaishnikov a house. A year later, in 1881, the naturalist John Muir toured the village and commented that at the priest's house he was "ushered into a room which for fineness of taste in furniture and fixtures might well challenge the very best in San Francisco or New York."³⁷ In 1883, the Bishop's House, designed for Bishop Nestor, was completed. The Alaska Commercial Company commissioned this ornate wooden building from the San Francisco architectural firm of

Mooser and Pissis. All the materials as well as the craftsmen originated from San Francisco. In the same year an orphanage was added to the school.

General Frederick Schwatka toured Unalaska in 1883 during a military reconnaissance of Alaska. There he found "every sign of civilized improvements, and among other things the novel sight of domestic cattle."³⁸ He estimated the numbers of residents at 400 and recorded a school house, church, residence of the priest, custom house, traders' warehouses and dwellings, and many frame dwellings and *barabaras* for the Aleuts.

In 1890 J.A. Tuck established the Methodist Jesse Lee Home for children in a small house on the beach at the eastern edge of town. By 1895 the home and school expanded and a large double gabled building was erected. In 1906, the school completed a second smaller dormitory built nearby facing the beach road. This building still stands and residents call it the Jesse Lee Home.



Figure 9
The Jesse Lee Home, 1990.

Among the noted visitors to the island during this period, Libby Beaman, wife of a U.S. fur agent and one of the first American women to travel to the Pribilofs, toured the Holy

Ascension Church in 1879 and wondered at its color and form, "its exterior is in striking contrast to the white frame houses and the sod houses of the natives [sic]. It has a bright blue, onion-shaped dome that rests on a bright green tower. The frame structure of the church is vivid yellow."³⁹ By 1890 the exterior had deteriorated and it "was somewhat dingy in outward appearance and funds have been collected to erect a new edifice in its place."⁴⁰ In 1894 local parishioners financed the erection of the third Holy Ascension Church.

The 1890 census description of Unalaska which coincided with the end of Alaska Commercial Company's lease of the Pribilofs was far from complementary:

*Fully two-thirds of the buildings at Unalaska are the property of the Alaska Commercial Company, as well as the wharf and the water supply, pipe line, and pump. In addition. . . is a Russian church, somewhat out of repair, with parsonage and school-house, and some private dwellings. . . A small customhouse has been allowed to fall to pieces. . . The only government building at Unalaska in a serviceable condition is a coal shed of limited capacity, in which fuel for the use of the revenue marine is stored. Among the native dwellings but 4 or 5 of the old sod houses remain.*⁴¹

The following year the North America Commercial Company acquired the fur seal lease and established its company station at Dutch Harbor on Amaknak Island approximately one mile from the Alaska Commercial Company docks and warehouses. As the harbor prospered, warehouses, hotels, bars, and a few private homes quickly followed. By one account, Molly Brown, the daughter of President Garfield, was one new resident who made the small settlement famous.⁴² She married a North America Commercial Company agent and moved to the island with a set of blue delft china, a treasure unequalled in the village. The Browns lived in a "gingerbread house" that "became the gathering place for officers from the revenue cutters and the naval vessels that frequented the port during the Seal Island disputes."⁴³ With the news of gold on the Yukon and Nome the number of boats headed for St. Michael increased. They stopped at the Dutch Harbor dock to refuel and load supplies.



Figure 10

The North American Commercial Company facility at Dutch Harbor from the water. The Molly Garfield Brown house is at extreme left.

At the turn of the century hundreds of fortune seekers, by some accounts thousands, stranded by the Arctic Ice Pack on their way to the gold fields in Nome, wintered in the area.

Military Operations in Unalaska

The Navy returned to Unalaska in 1911 to build a U.S. Signal Corps station. The site was one of fifty-three wireless stations in the state and in 1930 it became a Naval Radio Station. In 1932 the Navy erected the naval radio station apartment house, the only brick building in the Aleutians. Seven years later the Navy expropriated all of the Northern Commercial Company holdings on Unalaska and Amaknak Islands and jointly commissioned with the Army in 1939 the construction of a Naval Section Base and a Naval Air Station.



Figure 11
Brick faced apartment building.

By 1941 Dutch Harbor Naval Operation Base was constructed and although considered marginal by national war time standards, the local effects of the buildup were overwhelming. In the span of a few years Amaknak Island became a critical coastal defense outpost with facilities to support tens of thousands of men. Unalaska townsite, slightly removed from the initial construction by virtue of its location on another island, was soon included in the military operations. After the Japanese bombed the harbor on 3 and 4 June 1942, military construction intensified. Engineers surveyed roads for military vehicles and partially filled Iliuliuk River and a part of Unalaska Lake to build a road past Holy Ascension Church to the end of the Unalaska spit.

Military structures varied from the elaborate interconnecting Navy buildings designed by the Detroit architect Albert Kahn to the individual prefabricated Loxstave units and quonset huts. Many wood and steel frame structures were set on concrete foundations which

gave them a sense of permanence in the harsh Aleutian climate. As the threat of further Japanese attacks intensified, the Army adapted the design of its bases and garrisons. In contrast to the large multi-purpose barracks housed under one roof, new designs called for the dispersion, separation, and camouflaging of buildings. Small rectangular, four to six men, wooden cabanas dotted hillsides and larger structures conformed to the hilly landscape. Semi-circular revetments, carved into the hillsides, sheltered vehicles and structures from possible air attack.

Military policy showed little sensitivity for historic Aleut sites as it reshaped the island's topography to build roads, tunnels, artillery magazines, offices, and underground hospitals. Reportedly, construction projects destroyed three archeological sites on Amaknak Island and the construction of a military road severely damaged a fourth.⁴⁴ At Eider Point, the location of Fort Learnard, the mounting of several large Panama gun emplacements ruined archeological material.⁴⁵

Private residences and the Holy Ascension Church complex of buildings were left basically intact but just the sheer number of military personnel on the islands made it



Figure 12

U.S. Navy personnel at the Alaska Commercial Company.

impossible to protect the area from the curious. The downtown area was also the obvious choice to build the numerous bars, restaurants, and liquor stores that prospered from the thousands of Siems Drake construction workers.

Aleut Evacuation

The military occupation of Amaknak and Unalaska Islands had a devastating effect on the local population, especially on the Aleut people. In July 1942 the Army and Navy initiated the evacuation of most of the Aleuts from their native islands. One month earlier the Japanese invaded the island of Attu and captured forty-five Aleuts and their American school teacher. To prevent a similar threat to the residents of Adak, Atka, St. Paul, St. George, Akutan, Nikolski, Kashega, Makushin, Biorka, and Unalaska, the Army and Navy arranged to transport them to safer locations in southeastern Alaska.

Much controversy still surrounds the events of the evacuation as well as the years of internment. Poor coordination and communication between the Office of Indian Affairs, Governor Gruening's office, and the military throughout the evacuation, imposed unnecessary hardship on the evacuees. In many cases, Natives had less than twenty-four hours notice before leaving on military ships.

The Navy first evacuated residents of Atka. A Navy ship transported them to Nikolski on Umnak Island and later to Unalaska. Before leaving the island the Navy torched the village. When the flames died out only four houses remained. The Russian Orthodox Church and the rest of the village perished in the fire. Next the Navy evacuated the residents of the Pribilofs transporting 183 Aleuts to Dutch Harbor. Military policy spared the villages of St. Paul and St. George but the caretaker at St. George primed the buildings for possible burning.

I was. . . to prepare the village for destruction first that night by placing a pail of gasoline in each house and building and a charge of dynamite for each other installation such as storage tanks, light plants, trucks, radio transmitters, receivers, antenna masts, etc. The packing of everybody was to be very simple- absolutely nothing but one suitcase per person and a roll of blankets.⁴⁶

In September Army troops arrived in the village to garrison the island and build an airstrip. They were billeted in the village houses.

Evacuees from the Pribilofs and Atka departed for the southeast from Unalaska. Evacuees from Nikolski, Akutan, Kashega, Biorka, and Makushin departed from Chernofski on the S.S. Columbia, an Alaska Steamship Company vessel.⁴⁷ The return of the Aleuts was equally calamitous. The men of St. Paul and St. George returned in the fall of 1943 with most of the families arriving in the spring of 1944. For the homecoming, the government stocked homes and villages with food, stoves, and supplies. The residents of Unalaska, scheduled to return in the summer of 1944, were delayed another year.⁴⁸ In 1945, when they finally arrived they found their home partially destroyed. A combination of neglect, trespass, and rats destroyed most of the houses. American servicemen stole or damaged their personal property and much of the damage possibly occurred at the end of the war when military personnel hurried to restore the village.

*Perhaps the greatest loss to personal property occurred at the time the Army conducted its clean up of the village in June of 1943. Large numbers of soldiers were in the area at that time removing rubbish and outbuildings and many houses were entered unofficially and souvenirs and other articles were taken.*⁴⁹

President Roosevelt appropriated approximately \$10,000 to restore Aleut villages and compensate residents for their losses. These monies were quickly spent and to offset the property losses, the Army supplied the residents with the small wooden cabanas used to house military personnel. Residents and servicemen dragged surplus cabanas from Unalaska Valley into town on skids and chained them down against the fierce winds. Today, a sizeable portion of the housing stock in Unalaska is based on the characteristic 16 by 20 foot rectangular cabana.

The Recent Past

In the 1950's national interest shifted away from the Aleutians and residents resumed their island lifestyle, but not for long. In the 1960's fishing entrepreneurs pioneered the king crab industry and record catches in the late 1960's established Unalaska as the number one

fishing port in the country and set the stage for yet a third outside occupation of the community.

After a few record years the crab stock declined and the local economy collapsed but the recent surge in the bottomfish industry and the growing surimi market restored the economy and in many ways current conditions parallel the boom years of the crab industry. These wild economic swings have introduced agents of change in many ways greater than the Russian and military periods and recent catches are showing another leveling out in the bottom fish harvests. Unalaska, however, was the top port in the U.S. in both volume and value of fish landed in 1992 and again in 1993.

A profound change took place in the community in 1980 when the Unalaska/Dutch Harbor Bridge to the Other Side was finished and people could travel freely by automobile between the two islands. Before that a passenger ferry operated with limited hours. Prior to the completion of the bridge many people considered Unalaska and Dutch Harbor as two separate communities. That distinction has now been all but obliterated.

In late 1992 during the excavation of a hill near the base of Nirvana Hill by Marcenco, a local contractor, a fossil of a prehistoric creature, a *Desmostylid*, was discovered. The fossil is believed to be of the genus *Behemotops*.⁵⁰ It was quickly named "the Nirvana Dragon". *Desmostylids* lived in the Miocene Era from eight to fifteen million years ago, and have been described as a cross between a hippopotamus and a sea cow.

Since then other fossil bones have been found, leading researchers to believe that there were five adult animals and two juveniles, including a teething one that was probably still nursing. The bones are from various geologic periods and a tentative identification has been made of some of the bones as being from a *Paleoparadoxia* (a later *Desmostylid*), and a genus that is yet unidentified.

The find is rare in a number of ways. First, the excavators stopped immediately when they realized that they had found a fossil. The owners of the company, Frank and Betty Arriaga, were diligent in retrieving and protecting the find until the professional paleontologists could examine them. Usually fossils, when found during excavations, are destroyed. Large fossil finds from the Miocene Era are rare and extremely rare from this

region according to Ann Pasch, head of the University of Alaska, Anchorage Geology Department.⁵¹

In recent years there has been some interest in developing the shipping route to Europe using the Northeast Passage using Unalaska/Dutch Harbor as the Pacific terminus. If that route proves to be economically feasible and desirable to shippers, the community could see increased development in a different industry in the years to come.

II. EXISTING CONDITIONS AND TRENDS

A. The Community

Since World War II the community of Unalaska has been the subject of several waves of development: the military buildup of Dutch Harbor and Fort Mears, followed by the king crab fishing booms in the 1960's and 1970's into the early 1980's, and the bottom fish boom of the late 1980's and early 1990's. At times development has seemed to swamp the community. The downtown area which has several buildings dating from the turn of the century has been seriously impacted by the larger scale of much of the newer construction and the loss of open space between buildings. In other parts of the community some of the buildings from World War II remain, in spite of the clean up effort that took away most of them in the 1980's.

The city has put a historical museum on its Capital Improvements Plan with planning for the facility to begin in 1994. One of the building's proposed locations is between the new



Figure 13

Downtown Unalaska, from across the creek.

City Hall and the Iliuliuk Clinic on the site of the old reservoir. Both the city and the school district have been collecting, storing, and periodically displaying artifacts and photographs for some years but these efforts, although commendable, do not take the place of a museum.



Figure 14

One of the proposed sites for the city's museum/library.

In the downtown area there are a number of properties having historic structures on them which have restrictions on the deeds. This means that the Bureau of Indian Affairs must approve sale of those properties. This has relevance for historic preservation activity because of the necessity for involvement of a third party.

For many years most of the residential development in the community was within and close to the original village site on Unalaska Island, with most of the industrial activity being limited to Amaknak Island. The only strictly residential area on Amaknak Island was on Standard Oil Hill in duplexes built for the military during and immediately after World War II. In recent years, however, the housing on the hill has been expanded by the construction of several new apartment complexes and the nature of the activity all over that island has

become much more of a mixture of residential, commercial and industrial uses. The earlier, intense, industrial uses still surround this residential area.

B . H i s t o r i c **P r e s e r v a t i o n** **T r e n d s**

Public

The City of Unalaska has been in the forefront in the community in the field of historic preservation. Several cultural resources have been preserved through the efforts of the city, and should be recognized.

Several years ago when the city was building a new Public Safety Building at

the same time that buildings from World War II which were then owned by the Ounalashka Corporation were being demolished, the city and the Ounalashka Corporation entered into an agreement whereby the city installed in the lobby of the new building, the terrazzo emblem from the floor of the Officers Club which was being removed.

In earlier years historic preservation was a matter of necessity. People "made do" with what they had. An example of that philosophy is the city's public works shop, a substantially renovated World War II building which remains a serviceable building today.

The city has leased the Marco Roller Rink building from its owner for a number of years and has done considerable renovation work to preserve that structure and continue its

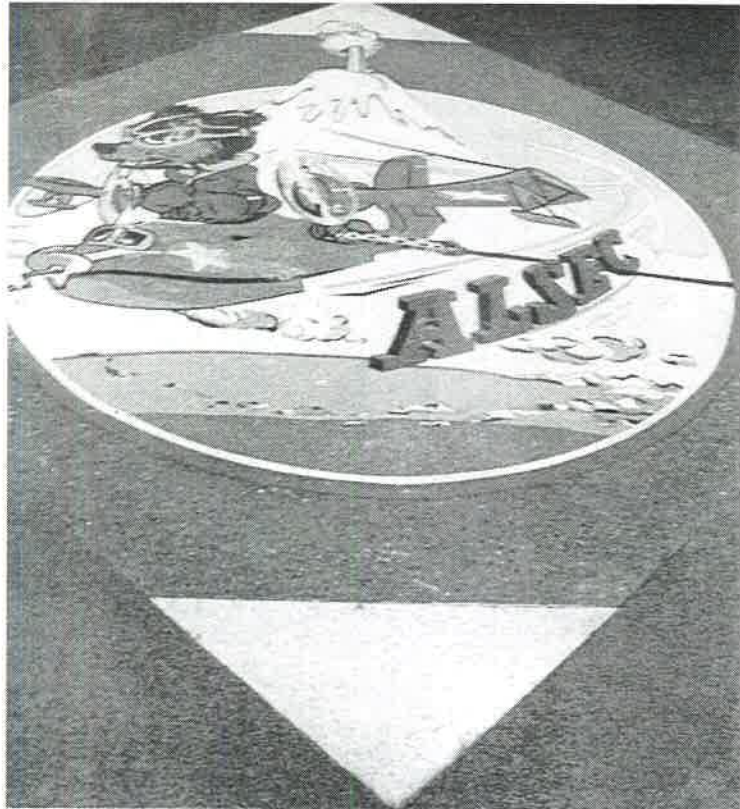


Figure 15

Terrazzo emblem from World War II Officers Club, now at Public Safety Building.

use for community recreation. It was originally built before World War II and is called "The Rendezvous" by old-timers.



Figure 16
The Marco Roller Rink.

The city is also planning to renovate the existing recreation center for use as a public library when the new recreation center is occupied in 1994. The building, built as a chapel during World War II, generally retains that appearance in spite of its current use.

Henry Swanson's last home has been taken over by the City of Unalaska and turned into a visitor information center which is staffed by volunteers during limited hours. Henry's life spanned the years from 1895 to 1990.



Figure 17
Henry Swanson's home, now the Visitor Information Center.

He was a community resource who had a book, The Unknown Islands, written about him, by the students at the Unalaska School. He was a master story teller and is sorely missed by all who knew him.

The city also built a memorial park area adjacent to the cemetery which was "spruced up" by community efforts in recent years. This area honors several entities and individuals: the propeller from the S.S. Northwestern commemorates the history of the vessel and the workers of Siems-Drake, the contractor who built the World War II facilities; the U.S. Naval Station flag monument honors the Navy men who served at Dutch Harbor; the Arkansas National Guard has mounted a bronze plaque on one of the World War II bunkers in the park remembering their comrades who served here during World War II; the fishermen's memorial honors those who were lost at sea; and trees originally planted by Coast Guardsmen of the Bering Sea Patrol in the 1930's have been transplanted here in their honor.

For a number of years the National Park Service has been considering the placement



Figure 18

The interior of the Aerology Building, Mark Air.

of a World War II Interpretive Center at Unalaska for the Aleutian Campaign. Plans have been submitted to Washington, D.C., but, to date no funds for construction have been appropriated. Such a center would add immeasurably to the understanding and appreciation of what has been characterized as the Forgotten War.

Private

An appreciation for the buildings of the past is also developing in the community at large. Alaska Diversified Properties restored the Aerology Building at the airport for use as the Markair VIP lounge at a time when the building was falling into serious disrepair, thus saving it for the future. The renovation was done using photographs of the building and the room as they appeared during World War II. A very interesting terrazzo floor at the center of this building has been refurbished and can be seen during business hours. In late 1993 the building also housed a freight forwarding company and the local offices of the U.S. Coast Guard.

The Grand Aleutian Hotel, built on the site of Fort Mears, has incorporated several of the remaining pillboxes into its site plan for the hotel as a result of mitigation under section 106 of the National Historic Preservation Act. Over the years a number of ideas have been advanced for adaptive reuse of the brick apartment building on Amaknak Island that



Figure 19
The Grand Aleutian Hotel.

was built by the U.S. Signal Corps in the 1920's, but to date no concrete plans have been announced by the building owner, the Ounalashka Corporation.

A group is presently investigating the renovation of Building 820, near the Ounalashka Corporation offices, for use as a warehouse. There are more opportunities for adaptive reuse of historic structures in Unalaska for developers with sharp eyes and sharp pencils.

In years past a number of World War II buildings have been adapted for use by later owners. Walashek Marine is located in the World War II submarine rigging shed making use of the shed and the marine ways in vessel repair. Waterfront Welding uses a torpedo arming and storage facility as its retail outlet and fabrication shop. One of Alyeska's bunkhouses is built on the foundation of the hospital that was bombed during World War II. Marcenco's headquarters is located in a World War II building on Standard Oil Hill. There are other examples scattered around the community .



Figure 20
Adaptive reuse of WWII building.

III. ISSUES AND OPPORTUNITIES

A. Incentives for Historic Preservation

There are a number of different tax incentives to benefit historic properties. A brief summary is given below. Any owner of a historic property is urged to look into these programs. The State Historic Preservation Office, the National Park Service, and the National Trust for Historic Preservation have information and may be able to provide technical assistance to those desiring to take advantage of any of these income tax incentive programs.

Federal Programs

1. Income producing property - Owners of income producing properties listed on, or eligible for the National Register of Historic Places may apply for special tax incentives. The Federal Investment Tax Credit Program provides for a 20% tax credit on rehabilitation expenses to encourage preservation. The law also allows for depreciation of the structures. Application is made to the State Historic Preservation Officer at the Office of History and Archaeology.

A 10% tax credit is available for rehabilitation expenditures for a qualified building which is not a certified historic structure but was first placed in service before 1936.

2. Charitable contribution for historic preservation purposes - Income and estate taxes can be reduced for charitable donations of partial interests in historic property to preserve that property for historic purposes. The property may be a structure other than a building.

3. Economic Development Loans and Grants are made to promote long term economic development and assist in the development of facilities needed to initiate and encourage the creation or retention of permanent private sector jobs in areas experiencing severe economic distress. This program is available to individuals as well as government and non-profit entities through the Economic Development Administration (EDA).

4. The U.S. Department of Housing and Urban Development (HUD) has a number of programs for low income housing that allow for the rehabilitation of existing housing.

5. Community Development Block Grants are available for various kinds of projects to benefit low and moderate income people. The eligible grantee must be a local government, but the project can be for the benefit of a non-profit organization on a "pass through" basis. The applications in Alaska are handled by the Alaska Department of Community and Regional Affairs.

6. The Small Business Administration (SBA) has a variety of programs to assist low income people and/or small businesses in improving business management skills and makes loans to businesses in areas of high unemployment. There are also programs to benefit minorities, women, veterans, and the disabled in starting and running small businesses.

7. The Intermodal Surface Transportation Act of 1991, commonly called ISTEA, requires that at least 10% of a state's funding allocation under the Surface Transportation Program be used for transportation enhancement activities which can include the acquisition of scenic easements and scenic or historic sites, preservation of abandoned transportation corridors and archaeological planning and research. In Alaska the program is administered by the Alaska Department of Transportation and Public Facilities.

State Programs

1. Alaska Industrial Development and Export Authority (AIDEA) and Southwest Alaska Municipal Conference (SWAMC) provide loans to the private sector for construction or rehabilitation of facilities for commercial or industrial use.

2. The State Historic Preservation Office (SHPO) offers technical assistance and historic preservation fund grants to Certified Local Governments (CLGs). To become a CLG, local governments must meet certain requirements including passing a local historic preservation ordinance, establishing a historic preservation commission, implementing a historic resources inventory and making certain that the public has an opportunity to participate in the program.

Local Programs

1. Alaska Statute allows local governments to provide, by ordinance, for an exemption or partial exemption from real property taxes for historic sites, buildings, and monuments. {AS 29.45.050 (b)(2)(B)} It is recommended that the City of Unalaska investigate the adoption of such an ordinance.

2. State law also allows a municipality to exempt or partially exempt from taxation privately owned land for which a scenic, conservation or public recreation use easement is granted to a governmental body. {AS 29.45.050 (e)} It is recommended that the City of Unalaska investigate the adoption of an ordinance enabling this tax exemption as well.



Figure 21

The Jesse Lee Home buildings and unfinished paddle wheeler between 1900 and 1910.

B. Local Landmarks Program

Though not a requirement to be a Certified Local Government, passage of a local landmark ordinance is desirable to enhance local preservation efforts and facilitate the nomination of local properties to the National Register of Historic Places.

"Landmark" means, any site or improvement, manmade or natural, which has special character or special historical, cultural, architectural, archeological, community or aesthetic value as part of the community's heritage. Local landmarks represent the most significant cultural and historic resources in the community. Sites may be designated thematically in a group, or one at a time, whichever is appropriate.

Unalaska already has three National Historic Landmarks. These landmarks are on the National Register of Historic Places and represent significance in national history and meet national standards mandated by the U.S. Secretary of the Interior.

Locally designated landmarks are completely independent of the national program, although the national program allows for placement of locally significant sites on the register. Local landmarks are designated and nominated for their contribution to local history, through the local government.

In order for the Unalaska Historic Preservation Commission to begin designating



Figure 22
The Bishop's House, COU, 1994.

local landmarks, there should first be a city ordinance in place which would spell out the significance of the designation as a local landmark; criteria for the designation; the process to be followed in making the designation; the roles of property owners; the Unalaska Historic Preservation Commission and any other departments of the city government or other agencies that may have an interest in the properties included in the program.



Figure 23

Proposed Landmarks

Sitka Spruce Plantation

Holy Ascension Russian Orthodox Church and Bishop's House

Dutch Harbor Naval Operating Facilities and Fort Mears

Jesse Lee Home Dormitory

Alice Moller House/Henry Swanson's Birthplace

Unalaska Cemetery

The S.S. Northwestern

Manson Saltery

Port Levashef Landing in Captain's Bay

Naval Radio Operating Station Apartment House and Adjoining Structure

Archaeological Sites such as:

Margaret Bay, Bridge Site, Spit Site, Morris Cove, Eider Point and
Hog Island

While investigating local landmarks, the historic preservation commission, the city council, or the independent researcher should consider the importance to state history of local sites and structures. To assist the creation of a state register, the State Office of History and Archeology prepared a draft Alaska Historic Preservation Plan which outlines major themes in the state's history. Proposed local landmarks of possible state importance include the Manson Saltery, the Jesse Lee Home Dormitory, and the cemeteries.



Figure 24

The Dorsey House, one of Unalaska's oldest.

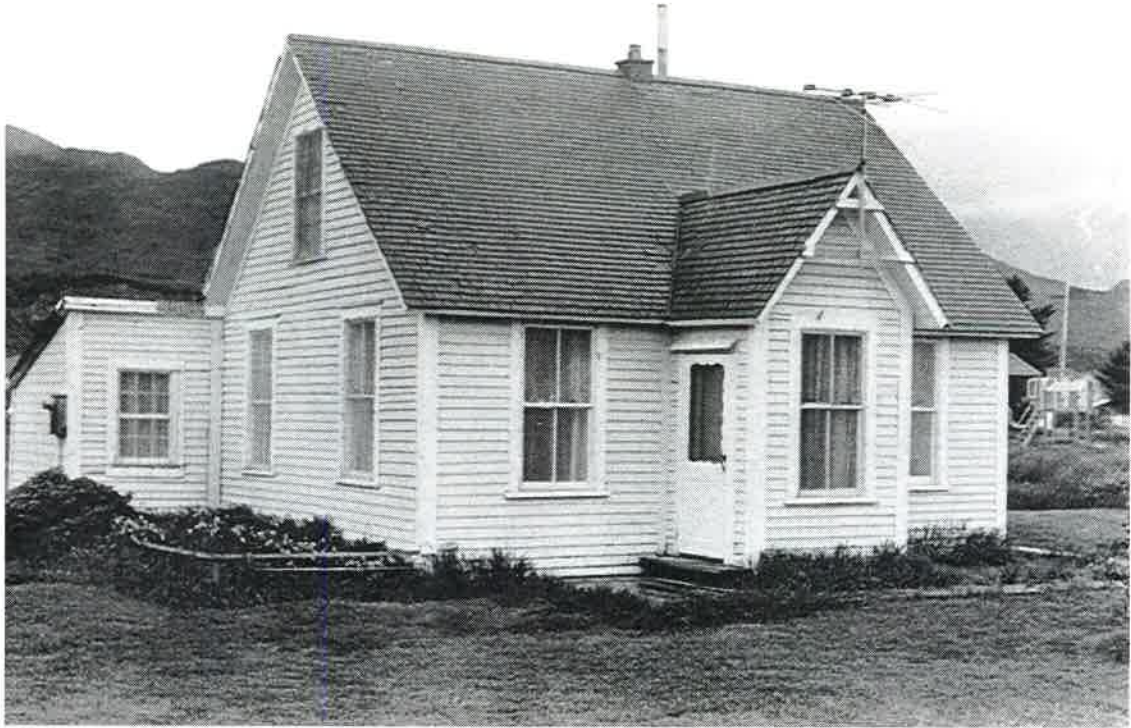


Figure 25
The Alice Moller House, Henry Swanson's birthplace.



Figure 26
Totem Pole House across Broadway from the Alice Moller House.



Figure 27
Dr. James Mushovic's office, reputed to have been moved from the AC Complex.



Figure 28
The Alascom Building dating from the turn of the century.



Figure 29
The A.C. Complex in the early days, located where Alyeska Seafoods is today.



Figure 30
The same view in 1994. None of the earlier buildings remain.

C. Local Issues and Concerns

Industry and Harbor Development

Unalaska is the premier deep water port west of Unimak Pass which is the main shipping route between the North Pacific Ocean and the Bering Sea. Historically, the port has shaped the economic development of the region and continues to do so today. Approximately seventy percent of Amaknak's shoreline is zoned for light or heavy industrial use. Major foreign and domestic commercial fishing and fish processing companies have onshore and offshore processing operations based at Unalaska, and the community provides support services for approximately 100,000 persons annually. As fishing activity has intensified in recent years community services have been stretched to provide attendant medical, food, energy, and dry goods, as well as to improve existing infrastructure.

In 1980 Unalaska was the number one fishing port in the United States in terms of dollar value of all harvests and, again in 1989, number one in terms of volume of fish. In 1988 when the National Marine Fisheries Board recognized the bottomfish industry as a "developing fishery," more and more of the American fishing fleet moved to the Aleutian region. In 1993 the port was first in both value and volume, based largely on the bottom fish harvests.

"The development is so quick it's almost like a military invasion. It's great for the economy, but a real challenge to the environment."
U.S.F.W.S. Biologist Art Sowls,
speaking about development to support
the fishing industry on the Pribilof
Islands.

With the increase in product and local employment there has been sizeable, relatively recent investment in onshore processing facilities and services to support the fleet and the processing activities. Most of the recent investment has come from companies with few ties to the community. New construction and city infrastructure will probably continue to move into areas that may impact cultural resources. Because of the large inventory of cultural resources in and close to the community and the equally large potential for additional construction and development projects on the island, there is a need to coordinate these two

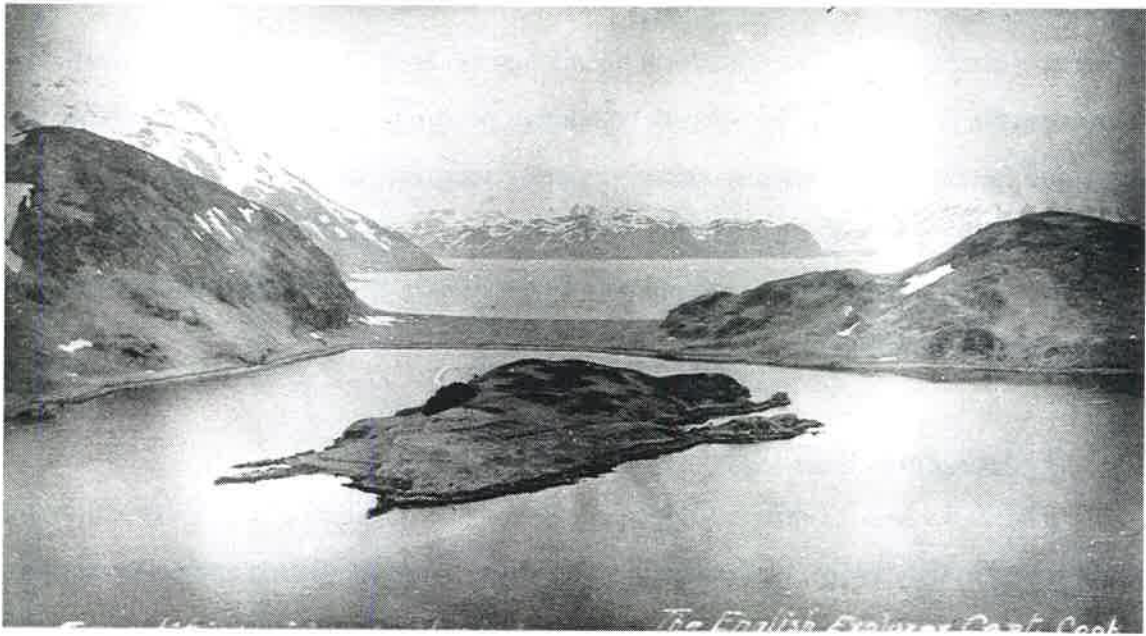


Figure 31
Expedition Island, 1910.

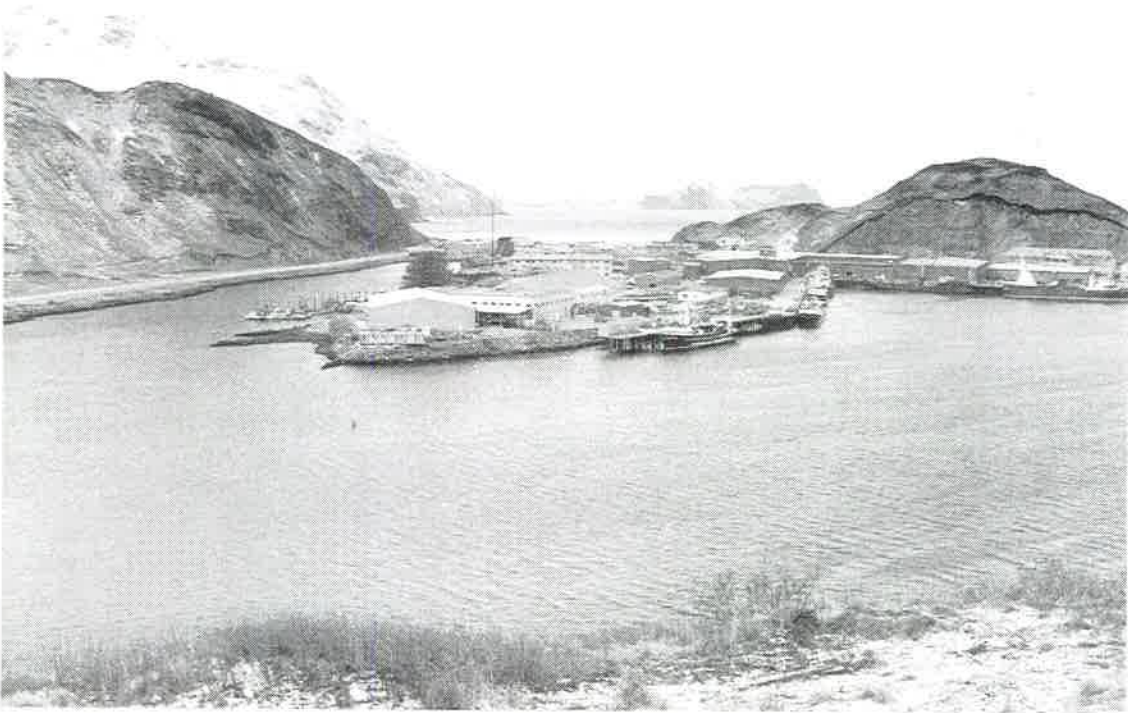


Figure 32
Expedition Island, 1994.

interests. This plan identifies some local historic resources in an effort to avoid conflicts of interest as new projects emerge. This development pattern has preserved much of the open space and tundra around the city as well as preserving important view points and island seascapes. The State of Alaska Office of History and Archaeology should be contacted before any new construction takes place to make certain that cultural resources will be avoided if at all possible.

Federal Permits on Waterways and Tidal Zones

The U.S. Army Corps of Engineers issues federal permits for construction and development in the nation's wetlands and waterways. This jurisdiction applies to all of the coastal waters within Unalaska's city limits. For sites that contain properties on or eligible for the National Register of Historic Places, the Corps of Engineers must consult with the State Historic Preservation Office to minimize or mitigate any and all affects to these resources. Although this process (see National Historic Preservation Act of 1966, as amended 1992, Sec. 106, appended) is only initiated for properties on or eligible for the National Register, the Corps of Engineers responds to local issues and concerns that are in the public interest. Future conflicts should be further avoided by the city providing the Corps of Engineers as well as other interested federal and state agencies with up-to-date information regarding historic resources.

Harbor Management Plan

To meet the growing international demand for port services, the City has recently compiled a Harbor Management Plan designed to help with the myriad issues with any project requiring permits. Many of Unalaska's cultural resources are located in coastal areas near the harbor. Because of Unalaska's long maritime history, the number of submerged resources is still unknown. The plan also points up the need to avoid, to the greatest extent possible, archaeological sites in future development.

This historic preservation plan recommends that the city allow for the discovery and *in situ* preservation of the resources which are eligible for the National Register.





Figure 33
One of the busiest harbors in Alaska.

Open Space

Historically, industrial development in Unalaska depended on outside interests. For the most part, with the exception of World War II, that development was concentrated and limited to the availability of relatively flat land and materials as well as the economy. The result was a landscape of open space broken by pockets of development which made the industrial activity less intrusive into the life of the community. This plan recommends that future development observe this "cluster" pattern of growth and preserve open space.

New Construction

There are wide swings in the amount and nature of new construction in the community. Right now there seems to be a "lull", whether before or after the storm is not clear. A review of building permits issued in 1993 indicates that, of the fifty nine permits

issued, eleven were for industrial projects, 21 were for residential construction or remodeling, and mobile home placement and 27 were "commercial" including nine to the city for public buildings, and three for churches. This is in contrast to 1992 when 91 permits were issued. Thirty-two were for residential purposes, 17 industrial, and 42 commercial. In 1992 permits were issued for the construction of three warehouses, two bunk houses, the clinic, two hotels, the school remodel, an office building and the new post office.

The recent industrial construction has been mainly large metal buildings for processing plants, warehouses, housing complexes, and offices. The speed of construction of the buildings and the dense mass which they present is contrary to the existing scale and texture of the community. Even buildings that are now five to ten years old such as the Unisea bottom fish expansion project are quickly dwarfed by the projects going up today.

Historic World War II buildings are often located near the new construction sites. These wood and concrete buildings create a secondary overlay for community scale and texture. Many of them are valuable historic resources and should not be dismantled, burned, or moved. This plan identifies key historic structures which should be preserved.

Trails

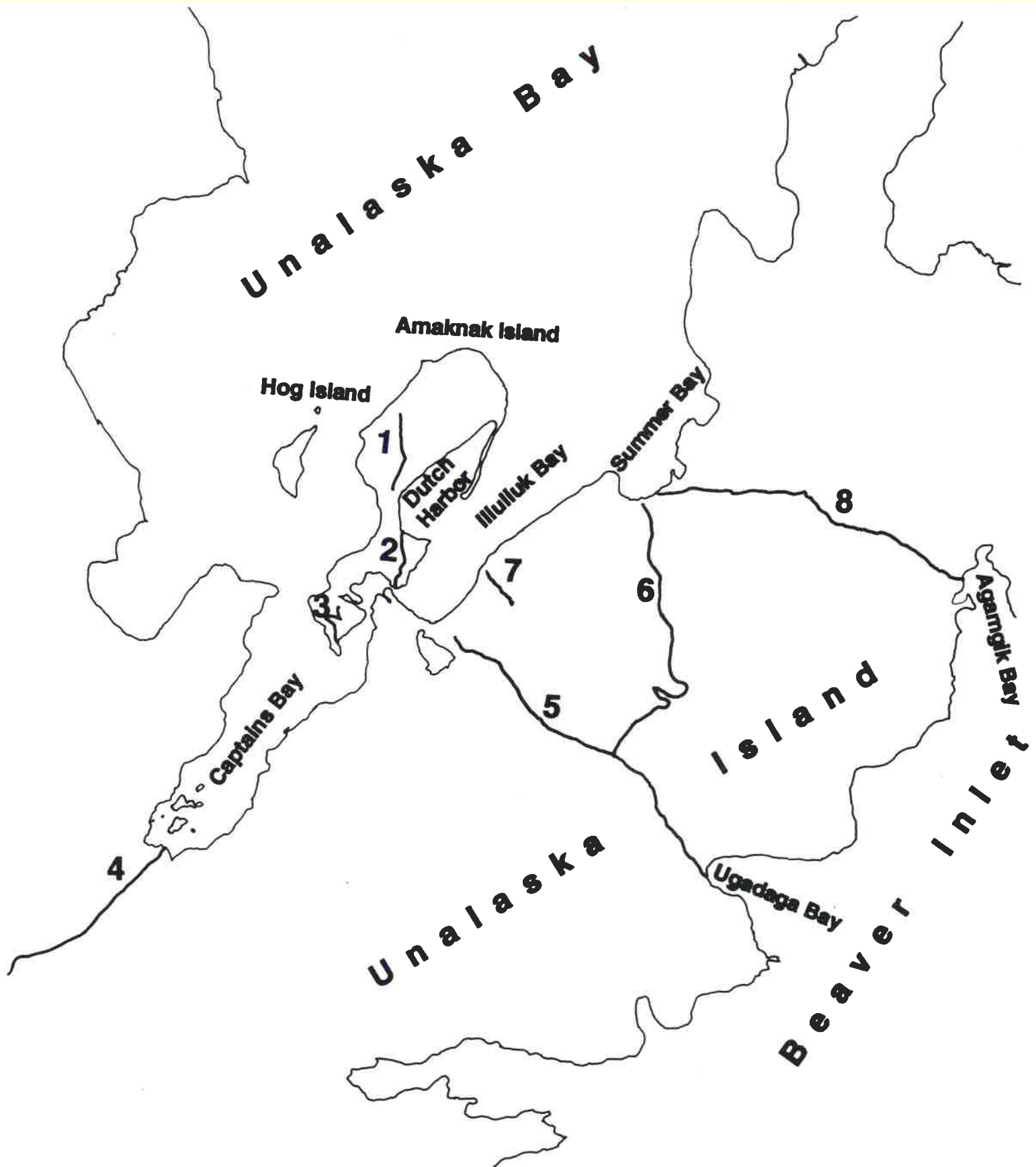
For many, many years there have been communities scattered around Unalaska and Amaknak Islands. Until well into the twentieth century communities existed at Chernofski, Kashega, Makushin and Biorka. In earlier days there were a number of small settlements in the vicinity of Unalaska and along the shores of Captains Bay. People traveled between these communities over well worn trails, Aleut Highways if you will. Vestiges of those highways exist to the present.

Most of these trailways are on privately owned land and should not be traversed without advance knowledge and approval of the land owners. The city should discuss use easement agreements with the property owners, if a trail program is implemented.

Trails of special significance are listed below:

1. Scenic walk up Mt. Ballyhoo, first recorded by gold seekers who stopped over on their way to the Nome.

2. Route across Amaknak Island from Dutch Harbor to the old ferry terminus (at East Point).
3. Bunker Hill Trail up Hill 400 to the coastal defense bunker at the top.
4. Route from the head of Captains Bay to Makushin Bay used by people going to Makushin, Kashega or Chernofski.
5. Route from the head of Unalaska Valley to Ugadaga Bay of Beaver Inlet which was used by people going to Biorka.
6. Route from Summer Bay to Ugadaga Bay. Part of this was used by the military during World War II as a route between the defenses at Summer Bay and the Fort Mears facilities in Unalaska Valley.
7. Climb to the top of Mt. Newhall.
8. Route from Humpy Cove to Agamgik Bay.



TRAILS

Resource Surveys

One of the requirements for a certified local government is to establish and maintain an inventory of historic and cultural resources. The inventory is included in this document as Appendix II. Several different governmental agencies and people have previously compiled resource information but no attempt has been made to update and maintain an ongoing, all inclusive record. It is essential that this task be added to the annual work plan of the UHPC.

There are three National Historic Landmarks within the city limits: the Holy Ascension Russian Orthodox Church and Bishop's House, located downtown; the Sitka Spruce Planation on Amaknak Island; and the Dutch Harbor Naval Operating Base and Fort Mears, U.S. Army, which includes the entire Amaknak Island. The boundaries of this landmark are now under review by the National Park Service. These national landmarks represent almost 200 years of local history which has national significance.

In 1986 the National Park Service prepared a Historic Architecture Buildings Survey and Historic American Engineering Record (HABS/HAER) survey of the Dutch Harbor Naval Operating Base and Fort Mears National Historic Landmark. The State of Alaska has surveyed many of the Aleut archeological sites within the city limits and elsewhere on the island through the Alaska Heritage Resource Survey. Other surveys include The Aleutians West Coastal Resource Service Area Resource Inventory, published in 1990 and Cultural Resources of the Aleutian Region: Historic Sites, compiled by Gary Stein in 1977. In 1982, Douglas and Mary Veltre inventoried subsistence and natural resources in Resource Utilization in Unalaska, Aleutian Islands, Alaska.

Until the inventory included in this plan receives wide distribution the community will continue to be relatively unaware of the significance of the landmarks and sites. With a growing visitor industry it is important for the historical story of Unalaska to be told.

One of the best techniques for heightening awareness of history is visiting historic sites and buildings which have adequate interpretive services. This plan addresses the need to heighten public awareness of historic sites, Aleut highways, and structures and maintain a local data base of all the cultural and historic resources in Unalaska.

For obvious reasons, the locations of archeological sites will remain undisclosed. The city will need to insure the confidentiality of location of these sites. National Register Bulletin #29 contains guidelines for restricting information about historic and prehistoric resources.

Cultural Resources

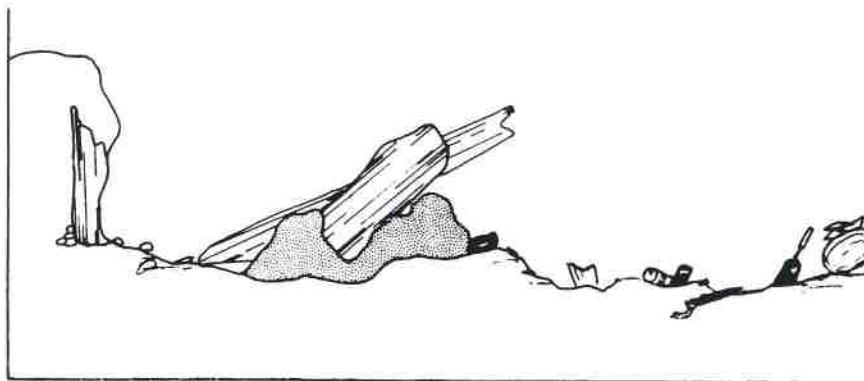
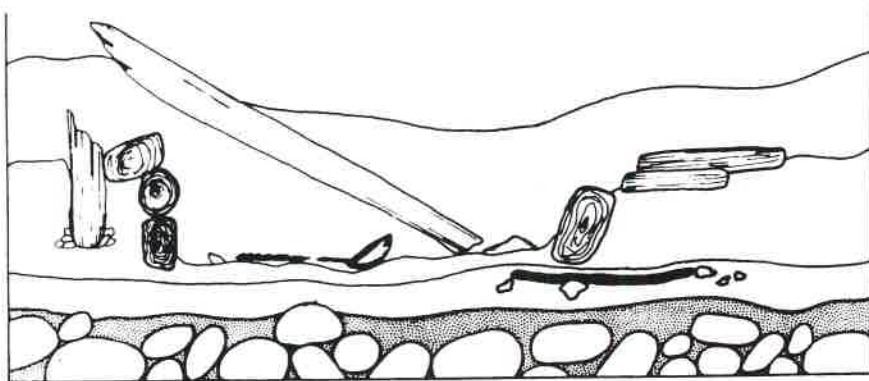
We gain our knowledge of the prehistoric past through the study of objects within a context, an environment within which they were used. This type of information comes from the careful recovery of pollen, food and plant remains, and other items overlooked by people who are only looking for artifacts to put on a curio shelf. "Pot hunters" may spend an enjoyable afternoon gathering artifacts, but, besides trespassing, these people may also be destroying a potentially valuable insight into the past that cannot be duplicated. See Figure 34.

A number of cultural resources, both historic and archaeological, exist in close proximity to the settled parts of the community. Such resources are

"Every place, like every person, is elevated by the love and respect shown toward it, and the way in which its bounty is received." From The Island Within by Richard Nelson.

mainly located on private property, and are to be removed only by qualified professionals with the knowledge and approval of the property owner, not by casual visitors.

Students of the past, especially of the time before written records were kept, make use of excavation as one of the processes by which the knowledge and understanding about earlier people is gained. Careful mapping of the entire site, locations of artifacts on that site, other materials such as wood used in fires or for building material, pollens, food remains all fill in bits of the picture of those who came before when they are scientifically removed from a site.



WHAT CAN WE LEARN?

Archaeological Excavation

Careful excavation provided information about the people who lived in this house 1000 years ago:

- Two to four people lived here
- Toy fragments tell us at least one was a child
- Wood and charcoal enable us to date the site using the Radiocarbon method
- Clothing scraps tell us about what people wore, and how they made their clothing.
- Cooking tools give clues about what people ate and how they prepared foods.
- Bones, shells, seeds, and even pollen in the soil tell us what these people ate.

Researchers found an even earlier camp beneath the house. They presented their results to the local people. They created an exhibit of the materials from the site. Everyone was able to share the results and participate in the exciting discoveries about the past.

"Relic Hunting"

Careless relic hunting robs us of information about people who lived in this house:

- We cannot tell how big the house was, or how many people lived here in the past.
- No dates. Items that will not bring a profit (wood, charcoal fragments) are removed and discarded.
- Fragile items like clothing and baskets may fall apart if not chemically preserved immediately.
- Bone, shell and seed fragments are discarded. Some whale bone, ivory and broken artifacts saved.

Relic Hunters sell bone, ivory and broken tools by the pound to dealers and artists. The "best" artifacts are also sold to dealers. Dealers sell these artifacts to wealthy buyers. Many local people never see the items removed from sites inhabited by their ancestors.

Figure 34

What can we learn? National Park Service

In addition to the destruction of cultural resources and what they can teach us, a person who takes material from an archaeological site is stealing from the descendants of the people who left them there, many of whom still live in the area.

Visitor Use

Several steps have been taken recently to improve the opportunities for visitors to see and understand Unalaska's historic and cultural heritage. The city has turned a small house in the downtown area into a visitor information center which is staffed by volunteers on a limited basis. Also, the Unalaska/Port of Dutch Harbor Convention and Visitors Bureau (U/PDHCVB) has been formed and an Executive Director has recently been hired. It is important for the city and the U/PDHCVB to work together in the development of programs which will inform the visitors to the community and the general public of history's impact on Unalaska.

Trees

Since trees do not occur naturally in southwest Alaska they are something of an oddity. Alders often reach a height of eight to ten feet, particularly in protected locations. Coniferous trees are relatively rare. The young trees of the Sitka Spruce Plantation were brought from Sitka in 1805 and planted on Amaknak Island. This is the oldest known forestation project on North America. Those trees are honored by being designated a National Historic Landmark.

There are three other relatively large concentrations of trees that are important to many people in the community. All of them are historic in the sense that they have existed in the community for many years.

There is a grove of trees on Expedition Island that is in a city park. Most of the mature trees have been seriously compromised in recent years. They should be examined by an expert and steps should be taken to protect those that are still viable. There are a number of seedlings and young trees from this grove which is in an area of intense industrial



Figure 35
Sitka Spruce Plantation, National Historic Landmark.



Figure 36
Expedition Island Park.

activity. The city needs to take notice of the activity in the vicinity of these trees and make sure that the trees are protected.

There is a grove of trees at the City Park, across the street from the roller rink. These trees contribute to the ambiance along Broadway and the gazebo which is a focal point for the park. They do not seem to be reproducing. Again the city should make certain that the trees are cared for properly, and protected from harmful activity.

The third grove is on privately owned land near the East Point processing plant. It is used as a recreation area by workers at the processing plant. The city has no direct control over these trees, but they deserve the same kind of protection the city's trees do.

IV. GOALS AND OBJECTIVES

Some of the goals and objectives given here should be ongoing, in other words they will never be completely attained. Others can be accomplished in a relatively short time. The * before the number indicates an ongoing activity.

GOAL I TO DISCOVER ADDITIONAL INFORMATION, BECOME MORE KNOWLEDGEABLE, AND PRESERVE DATA AND ARTIFACTS ABOUT UNALASKA'S HISTORIC AND CULTURAL RESOURCES.

Objectives

1. Complete the process for getting a historical museum constructed in the community.
- * 2. Establish and maintain an inventory of cultural and historic resources while maintaining confidentiality of archaeological sites.
- * 3. Continue the support for the memorial park.
4. Participate in the Gold Rush Centennial Task Force which is planning events across the state to commemorate the centennial of the Gold Rush.
5. Gather and preserve information about the cemeteries in the community.

GOAL II TO PROVIDE AN ENVIRONMENT IN WHICH PRESERVATION OF UNALASKA'S HISTORIC RESOURCES WILL FLOURISH.

Objectives

1. Continue to work with the National Park Service in getting funding for a World War II Interpretive Center to be located in the community.
2. Participate in the boundary revision review of the World War II National Historic Landmark now under way at the National Park Service.
3. Apply for National Register designation for all significant historic resources owned by the City of Unalaska.

GOAL III TO MAKE THE GENERAL PUBLIC MORE AWARE AND APPRECIATIVE OF THE HISTORIC RESOURCES IN THE COMMUNITY.

Objectives

- * 1. Institute a program for marking sites significant in Unalaska's past, including Aleut highways.
- 2. Provide for the publication of information regarding the markers.
- * 3. Act as advocates for responsible, cost effective historic preservation and adaptive reuse of historic buildings in the private sector.
- * 4. Cooperate with the Unalaska/Port of Dutch Harbor Convention and Visitors Bureau in projects to provide information to the public about Unalaska's past.
- * 5. Continue support for the repair and restoration of the Holy Ascension Church and Bishop's House.
- * 6. Provide an ongoing program of information and education about historic preservation issues in the community.

GOAL IV TO INCLUDE HISTORIC PRESERVATION CONCERNS IN THE CITY'S CAPITAL PROJECTS PLANNING AND ONGOING ADMINISTRATION.

Objectives

- 1. Adopt an historic preservation ordinance to provide for the establishment of a local landmarks program.
- 2. Amend the city's property tax ordinance to allow for real property tax exemptions for historic preservation projects.
- 3. Draft an amendment to the real property tax ordinance to provide for tax exemptions for historic trail easements.
- 4. Formally recognize businesses and organizations that institute active historic preservation programs.
- * 5. Provide for the preservation and enhancement of the groves of trees in the community.

- * 6. Continue staff support for the UHPC.
- * 7. Include historic preservation in the building permit review process in a formal way.

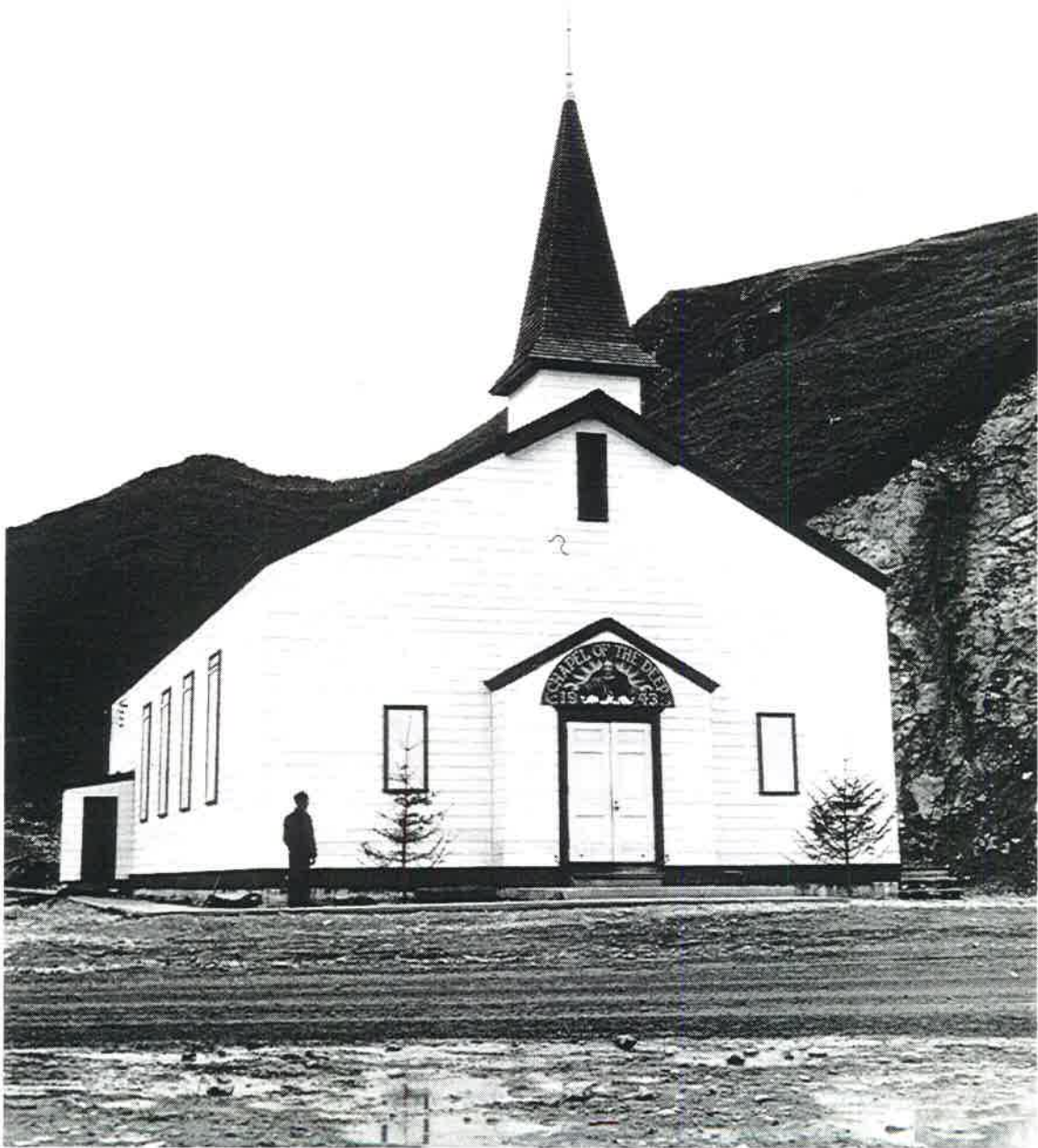


Figure 37

Chapel of the Deep, located where the A.C. Company Mall is today.

V. IMPLEMENTATION OF THE HISTORIC PRESERVATION PLAN

This plan will serve as a guide for the City of Unalaska as it pursues the preservation of the historic and cultural resources in the community. In order for historic preservation to become an integral part of community life several things must take place. The city must clearly define the goals, roles, and responsibilities of each of the participants. True implementation of the plan will require the commitment of the Mayor, the Unalaska City Council and Administration, the Historic Preservation Commission, the Planning Commission, owners of historic properties, and the general public.

The role that the UHPC will play is as advocate, sounding board, advisor, and information source for historic preservation. In order to fill this role the members of the commission must be committed to historic preservation, understand the powers and duties of the commission, grasp the principles and issues in historic preservation, and the methods by which preservation can and should be incorporated into the community. When these things happen the commission will be able to fill its role stated above.

The plan should be seen as a series of recommendations regarding historic preservation. The inventory can be an invaluable tool in bringing the need for preservation of historic and cultural resources to the attention of city officials and land owners alike.

The plan should be adopted by resolution by the Unalaska Planning Commission and the Unalaska Historic Preservation Commission as a resource document.

THEN AND NOW



Figure 38
Dutch Harbor Panorama, showing North American Commercial Company buildings, about 1910.



Figure 39
Dutch Harbor Panorama 1994. Only the mountains and the sea remain unchanged.



Figure 40
Standard Oil Hill, late 1940's.



Figure 41
Standard Oil Hill, 1994.



Figure 42

Looking towards Standard Oil Hill, World War II. Note the Sitka Spruce Plantation surrounded by vehicles.



Figure 43

Approximately the same view in 1994. Note the loss of trees at the plantation and the number of buildings that are still in use.

1. David Damas, editor, Subarctic, vol. 5 of Handbook of North American Indians, edited by William C. Sturtevant (Washington, D.C.: Smithsonian Institution, 1984), 120.
2. There are many spellings for Iliuliuk and Unalaska. For the purposes of this report Iliuliuk, spelled with one "l" has been used.
3. Svetlana G. Federova, The Russian Population in Alaska and California, edited and translated by Richard A. Pierce and Alton S. Donnelly (Kingston, Ontario: The Limestone Press, 1973), 217. Federova refers to the early village as "Eguchshak" whereas Father Veniaminov in Notes on the Islands of the Unalaska District, uses the name "Gavanskoe."
4. Anatole Senkevitch, Jr., "The Early Architecture and Settlements of Russian America," in Russia's American Colony, edited by Frederick Starr (Durham: Duke University Press, 1989), 149.
5. B.P. Polevoi, "The Discovery of Russian America," in Russia's American Colony, 31.
6. Ibid., 21.
7. Ibid.
8. Raisa V. Makarova, Russians on the Pacific, 1743-1799, translated and edited by Richard A. Pierce and Alton S. Donnelly (Kingston, Ontario: The Limestone Press, 1975), 53.
9. James R. Gibson, "Russian Dependence upon the Natives of Alaska", in Russia's American Colony, 98.
10. William Coxe, [1787], Account of the Russian Discoveries Between Asia and America, 3rd edition (Ann Arbor: Michigan University Microfilms, 1966), 215.
11. Innokentii, Father Ivan Veniaminov, Notes on the Islands of the Unalaska District, translated by Lydia T. Black and R.H. Geoghegan and edited by. Richard A. Pierce (1840; reprint, Kingston, Ontario: The Limestone Press and Fairbanks: The Elmer E. Rasmuson Library Translation, 1984), 264.
12. Father Innokentii, Notes, 262.
13. Theodore T. Bank, II, "Ecology of Prehistoric Aleutian Village Sites," Ecology 34, no. 2 (April 1953): 261.
14. William S. Laughlin, Aleuts: Survivors of the Bering Land Bridge (New York: Holt, Rinehart, and Winston, 1980), 52.
15. Federova, The Russian Population in Alaska, 215.

16. James C. Beaglehole, editor, The Voyage of the "Resolution" and "Discovery," 1776-80, vol. 3 of The Journals of Captain James Cook on his Voyages of Discovery (Cambridge University Press, 1967), 1353.
17. Gonzalo de Haro Lopez, Spaniards and Russians Meet in Alaskan Waters, 1788: the Voyage of the Princesa and the San Carlos to Prince William Sound, Kodiak and Unalaska, March to October, 1788, translation and notes by Katrina H. Moore (January 1975), 29.
18. P.A. Tikhmenev, A History of the Russian-American Company, translated and edited by Richard A. Pierce and Alton S. Donnelly (Seattle and London: University of Washington Press, 1978), 89.
19. Father Innokentii, Notes, 264.
20. Ibid.
21. Frederic P. Litke, A Voyage Around the World 1826-1829, vol. 1 of To Russian America and Siberia, translated by Renee Marshall and edited by Richard A. Pierce (Kingston, Ontario: The Limestone Press, 1987), 100.
22. James W. Vanstone, "An Early Nineteenth Century Artist in Alaska: Louis Choris and the First Kotzebue Expedition," Pacific Northwest Quarterly 51, no. 4 (1960): 152.
23. Litke, A Voyage Around the World, 100.
24. Father Innokentii, Notes, 90-91.
25. Ibid., 264.
26. Raisa V. Makarova, "Toward a History of the Liquidation of the Russian American Company," in Russia's American Colony, 64.
27. Ford, An American Cruiser in the East, 20.
28. Vincent H. Colyer, Special Indian Commissioner on the Indian Tribes and Their Surroundings in the Alaska Territory from Personal Observations and Inspection (Report of the Secretary of the Interior, 1870), 1043.
29. Samuel P. Johnston, editor, Alaska Commercial Company 1868-1940 (Seattle: Alaska Commercial Company, 1940), 36.
30. Eliza Ruhamah Scidmore, Appleton's Guidebook to Alaska and the Northwest Coast (New York: Appleton, 1898), 143.

31. Lois D. Kitchener, Flag Over the North (Seattle: Superior Publishing, 1954), 124.
32. Sister Marie Joseph Calasanz, The Voice of Alaska (Lachine, Quebec: Sisters of St. Anne, 1935), 65.
33. Johnston, Alaska Commercial Company, 31.
34. Neville J. McMillan, U.S. Department of the Interior, Office of Indian Affairs, Field Service, Noatak, Alaska, in a letter to Charles G. Burdick, Assistant Director, Alaska Civilian Conservation Corps, Juneau, Alaska, 6 February 1938.
35. Isabel Sharpe Shepard, The Cruise of the U.S. Steamer Rush in the Behring Sea (San Francisco: Bancroft, 1889), 73.
36. Ibid.
37. John Muir, The Cruise of the Corwin. Journal of the Arctic Expedition of 1881 in Search of DeLong and the Jeannette. Edited by William Frederic Bade (Boston: Houghton Mifflin Company, 1917), 16.
38. Frederick Schwatka, Military Reconnaissance in Alaska: Made in 1883 (Washington, D.C.: Government Printing Office, 1885), 115.
39. Betty John, Libby. The Alaskan Diaries and Letters of Libby Beaman, 1879-1880 (Boston: Houghton Mifflin Company, 1989), 48.
40. Ivan Petroff, Report on the Population, Industries, and Resources of Alaska (Washington, D.C.: Government Printing Office, 1884), 182.
41. Ibid., 89.
42. Ransom, Sea of the Bear, 9.
43. Ibid.
44. Bank, "Ecology," 252.
45. Ibid.
46. Report of the Commission on Wartime Relocation and Internment of Civilians, Personal Justice Denied (Washington, D.C., December 1964), 239.
47. Ibid., 333.
48. Ibid., 355.

- 49 . Ibid., 356.
- 50 . "Road crew unearths fossils of extinct marine mammal", Fairbanks Daily News-Miner, December 6, 1992, P. B-2.
- 51 . "Old fossil unearthed in Aleutians", Boledovich, Glenn; The Northern Light, September 29, 1992.

APPENDIX 6

ALASKA HISTORIC PRESERVATION ACT

LAWS AND REGULATIONS RELATING TO
ARCHAEOLOGY AND HISTORIC PRESERVATION IN ALASKA

ALASKA STATUTES

TITLE 41, CHAPTER 35. ALASKA HISTORIC PRESERVATION ACT

Sec. 41.35.010. DECLARATION OF POLICY. It is the policy of the State to preserve and protect the historic, prehistoric and archeological resources of Alaska from loss, desecration and destruction so that the scientific, historic and cultural heritage embodied in these resources may pass undiminished to future generations. To this end, the legislature finds and declares that the historic, prehistoric and archeological resources of the state are properly the subject of concerted and coordinated efforts exercised on behalf of the general welfare of the public in order that these resources may be located, preserved, studied, exhibited and evaluated.

Sec. 41.35.020. TITLE TO HISTORIC, PREHISTORIC AND ARCHEOLOGICAL RESOURCES; LOCAL DISPLAY. (a) The state reserves to itself title to all historic, prehistoric and archeological resources situated on land owned or controlled by the state, including tideland and submerged land, and reserves to itself the exclusive right of field archeology on state-owned or controlled land. However, nothing in AS 41.35.010 - 41.35.240 diminishes the cultural rights and responsibilities of persons of aboriginal descent or infringes upon their right of possession and use of those resources which may be considered of historic, prehistoric or archeological value.

(b) Although title to historic, prehistoric and archeological resources is in the state, local cultural groups may obtain from the state, or retain, for study or display, artifacts and other items of these resources from their respective cultures or areas if the committee created in AS 41.35.110 finds that (1) the group has a durable building with weatherproof and fireproof construction and humidity control and other factors necessary to serve as a museum which will assure safe preservation of the items, (2) the item sought to be obtained is not one for which there is an undue risk of damage during transportation, and (3) the item sought to be obtained or retained is not one requiring special treatment or care beyond the ability or means of the group requesting it. A group retaining such an item or obtaining one from the state shall house it in the museum building and shall make every reasonable effort to assure its safe preservation. If the committee finds that a local cultural group is not properly taking care of an item the group shall return it to the department.

Sec. 41.35.030. DESIGNATION OF MONUMENTS AND HISTORIC SITES.

Upon the recommendation of the committee, the governor may declare by public order any particular historic, prehistoric or archeological structure, deposit, site or other object of scientific or historic interest that is situated on land owned or controlled by the state to be a state monument or historic site and the governor may designate as a part of the monument or site as much land as is considered necessary for the proper access, care and management of the object or site to be protected. When an object or site is situated on land held in private ownership, it may be declared a state monument or historic site in the same manner, with the written consent of the owner.

Sec. 41.35.040. ADMINISTRATION AND FINANCIAL SUPPORT OF MONUMENTS AND HISTORIC SITES. State-owned monuments, sites and other historic, prehistoric or archeological properties owned or purchased by the state are under the control of the Department of Natural Resources and their maintenance shall be covered in the appropriations made to the department. Privately owned state monuments or historic sites are eligible to receive state support for their maintenance, restoration and rehabilitation if they are kept accessible to the general public and application for support is made in conformity with regulations adopted by the commissioner of natural resources.

Sec. 41.35.050. REGULATIONS. The commissioner shall adopt regulations to carry out the purposes of AS 41.35.010 - 41.35.240.

Sec. 41.35.060. POWER TO ACQUIRE HISTORIC, PREHISTORIC OR ARCHEOLOGICAL PROPERTIES. (a) The department, with the recommendation of the committee, may acquire real and personal properties that have statewide historic, prehistoric or archeological significance by gift, purchase, devise or bequest. The department shall preserve and administer property so acquired. The department may acquire property adjacent to the property having historic, prehistoric or archeological significance when it is determined to be necessary for the proper use and administration of the significant property.

(b) If an historic, prehistoric or archeological property which has been found by the department, upon the recommendation of the committee, to be important for state ownership is in danger of being sold or used so that its historic, prehistoric or archeological value will be destroyed or seriously impaired, or is otherwise in danger of destruction or serious impairment, the department may establish the use of the property in a manner necessary to preserve its historic, prehistoric or archeological character or value. If the owner of the property does not wish to follow the restrictions of the department, the department may acquire the property by eminent domain under AS 09.55.240 - 09.55.460.

Sec. 41.35.070. PRESERVATION OF HISTORIC, PREHISTORIC AND ARCHEOLOGICAL RESOURCES THREATENED BY PUBLIC CONSTRUCTION. (a) The department shall locate, identify and preserve in suitable records information regarding historic, prehistoric and archeological sites, locations and remains. The information shall be submitted to the heads of the executive departments of the state.

(b) Before public construction or public improvement of any nature is undertaken by the state, or by a governmental agency of the state or by a private person under contract with or licensed by the state or governmental agency of the state, the department may survey the affected area to determine if the area contains historic, prehistoric or archeological values.

(c) If the department determines that historic, prehistoric or archeological sites, locations or remains will be adversely affected by the public construction or improvement, the proposed public construction or improvement may not be commenced until the department has performed the necessary investigation, recording and salvage of the site, location or remains. All investigation, recording and salvage work shall be performed as expeditiously as possible so that no state construction project will be unduly impaired, impeded or delayed.

(d) If in the course of performing public construction or improvements, historic, prehistoric or archeological sites, locations, remains or objects are discovered, the department shall be notified and its concurrence shall be requested in continuing the construction or improvement. Upon receipt of this notice, the department shall survey the area to determine whether the area contains historic, prehistoric or archeological data which should be preserved in the public interest. The survey shall be conducted as expeditiously as possible. If, as a result of the survey, it is determined that (1) this data exists in the area, (2) the data has exceptional historic, prehistoric or archeological significance, and should be collected and preserved in the public interest, and (3) it is feasible to collect and preserve the data, the department shall perform the necessary work to collect and preserve the data. This work shall be performed as expeditiously as possible.

(e) If the concurrence of the department, required under (b) and (c) of this section is not obtained after 90 days from the filing of a request for its concurrence to proceed with the project, the agency or person performing the construction or improvement may apply to the governor for permission to proceed without that concurrence and the governor may take the action the governor considers best in overruling or sustaining the department.

(f) The costs of investigation, recording and salvage of the site shall be reimbursed by the agency sponsoring the construction project.

(g) Notwithstanding (a) - (f) of this section, all actions to stop any project must first be approved in writing by the commissioner.

Sec. 41.35.080. PERMITS. The commissioner may issue a permit for the investigation, excavation, gathering or removal from the natural state, of any historic, prehistoric or archeological resources of the state. A permit may be issued only to persons or organizations qualified to make the investigations, excavations, gatherings or removals and only if the results of these authorized activities will be made available to the general public through institutions and museums interested in disseminating knowledge on the subjects involved. If the historic, prehistoric or archeological resource involved is one which is, or is located on a site which is, sacred, holy or of religious significance to a cultural group, the consent of that cultural group must be obtained before a permit may be issued under this section.

Sec. 41.35.090. NOTICE REQUIRED OF PRIVATE PERSONS. Before any construction, alteration or improvement of any nature is undertaken on a privately owned, officially designated state monument or historic site by any person, the person shall give the department three months notice of intention to construct on, alter or improve it. Before the expiration of the three-month notification period, the department shall either begin eminent domain proceedings under AS 41.35.060 or undertake or permit the recording and salvaging of any historic, prehistoric or archaeological information considered necessary.

Sec. 41.35.100. EXCAVATION AND REMOVAL OF HISTORIC, PREHISTORIC OR ARCHEOLOGICAL REMAINS ON PRIVATE LAND. Before any historic, prehistoric or archeological remains are excavated or removed from private land by the department, the written approval of the owner shall first be secured. When the value of the private land is diminished by the excavation or removal, the owner of the land shall be compensated for the loss at a monetary sum mutually agreed on by the department and the owner or at a monetary sum set by the court.

Sec. 41.35.110. HISTORIC SITES ADVISORY COMMITTEE. There is created in the Department of Natural Resources the Historic Sites Advisory Committee.

Sec. 41.35.120. COMPOSITION OF COMMITTEE. The committee consists of the following persons:

- (1) the director of Alaska State Museum;

(2) the state liaison officer appointed under 16 U.S.C. 470-470n (Public Law 89-665, National Historic Preservation Act of 1966);

(3) three persons with professionally relevant backgrounds appointed from each of the following fields: history, architecture, and archeology; and

(4) two persons appointed to represent indigenous ethnic groups.

Sec. 41.35.130. APPOINTMENT OF MEMBERS. Members of the committee are appointed by the governor and confirmed by the legislature meeting in joint session. The members of the committee shall serve at the pleasure of the governor.

Sec. 41.35.140. TERM OF MEMBERSHIP. The term of office for a member of the committee is three years, except for those who are members by virtue of their positions with the state, who serve for as long as they remain in the position by virtue of which they are members of the committee. A member appointed to fill a vacancy serves for the unexpired term of the member he succeeds.

Sec. 41.35.150. COMPENSATION. The members of the committee serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards and commissions.

Sec. 41.35.160. OFFICERS. At the first meeting of each year, the committee shall elect a chairman from among its members.

Sec. 41.35.170. MEETINGS AND QUORUM. The committee shall meet at least twice a year. Additional meetings may be called by the chairman or by petition of at least five members. Five members of the committee constitutes a quorum.

Sec. 41.35.180. DUTIES OF COMMITTEE. The committee shall

(1) develop criteria for the evaluation of state monuments and historic sites and all real and personal property which may be considered to be of historic, prehistoric or archeological significance as would justify their acquisition and ownership by the state;

(2) cooperate with the department in formulating and administering a statewide historic sites survey under 16 U.S.C. 470-470n (P.L. 89-665, National Historic Preservation Act of 1966);

(3) review those surveys and historic preservation plans that may be required, and approve properties for nomination to the National Register as provided for in 16 U.S.C. 470-470n (P.L. 89-665, National Historic Preservation Act of 1966);

(4) provide necessary assistance to the governor and the legislature for achieving balanced and coordinated state policies and programs for the preservation of the state's historic, prehistoric and archeological resources;

(5) consult with local historical district commissions regarding the establishment of historical districts under AS 29.55.010 - 29.55.020 and the approval of project alterations under AS 45.98.040; recommend, if appropriate, the formulation of additional criteria for the designation of historical districts under AS 29.55.020(b); approve plans for and evaluate the suitability of specific structures for purposes of loan eligibility and continuance under the historical district revolving loan fund (AS 45.98); and consult with the Department of Commerce and Economic Development relative to the adoption of regulations for historical district loans under AS 45.98.

Sec. 41.35.190. POWERS OF CHAIRMAN. Subject to available appropriations the chairman may, with the concurrence of a majority of the committee, employ necessary personnel and may contract for the services of experts and other persons who may be needed.

Sec. 41.35.200. UNLAWFUL ACTS. (a) A person may not appropriate, excavate, remove, injure, or destroy, without a permit from the commissioner, any historic, prehistoric or archeological resources of the state.

(b) A person may not possess, sell, buy or transport within the state, or offer to sell, buy or transport within the state, historic, prehistoric or archeological resources taken or acquired in violation of this section or 16 U.S.C. 433.

(c) A person may not unlawfully destroy, mutilate, deface, injure, remove or excavate a gravesite or a tomb, monument, gravestone or other structure or object at a gravesite, even though the gravesite appears to be abandoned, lost or neglected.

(d) An historic, prehistoric or archeological resource which is taken in violation of this section shall be seized by any person designated in AS 41.35.220 wherever found and at any time. Objects seized may be disposed of as the commissioner determines by deposit in the proper public depository.

Sec. 41.35.210. CRIMINAL PENALTIES. A person who is convicted of violating a provision of AS 41.35.010 - 41.35.240 is guilty of a class A misdemeanor.

Sec. 41.35.215. CIVIL PENALTIES. In addition to other penalties and remedies provided by law, a person who violates a provision of AS 41.35.010 - 41.35.240 is subject to a maximum civil penalty of \$100,000 for each violation.

Sec. 41.35.220. ENFORCEMENT AUTHORITY. The following persons are peace officers of the state and shall enforce AS 41.35.010 - 41.35.240:

(1) an employee of the department authorized by the commissioner;

(2) a peace officer in the state;

(3) any other person authorized by the commissioner.

Sec. 41.35.230. DEFINITIONS. In AS 41.35.010 - 41.35.240, unless the context otherwise requires,

(1) [Repealed];

(2) "committee" means the Historic Sites Advisory Committee;

(3) [Repealed];

(4) "historic, prehistoric and archeological resources" include deposits, structures, ruins, sites, buildings, graves, artifacts, fossils, or other objects of antiquity which provide information pertaining to the historical or prehistorical culture of people in the state as well as to the natural history of the state.

Sec. 41.35.240. SHORT TITLE. AS 41.35.010 - 41.35.240 may be cited as the Alaska Historic Preservation Act.

ARTICLE 2. ALASKA HISTORICAL COMMISSION.

Sec. 41.35.300. CREATION. There is created in the Department of Natural Resources the Alaska Historical Commission.

Sec. 41.35.310. COMPOSITION. The Alaska Historical Commission consists of four members appointed by the governor, ex officio the lieutenant governor, and ex officio the executive director who may not vote. The lieutenant governor shall serve as chairman.

Sec. 41.35.320. APPOINTMENT. The governor shall make appointments from a list of recommended nominees submitted to the governor each year by the Alaska Historical Society. The list shall contain at least four names. A person who has served on the commission may be renominated.

Sec. 41.35.330. TERMS OF OFFICE. The term of office for each appointed member of the commission is two year. When a member's term has expired and a replacement has not been appointed, the member shall continue to serve until a replacement is appointed.

Sec. 41.35.340. COMPENSATION. The members of the commission are not entitled to receive compensation for their services, but they are entitled to receive the same travel pay and per diem as state officials and employees.

Sec. 41.35.350. DUTIES OF THE COMMISSION. The duties of the commission are to

(1) survey, evaluate, and catalog Alaska prehistory and history materials now in print;

(2) ascertain and register what Alaska prehistory and history work is now in progress;

(3) identify the existing gaps in the coverage of Alaska's past in presently available published works and establish priorities for bridging them;

(4) prepare a thematic study of Alaska's history for historic preservation;

(5) identify the sources of Alaska's history;

(6) coordinate the production and publication of works that will adequately present all aspects of Alaska's past; and

(7) cooperate with the federal government in programs relating to history and archaeology.

Sec. 41.35.360. REPORTS. The commission shall make an annual report to the governor.

Sec. 41.35.370. EXECUTIVE DIRECTOR. The commission shall appoint, subject to approval by the governor, an executive director who is to be in the partially exempt service under AS 39.25.120. The executive director shall serve as the executive officer of the commission in the accomplishment of its functions. The executive director serves at the direction and at the pleasure of the governor.

Sec. 41.35.380. GIFTS AND INCOME. (a) There is established in the state general fund a special Alaska Historical Commission receipts account into which shall be paid:

(1) all monetary gifts, grants, and bequests received by the commission;

(2) all royalties and other income which the commission receives from its projects.

(b) The legislature may appropriate funds from this account for commission projects.

* * * * *

TITLE 44, CHAPTER 37. DEPARTMENT OF NATURAL RESOURCES

Sec. 44.37.040. DUTIES OF DEPARTMENT WITH RESPECT TO HISTORIC PRESERVATION AND ARCHEOLOGY. The Department of Natural Resources shall

(1) sponsor, engage in and direct fundamental research into the archeology of the state and encourage and coordinate archeological research and investigation undertaken in the state;

(2) cooperate with the Historic Sites Advisory Committee in performing their functions under AS 41.35;

(3) ensure that historic, prehistoric and archeological resources are properly reported by persons or agencies engaged in public construction work and protect sites and objects of significance discovered at state sites or discovered during the course of public construction and encourage the protection of sites and objects discovered during the course of any other construction work;

(4) investigate reported historic, prehistoric or archeological resources and appraise them for any future excavation, preservation and interpretation;

(5) serve as a central clearinghouse for information on all historic, prehistoric and archeological resource excavation in the state.

* * * * *

TITLE 29, CHAPTER 40. PLANNING, PLATTING, AND LAND USE REGULATIONS

Sec. 29.40.030. COMPREHENSIVE PLAN. (a) The comprehensive plan is a compilation of policy statements, goals, standards, and maps for guiding the physical, social, and economic development, both private and public, of the first or second class borough, and may include, but is not limited to, the following:

- (1) statements of policies, goals, and standards;
- (2) a land use plan;
- (3) a community facilities plan;
- (4) a transportation plan; and
- (5) recommendations for implementation of the comprehensive plan.

(b) With the recommendations of the planning commission, the assembly shall adopt by ordinance a comprehensive plan. The assembly shall, after receiving the recommendations of the planning commission, periodically undertake an overall review of the comprehensive plan and update the plan as necessary.

Sec. 29.40.040. LAND USE REGULATION. (a) In accordance with a comprehensive plan adopted under AS 29.40.030 and in order to implement the plan, the assembly by ordinance shall adopt or amend provisions governing the use and occupancy of land that may include, but are not limited to,

- (1) zoning regulations restricting the use of land and improvements by geographic districts;
- (2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;

(3) measures to further the goals and objectives of the comprehensive plan.

(b) A variance from a land use regulation adopted under this section may not be granted if

- (1) special conditions that require the variance are caused by the person seeking the variance;

(2) the variance will permit a land use in a district in which that use is prohibited; or

(3) the variance is sought solely to relieve pecuniary hardship or inconvenience.

TITLE 29, CHAPTER 45. MUNICIPAL TAXATION

Sec. 29.45.050. OPTIONAL EXEMPTIONS AND EXCLUSIONS. (a) A municipality may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at an election. An exclusion or exemption authorized by this section may not exceed the assess value of \$10,000 for any one residence.

(b) A municipality may by ordinance

(1) classify boats and vessels for the purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage;

(2) classify and exempt from taxation

(A) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes if the income derived from rental of that property does not exceed the actual cost to the owner of the use by the renter;

(B) historic sites, buildings, and monuments;

(C) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 38.05.069(c);

(3) exempt personal property from taxation;

(4) exempt business inventories from taxation;

(5) classify as to type and exempt or partially exempt any or all types of motor vehicles from taxation.

(c) The provisions of (a) of this section notwithstanding,

(1) a borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of a city in the borough, including but not limited to, excluding personal property from taxation, establishing exemptions, and extending the redemption period;

(2) a home rule or first class city has the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes if

(A) the exemptions or exclusions have been adopted as to city taxes; and

(B) the city appropriates to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly;

(3) a city in a borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of the borough, including but not limited to exempting or partially exempting property from taxation.

(d) Exemptions or exclusions from property tax that have been granted by a home rule municipality in addition to exemptions authorized or required by law, and that are in effect on September 10, 1972, and not later withdrawn, are not affected by this chapter.

(e) A municipality may by ordinance classify and exempt or partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body. To be eligible for a tax exemption, or partial exemption, the easement must be in perpetuity. The easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property, so that the property owner is compensated at a rate that does not reflect the easement grant. The municipality may provide by ordinance that if the area subject to the easement is sold, leased, or otherwise disposed of for uses incompatible with the easement or if the easement is conveyed to the owner of the property, the owner must pay to the municipality all or a portion of the amount of the tax exempted, with interest.

(f) A municipality may by ordinance exempt from taxation all or part of the increase in assessed value of improvements to real property if an increase in assessed value is directly attributable to alteration of the natural features of the land, or new maintenance, repair, or renovation of an existing structure, and if the alteration, maintenance, repair, or renovation, when completed, enhances the exterior appearance or aesthetic quality of the land or structure. An exemption may not be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use in the structure or for the alteration of land as a consequence of construction

activity. An exemption provided in this subsection may continue for up to four years from the date the improvement is completed, or from the date of approval for the exemption by the local assessor whichever is later.

(g) A municipality may by ordinance exempt from taxation all or part of the increase in assessed value of improvements to a single-family dwelling if the principal purpose of the improvement is to increase the amount of space for occupancy. An exemption provided in this subsection may continue for up to two years from the date the improvement is completed, or from the date of approval of an application for the exemption by the local assessor, whichever is later.

(h) A municipality may by ordinance partially or wholly exempt land from a tax for fire protection service and fire protection facilities and may levy the tax only on improvements, including personal property affixed to the improvements.

(i) A municipality may by ordinance approved by the voters exempt from taxation the assessed value that exceeds \$150,000 of real property owned and occupied as a permanent place of abode by a resident who is

(1) 65 years of age or older;

(2) a disabled veteran, including a person who was disabled in the line of duty while serving in the Alaska Territorial Guard; or

(3) at least 60 years old and a widow or widower of a person who qualified for an exemption under (1) or (2) of this subsection.

(j) A municipality may by ordinance approved by the voters exempt real or personal property in a taxing unit used in processing timber after it has been delivered to the processing site from up to 75 percent of the rate of taxes levied on other property in that taxing unit. An ordinance adopted under this subsection may not provide for an exception that exceeds five years in duration. In this subsection "taxing unit" means a municipality and includes

(1) a service area in a unified municipality or borough;

(2) the entire area outside cities in a borough; and

(3) a differential tax zone in a city.

(k) A municipality may by ordinance approved by the voters exempt from taxation pollution control facilities that meet requirements of the United States Environmental Protection Agency or the Department of Environmental Conservation. An ordinance adopted under this subsection may not provide for an exemption that exceeds five years in duration.

(l) A municipality may by ordinance exempt from taxation an interest, other than record ownership, in real property of an individual residing in the property if the property has been developed, improved, or acquired with federal funds for low-income housing and is owned or managed as low-income housing by the Alaska State Housing Authority or a regional housing authority formed under AS 18.44.996. This section does not prohibit a municipality from receiving payments in lieu of taxes authorized under federal law.

(m) A municipality may by ordinance partially or totally exempt all or some types of economic development property from taxation for up to five years. The municipality may provide for renewal of the exemption under conditions established in the ordinance. However, under a renewal, a municipality that is a school district may only exempt all or a portion of the amount of taxes that exceeds the amount levied on other property for the school district. A municipality may by ordinance permit deferral of payment of taxes on all or some types of economic development property for up to five years. The municipality may provide for renewal of the deferral under conditions established in the ordinance. A municipality may adopt an ordinance under this subsection only if, before it is adopted, copies of the proposed ordinance made available at a public hearing on it contain written notice that the ordinance, if adopted, may be repealed by the voters through referendum. An ordinance adopted under this subsection must include specific eligibility requirements and require a written application for each exemption or deferral. In this subsection "economic development property" means real or personal property, including developed property conveyed under 43 U.S.C. 1601-1629e (Alaska Native Claims Settlement Act), that

(1) has not previously been taxed as real or personal property by the municipality;

(2) is used in a trade or business in a way that

(A) creates employment in the municipality;

(B) generates sales outside of the municipality of goods or services produced in the municipality; or

(C) materially reduces the importation of goods or services from outside the municipality; and

(3) has not been used in the same trade or business in another municipality for at least six months before the application for deferral or exemption is filed; this paragraph does not apply if the property was used in the same trade or business in an area that has been annexed to the municipality within six months before the application for deferral or exemption is filed; this paragraph does not apply to inventories.

(n) A municipality may by ordinance classify as to type inventories intended for export outside the state and partially or totally exempt all or some types of those inventories from taxation. A municipality that is a school district may, under this subsection, only exempt all or a portion of the amount of taxes that exceeds the amount levied on other property for the school district. A municipality may adopt an ordinance under this subsection only if, before it is adopted, copies of the proposed ordinance made available at a public hearing on it contain written notice that the ordinance, if adopted, may be repealed by the voters through referendum. The ordinance may provide for different levels of exemption for different classifications of inventories. An ordinance adopted under this subsection must include specific eligibility requirements and require a written application for each exemption.

TITLE 29, CHAPTER 55. MUNICIPAL PROGRAMS

Sec. 29.55.010. CREATION OF LOCAL HISTORICAL DISTRICT COMMISSIONS. The governing body of a municipality may establish a local historical district commission or designate the planning commission or itself to serve as the historical district commission.

Sec. 29.55.020. ESTABLISHMENT OF HISTORICAL DISTRICTS. (a) In addition to existing municipal authority providing for the preservation, protection, and maintenance of historic sites, the local historical district commission, in consultation with the Historic Sites Advisory Committee in the Department of Natural Resources, may establish historical districts within the boundaries of the municipality.

(b) A historical district shall be a reasonably compact area of historical significance in which two or more structures important in state or national history, and related by physical proximity or historical association, are located. For purposes of this section, "structures important in state or national history" means properties recommended by historical district commissions that are listed in the National Register of Historic Places or are

characteristic of the Russian-American period before October 18, 1867, the early territorial period before 1930, or early Native heritage, reflecting the indigenous characteristics of Native culture in Alaska. On recommendation of the governing body of a municipality and the Historic Sites Advisory Committee, the Department of Natural Resources may by regulation formulate additional criteria for the establishment of historical districts not inconsistent with this subsection.

(c) The establishment of a historical district under this section shall be consistent with any applicable comprehensive plan for the municipality.

* * * * *

TITLE 09, CHAPTER 25. EVIDENCE

Sec. 09.25.120. PUBLIC RECORDS, EXCEPTIONS, CERTIFIED COPIES. Every person has a right to inspect a public record in the state, including public records in recorders' offices except:

(1) records of vital statistics and adoption proceedings which shall be treated in the manner required by AS 18.50;

(2) records pertaining to juveniles;

(3) medical and related public health records;

(4) records required to be kept confidential by a federal law or regulation or by state law. Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the fees under AS 09.25.110 - 09.25.115 a certified copy of the record, and the copy shall in all cases be evidence of the original. Recorders shall permit memoranda, transcripts, and copies of the public records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants; and shall furnish proper and reasonable facilities to persons having lawful occasion for access to the public records for those purposes, subject to reasonable rules and regulations, in conformity to the direction of the court, as are necessary for the protection of the records and to prevent interference with the regular discharge of the duties of the recorders and their employees.

TITLE 09, CHAPTER 55. SPECIAL ACTIONS AND PROCEEDINGS

Sec. 09.55.250. CLASSIFICATION OF ESTATES AND LAND SUBJECT TO BE TAKEN. The following is a classification of the estates and rights in land subject to be taken for public use:

(1) a fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams and permanent flooding occasioned by them, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine, or when, in the judgment of the Department of Natural Resources, or the Department of Transportation and Public Facilities, a fee simple is necessary for any of the purposes for which the department, on behalf of the state, is authorized by law to acquire real property by condemnation;

(2) an easement when taken for any other use;

(3) the right of entry upon an occupation of land, and the right to take from the land earth, gravel, stones, trees, and timber as may be necessary for a public use.

★ ★ ★ ★ ★ ★ ★ ★

ALASKA ADMINISTRATIVE CODE

The following portions of the Alaska Administrative Code are relative to the Alaska Historic Preservation Act:

CHAPTER 16. HISTORIC, PREHISTORIC AND ARCHEOLOGICAL RESOURCES

Article

1. Procedure (11 AAC 16.010 - 11 AAC 16.160)
2. National Register of Historic Places (11 AAC 16.120 - 11 AAC 16.230)
3. General Provisions (11 AAC 16.900)

ARTICLE 1. PROCEDURE

Section

10. Jurisdiction
20. Title to collected items
30. Investigation and collection permits
40. Qualified person
50. Reports
60. Restoration of area
70. Permit restrictions
80. Cancellation of permits
90. Examination of site
100. Maintenance of privately-owned sites
110. Administrative responsibility
120. Eligibility
130. Application
140. Allocation of funds
150. Definitions (Relocated to 11 AAC 16.900)
160. Project Agreement

11 AAC 16.010. JURISDICTION. The division of parks shall administer the historic, prehistoric and archeological resources of the state.

11 AAC 16.020. TITLE TO COLLECTED ITEMS. (a) Each item collected from lands owned or controlled by the state is the property of the state and shall be registered with the division.

(b) An item may be removed from the state in accordance with a permit from the director. The repository of the item is subject to his restrictions. The director may require the items to be returned to the state upon giving 60 days' notice.

APPENDIX 7

ABANDONED SHIPWRECK ACT OF 1987

Public Law 100-298—APR. 28, 1988

ABANDONED SHIPWRECK ACT OF 1987

DECEMBER 9 (legislative day, DECEMBER 8), 1987.—Ordered to be printed

Mr. JOHNSTON from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 858]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 858) to establish the title of States in certain abandoned shipwrecks, and for other purposes, having considered the same, reports favorably thereon with an amendment to the text and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Abandoned Shipwreck Act of 1987".

SEC. 2. FINDINGS.

The Congress finds that:—

- (a) States have the responsibility for management of a broad range of living and nonliving resources in State waters and submerged lands; and
- (b) included in the range of resources are certain abandoned shipwrecks, which have been deserted and to which the owner has relinquished ownership rights with no retention.

SEC. 3. DEFINITIONS.

For purposes of this Act—

- (a) the term "embedded" means firmly affixed in the submerged lands or in coralline formations such that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof;

- (b) the term "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the National Historic Preservation Act (16 U.S.C. 470a);

- (c) the terms "public lands," "Indian lands" and "Indian tribe" have the same meaning given the terms in the Archaeological Resource Protection Act of 1979 (16 U.S.C. 470aa-47011);

Public
information.
Historic
preservation.

(3) on submerged lands of a State and is included in or determined eligible for inclusion in the National Register.

(b) The public shall be given adequate notice of the location of any shipwreck to which title is asserted under this section. The Secretary of the Interior, after consultation with the appropriate State Historic Preservation Officer, shall make a written determination that an abandoned shipwreck meets the criteria for eligibility for inclusion in the National Register of Historic Places under clause (a)(3).

(c) **TRANSFER OF TITLE TO STATES.**—The title of the United States to any abandoned shipwreck asserted under subsection (a) of this section is transferred to the State in or on whose submerged lands the shipwreck is located.

Gifts and
property.
Indiana.

(d) **EXCEPTION.**—Any abandoned shipwreck in or on the public lands of the United States is the property of the United States Government. Any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands.

(e) **RESERVATION OF RIGHTS.**—This section does not affect any right reserved by the United States or by any State (including any right reserved with respect to Indian lands) under—

(1) section 3, 5, or 6 of the Submerged Lands Act (43 U.S.C. 1311, 1313, and 1314); or

(2) section 19 or 20 of the Act of March 3, 1899 (33 U.S.C. 414 and 415).

43 USC 2106.

SEC. 7. RELATIONSHIP TO OTHER LAWS.

(a) **LAW OF SALVAGE AND THE LAW OF FINDS.**—The law of salvage and the law of finds shall not apply to abandoned shipwrecks to which section 6 of this Act applies.

(b) **LAWS OF THE UNITED STATES.**—This Act shall not change the laws of the United States relating to shipwrecks, other than those to which this Act applies.

(c) **EFFECTIVE DATE.**—This Act shall not affect any legal proceeding brought prior to the date of enactment of this Act.

Approved April 28, 1988.

LEGISLATIVE HISTORY—S. 858:

HOUSE REPORTS: No. 100-514, Pt. 1 (Comm. on Interior and Insular Affairs) and Pt. 2 (Comm. on Merchant Marine and Fisheries).

SENATE REPORTS: No. 100-241 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 133 (1987): Dec. 19, considered and passed Senate.

Vol. 134 (1988): Mar. 28, 29, Apr. 13, considered and passed House.

Public Law 100-298
100th Congress

An Act

Apr. 28, 1988

[S. 858]

To establish the title of States in certain abandoned shipwrecks, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Abandoned Shipwreck Act of 1987".

SEC. 2. FINDINGS.

The Congress finds that—

(a) States have the responsibility for management of a broad range of living and nonliving resources in State waters and submerged lands; and

(b) included in the range of resources are certain abandoned shipwrecks, which have been deserted and to which the owner has relinquished ownership rights with no retention.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(a) the term "embedded" means firmly affixed in the submerged lands or in coralline formations such that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof;

(b) the term "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the National Historic Preservation Act (16 U.S.C. 470a);

(c) the terms "public lands", "Indian lands", and "Indian tribe" have the same meaning given the terms in the Archaeological Resource Protection Act of 1979 (16 U.S.C. 470aa-470ll);

(d) the term "shipwreck" means a vessel or wreck, its cargo, and other contents;

(e) the term "State" means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and

(f) the term "submerged lands" means the lands—

(1) that are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301);

(2) of Puerto Rico, as described in section 8 of the Act of March 2, 1917, as amended (48 U.S.C. 749);

(3) of Guam, the Virgin Islands and American Samoa, as described in section 1 of Public Law 93-435 (48 U.S.C. 1705); and

(4) of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Public Law 94-241 (48 U.S.C. 1681).

Abandoned
Shipwreck
Act of 1987.
Maritime
affairs.
43 USC 2101
note.
43 USC 2101.

43 USC 2102.

SEC. 4. RIGHTS OF ACCESS.**(a) ACCESS RIGHTS.**—In order to—

(1) clarify that State waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups, as well as irreplaceable State resources for tourism, biological sanctuaries, and historical research; and

(2) provide that reasonable access by the public to such abandoned shipwrecks be permitted by the State holding title to such shipwrecks pursuant to section 6 of this Act,

it is the declared policy of the Congress that States carry out their responsibilities under this Act to develop appropriate and consistent policies so as to—

(A) protect natural resources and habitat areas;

(B) guarantee recreational exploration of shipwreck sites; and

(C) allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites.

(b) PARKS AND PROTECTED AREAS.—In managing the resources subject to the provisions of this Act, States are encouraged to create underwater parks or areas to provide additional protection for such resources. Funds available to States from grants from the Historic Preservation Fund shall be available, in accordance with the provisions of title I of the National Historic Preservation Act, for the study, interpretation, protection, and preservation of historic shipwrecks and properties.

SEC. 5. PREPARATION OF GUIDELINES.

(a) In order to encourage the development of underwater parks and the administrative cooperation necessary for the comprehensive management of underwater resources related to historic shipwrecks, the Secretary of the Interior, acting through the Director of the National Park Service, shall within nine months after the date of enactment of this Act prepare and publish guidelines in the Federal Register which shall seek to:

(1) maximize the enhancement of cultural resources;

(2) foster a partnership among sport divers, fishermen, archeologists, salvors, and other interests to manage shipwreck resources of the States and the United States;

(3) facilitate access and utilization by recreational interests;

(4) recognize the interests of individuals and groups engaged in shipwreck discovery and salvage.

(b) Such guidelines shall be developed after consultation with appropriate public and private sector interests (including the Secretary of Commerce, the Advisory Council on Historic Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archeologists, historic preservationists, and fishermen).

(c) Such guidelines shall be available to assist States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under this Act.

SEC. 6. RIGHTS OF OWNERSHIP.

(a) UNITED STATES TITLE.—The United States asserts title to any abandoned shipwreck that is—

(1) embedded in submerged lands of a State;

(2) embedded in coralline formations protected by a State on submerged lands of a State; or

Cultural
programs.
Historic
preservation.
Environmental
protection.
42 USC 2103.

Grants.

43 USC 2104.

National parks,
monuments, etc.
Federal
Register,
publication.

43 USC 2105.

(d) the term "shipwreck" means a vessel or wreck, its cargo, and other contents;

(e) the term "State" means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and

(f) the term "submerged lands" means the lands—

- (1) that are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301);
- (2) of Puerto Rico, as described in section 8 of the Act of March 2, 1917, as amended (48 U.S.C. 749);
- (3) of Guam, the Virgin Islands and American Samoa, as described in section 1 of Public Law 93-453 (48 U.S.C. 1705); and
- (4) of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Public Law 92-311 (48 U.S.C. 1681).

SEC. 4. SHORTS OF ACCESS.

(a) ACCESS RIGHTS.—In order to—

- (1) clarify that State waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups, as well as irreplaceable State resources for tourism, biological sanctuaries, and historical research; and

(2) provide that reasonable access by the public to such abandoned shipwrecks be permitted by the State holding title to such shipwrecks pursuant to section 6 of this Act,

it is the declared policy of the Congress that States carry out their responsibilities under this Act to develop appropriate and consistent policies so as to—

- (A) protect natural resources and habitat areas;
- (B) guarantee recreational exploration of shipwreck sites; and
- (C) allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites.

(b) PARKS AND PROTECTED AREAS.—In managing the resources subject to the provisions of this Act, States are encouraged to create underwater parks or areas to provide additional protection for such resources. Funds available to States from grants from the Historic Preservation Fund shall be available, in accordance with the provisions of title 1 of the National Historic Preservation Act, for the study, interpretation, protection, and preservation of historic shipwrecks and properties.

SEC. 5. PRESERVATION OF GUIDELINES.

(a) In order to encourage the development of underwater parks and the administrative cooperation necessary for the comprehensive management of underwater resources related to historic shipwrecks, the Secretary of the Interior, acting through the Director of the National Park Service, shall within nine months after the date of enactment of this Act prepare and publish guidelines in the Federal Register which shall seek to:

- (1) maximize the enhancement of cultural resources;
- (2) foster a partnership among sport divers, fishermen, archaeologists, salvors, and other interests to manage shipwreck resources of the States and the United States;
- (3) facilitate access and utilization by recreational interests;
- (4) recognize the interests of individuals and groups engaged in shipwreck discovery and salvage.

(b) Such guidelines shall be developed after consultation with appropriate public and private sector interests (including the Secretary of Commerce, the Advisory Council on Historic Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archaeologists, historic preservationists, and fishermen).

(c) Such guidelines shall be available to assist States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under this Act.

SEC. 6. RIGHTS OF OWNERSHIP.

(a) UNDETERMINED STATUS.—The United States asserts title to any abandoned shipwreck that is—

- (1) embedded in submerged lands of a State;
- (2) embedded in coralline formations protected by a State on submerged lands of a State; or

(3) on submerged lands of a State and is included in or determined eligible for inclusion in the National Register.

(b) The public shall be given adequate notice of the location of any shipwreck to which title is asserted under this section. The Secretary of the Interior, after consultation with the appropriate State Historic Preservation Officer, shall make a written determination that an abandoned shipwreck meets the criteria for eligibility for inclusion in the National Register of Historic Places under clause (a)(3).

(c) TRANSFER OF TITLE TO STATES.—The title of the United States to any abandoned shipwreck asserted under subsection (a) of this section is transferred to the State in or on whose submerged lands the shipwreck is located.

(d) EXEMPTION.—Any abandoned shipwreck in or on the public lands of the United States is the property of the United States Government. Any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands.

(e) RESERVATION OF RIGHTS.—This section does not affect any right reserved by the United States or by any State (including any right reserved with respect to Indian lands) under—

- (1) section 3, 5, or 6 of the Submerged Lands Act (43 U.S.C. 1311, 1313, and 1314); or
- (2) section 19 or 20 of the Act of March 3, 1899 (33 U.S.C. 414 and 416).

SEC. 7. RELATIONSHIP TO OTHER LAWS.

(a) LAW OF SALVAGE AND THE LAW OF FINDS.—The law of salvage and the law of finds shall not apply to abandoned shipwrecks to which section 6 of this Act applies.

(b) LAWS OF THE UNITED STATES.—This Act shall not change the laws of the United States relating to shipwrecks, other than those to which this Act applies.

(c) EFFECTIVE DATE.—This Act shall not affect any legal proceeding brought prior to the date of enactment of this Act.

PURPOSE OF THE MEASURE

The purpose of S. 858 is to vest title to certain abandoned shipwrecks that are buried in State lands to the respective States and clarify the management authority of the States for these abandoned shipwrecks.

BACKGROUND AND NEED

The central issue underlying this legislation is the ownership and the authority to manage abandoned shipwrecks on State lands. Currently, States claim title to and regulatory authority over abandoned historic shipwrecks. However, the Federal Admiralty Court has also claimed jurisdiction over these resources, creating confusion over ownership of the resource and in some cases resulting in inadequate protection of historical artifacts.

The Submerged Lands Act of 1953 gave the States title to the "land and natural resources" within 3 miles of their coasts. The States have contended that "lands and natural resources" include abandoned shipwrecks. Since the 1950's, the States have managed historic shipwreck archaeological sites as part of their historic preservation programs. In addition, 27 States have established specific laws regulating abandoned historic shipwrecks. The laws differ by State, but none prohibit sport diving on historic shipwrecks and about half of the laws provide for compensation for recovery activities undertaken by private parties.

Federal Admiralty Court and the admiralty system, which have their roots in English history and common law, were developed to deal with the recovery or salvage of goods lost at sea. The Admiralty Court makes a determination of a salvage award and ownership of a shipwreck depending on success in recovering the vessel or cargo, the danger present in the rescue, the value of the property recovered, and the time and labor expended by the salvor. Such a

determination for historic shipwrecks often times does not consider the archeological, historical, and other values associated with these wrecks which would preserve part of our nation's heritage.

This legislation would clarify that situation by asserting Federal ownership over these shipwrecks and then transferring title to the States for administration, management, and regulation.

LEGISLATIVE HISTORY

S. 858 was introduced by Senator Bradley on March 26, 1987. A hearing was held by the Subcommittee on Public Lands, National Parks and Forests on September 29, 1987.

At a business meeting on December 2, 1987, the Senate Committee on Energy and Natural Resources ordered S. 858, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on December 2, 1987, by a unanimous vote of a quorum present, recommends that the Senate pass S. 858, if amended, as described herein.

The rollcall vote on reporting the measure was 19 yeas, 0 nays as follows:

YEAS

Mr. Johnston
Mr. Bumpers
Mr. Ford
Mr. Metzenbaum
Mr. Melcher
Mr. Bradley
Mr. Bingham
Mr. Wirth
Mr. Fowler
Mr. Conrad
Mr. McClure
Mr. Hatfield
Mr. Weicker
Mr. Domenici
Mr. Wallop
Mr. Murkowski
Mr. Nickles
Mr. Hecht
Mr. Evans

NAYS

*Indicates voted by proxy.

COMMITTEE AMENDMENTS

During the consideration of S. 858, the Committee adopted an amendment in the nature of a substitute. The substitute includes a number of technical and conforming amendments and some substantive changes. A discussion of those substantive differences follows. Additional information on the substitute is included in the "Section-by-Section Analysis" of this report.

1. Findings and definitions

The substitute clarifies that "abandoned shipwrecks" refers to those shipwrecks which have been deserted and to which all owner-ship rights have been relinquished. It also expands the definition of "embedded" to include the requirement that tools of excavation would have to be used to gain access to the shipwreck.

2. Guidelines

The substitute changes the authority for promulgation of the guidelines from the Advisory Council on Historic Preservation to the Secretary of the Interior, acting through the Director of the Park Service. In preparing the guidelines, the Secretary is required to consult with a variety of interests, including the Secretary of Commerce, the Advisory Council on Historic Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archaeologists, historic preservationists, and fishermen. The guidelines were expanded to include the recognition of the interests of those engaged in shipwreck discovery and salvage. The purpose of these changes was to broaden the focus of the guidelines from primarily historic preservation to include the consideration of recreational and commercial interests as well.

SECTION-BY-SECTION ANALYSIS

Section 1 provides a short title for S. 858, the "Abandoned Shipwreck Act of 1987".

Section 2 includes a set of Congressional findings.

Section 3 contains definitions of key terms in the Act.

Section 4 sets forth the general responsibilities of the States under this Act. The States are directed to develop policies to protect shipwrecks, guarantee recreational exploration of shipwreck sites, and allow for recovery of shipwrecks which are consistent with the protection of historical and environmental values. This section also encourages the States to create underwater parks to give further protection of these resources.

Section 5 provides for advisory guidelines to be developed by the Secretary of the Interior, acting through the Director of the National Park Service. The purpose of the guidelines is to assist the States and the appropriate Federal agencies in developing legislation and regulations to carry out the purposes of the Act. The guidelines are intended to enhance cultural resources; foster a partnership among a variety of parties including sportdivers, fishermen, archaeologists and salvors; facilitate access by recreational users; and recognize the interests of those engaged in shipwreck discovery or salvage.

Section 6 asserts that title to certain abandoned shipwrecks vests in the United States. These shipwrecks include those which are embedded in the submerged lands of a State, are located on coral-line formations protected by a State or have been determined to be eligible for inclusion in the National Register. Notice of the location of these shipwrecks are to be provided to the public.

The purpose of providing notice to the public is to ensure that sport divers and others seeking to use abandoned shipwrecks know that wrecks have been found to be historically significant. The

need to give such advance notice must be balanced, however, against the danger that notice of location will lead to damage and pilferage.

Accordingly, it is expected that the degree of specificity with which such wrecks are located in public notices will vary from circumstance to circumstance. The Committee concurs that appropriate public notice of the site location may be accomplished in many different ways, including notice in the Federal Register, the marking of charts, a site marker, notice in local newspapers or diving information centers. The specificity of such notice may vary, and may be accomplished by other means, such as the 1-mile lease-tract method used by some States for offshore oil and gas leases.

The title of those abandoned shipwrecks which meet the specified criteria outlined above are to be transferred to the appropriate State. The United States retains title only if the shipwreck is located on public lands, and any shipwrecks located on Indian lands is the property of Indian tribe owning the land.

There are some units of the National Park System where abandoned shipwrecks are found on lands which are owned by the United States, for example at Biscayne National Park in Florida. Section 6(d) would ensure that the United States retains title to these shipwrecks. In other park units, however, the submerged lands within the park boundaries are owned by the State. Section 6(c) would transfer title to these shipwrecks to the States.

The Committee is concerned that historic shipwrecks within national park boundaries be preserved, regardless of whether they lie in State or Federal waters. Accordingly, the Committee encourages the National Park Service and the States to enter into management agreements whereby any historic shipwrecks within national park boundaries will be protected by the National Park Service. The Committee expects the guidelines issued pursuant to section 5 to reflect this need to manage historic resources within park boundaries consistently.

Section 7 describes the relationship of the Abandoned Shipwrecks Act to other laws. In particular, the Law of Salvage and the Law of Finds do not apply to shipwrecks described in section 6.

The Committee recognizes that the management of long-submerged and abandoned shipwrecks now presents concerns far removed from the traditional admiralty interests in safety and in returning goods to the streams of commerce. As new technologies have allowed the recovery of wrecks that have been lost for long periods of time, a new concern has been developed for the historic and recreational interests in shipwrecks. Shipwrecks are no longer viewed as only lost commercial resources that should be salvaged so that the goods can be returned to commerce. Rather, many shipwrecks are now used as recreational resources for sport divers and fishermen and are viewed as invaluable and irreplaceable archeological resources.

The archeological and recreational interests require that certain shipwrecks be managed by entities with experience in these areas and a broad concern with historic and recreational resources as well as an awareness of the unique needs of their local resources. It is no longer appropriate for the admiralty courts to adjudicate these interests based on traditional admiralty concerns. Admiralty

courts remain best equipped to deal with issues essential to a national maritime jurisdiction, primarily the adjudication of commercial interests, as would be present in the wreck of ships that are currently engaged in commerce and their cargo.

The States and the Federal Government, both of which have extensive experience in recreational and historic site management as well as broad interests in a range of other historic and recreational resources, should manage the shipwrecks covered by this Act.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 8, 1987.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 858, the Abandoned Shipwreck Act of 1987, as ordered reported by the Senate Committee on Energy and Natural Resources, December 2, 1987. We estimate that this bill would have no significant impact on the budget of the federal government, or of state or local governments.

S. 858 would assert federal title to certain abandoned shipwrecks and would transfer title to the state on whose submerged lands the shipwreck is located, unless the shipwreck lies within the boundaries of lands administered by the National Park Service (NPS). This bill would also direct the NPS to develop guidelines on managing shipwrecks and providing public access. Neither the NPS nor the affected states are expected to incur significant additional costs as a result of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 858. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy. Little, if any, additional paperwork would result from the enactment of S. 858, as reported.

EXECUTIVE COMMUNICATIONS

On September 22, 1987, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior, the National Oceanographic and Atmospheric Administration and the Office of Management and Budget setting forth executive views on S. 858. These reports had not been received at the time the report on S. 858 was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 858, as reported.

○

ESTABLISHING THE TITLE OF STATES IN CERTAIN ABANDONED SHIPWRECKS

MARCH 28, 1988.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany S. 858]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (S. 858) to establish the title of States in certain abandoned shipwrecks, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF LEGISLATION

The purpose of S. 858 is to vest title to certain abandoned shipwrecks that are embedded in or located on State lands to the respective States and clarify the management authority of the States for these abandoned shipwrecks.

SUMMARY OF BILL

S. 858 asserts U.S. title to three classes of abandoned shipwrecks in State waters: (1) those embedded in submerged lands of a State; (2) those embedded in coralline formations protected by a State on submerged lands; and (3) those on submerged lands of a State and included or determined eligible for inclusion in the National Register of Historic Places. Title to shipwrecks in these categories is transferred to the States within whose waters they lie. S. 858 de-

*33-436

clares as Congressional policy that States should manage these wrecks to protect natural resources and habitat areas, guarantee recreational exploration of shipwreck sites, and allow for appropriate public and private sector recovery. S. 858 also directs the Director of the National Park Service, after consultation with all affected interests, to develop guidelines for States and federal agencies to use in managing these shipwrecks. S. 858 specifically supercedes the law of salvage and the law of finds with respect to shipwrecks for which title is asserted.

BACKGROUND AND NEED

The central issue intended to be resolved by the legislation is the ownership and the authority to manage certain abandoned shipwrecks on State lands. In 1953, Congress passed the Submerged Lands Act (SLA, 43 U.S.C. 1301 *et seq.*) and transferred ownership to the States of all natural resources and submerged lands out to a distance of three miles (except in the case of Texas, Puerto Rico, and the west coast of Florida where it is three marine leagues or nine statute miles).

Congress did not specify in the SLA whether the states also owned non-natural objects such as shipwrecks that rested on or within submerged lands. Notwithstanding this lack of clarity, some 28 States have laws that pertain to the management of abandoned or historic shipwrecks in state waters. It is estimated that the total number of shipwrecks in State waters is more than 50,000, of which some 5-10 percent may be of historical significance.

Existing State laws assert title to shipwrecks in State waters and prescribe regulations for the protection and salvage of wrecks of historic significance. To the Committee's knowledge, none of the existing laws prohibit access by sport divers, although those wishing to recover artifacts from wrecks are frequently required to obtain state permits.

States have been constrained in applying their shipwreck management and preservation laws because of conflicts with federal admiralty principles and mixed judicial decisions. Under Article III, section 2 of the Constitution and 28 U.S.C. 1333, federal district courts have original jurisdiction over all admiralty and maritime cases. This jurisdiction includes claims for the salvage of abandoned shipwrecks. In exercising this jurisdiction, federal courts apply common law principles of admiralty, including the law of finds and the law of salvage.

Under the American law of finds, the finder of an abandoned shipwreck is allowed to keep the wreck and its cargo. Under the law of salvage, the owner of the shipwreck retains title to the wreck but the salvor may be entitled to a salvage award.

The majority of federal courts presented with a salvage claim to resolve have decided that (1) the SLA did not specifically assert U.S. title to shipwrecks and transfer that title to the states; and (2) state historic preservation laws whose provisions are inconsistent with federal common law admiralty principles are superceded by those principles under the supremacy clause of the Constitution. (Cobb Coin Co., *Inc. v. The Unidentified, Wrecked and Abandoned Sailing Vessel*, 525 F. Supp. 186 (S.D. Fla. 1981); *Treasure Salvors,*

Inc. v. The Unidentified, Wrecked and Abandoned Sailing Vessel, 569 F.2d 380 (5th Cir. 1978).) A minority of courts have decided that the SLA did provide the states with jurisdiction over shipwrecks in state waters. (*Subaqueous Exploration and Archaeology, Ltd. v. The Unidentified, Wrecked and Abandoned Sailing Vessel*, 577 F. Supp. 597 (D. Md. 1983).)

At a minimum, these decisions have led to confusion over the ownership of, and responsibility for, historic shipwrecks in State waters. This confusion led to the introduction of historic shipwreck legislation in the 97th Congress and the passage by the House, in the 98th Congress, of H.R. 3194. The Abandoned Shipwreck Act of 1984 would have transferred title of a certain class of historic shipwrecks lying on submerged lands to the States. The Senate took no action on H.R. 3194.

COMMITTEE ACTION

The original House legislation on abandoned shipwrecks in the 100th Congress was H.R. 74, introduced on January 6, 1987, by Congressman Charles Bennett and four cosponsors. As introduced, H.R. 74 is similar to S. 858. On April 9, 1987, Congressman Norman Shumway introduced H.R. 2071, a bill to establish that federal district courts exercising admiralty jurisdiction have the exclusive power to control and dispose of abandoned historic shipwrecks located in State waters. H.R. 2071 provided guidelines for the court to follow to protect historically significant shipwrecks and also created a right of intervention for affected states. Both bills were jointly referred to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries and were the subject of a hearing in the Oceanography Subcommittee of the latter Committee on April 21, 1987.

The Subcommittee reported H.R. 74 with an amendment in the nature of a substitute on August 5, 1987. As reported, H.R. 74 would transfer the title of certain abandoned shipwrecks to States conditioned on the States developing plans for the protection of the shipwrecks and having those plans approved by the Secretary of the Interior within five years from enactment of the bill. If the State plan is not approved, title reverts to the United States. The bill reported by the Subcommittee also establishes a 16-member advisory committee to assist the Secretary of the Interior in the development of guidelines for the States to use in the management of historic shipwrecks.

S. 858 was introduced on March 26, 1987. On December 2, 1987, the Senate Committee on Energy and Natural Resources ordered the bill, as amended, favorably reported by a 19-0 roll call vote. On December 19, 1987, S. 858 was passed by the Senate on a voice vote. On December 20, 1987, the bill was jointly referred to the Committees on Merchant Marine and Fisheries and Interior and Insular Affairs.

Within the Committee on Interior and Insular Affairs, a hearing was held on S. 858 by the Subcommittee on National Parks and Public Lands on February 4, 1988. The bill was favorably recommended to the full Committee on February 18, 1988. The Committee on Interior and Insular Affairs ordered S. 858 favorably report-

ed to the House by voice vote on February 24, 1988, and filed its report on the legislation on March 14, 1988 (Rept. 100-514, Part 1). On March 23, 1988, the Committee on Merchant Marine and Fisheries marked up S. 858. Congressman Shumway offered an amendment to make the congressional policy statement about rights of access in section 4 of the bill binding on the States and to make any dispute about State implementation of the rights of access reviewable in a federal district court. Mr. Shumway's amendment was defeated by a 14-25 roll call vote.

Mr. Shumway offered a second amendment to conform the geographic scope of the Act to three nautical miles off the U.S. coast, consistent with international law and as recommended by the State Department. This amendment was defeated by a voice vote.

No other amendments were offered to the bill and it was ordered reported to the House, without amendment, by a 30-10 roll call vote. A majority quorum was present.

BOULGAT VOTE ON: 133—FIRM PASSAGE

Number	Age	Sex
Arthur G. Jones, North Carolina		X
Charles H. King, New York		P
John H. Anderson, California		X
Harry C. Smith, Massachusetts		X
David Johnson, Jr., Kentucky		X
John Baker, Washington		X
William J. Hughes, New Jersey		P
William Lewis, Washington		P
Ed L. Smith, Florida		X
W. J. A. (1884) Smith, Louisiana		X
Thomas H. Hughes, Pennsylvania		P
Samuel H. David, Michigan		X
Ray Davis, Maryland		X
William B. Updell, Black		X
Robert A. David, Pennsylvania		X
Thomas B. Cooper, Indiana		X
Samuel Davis, California		X
William Jones, South Carolina		P
Johnston P. Smith, Texas		X
Charles E. Bennett, Florida		X
Thomas J. Smith, New York		X
John B. Pickett, Virginia		X
Joseph E. Bennett, Idaho		X
George J. Smith, New York		X
John C. Smith, Tennessee		X
Richard W. Smith, Michigan		X
Sam Wang, Alaska		X
Thomas F. Lee, New York		X
Thomas B. Bennett, California		X
Jack Fish, Texas		X
Charles Schuler, Rhode Island		X
Robert H. Bennett, Virginia		X
Sam Smith, New Jersey		X
John B. Smith, Washington		X
John Smith, Maryland		X
Samuel Davis, North Carolina		X
John C. Smith, Texas		X
Carl Smith, Pennsylvania		X
Patrick Smith, Kansas		X
John H. Smith, California		X
John H. Smith, Kentucky		X

ROLLCALL VOTE ON S. 858—FINAL PASSAGE—Continued

Number	10	11
United L. Supply, California		
Total	30	10

一、二、三、四、五、六、七、八、九、十、十一、十二、十三、十四、十五、十六、十七、十八、十九、二十、二十一、二十二、二十三、二十四、二十五、二十六、二十七、二十八、二十九、三十、三十一、三十二、三十三、三十四、三十五、三十六、三十七、三十八、三十九、四十、四十一、四十二、四十三、四十四、四十五、四十六、四十七、四十八、四十九、五十、五十一、五十二、五十三、五十四、五十五、五十六、五十七、五十八、五十九、六十、六十一、六十二、六十三、六十四、六十五、六十六、六十七、六十八、六十九、七十、七十一、七十二、七十三、七十四、七十五、七十六、七十七、七十八、七十九、八十、八十一、八十二、八十三、八十四、八十五、八十六、八十七、八十八、八十九、九十、九十一、九十二、九十三、九十四、九十五、九十六、九十七、九十八、九十九、一百。

SECTION-BY-SECTION ANALYSIS

Section 1 provides that this Act may be cited as the "Abandoned Shipwreck Act of 1987."

Section 2 contains the Congressional finding that states should have jurisdiction over and management responsibility for certain abandoned shipwrecks in state waters and submerged lands. The first finding in subsection (a) recognizes that, under the Submerged Lands Act (43 U.S.C. 1801 *et seq.*), states already have the responsibility for all living and nonliving resources in state waters and submerged lands. The second finding in subsection (b) confirms that, consistent with their existing responsibility, states also should have the responsibility for certain abandoned shipwrecks. Abandoned shipwrecks within the scope of this Act include those which have been deserted and to which the owner has relinquished all ownership rights. Except in the case of U.S. warships or other public vessels (which require an affirmative act of abandonment), the act of abandonment may be implied or inferred from the circumstances of the shipwreck as when an owner has never asserted any control over or otherwise indicated a claim of possession.

Section 3 defines the specific terms used in the Act, including "embedded," "National Register," "public lands," "shipwreck," "state" and "submerged lands." The Committee does not consider that diving equipment, normally worn by a recreational diver while exploring or viewing a shipwreck site, constitutes tools of excavation within the meaning of this term as used in the definition of "embedded." The Committee notes that, for purposes of this Act, the submerged lands of the Commonwealth of the Northern Mariana Islands include those lands three geographic miles seaward from the coastline of the Northern Mariana Islands. The term "submerged lands" set forth in section 8(f) is not intended to constitute an assertion of U.S. sovereignty under international law beyond the currently recognized U.S. territorial sea limit. Those states (Texas, Florida, and Puerto Rico) which have submerged lands extending beyond the current U.S. territorial sea limit shall exercise their jurisdiction over abandoned shipwrecks in those waters consistent with international law principles.

Section 4(a) sets forth the Congressional policy under which states are to carry out their responsibilities for abandoned shipwrecks to which title is transferred under this Act. Two of the central purposes of this Act are contained in this section: (1) to clarify that state waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups; and (2) to provide that reasonable access by the public to certain abandoned shipwrecks be permitted. It is the intent of the Committee that

states manage shipwrecks covered by Section 6 of this Act so as to protect natural resources and habitat areas, guarantee recreational exploration of shipwreck sites, and allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and the environmental integrity of the shipwrecks and their sites.

The Committee intends that states should provide sport divers with recreational access to all non-historic shipwrecks. The states can take into account human safety or the fragility of particular shipwrecks as legitimate exceptions to this policy. A State law that does not provide a method of legal recourse to individuals denied access is inconsistent with this bill and the Committee's intent. The Committee distinguishes between providing non-destructive access to shipwrecks and the salvage or collection of artifacts from historic shipwrecks. Further, it is not the intent of the Committee that states discourage private salvage of shipwrecks that is consistent with the protection of historical values and the environmental integrity of the shipwrecks and the sites.

Section 4(b) encourages states to create underwater parks or areas to provide additional protection for shipwrecks subject to this Act. Federal funds available to states from grants under the Historic Preservation Fund established under the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) shall be available to states for the study, interpretation, protection, and preservation of historic shipwrecks and properties covered by this Act. The Committee encourages states to work with sport divers to locate shipwrecks and establish underwater parks.

Section 5 authorizes the issuance of federal guidelines to encourage the development of underwater parks and to foster the administrative cooperation necessary for the comprehensive management of abandoned shipwrecks and underwater resources under this Act. The Secretary of the Interior, acting through the Director of the National Park Service, shall prepare and publish the guidelines in the Federal Register within nine months from the date of enactment of this Act. The guidelines should attempt to maximize the enhancement of underwater cultural resources; foster a partnership among sport divers, fishermen, archeologists, salvors and other interested parties; facilitate recreational access and utilization of shipwrecks; and recognize the interests of individuals and groups engaged in shipwreck discovery and salvage. The Committee encourages the Director to consider existing uses by both sport divers and archeologists in developing the guidelines.

Subsection 5(b) requires the guidelines to be developed only after consultation with all appropriate public and private sector interests, including the Secretary of Commerce (acting through the Under Secretary for Oceans and Atmosphere), the Advisory Council on Historic Preservation, sport divers, state Historic Preservation Officers, professional dive operators, salvors, archeologists, historic preservationists, and fishermen. The Committee encourages the Director of the National Park Service to form a committee of these interest groups for the purpose of assisting the Director in the development of the guidelines.

Subsection 5(c) provides that the guidelines shall be available to assist states and appropriate Federal agencies in developing legisla-

tion and regulations to carry out their responsibilities under this Act. While recognizing that the guidelines are non-binding, the Committee strongly encourages the states to act consistently with the guidelines. If an affected party believes that a state is not acting generally consistent with the guidelines, that individual should bring that fact to the state's attention and legal recourse should be provided under state law. Federal agencies also should manage their historic shipwrecks consistent with the guidelines to the extent consistent with other applicable federal law.

Section 6 defines the rights of ownership to those abandoned shipwrecks covered by this Act. Section 6(a) asserts the title of the United States to any abandoned shipwreck that is: (1) embedded in submerged lands of a state; (2) embedded in coralline formations protected by a state on submerged lands of a state; or (3) on submerged lands of a state and is included in or determined eligible for inclusion in the National Register. This assertion of title by the United States is an exercise of its recognized sovereign prerogative to assert title to abandoned shipwrecks that lie within waters of the United States. (See *Treasure Salvors, Inc., v. Unidentified, Wrecked and Abandoned Sailing Vessel*, 567 F.2d 330 (5th Cir. 1978).) The title asserted in subsection (a)(1) is also consistent with the recognized exception from the law of finds for shipwrecks embedded in submerged lands of a state. (See *Chance v. Certain Artifacts Found and Salvaged*, 606 F. Supp. 301 (S.D. Ga. 1984), *aff'd* 775 F.2d 302 (11th Cir. 1985).) The Committee intends, with respect to the second category, to cover any abandoned shipwreck that is embedded in a coral formation protected by a state such as in a state park or protected by state order or regulation. As to those shipwrecks in the third category, the Committee intends that the abandoned shipwrecks should meet the criteria for eligibility for inclusion in the National Register of Historic Places (36 CFR 60.4), but does not intend that the shipwreck must be listed formally on the Register.

Section 6(b) provides that the public shall be given adequate notice of the location of any shipwreck to which title is asserted under this section. The notice may be provided by a state or federal agency. The notice should advise the public that the wreck comes within one of the three categories of shipwrecks to which title has been asserted. The degree of specificity of the notice will depend on balancing the need to inform the public of the exact location of the shipwreck against the possible need to protect an historic shipwreck from possible vandalism. Therefore, the type of notice may vary from shipwreck to shipwreck and may be accomplished in different ways, including publication by the State of notice in local newspapers, publication in the *FEDERAL REGISTER*, the marking of nautical charts, onsite markers, or publication of notice in local diving information centers.

Except as provided under section 6(d), section 6(c) transfers title of the abandoned shipwrecks that fall within section 6(a) from the United States to the respective state in which the shipwreck is located. The transfer of title takes place immediately upon enactment of this Act and simultaneously with the U.S. assertion of title under section 6(a).

Section 6(d) contains an exception from the transfer of title to the states for any abandoned shipwreck in or on the public lands of the United States or in or on any Indian lands. The United States Government retains title, which it has asserted, to any abandoned shipwreck that is located in or on the public lands of the United States as these lands are defined in the Archaeological Resources Protection Act of 1979 (ARPA, 16 U.S.C. 470aa-470ll). The Committee encourages the National Park Service and the states to enter into management agreements for abandoned historic shipwrecks within national park boundaries. Any abandoned shipwreck located in or on any Indian lands, also as defined in the ARPA, remains the property of the Indian tribe owning such lands.

Section 6(e) preserves the rights granted to the United States and to the states under certain provisions of the Submerged Lands Act and the Rivers and Harbors Act of 1899. This provision recognizes the traditional navigational servitude reserved to the United States under these two laws.

Section 7 explains the relationship between this Act and other federal law. Section 7(a) specifies that the law of salvage and the law of finds shall not apply to abandoned shipwrecks to which title has been asserted under section 6. The law of salvage and the law of finds have been applied by federal admiralty courts to claims for the salvage of abandoned shipwrecks. Under the American law of finds, the finder of an abandoned shipwreck may be declared the owner of the wreck or its cargo; under the law of salvage, the owner retains title to the shipwreck, but, depending on certain factors, the finder may be entitled to a salvage award.

The Committee finds that these admiralty principles are not well-suited to the preservation of historic and other shipwrecks to which this Act applies. Abandoned shipwrecks covered by this Act are not considered by the Committee to be in marine peril, necessitating their recovery by salvage companies. Further, the Committee intends that states should have title to historic and certain other abandoned shipwrecks in state waters, thereby eliminating the assumption that there is no owner of these wrecks. This succession of the law of finds also recognizes that wrecks embedded in submerged lands of a state belong to the state. In light of today's experiences and conditions, the Committee does not believe that the law of finds and the law of salvage well serve the protection of our nation's maritime heritage. This heritage is best protected by states acting through their historic preservation programs consistent with federal guidance. The Committee also believes that it is acting fully within its authority under Article III, section 2, of the Constitution (the admiralty clause) and the necessary and proper clause of the Constitution by modifying admiralty law in this way. The Committee intends to carve out a limited exception from general admiralty principles for those classes of shipwrecks to which this Act applies. All other shipwrecks, including those in federal waters, remain subject to the uniform principles of admiralty law, except as may be provided in other federal law.

Section 7(b) affirms that this Act does not change the laws of the United States relating to shipwrecks, other than those to which this Act applies. The Committee notes, for example, that this Act does not change the authority of the Under Secretary for Oceans

and Atmosphere in the Commerce Department to designate and manage abandoned shipwrecks within national marine sanctuaries in state waters. The Committee encourages the Under Secretary and the states to work together to manage abandoned shipwrecks within national marine sanctuaries in state waters.

Section 7(c) provides that this Act does not affect any legal proceeding filed prior to the date of enactment of this Act.

INFLATIONARY IMPACT STATEMENT

Pursuant to the requirements of clause (2)(X)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of S. 858 will have no significant inflationary impact upon prices and costs in the operation of the national economy.

COST OF THE LEGISLATION

Clause 7(a) of Rule XIII of the House of Representatives requires a statement of the estimated cost to the United States which would be incurred in carrying out S. 858. However, under paragraph (d) of Clause 7, the provisions of (a) do not apply when the Committee has received a timely report from the Congressional Budget Office.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirements of clause (2)(X)(3)(A) of Rule XI of the Rules of the House of Representatives, no oversight findings or recommendations on the subject of S. 858 have been made by the Committee during the 100th Congress.

2. With respect to the requirements of Clause (2)(X)(3)(B) of Rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, S. 858 does not contain any new budget authority or tax exemptions.

3. With respect to the requirement of clause (2)(X)(3)(D) of Rule XI of the Rules of the House of Representatives, the Committee has received no report from the Committee on Government Operations on the subject of S. 858.

4. With respect to the requirements of clause (2)(X)(3)(C) of Rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following estimate of the cost of S. 858 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 28, 1988.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, U.S.
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 858, the Abandoned Shipwreck Act of 1987, as ordered reported by the Senate Committee on Merchant Marine and Fisheries on March 23, 1988. We estimate that this bill would have no

significant impact on the budget of the federal government, or of state or local governments.

S. 858 would assert federal title to certain abandoned shipwrecks and would transfer title to the state on whose submerged lands the shipwreck is located, unless the shipwreck lies within the boundaries of lands administered by the National Park Service (NPS). This bill would also direct the NPS to develop guidelines on managing shipwrecks and providing public access. Neither the NPS nor the affected states are expected to incur significant additional costs as a result of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
Acting Director.

DEPARTMENTAL REPORT

GENERAL COUNSEL OF THE
U.S. DEPARTMENT OF COMMERCE,
Washington, DC, February 17, 1988.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Commerce on S. 858, the "Abandoned Shipwreck Act of 1987."

Section 6 of S. 858 asserts title for the United States to all abandoned shipwrecks that are: (1) embedded in submerged lands of a State; (2) embedded in coralline formations protected by a State on its submerged lands; or (3) on submerged lands of a State when the shipwreck is included in, or eligible for inclusion in, the National Register of Historic Places. Except for a shipwreck located in or on the public lands of the United States, the title of the United States asserted by section 6 is then transferred by section 6 to the State in or on whose submerged lands the shipwreck is located. Section 7(a) states that the laws of salvage and finds shall not apply to shipwrecks covered by section 6. Section 7(b) states that S. 858 shall not change the laws of the United States relating to shipwrecks, other than those to which S. 858 applies.

The Department of Commerce supports enactment of S. 858 but believes it should be amended as set forth below.

Although S. 858 as passed by the Senate asserts United States title for all abandoned historic shipwrecks lying in territorial waters, it does not retain United States title for those shipwrecks of "special national significance." Further, it would not allow the United States Government to reassert title to any abandoned historic shipwreck of national significance that is discovered in territorial waters in the future. As a result, it does not adequately protect the national interest in such shipwrecks.

We have carefully examined the relationship of S. 858 to title III of the Marine Protection, Research and Sanctuaries Act (MPRSA) with respect to the protection of historic shipwrecks lying in territorial waters. Title III of the MPRSA authorizes the Secretary of

Commerce to designate discrete areas of the marine environment as national marine sanctuaries if he determines, in pertinent part, that the area is of "special national significance due to its resource and human-use values" and existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education. As most recently amended in 1984, section 303 of title III directs the Secretary to consider, among other factors, an area's historic, cultural, and archaeological significance in determining whether the area is of special national significance. Thus, the 1984 amendments provide for the designation and protection of abandoned historic shipwrecks as national marine sanctuaries if they are of "special national significance" and existing Federal and State authorities are inadequate to protect them. The National Marine Sanctuary Program has in place detailed policies and guidelines for protecting historic resources located in national marine sanctuaries.

Some abandoned historic shipwrecks located in territorial waters are within national marine sanctuaries established to protect natural and cultural resources of special national significance. Because section 7(b) specifies that S. 858 shall not change the laws of the United States relating to shipwrecks, other than those to which S. 858 applies, S. 858 would not affect the existing regulatory authority of the Secretary of Commerce under title III of the MPRSA with respect to abandoned shipwrecks on State-owned submerged lands in existing or future national marine sanctuaries. However, in the absence of a proprietary interest (i.e., United States title), questions remain as to the authority of the Secretary, under current law or under S. 858, to control the disposition of recovered historic resources of national significance. We believe that the national interest in abandoned shipwrecks of special national significance can only be fully protected if the authority of the Secretary to protect such shipwrecks within national marine sanctuaries is supported by United States title.

The United States Government could fully protect the national interest in abandoned historic shipwrecks of special national significance located in state waters if section 6 is amended in accordance with the enclosed draft language to retain title in the United States for those shipwrecks and to authorize the United States Government to reassert title to any abandoned historic shipwreck discovered in territorial waters in the future that is of sufficient national significance to merit inclusion in a future national marine sanctuary.

We have been advised by the Office of Management and Budget that there is no objection to submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

ROBERT H. BAUMLEY,
Deputy General Counsel.

Enclosure.

DEPARTMENT OF COMMERCE PROPOSED AMENDMENT TO S. 858

(a) Section 6(d) should be amended to read as follows:

"(d) **Excursion.**—Any abandoned shipwreck in or on the public lands of the United States, any abandoned shipwreck in or on the submerged lands of a State and managed by law or agreement by a Federal agency, and any abandoned shipwreck in or on the submerged lands of a State and within a national marine sanctuary established under title III of the Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. 1431 *et seq.*) is the property of the United States Government. Any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands."

(b) Section 6 should be amended further by redesignating subsection (c) as (f) and adding immediately after subsection (d) the following new subsection (e):

"(e) **REASSESSMENT OF TITLE.**—"(1) The United States may reassess title to any abandoned shipwreck that was transferred to a State under subsection (c) of this section if, after the date of enactment of this Act, the abandoned shipwreck is found to be of sufficient national significance to merit inclusion within a national marine sanctuary under the provisions of title III of the Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. 1431 *et seq.*)"

"(2) Reassessment of United States title to an abandoned shipwreck under paragraph (1) of this subsection is effective on the date designation of the national marine sanctuary becomes effective, but the reassessment is subject to any right, title or interest to such shipwreck that was granted by the State before such date by permit, contract, license, or otherwise."

U.S. DEPARTMENT OF STATE,
Washington, DC, February 19, 1988.

HON. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives.

DEAR MR. CHAIRMAN: Pursuant to your request of January 7, 1988, I am pleased to provide the Department's views on S. 858, entitled the "Abandoned Shipwreck Act of 1987." This Department has, apart from the comments below, no objections to the legislation.

As drafted, S. 858 would assert U.S. title to any abandoned shipwreck located in or on submerged lands of a State. The term "submerged lands" is defined in Section 8(f) of the draft legislation as the lands:

- (1) that are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301);
- (2) of Puerto Rico, as described in section 8 of the Act of March 2, 1917, as amended (48 U.S.C. 749);
- (3) of Guam, the Virgin Islands and American Samoa, as described in section 1 of Public Law 93-435 (48 U.S.C. 1705); and
- (4) of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Public Law 94-241 (48 U.S.C. 1681).

There is a difficulty with the definitions incorporated, at least with respect to Texas, Florida and Puerto Rico, because each of those jurisdictions has rights in submerged lands out to a distance of three marine leagues (nine nautical miles).

Notwithstanding these special rights of Texas, Florida and Puerto Rico, the United States claims only a three-nautical-mile territorial sea. The United States asserts no sovereignty seaward of that three-mile limit, even off the coasts of those jurisdictions. S. 858 would, however, assert U.S. title to abandoned shipwrecks more than three nautical miles off the Texas, Florida and Puerto Rico coasts, and title could only derive from sovereignty. This assertion cannot be supported in international law. To be sure, the areas in question fall within the U.S. exclusive economic zone (EEZ) and are part of the U.S. continental shelf. A country's sovereign rights in its EEZ and on its shelf do not, however, extend to ownership rights of objects that are not natural resources, which category does not comprise shipwrecks.

There appears to be a simple way to address this problem. That is to limit assertion of U.S. title to shipwrecks beneath "navigable waters," incorporating by reference the definition of that term in 33 U.S.C. 2316(7). Use of that definition will ensure that there is no assertion of ownership rights beyond the territorial sea.

A second matter involves vessels that, at the time of their sinking, were governmental vessels engaged in non-commercial service (generally, but not always, warships). The Department appreciates the careful manner in which S. 858 limits U.S. assertion of title to shipwrecks that are abandoned. As you know, the U.S. only abandons its sovereignty over, and title to, sunken U.S. warships by affirmative act; mere passage of time or lack of positive assertions of right are insufficient to establish such abandonment. This fact has two implications for the application of S. 858. First, we understand that the same presumption against abandonment will be accorded vessels within the U.S. territorial sea that, at the time of their sinking, were on the non-commercial service of another State. Second, S. 858 does not apply to U.S. warships sunk within the territorial sea, unless they have been affirmatively abandoned by the U.S. Government.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

With best wishes,
Sincerely,

J. EDWARD FOX,
Assistant Secretary, Legislative Affairs.

CHANGES IN EXISTING LAW

If this bill is enacted, it will make no changes in existing statutory law.

This includes the salvage of shipwrecks. Section 7 of S. 858 bro-
gates this 200-year old tradition by specifically removing affected
shipwrecks from the admiralty laws of salvage and finds.

Sixth, *the bill is overly expansive, applying to almost all ship-
wrecks regardless of historical value.* The intention of the bill, as
announced by its drafters, is to protect historic shipwrecks from de-
struction. However, the bill sweeps much too broadly, awarding
title to any abandoned shipwreck which is "embedded" on lands be-
neath state waters, as well as any abandoned shipwreck on or eligi-
ble for inclusion on the National Register of Historic Places. As
almost any diver knows, ocean currents will drive shifting sands to
cover items placed on the ocean floor almost immediately. There-
fore, recent shipwrecks with no historic value are also covered by
S. 858.

All these problems with S. 858 were identified at the Full Com-
mittee markup, and many Members acknowledged that these are
deficiencies that should be repaired. However, because of a percep-
tion that if S. 858 were altered from the version passed unanimo-
usly from the Senate, it would not again pass from that Chamber,
none of these needed changes were made. This is shortsighted, un-
necessarily cautious, and certainly not consistent with our respon-
sibilities to enact the best legislation possible.

NORMAN D. SHUMWAY.
WALLY HERGER.
BOB DAVIS.
NORMAN F. LENT.
HOWARD COBLE.
JACK FIELDS.

ADDITIONAL VIEWS OF MR. COBLE, MR. DAVIS OF MICHIGAN, MR. FIELDS, MR. HERGER, MR. LENT, AND MR. SHUMWAY ON S. 858

S. 858 is designed to address conflicting state and Federal court decisions which have created confusion over the ownership and control of abandoned shipwrecks located within state territorial waters. While S. 858, as passed by the Full Committee, may achieve this end by merely transferring title to states and abdicating any federal role with regard to shipwrecks covered by this Act, it will also create a variety of new and disturbing legal problems for these historic resources.

First, S. 858 does not guarantee reasonable access to shipwrecks by recreational divers and salvors. Despite numerous concerns expressed by recreational divers and salvors that they will be barred access to these vessels, the Committee voted down a provision which would guarantee that the states would allow benign access by these groups. By leaving the Sec. 4 provisions nonbinding, they are unenforceable and thus may not result in the uniformity sought by the bill. As a result, there is no way the Federal Government can ensure that a state will not capriciously restrict access of sport divers or other legitimate private sector interests.

Second, S. 858 does not comport with international law. Under the bill, title to shipwrecks is claimed by the U.S. (and transferred to states) in areas beyond three nautical miles off of Texas, Florida, and Puerto Rico. International law recognizes a state's management jurisdiction to non-natural resources, like shipwrecks, in this area of the oceans, but not title.

Third, this bill creates conflicts with the national Marine Sanctuary Program established under Title III of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1431-1439). Under the Federal program, the National Oceanic and Atmospheric Administration manages areas within the U.S. Exclusive Economic Zone of national significance due to their conservation, recreational, educational, ecological, historical, research, or aesthetic importance; one example of such a sanctuary is the U.S.S. Monitor, the famous Civil War vessel. Under S. 858, states would take title to any abandoned shipwreck in a National Marine Sanctuary within territorial waters. This will likely lead to conflicts between Federal sanctuary regulations and the state shipwreck program.

Fourth, abandoned shipwrecks which are retained by the United States (on public lands) need not be managed consistently with the guidelines prepared under Section 5 of the bill to balance the interests of all affected groups. In addition, these guidelines are devoid of any diving safety requirement.

Fifth, admiralty law is not respected under this bill. Under Article III, Section 2 of the U.S. Constitution, Federal district courts have original jurisdiction over all admiralty and maritime issues.

volved in our courts over centuries. The bill does so by requiring the courts to impose upon salvors new historic protection requirements to responsibly regulate the salvage activity; H.R. 2071 then requires salvors to adequately meet these requirements as a prerequisite to receiving a salvage award from the court.

My legislation also specifically allows states or Federal agencies (or anyone for that matter) to intervene in the salvage litigation as a trustee of the public interest to ensure protection of the historical and archaeological significance of these shipwrecks. This would allow, for example, a state to place an agent or employee on board a salvage vessel to monitor a salvage operation. States could also request an award of a representative sample of the artifacts or treasures recovered during salvage which otherwise are not represented in their state museums, and which are important to the preservation of the nation's or the state's cultural, historical, or scientific heritage.

With respect to sport diving access, H.R. 2071 actually goes further than leaving intact the status quo regarding access by sport divers. Specifically, H.R. 2071 provides a clear, direct Federal statement to district courts regarding access for sport divers; whereas S. 858 contains only "Sense-of-the Congress" type language regarding sport diving access.

In summary, H.R. 2071 balances the concerns of each of the major interest groups involved in this issue, and I believe is far preferable to the approach taken in S. 858 as reported by the Committee which does not achieve this appropriate balance.

NORMAN D. SHUMWAY.

○

DISSENTING VIEWS OF MR. SHUMWAY ON S. 858

While I appreciate the efforts of Mr. Bennett, who has guided S. 858 through the Merchant Marine and Fisheries Committee, I oppose the bill as written because it fails to protect the legitimate interests of all the groups affected by this bill. Simply stated, S. 858 as written does not contain any binding provisions to ensure that a state, after receiving title to the shipwrecks off its coast, will protect the right to access for the more than four million sport divers in the U.S. Nor does it contain any assurance that a state will allow private salvors to conduct salvage operations—even if the salvage operation can be conducted in a responsible fashion which ensures that the integrity of the wreck is preserved.

S. 858 as written accomplishes only one thing—and that is to unconditionally give states title to a certain class of "abandoned shipwrecks". By doing so, the bill only addresses the question of ownership of these wrecks—nothing more, nothing less.

Unfortunately, in the past, states, which have assumed they have had legal title to these wrecks but which several Federal court decisions have said otherwise, have seen fit to greatly restrict activities on shipwrecks in their state waters. Texas, for example, has legislated in essence that private salvors can not even explore for vessels—historic or otherwise. Now I am not suggesting that we should allow salvors unrestricted access once a wreck is found; however, if S. 858 as written were passed, we would likely see a situation where state regulation, to benefit state-sponsored archeology, forbids private salvage operations. Such state regimes would dramatically reduce the number of private exploration activities and, correspondingly, the number of shipwrecks discovered. How, then, by passing S. 858 are we protecting shipwrecks and promoting opportunities for learning from these historic vessels if the likely result will be state laws which create major disincentives to private efforts to discover historic shipwrecks?

It has only been in the past three years or so that the sport diving public has become aware of this proposal, and far and away the majority of the divers oppose S. 858—and the key here is that they are the one group that is by far the most affected. I have personally received hundreds of letters and post cards from divers all around the country and 99% express strong opposition to S. 858.

I believe a better approach to handling shipwrecks is embodied in H.R. 2071, legislation I introduced last year which takes positive steps to ensure that historic protection of abandoned shipwrecks will be implemented as a matter of national policy, and which protects the private sector interest in both sport diving and salvage.

Article III section 2 of the U.S. Constitution states, "The judicial power shall extend to . . . all cases of admiralty and maritime jurisdiction." H.R. 2071 builds upon, rather than abandons, a body of admiralty law which is constitutionally founded and which has en-

VI. APPENDICES

1. SELECT BIBLIOGRAPHY
2. INVENTORY OF CULTURAL RESOURCES
3. NATIONAL HISTORIC PRESERVATION ACT OF 1966,
(SECTIONS 1, 2 and 106)
4. ABANDONED SHIPWRECK ACT OF 1987

APPENDIX 1

SELECT BIBLIOGRAPHY

- Bank, Theodore P., II. "Ecology of Prehistoric Aleutian Village Sites." Ecology 34, no 2 (April 1953): 246-264.
- Beaglehole, James C., Editor. The Voyage of the "Resolution" and "Discovery", 1776-80. Vol. 3 of the Journals of Captain James Cook on His Voyages of Discovery. Cambridge University Press, 1967.
- Berkh, Vasilii Nikolaevich. Chronological History of the Discovery of the Aleutian Islands, or the Exploits of Russian Merchants. Edited by Richard A. Pierce and translated by Dmitri Krenov. Materials for the Study of Alaska History. No.5. Kingston, Ontario: The Limestone Press, 1974.
- Brown, John E. Unalaska Preliminary Development Plan. Resources Development Internship Program. Western Interstate Commission for Higher Education. September 1973.
- Calasanz, Sister Marie Joseph. The Voice of Alaska. Lachine, Quebec: Sisters of St. Anne, 1935.
- Colyer, Vincent H. Special Indian Commissioner on the Indian Tribes and Their Surroundings in the Alaska Territory from Personal Observations and Inspection. Report of the Secretary of the Interior, 1870.
- Conn, Stetson, Rose C. Engelman, and Byron Fairchild. The Western Hemisphere, Guarding the United States and Its Outposts. Washington, D.C.: Office of the Chief of Military History, Department of the Army, 1964.
- Coxe, William A.M. F.R.S. [1787}. Account of the Russian Discoveries Between Asia and America. 3rd edition. Ann Arbor: Michigan University Microfilms, 1966.
- Dall, William H. "Exploration in the Aleutian Islands and Their Vicinity". American Geographic, 5: 243-245.
- Damas, David, editor. Subarctic. Vol. 5 of Handbook of North American Indians. Edited by William C. Sturtevant. Washington, D.C.: Smithsonian Institution, 1984.
- Davydov, G.J. Two Voyages to Russian American 1802-1807. Edited by Richard A. Pierce and translated by Colin Bearne. Kingston, Ontario: The Limestone Press, 1977.
- Downs, Michael Alan. Sociocultural Change and Ethnic Identity: The Effect of the Alaska Native Claims Settlement Act in Unalaska, Alaska. Ann Arbor, Michigan: University Microfilms International, 1985.

- Dmytryshyn, Basil, E.A.P. Vaughan-Crownhart, and Thomas Vaughan, editors and translators. Russian Penetration of the North Pacific Ocean. A Documentary Record 1700-1799. Vol.2 Portland: Oregon Historical Press, 1988.
- Drewes, Harald, et al. Geology of Unalaska Island and Adjacent Insular Shelf, Aleutian Islands, Alaska. U.S. Geological Survey Bulletin. no. 1028-S. Washington, D.C.: Government Printing Office, 1961.
- Dumond, Don E. The Eskimos and the Aleuts. London: Thames and Hudson Ltd., 1977.
- Elliott, Henry W. Our Arctic Province, Alaska and the Seal Islands. New York: Charles Scribners, 1887.
- Executive Order #1733. President Taft declaring the Aleutians a National Wildlife Refuge, March 3, 1913.
- Fedorova, Svetlana G. The Russian Population in Alaska and California. Edited and translated by Richard A. Pierce and Alton S. Donnelly. Kingston, Ontario: The Limestone Press, 1973.
- Ford, John Donaldson. An American Cruiser in the East. New York: A.S. Barnes and Company, 1898.
- Healy, Captain M.A. Report on the Cruise of the Revenue Marine Steamer Corwin in the Arctic Ocean in the Year 1884. Washington, D.C.: Government Printing Office, 1889.
- Hrdlicka, Ales. The Aleutian and Commander Islands. Philadelphia: Wistar Institute of Anatomy and Biology, 1945.
- Hrdlicka, Ales. "The Exploration of Mummy Caves in the Aleutian Islands". The Scientific Monthly (January 1941): 4-23.
- Hutchinson, Isobell Wylie. "Riddle of the Aleutians". National Geographic Magazine 82, no.6, (1942), 769-792.
- Impact Assessment, Inc. Analysis of the Aleut Institutional Response and Change: 1980-1985. U.S. Department of Interior, Minerals Management Service. August 4, 1987.
- Innokentii, Father Ivan Veniaminov. [1840] Notes on the Islands of the Unalaska District. Alaska History, #27. Reprint. translated by Lydia T. Black and R.H. Geoghegan and edited by Richard A. Pierce. Published jointly by the Elmer E. Rasmuson Library Translation and The Limestone Press. 1984.

- Jennings, Jesse D. Ancient North Americans. San Francisco: W.H. Freeman and Company, 1983.
- Jochelson, Waldernar. Archeological Investigation in the Aleutian Islands. Carnegie Institute, 1925.
- Jochelson, Waldernar. "People of the Foggy Seas." Natural History 28, no.4, (1928), 413-424.
- John, Betty, compiler. Libby: The Alaska Diary and Letters of Libby Beaman, 1879-1880. Boston: Houghton Mifflin Company, 1989.
- Johnston, Samuel P., Editor. Alaska Commercial Company 1868-1940. Seattle: Alaska Commercial Company Report, 1940.
- Karig, Capt. Walter and Comdr. Eric Purdon. Battle Report, Pacific War: Middle Phase. New York: Rinehart and Company, Inc. 1947.
- Kitchener, Lois Delano. Flag Over the North: The Story of the Northern Commercial Company. Seattle: Superior Publishing Company, 1954.
- Laughlin, William S. Aleuts: Survivors of the Bering Land Bridge. New York: Holt Rinehart and Winston, 1980.
- Laughlin, William S. and Jean S. Aigner. "Aleut Adaptation and Evolution," in Prehistoric Maritime Adaptations of the Circumpolar Zone, William Fitzhugh, editor. The Hague: Mouton Publishers, 1975.
- Litke, Frederic P. A Voyage Around the World 1826-1829. Vol.1 of To Russian America and Siberia. Translated by Renee Marshall and edited by Richard A. Pierce. Kingston, Ontario: The Limestone Press, 1987.
- Lopez de Haro, Gonzalo. Spaniards and Russians Meet in Alaskan Waters, 1788: the Voyage of the Princessa and the San Carlos to Prince William Sound, Kodiak and Unalaska March to October 1788. Typescript. Translation and notes by Katrina H. Moore, January 1975. 1991: Making it Work, A guide to Public Law 100-241. 1987 Amendments to the Alaska Native Claims Settlement Act. Alaska Federation of Natives, 1988.
- Makarova, Raisa V. Russians on the Pacific 1743-1799. Edited and translated by Richard A. Pierce and Alton S. Donnelly. Kingston, Ontario: The Limestone Press.
- Morison, Samuel Eliot. The Aleutians, Gilberts and Marshalls. Volume VII of History of United States Naval Operations in World War II. Boston: Little, Brown and Company, 1962.

- Muir, John. The Cruise of the Corwin. Journal of the Arctic Expedition of 1881 in Search of DeLong and the Jeannette. Edited by William Frederic Bade. Boston: Houghton, Mifflin Company, 1917.
- Munford, James Kenneth, editor. John Ledyard's Journal of Captain Cook's Last Voyage. Corvallis, Oregon: Oregon State University Press, 1963.
- Okun, S.B. The Russian-American Company. Translated by Carl Ginsburg and edited with introduction by B.D. Grekov. New York: Farrar, Straus and Giroux, 1979.
- Pacific Coast Pilot. Coast and Islands of Alaska. USCG Survey second series. Washington, D.C.: Government Printing Office 1879.
- Petroff, Ivan. Report on the Population, Industries, and Resources of Alaska. Washington, D.C.: Government Printing Office, 1884.
- Ransom, Lt. Comdr. M.A. Sea of the Bear: Journal of a Voyage to Alaska and the Arctic, 1921. Annapolis, Maryland: United States Naval Institute, 1964.
- Report of the Commission on Wartime Relocation and Internment of Civilians. Personal Justice Denied. Washington, D.C. December 1982.
- Report on Population and Resources of Alaska at the 11th Census 1890. Washington, D.C., December 1982.
- Sarytschew, Gawrila. Account of the Voyage of the Discovery to Siberia. Richard Phillips, London, vols. 1 and 2. Translated from the Russian, 1806.
- Scidmore, Eliza Ruhamah. The Guidebook to Alaska and the Northwest Coast. London: William Heinemann, 1893.
- Scidmore, Eliza Ruhamah. Appleton's Guidebook to Alaska and the Northwest Coast. New York: Appleton, 1898.
- Schwatka, Frederick. Military Reconnaissance in Alaska: Made in 1883. Washington, D.C.: Government Printing Office, 1885.
- Shepard, Isabel Sharpe. The Cruise of the U.S. Steamer Rush in the Behring Sea. San Francisco: Bancroft, 1889.
- Starr, Frederick S., editor. Russia's American Colony. Durham, North Carolina: Duke University Press, 1987.

Surla, Jr. Leo T. Economic Potential of Alaskan Military Surplus Property, Vol II: Recommendations for the Development of Unalaska. Doxiadis-System Development Corporation, March 1970.

Tikhenev. P.A. A History of the Russian America Company. Translated and edited by Richard A. Pierce and Alton S. Donnelly. Seattle and London: University of Washington Press, 1978.

U.S. Report of the Cruise of the U.S. Revenue Cutter Bear and the Overland Expedition for the Relief of Whalers in the Arctic Ocean, From November 27, 1897 to September 7, 1898. Washington, D.C.: Government Printing Office, 1899.

Vanstone, James W. "An Early Nineteenth Century Artist in Alaska: Louis Choris and the First Kotzebue Expedition." Pacific Northwest Quarterly, 51, no.4 (1960): 145-58.

Veltre, Douglas W. and Mary J. Veltre Resource Utilization in Unalaska, Aleutian Islands, Alaska. Technical Paper #58. Alaska Department of Fish and Game, Division of Subsistence, Technical Paper Series, Oct.23, 1982.

Veltre, Douglas W. et al. An Archaeological Site Survey of Amaknak and Unalaska Islands. Alaska Division of Parks and Outdoor Recreation, Anchorage, Alaska. November 1984.

Walker, Ernest P. Alaska: America's Continental Frontier Outpost. Smithsonian Institution War Background Studies Number 13. Publication No. 3733. July 8, 1943. November 1984.

APPENDIX 2

INVENTORY OF CULTURAL RESOURCES

THE INVENTORY IS NOT COMPLETE.

APPENDIX 3

NATIONAL HISTORIC PRESERVATION ACT OF 1966, (SECTIONS 1, 2 AND 106)

National Historic Preservation Act of 1966, as amended

AN ACT to Establish a Program for the Preservation of Additional Historic Properties throughout the Nation, and for Other Purposes, Approved October 15, 1966 (Public Law 89-665; 80 STAT. 915; 16 U.S.C. 470) as amended by Public Law 91-243, Public Law 93-54, Public Law 94-422, Public Law 94-458, Public Law 96-199, Public Law 96-244, and Public Law 96-515).

Section 1 (16 U.S.C. 470)

Short title

(a) This Act may be cited as the "National Historic Preservation Act."

Purpose of the Act

(b) The Congress finds and declares that—

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Section 2 (16 U.S.C. 470-1)

Declaration of policy

It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to—

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

- (2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations;
- (3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;
- (4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;
- (5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and
- (6) assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Section 106 (16 U.S.C. 470f)

*Advisory Council on Historic Preservation,
comment on Federal undertakings*

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

Section 107 (16 U.S.C. 470g)

*Exemption of White House, Supreme
Court, and Capitol*

Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.

Section 108 (16 U.S.C. 470h)

*Establishment of Historic Preservation
Fund; authorization for appropriations*

To carry out the provisions of this Act, there is hereby established the Historic Preservation Fund (hereafter referred to as the "fund") in the Treasury of the United States.

There shall be covered into such fund \$24,400,000 for fiscal year 1977, \$100,000,000 for fiscal year 1978, \$100,000,000 for fiscal year 1979, \$150,000,000 for fiscal year 1980, \$150,000,000 for fiscal year 1981, and \$150,000,000 for each of fiscal years 1982 through 1987, from revenues due and payable to the United States under the Outer Continental Shelf Lands Act (67 Stat. 462, 469) as amended (43 U.S.C. 338) and/or under the Act of June 4, 1920 (41 Stat. 813) as amended (30 U.S.C. 191), notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Such moneys shall be used only to carry out the purposes of this Act and shall be available for expenditure only when appropriated by the Congress. Any moneys not appropriated shall remain available in the fund until appropriated for said purposes: Provided, that appropriations made pursuant to this paragraph may be made without fiscal year limitation.

Section 109 (16 U.S.C. 470h-1)

Donations to the Secretary

(a) In furtherance of the purposes of sections of this Act, the Secretary may accept the donation of funds which may be expended by him for projects to acquire, restore, preserve, or recover data from any district, building, structure, site, or object which is listed on the National Register of Historic Places established pursuant to section 101 of this Act, so long as the project is owned by a State, any unit of local government, or any nonprofit entity.

Expenditure of donated funds

(b) In expending said funds, the Secretary shall give due consideration to the following factors: the national significance of the project; its historical value to the community; the imminence of its destruction or loss; and the expressed intentions of the donor. Funds expended under this subsection shall be made available without regard to the matching requirements established by section 102 of this Act, but the recipient of such funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund established by section 108 of this Act.

*Transfer of funds donated for the National
Park Service*

(c) The Secretary is hereby authorized to transfer unobligated funds previously donated to the Secretary for purposes of the National Park Service, with the consent of the donor, and any funds so transferred shall be used or expended in accordance with the provisions of this Act.

APPENDIX 4

**ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979
WITH 1988 AMENDMENTS**

Public Law 96-95
96th Congress

An Act

To protect archaeological resources on public lands and Indian lands, and for other purposes.

Oct. 31, 1979
[H.R. 1825]*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*Archaeological
Resources
Protection Act of
1979.

SHORT TITLE

SECTION 1. This Act may be cited as the "Archaeological Resources Protection Act of 1979".

16 USC 470aa
note.

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

16 USC 470aa.

- (1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;
 - (2) these resources are increasingly endangered because of their commercial attractiveness;
 - (3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and
 - (4) there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.
- (b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act.

DEFINITIONS

Sec. 3. As used in this Act—

16 USC 470bb.

- (1) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological

context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

(2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "public lands" means—

(A) lands which are owned and administered by the United States as part of—

- (i) the national park system,
- (ii) the national wildlife refuge system, or
- (iii) the national forest system; and

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution;

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688).

(6) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

43 USC 1601
note.

EXCAVATION AND REMOVAL

Permit
application.
16 USC 470cc.

SEC. 4. (a) Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this Act, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

(b) A permit may be issued pursuant to an application under subsection (a) if the Federal land manager determines, pursuant to uniform regulations under this Act, that—

(1) the applicant is qualified, to carry out the permitted activity,

(2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest,

(3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9.

(d) Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this Act, as the Federal land manager concerned deems necessary to carry out the purposes of this Act.

(e) Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Act and other law applicable to the permitted activity.

(f) Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 6. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 7 against the permittee or upon the permittee's conviction under section 6.

(g)(1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.

(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h)(1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431-433), for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906, shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before the date of the enactment of this Act which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

(i) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917, 16 U.S.C. 470f).

(j) Upon the written request of the Governor of any State, the Federal land manager shall issue a permit, subject to the provisions of subsections (b)(3), (b)(4), (c), (e), (f), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this Act.

CUSTODY OF RESOURCES

Regulations.
16 USC 470dd.

SEC. 5. The Secretary of the Interior may promulgate regulations providing for—

(1) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archaeological resources removed from public lands and Indian lands pursuant to this Act, and

(2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 U.S.C. 469-469c) or the Act of June 8, 1906 (16 U.S.C. 431-433).

Any exchange or ultimate disposition under such regulation of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands. Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this Act.

PROHIBITED ACTS AND CRIMINAL PENALTIES

16 USC 470ee.

SEC. 6. (a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(h)(2), or the exemption contained in section 4(g)(1).

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a), or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both: *Provided, however*, That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$5,000, such person shall be fined not more than \$20,000 or impris-

oned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than \$100,000, or imprisoned not more than five years, or both.

(e) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.

(g) Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

CIVIL PENALTIES

SEC. 7. (a)(1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this Act may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

16 USC 470ff.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost of restoration and repair of the resource and the archaeological site involved.

Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed an amount equal to double the cost of restoration and repair of resources and archaeological sites damaged and double the fair market value of resources destroyed or not recovered.

(3) No penalty shall be assessed under this section for the removal of arrowheads located on the surface of the ground.

(b)(1) Any person aggrieved by an order assessing a civil penalty under subsection (a) may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty,

the Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

Subpenas.

Witness fees.

(c) Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) shall be conducted in accordance with section 554 of title 5 of the United States Code. The Federal land manager may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

REWARDS; FORFEITURE

16 USC 470gg.

SEC. 8. (a) Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay from penalties and fines collected under sections 6 and 7 an amount equal to one-half of such penalty or fine, but not to exceed \$500, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 6 occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

- (1) such person's conviction of such violation under section 6,
- (2) assessment of a civil penalty against such person under section 7 with respect to such violation, or
- (3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 6 involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 7 and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

CONFIDENTIALITY

SEC. 9. (a) Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 of the United States Code or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

16 USC 470hh.

5 USC 551.

(1) further the purposes of this Act or the Act of June 27, 1960 (16 U.S.C. 469–469c), and

(2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Notwithstanding the provisions of subsection (a), upon the written request of the Governor of any State, which request shall state—

(1) the specific site or area for which information is sought,

(2) the purpose for which such information is sought,

(3) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation,

the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor.

REGULATIONS; INTERGOVERNMENTAL COORDINATION

SEC. 10. (a) The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). Each uniform rule or regulation promulgated under this Act shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives, and no such uniform rule or regulation may take effect before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

Rules and
regulations.
16 USC 470ii.

Submittal to
congressional
committees.

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

Rules and
regulations.

COOPERATION WITH PRIVATE INDIVIDUALS

SEC. 11. The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this Act, to foster and improve the communication, cooperation, and exchange of information between—

16 USC 470jj.

(1) private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act, and

(2) Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and

professional archaeologists and associations of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this Act, make efforts to expand the archaeological data base for the archaeological resources of the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations.

SAVINGS PROVISIONS

16 USC 470kk.

SEC. 12. (a) Nothing in this Act shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock, coin, bullet, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 3(1).

(c) Nothing in this Act shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land.

REPORT

16 USC 470ll.

SEC. 13. As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 5(c) of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469-469a), the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this Act, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this Act. Such report shall include a brief summary of the actions undertaken by the Secretary under section 11 of this Act, relating to cooperation with private individuals.

Approved October 31, 1979.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-311 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 96-179 accompanying S. 490 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 125 (1979):

July 9, considered and passed House.

July 30, considered and passed Senate, amended, in lieu of S. 490.

Oct. 12, House agreed to Senate amendments with an amendment.

Oct. 17, Senate concurred in House amendment.



PUBLIC LAW 100-588 [H.R. 4068]: November 3, 1988

ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979, AMENDMENT

An Act to amend the Archaeological Resources Protection Act of 1979 to strengthen the enforcement provisions of that Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENTS TO ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979.

(a) Section 3(3) of such Act is amended by striking out the semicolon at the end thereof and substituting a period.

(b) Section 6(a) of such Act is amended by inserting after "deface" the following: "; or attempt to excavate, remove, damage, or otherwise alter or deface".

(c) Section 6(d) of such Act is amended by striking "\$5,000" and inserting in lieu thereof "\$500".

(d) Section 10 of such Act is amended by adding the following new subsection at the end thereof:

"(c) Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. Each such land manager shall submit an annual report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate regarding the actions taken under such program."

Approved November 3, 1988.

APPENDIX 5

UNALASKA HISTORIC PRESERVATION ORDINANCE

CHAPTER 2.76

HISTORIC PRESERVATION COMMISSION

SECTIONS:

<u>2.76.010</u>	<u>COMMISSION ESTABLISHMENT.</u>
<u>2.76.020</u>	<u>OFFICERS.</u>
<u>2.76.030</u>	<u>MEETINGS.</u>
<u>2.76.040</u>	<u>DUTIES.</u>
<u>2.76.050</u>	<u>SUPPORT STAFF.</u>

2.76.010 MEMBERSHIP. The Historic Preservation Commission is hereby established. Such Commission to consist of seven members who reside in the community and have demonstrated interest in, competence or knowledge of historic preservation, history, anthropology, or architecture. Those filling the professional positions of historian, anthropologist, and architect, as required by the National Park Service regulations, may reside outside the community and are ex officio members of the Commission. A professional may reside within the community and be a member of the Commission while serving in their professional capacity.

2.76.020 OFFICERS. The Historic Preservation Commission shall designate a member as its clerk.

2.76.030 MEETINGS. The Historic Preservation Commission shall meet at least twice each year.

2.76.040 DUTIES. The duties of the Historic Preservation Commission shall be as follows:

(1) Survey and inventory community historic resources. The Commission shall conduct or cause to be conducted a survey of the historic, architectural, and archeological resources within the community. The survey shall be compatible with the Alaska Heritage Resources Survey and able to be readily integrated into statewide comprehensive historic preservation planning and other planning processes. Survey and inventory documents shall be maintained and released on a need-to-know basis to protect the site location from possible vandalism. The survey will be updated at least every ten years.

(2) Review proposed nominations to the National Register of Historic Places. The Historic Preservation Commission shall review and comment to the State Historic Preservation Officer on all

proposed National Register nominations for properties within the boundaries of the community. When the Historic Preservation Commission considers a National Register nomination which is not represented on the Commission, the Commission will seek expertise in this area before rendering its decision.

(3) Provide advice and information. The Historic Preservation Commission shall act in an advisory role to other officials and Departments of local government regarding the identification and protection of local historic and archaeological resources. The Commission shall work toward the continuing education of the public regarding historic preservation and the community's history.

(4) Enforcement of state historic preservation laws. The Historic Preservation Commission shall support the enforcement of the Alaska Historic Preservation Act.

2.76.050 SUPPORT STAFF. The Department of Parks, Culture and Recreation shall provide assistance and staff support to the Historic Preservation Commission.

APPENDIX 6

ALASKA HISTORIC PRESERVATION ACT

LAWS AND REGULATIONS RELATING TO
ARCHAEOLOGY AND HISTORIC PRESERVATION IN ALASKA

ALASKA STATUTES

TITLE 41, CHAPTER 35. ALASKA HISTORIC PRESERVATION ACT

Sec. 41.35.010. DECLARATION OF POLICY. It is the policy of the State to preserve and protect the historic, prehistoric and archeological resources of Alaska from loss, desecration and destruction so that the scientific, historic and cultural heritage embodied in these resources may pass undiminished to future generations. To this end, the legislature finds and declares that the historic, prehistoric and archeological resources of the state are properly the subject of concerted and coordinated efforts exercised on behalf of the general welfare of the public in order that these resources may be located, preserved, studied, exhibited and evaluated.

Sec. 41.35.020. TITLE TO HISTORIC, PREHISTORIC AND ARCHEOLOGICAL RESOURCES; LOCAL DISPLAY. (a) The state reserves to itself title to all historic, prehistoric and archeological resources situated on land owned or controlled by the state, including tideland and submerged land, and reserves to itself the exclusive right of field archeology on state-owned or controlled land. However, nothing in AS 41.35.010 - 41.35.240 diminishes the cultural rights and responsibilities of persons of aboriginal descent or infringes upon their right of possession and use of those resources which may be considered of historic, prehistoric or archeological value.

(b) Although title to historic, prehistoric and archeological resources is in the state, local cultural groups may obtain from the state, or retain, for study or display, artifacts and other items of these resources from their respective cultures or areas if the committee created in AS 41.35.110 finds that (1) the group has a durable building with weatherproof and fireproof construction and humidity control and other factors necessary to serve as a museum which will assure safe preservation of the items, (2) the item sought to be obtained is not one for which there is an undue risk of damage during transportation, and (3) the item sought to be obtained or retained is not one requiring special treatment or care beyond the ability or means of the group requesting it. A group retaining such an item or obtaining one from the state shall house it in the museum building and shall make every reasonable effort to assure its safe preservation. If the committee finds that a local cultural group is not properly taking care of an item the group shall return it to the department.

Sec. 41.35.030. DESIGNATION OF MONUMENTS AND HISTORIC SITES.

Upon the recommendation of the committee, the governor may declare by public order any particular historic, prehistoric or archeological structure, deposit, site or other object of scientific or historic interest that is situated on land owned or controlled by the state to be a state monument or historic site and the governor may designate as a part of the monument or site as much land as is considered necessary for the proper access, care and management of the object or site to be protected. When an object or site is situated on land held in private ownership, it may be declared a state monument or historic site in the same manner, with the written consent of the owner.

Sec. 41.35.040. ADMINISTRATION AND FINANCIAL SUPPORT OF MONUMENTS AND HISTORIC SITES. State-owned monuments, sites and other historic, prehistoric or archeological properties owned or purchased by the state are under the control of the Department of Natural Resources and their maintenance shall be covered in the appropriations made to the department. Privately owned state monuments or historic sites are eligible to receive state support for their maintenance, restoration and rehabilitation if they are kept accessible to the general public and application for support is made in conformity with regulations adopted by the commissioner of natural resources.

Sec. 41.35.050. REGULATIONS. The commissioner shall adopt regulations to carry out the purposes of AS 41.35.010 - 41.35.240.

Sec. 41.35.060. POWER TO ACQUIRE HISTORIC, PREHISTORIC OR ARCHEOLOGICAL PROPERTIES. (a) The department, with the recommendation of the committee, may acquire real and personal properties that have statewide historic, prehistoric or archeological significance by gift, purchase, devise or bequest. The department shall preserve and administer property so acquired. The department may acquire property adjacent to the property having historic, prehistoric or archeological significance when it is determined to be necessary for the proper use and administration of the significant property.

(b) If an historic, prehistoric or archeological property which has been found by the department, upon the recommendation of the committee, to be important for state ownership is in danger of being sold or used so that its historic, prehistoric or archeological value will be destroyed or seriously impaired, or is otherwise in danger of destruction or serious impairment, the department may establish the use of the property in a manner necessary to preserve its historic, prehistoric or archeological character or value. If the owner of the property does not wish to follow the restrictions of the department, the department may acquire the property by eminent domain under AS 09.55.240 - 09.55.460.

Sec. 41.35.070. PRESERVATION OF HISTORIC, PREHISTORIC AND ARCHEOLOGICAL RESOURCES THREATENED BY PUBLIC CONSTRUCTION. (a) The department shall locate, identify and preserve in suitable records information regarding historic, prehistoric and archeological sites, locations and remains. The information shall be submitted to the heads of the executive departments of the state.

(b) Before public construction or public improvement of any nature is undertaken by the state, or by a governmental agency of the state or by a private person under contract with or licensed by the state or governmental agency of the state, the department may survey the affected area to determine if the area contains historic, prehistoric or archeological values.

(c) If the department determines that historic, prehistoric or archeological sites, locations or remains will be adversely affected by the public construction or improvement, the proposed public construction or improvement may not be commenced until the department has performed the necessary investigation, recording and salvage of the site, location or remains. All investigation, recording and salvage work shall be performed as expeditiously as possible so that no state construction project will be unduly impaired, impeded or delayed.

(d) If in the course of performing public construction or improvements, historic, prehistoric or archeological sites, locations, remains or objects are discovered, the department shall be notified and its concurrence shall be requested in continuing the construction or improvement. Upon receipt of this notice, the department shall survey the area to determine whether the area contains historic, prehistoric or archeological data which should be preserved in the public interest. The survey shall be conducted as expeditiously as possible. If, as a result of the survey, it is determined that (1) this data exists in the area, (2) the data has exceptional historic, prehistoric or archeological significance, and should be collected and preserved in the public interest, and (3) it is feasible to collect and preserve the data, the department shall perform the necessary work to collect and preserve the data. This work shall be performed as expeditiously as possible.

(e) If the concurrence of the department, required under (b) and (c) of this section is not obtained after 90 days from the filing of a request for its concurrence to proceed with the project, the agency or person performing the construction or improvement may apply to the governor for permission to proceed without that concurrence and the governor may take the action the governor considers best in overruling or sustaining the department.

(f) The costs of investigation, recording and salvage of the site shall be reimbursed by the agency sponsoring the construction project.

(g) Notwithstanding (a) - (f) of this section, all actions to stop any project must first be approved in writing by the commissioner.

Sec. 41.35.080. PERMITS. The commissioner may issue a permit for the investigation, excavation, gathering or removal from the natural state, of any historic, prehistoric or archeological resources of the state. A permit may be issued only to persons or organizations qualified to make the investigations, excavations, gatherings or removals and only if the results of these authorized activities will be made available to the general public through institutions and museums interested in disseminating knowledge on the subjects involved. If the historic, prehistoric or archeological resource involved is one which is, or is located on a site which is, sacred, holy or of religious significance to a cultural group, the consent of that cultural group must be obtained before a permit may be issued under this section.

Sec. 41.35.090. NOTICE REQUIRED OF PRIVATE PERSONS. Before any construction, alteration or improvement of any nature is undertaken on a privately owned, officially designated state monument or historic site by any person, the person shall give the department three months notice of intention to construct on, alter or improve it. Before the expiration of the three-month notification period, the department shall either begin eminent domain proceedings under AS 41.35.060 or undertake or permit the recording and salvaging of any historic, prehistoric or archaeological information considered necessary.

Sec. 41.35.100. EXCAVATION AND REMOVAL OF HISTORIC, PREHISTORIC OR ARCHEOLOGICAL REMAINS ON PRIVATE LAND. Before any historic, prehistoric or archeological remains are excavated or removed from private land by the department, the written approval of the owner shall first be secured. When the value of the private land is diminished by the excavation or removal, the owner of the land shall be compensated for the loss at a monetary sum mutually agreed on by the department and the owner or at a monetary sum set by the court.

Sec. 41.35.110. HISTORIC SITES ADVISORY COMMITTEE. There is created in the Department of Natural Resources the Historic Sites Advisory Committee.

Sec. 41.35.120. COMPOSITION OF COMMITTEE. The committee consists of the following persons:

- (1) the director of Alaska State Museum;

(2) the state liaison officer appointed under 16 U.S.C. 470-470n (Public Law 89-665, National Historic Preservation Act of 1966);

(3) three persons with professionally relevant backgrounds appointed from each of the following fields: history, architecture, and archeology; and

(4) two persons appointed to represent indigenous ethnic groups.

Sec. 41.35.130. APPOINTMENT OF MEMBERS. Members of the committee are appointed by the governor and confirmed by the legislature meeting in joint session. The members of the committee shall serve at the pleasure of the governor.

Sec. 41.35.140. TERM OF MEMBERSHIP. The term of office for a member of the committee is three years, except for those who are members by virtue of their positions with the state, who serve for as long as they remain in the position by virtue of which they are members of the committee. A member appointed to fill a vacancy serves for the unexpired term of the member he succeeds.

Sec. 41.35.150. COMPENSATION. The members of the committee serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards and commissions.

Sec. 41.35.160. OFFICERS. At the first meeting of each year, the committee shall elect a chairman from among its members.

Sec. 41.35.170. MEETINGS AND QUORUM. The committee shall meet at least twice a year. Additional meetings may be called by the chairman or by petition of at least five members. Five members of the committee constitutes a quorum.

Sec. 41.35.180. DUTIES OF COMMITTEE. The committee shall

(1) develop criteria for the evaluation of state monuments and historic sites and all real and personal property which may be considered to be of historic, prehistoric or archeological significance as would justify their acquisition and ownership by the state;

(2) cooperate with the department in formulating and administering a statewide historic sites survey under 16 U.S.C. 470-470n (P.L. 89-665, National Historic Preservation Act of 1966);

(3) review those surveys and historic preservation plans that may be required, and approve properties for nomination to the National Register as provided for in 16 U.S.C. 470-470n (P.L. 89-665, National Historic Preservation Act of 1966);

(4) provide necessary assistance to the governor and the legislature for achieving balanced and coordinated state policies and programs for the preservation of the state's historic, prehistoric and archeological resources;

(5) consult with local historical district commissions regarding the establishment of historical districts under AS 29.55.010 - 29.55.020 and the approval of project alterations under AS 45.98.040; recommend, if appropriate, the formulation of additional criteria for the designation of historical districts under AS 29.55.020(b); approve plans for and evaluate the suitability of specific structures for purposes of loan eligibility and continuance under the historical district revolving loan fund (AS 45.98); and consult with the Department of Commerce and Economic Development relative to the adoption of regulations for historical district loans under AS 45.98.

Sec. 41.35.190. POWERS OF CHAIRMAN. Subject to available appropriations the chairman may, with the concurrence of a majority of the committee, employ necessary personnel and may contract for the services of experts and other persons who may be needed.

Sec. 41.35.200. UNLAWFUL ACTS. (a) A person may not appropriate, excavate, remove, injure, or destroy, without a permit from the commissioner, any historic, prehistoric or archeological resources of the state.

(b) A person may not possess, sell, buy or transport within the state, or offer to sell, buy or transport within the state, historic, prehistoric or archeological resources taken or acquired in violation of this section or 16 U.S.C. 433.

(c) A person may not unlawfully destroy, mutilate, deface, injure, remove or excavate a gravesite or a tomb, monument, gravestone or other structure or object at a gravesite, even though the gravesite appears to be abandoned, lost or neglected.

(d) An historic, prehistoric or archeological resource which is taken in violation of this section shall be seized by any person designated in AS 41.35.220 wherever found and at any time. Objects seized may be disposed of as the commissioner determines by deposit in the proper public depository.

Sec. 41.35.210. CRIMINAL PENALTIES. A person who is convicted of violating a provision of AS 41.35.010 - 41.35.240 is guilty of a class A misdemeanor.

Sec. 41.35.215. CIVIL PENALTIES. In addition to other penalties and remedies provided by law, a person who violates a provision of AS 41.35.010 - 41.35.240 is subject to a maximum civil penalty of \$100,000 for each violation.

Sec. 41.35.220. ENFORCEMENT AUTHORITY. The following persons are peace officers of the state and shall enforce AS 41.35.010 - 41.35.240:

(1) an employee of the department authorized by the commissioner;

(2) a peace officer in the state;

(3) any other person authorized by the commissioner.

Sec. 41.35.230. DEFINITIONS. In AS 41.35.010 - 41.35.240, unless the context otherwise requires,

(1) [Repealed];

(2) "committee" means the Historic Sites Advisory Committee;

(3) [Repealed];

(4) "historic, prehistoric and archeological resources" include deposits, structures, ruins, sites, buildings, graves, artifacts, fossils, or other objects of antiquity which provide information pertaining to the historical or prehistorical culture of people in the state as well as to the natural history of the state.

Sec. 41.35.240. SHORT TITLE. AS 41.35.010 - 41.35.240 may be cited as the Alaska Historic Preservation Act.

ARTICLE 2. ALASKA HISTORICAL COMMISSION.

Sec. 41.35.300. CREATION. There is created in the Department of Natural Resources the Alaska Historical Commission.

Sec. 41.35.310. COMPOSITION. The Alaska Historical Commission consists of four members appointed by the governor, ex officio the lieutenant governor, and ex officio the executive director who may not vote. The lieutenant governor shall serve as chairman.

Sec. 41.35.320. APPOINTMENT. The governor shall make appointments from a list of recommended nominees submitted to the governor each year by the Alaska Historical Society. The list shall contain at least four names. A person who has served on the commission may be renominated.

Sec. 41.35.330. TERMS OF OFFICE. The term of office for each appointed member of the commission is two year. When a member's term has expired and a replacement has not been appointed, the member shall continue to serve until a replacement is appointed.

Sec. 41.35.340. COMPENSATION. The members of the commission are not entitled to receive compensation for their services, but they are entitled to receive the same travel pay and per diem as state officials and employees.

Sec. 41.35.350. DUTIES OF THE COMMISSION. The duties of the commission are to

(1) survey, evaluate, and catalog Alaska prehistory and history materials now in print;

(2) ascertain and register what Alaska prehistory and history work is now in progress;

(3) identify the existing gaps in the coverage of Alaska's past in presently available published works and establish priorities for bridging them;

(4) prepare a thematic study of Alaska's history for historic preservation;

(5) identify the sources of Alaska's history;

(6) coordinate the production and publication of works that will adequately present all aspects of Alaska's past; and

(7) cooperate with the federal government in programs relating to history and archaeology.

Sec. 41.35.360. REPORTS. The commission shall make an annual report to the governor.

Sec. 41.35.370. EXECUTIVE DIRECTOR. The commission shall appoint, subject to approval by the governor, an executive director who is to be in the partially exempt service under AS 39.25.120. The executive director shall serve as the executive officer of the commission in the accomplishment of its functions. The executive director serves at the direction and at the pleasure of the governor.

Sec. 41.35.380. GIFTS AND INCOME. (a) There is established in the state general fund a special Alaska Historical Commission receipts account into which shall be paid:

(1) all monetary gifts, grants, and bequests received by the commission;

(2) all royalties and other income which the commission receives from its projects.

(b) The legislature may appropriate funds from this account for commission projects.

* * * * *

TITLE 44, CHAPTER 37. DEPARTMENT OF NATURAL RESOURCES

Sec. 44.37.040. DUTIES OF DEPARTMENT WITH RESPECT TO HISTORIC PRESERVATION AND ARCHEOLOGY. The Department of Natural Resources shall

(1) sponsor, engage in and direct fundamental research into the archeology of the state and encourage and coordinate archeological research and investigation undertaken in the state;

(2) cooperate with the Historic Sites Advisory Committee in performing their functions under AS 41.35;

(3) ensure that historic, prehistoric and archeological resources are properly reported by persons or agencies engaged in public construction work and protect sites and objects of significance discovered at state sites or discovered during the course of public construction and encourage the protection of sites and objects discovered during the course of any other construction work;

(4) investigate reported historic, prehistoric or archeological resources and appraise them for any future excavation, preservation and interpretation;

(5) serve as a central clearinghouse for information on all historic, prehistoric and archeological resource excavation in the state.

* * * * *

**TITLE 29, CHAPTER 40. PLANNING, PLATTING, AND LAND USE
REGULATIONS**

Sec. 29.40.030. COMPREHENSIVE PLAN. (a) The comprehensive plan is a compilation of policy statements, goals, standards, and maps for guiding the physical, social, and economic development, both private and public, of the first or second class borough, and may include, but is not limited to, the following:

- (1) statements of policies, goals, and standards;
- (2) a land use plan;
- (3) a community facilities plan;
- (4) a transportation plan; and
- (5) recommendations for implementation of the comprehensive plan.

(b) With the recommendations of the planning commission, the assembly shall adopt by ordinance a comprehensive plan. The assembly shall, after receiving the recommendations of the planning commission, periodically undertake an overall review of the comprehensive plan and update the plan as necessary.

Sec. 29.40.040. LAND USE REGULATION. (a) In accordance with a comprehensive plan adopted under AS 29.40.030 and in order to implement the plan, the assembly by ordinance shall adopt or amend provisions governing the use and occupancy of land that may include, but are not limited to,

- (1) zoning regulations restricting the use of land and improvements by geographic districts;
- (2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;

(3) measures to further the goals and objectives of the comprehensive plan.

(b) A variance from a land use regulation adopted under this section may not be granted if

- (1) special conditions that require the variance are caused by the person seeking the variance;

(2) the variance will permit a land use in a district in which that use is prohibited; or

(3) the variance is sought solely to relieve pecuniary hardship or inconvenience.

TITLE 29, CHAPTER 45. MUNICIPAL TAXATION

Sec. 29.45.050. OPTIONAL EXEMPTIONS AND EXCLUSIONS. (a) A municipality may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at an election. An exclusion or exemption authorized by this section may not exceed the assess value of \$10,000 for any one residence.

(b) A municipality may by ordinance

(1) classify boats and vessels for the purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage;

(2) classify and exempt from taxation

(A) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes if the income derived from rental of that property does not exceed the actual cost to the owner of the use by the renter;

(B) historic sites, buildings, and monuments;

(C) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 38.05.069(c);

(3) exempt personal property from taxation;

(4) exempt business inventories from taxation;

(5) classify as to type and exempt or partially exempt any or all types of motor vehicles from taxation.

(c) The provisions of (a) of this section notwithstanding,

(1) a borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of a city in the borough, including but not limited to, excluding personal property from taxation, establishing exemptions, and extending the redemption period;

(2) a home rule or first class city has the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes if

(A) the exemptions or exclusions have been adopted as to city taxes; and

(B) the city appropriates to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly;

(3) a city in a borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of the borough, including but not limited to exempting or partially exempting property from taxation.

(d) Exemptions or exclusions from property tax that have been granted by a home rule municipality in addition to exemptions authorized or required by law, and that are in effect on September 10, 1972, and not later withdrawn, are not affected by this chapter.

(e) A municipality may by ordinance classify and exempt or partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body. To be eligible for a tax exemption, or partial exemption, the easement must be in perpetuity. The easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property, so that the property owner is compensated at a rate that does not reflect the easement grant. The municipality may provide by ordinance that if the area subject to the easement is sold, leased, or otherwise disposed of for uses incompatible with the easement or if the easement is conveyed to the owner of the property, the owner must pay to the municipality all or a portion of the amount of the tax exempted, with interest.

(f) A municipality may by ordinance exempt from taxation all or part of the increase in assessed value of improvements to real property if an increase in assessed value is directly attributable to alteration of the natural features of the land, or new maintenance, repair, or renovation of an existing structure, and if the alteration, maintenance, repair, or renovation, when completed, enhances the exterior appearance or aesthetic quality of the land or structure. An exemption may not be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use in the structure or for the alteration of land as a consequence of construction

activity. An exemption provided in this subsection may continue for up to four years from the date the improvement is completed, or from the date of approval for the exemption by the local assessor whichever is later.

(g) A municipality may by ordinance exempt from taxation all or part of the increase in assessed value of improvements to a single-family dwelling if the principal purpose of the improvement is to increase the amount of space for occupancy. An exemption provided in this subsection may continue for up to two years from the date the improvement is completed, or from the date of approval of an application for the exemption by the local assessor, whichever is later.

(h) A municipality may by ordinance partially or wholly exempt land from a tax for fire protection service and fire protection facilities and may levy the tax only on improvements, including personal property affixed to the improvements.

(i) A municipality may by ordinance approved by the voters exempt from taxation the assessed value that exceeds \$150,000 of real property owned and occupied as a permanent place of abode by a resident who is

(1) 65 years of age or older;

(2) a disabled veteran, including a person who was disabled in the line of duty while serving in the Alaska Territorial Guard; or

(3) at least 60 years old and a widow or widower of a person who qualified for an exemption under (1) or (2) of this subsection.

(j) A municipality may by ordinance approved by the voters exempt real or personal property in a taxing unit used in processing timber after it has been delivered to the processing site from up to 75 percent of the rate of taxes levied on other property in that taxing unit. An ordinance adopted under this subsection may not provide for an exception that exceeds five years in duration. In this subsection "taxing unit" means a municipality and includes

(1) a service area in a unified municipality or borough;

(2) the entire area outside cities in a borough; and

(3) a differential tax zone in a city.

(k) A municipality may by ordinance approved by the voters exempt from taxation pollution control facilities that meet requirements of the United States Environmental Protection Agency or the Department of Environmental Conservation. An ordinance adopted under this subsection may not provide for an exemption that exceeds five years in duration.

(l) A municipality may by ordinance exempt from taxation an interest, other than record ownership, in real property of an individual residing in the property if the property has been developed, improved, or acquired with federal funds for low-income housing and is owned or managed as low-income housing by the Alaska State Housing Authority or a regional housing authority formed under AS 18.44.996. This section does not prohibit a municipality from receiving payments in lieu of taxes authorized under federal law.

(m) A municipality may by ordinance partially or totally exempt all or some types of economic development property from taxation for up to five years. The municipality may provide for renewal of the exemption under conditions established in the ordinance. However, under a renewal, a municipality that is a school district may only exempt all or a portion of the amount of taxes that exceeds the amount levied on other property for the school district. A municipality may by ordinance permit deferral of payment of taxes on all or some types of economic development property for up to five years. The municipality may provide for renewal of the deferral under conditions established in the ordinance. A municipality may adopt an ordinance under this subsection only if, before it is adopted, copies of the proposed ordinance made available at a public hearing on it contain written notice that the ordinance, if adopted, may be repealed by the voters through referendum. An ordinance adopted under this subsection must include specific eligibility requirements and require a written application for each exemption or deferral. In this subsection "economic development property" means real or personal property, including developed property conveyed under 43 U.S.C. 1601-1629e (Alaska Native Claims Settlement Act), that

(1) has not previously been taxed as real or personal property by the municipality;

(2) is used in a trade or business in a way that

(A) creates employment in the municipality;

(B) generates sales outside of the municipality of goods or services produced in the municipality; or

(C) materially reduces the importation of goods or services from outside the municipality; and

(3) has not been used in the same trade or business in another municipality for at least six months before the application for deferral or exemption is filed; this paragraph does not apply if the property was used in the same trade or business in an area that has been annexed to the municipality within six months before the application for deferral or exemption is filed; this paragraph does not apply to inventories.

(n) A municipality may by ordinance classify as to type inventories intended for export outside the state and partially or totally exempt all or some types of those inventories from taxation. A municipality that is a school district may, under this subsection, only exempt all or a portion of the amount of taxes that exceeds the amount levied on other property for the school district. A municipality may adopt an ordinance under this subsection only if, before it is adopted, copies of the proposed ordinance made available at a public hearing on it contain written notice that the ordinance, if adopted, may be repealed by the voters through referendum. The ordinance may provide for different levels of exemption for different classifications of inventories. An ordinance adopted under this subsection must include specific eligibility requirements and require a written application for each exemption.

TITLE 29, CHAPTER 55. MUNICIPAL PROGRAMS

Sec. 29.55.010. CREATION OF LOCAL HISTORICAL DISTRICT COMMISSIONS. The governing body of a municipality may establish a local historical district commission or designate the planning commission or itself to serve as the historical district commission.

Sec. 29.55.020. ESTABLISHMENT OF HISTORICAL DISTRICTS. (a) In addition to existing municipal authority providing for the preservation, protection, and maintenance of historic sites, the local historical district commission, in consultation with the Historic Sites Advisory Committee in the Department of Natural Resources, may establish historical districts within the boundaries of the municipality.

(b) A historical district shall be a reasonably compact area of historical significance in which two or more structures important in state or national history, and related by physical proximity or historical association, are located. For purposes of this section, "structures important in state or national history" means properties recommended by historical district commissions that are listed in the National Register of Historic Places or are

characteristic of the Russian-American period before October 18, 1867, the early territorial period before 1930, or early Native heritage, reflecting the indigenous characteristics of Native culture in Alaska. On recommendation of the governing body of a municipality and the Historic Sites Advisory Committee, the Department of Natural Resources may by regulation formulate additional criteria for the establishment of historical districts not inconsistent with this subsection.

(c) The establishment of a historical district under this section shall be consistent with any applicable comprehensive plan for the municipality.

* * * * *

TITLE 09, CHAPTER 25. EVIDENCE

Sec. 09.25.120. PUBLIC RECORDS, EXCEPTIONS, CERTIFIED COPIES. Every person has a right to inspect a public record in the state, including public records in recorders' offices except:

(1) records of vital statistics and adoption proceedings which shall be treated in the manner required by AS 18.50;

(2) records pertaining to juveniles;

(3) medical and related public health records;

(4) records required to be kept confidential by a federal law or regulation or by state law. Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the fees under AS 09.25.110 - 09.25.115 a certified copy of the record, and the copy shall in all cases be evidence of the original. Recorders shall permit memoranda, transcripts, and copies of the public records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants; and shall furnish proper and reasonable facilities to persons having lawful occasion for access to the public records for those purposes, subject to reasonable rules and regulations, in conformity to the direction of the court, as are necessary for the protection of the records and to prevent interference with the regular discharge of the duties of the recorders and their employees.

TITLE 09, CHAPTER 55. SPECIAL ACTIONS AND PROCEEDINGS

Sec. 09.55.250. CLASSIFICATION OF ESTATES AND LAND SUBJECT TO BE TAKEN. The following is a classification of the estates and rights in land subject to be taken for public use:

(1) a fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams and permanent flooding occasioned by them, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine, or when, in the judgment of the Department of Natural Resources, or the Department of Transportation and Public Facilities, a fee simple is necessary for any of the purposes for which the department, on behalf of the state, is authorized by law to acquire real property by condemnation;

(2) an easement when taken for any other use;

(3) the right of entry upon an occupation of land, and the right to take from the land earth, gravel, stones, trees, and timber as may be necessary for a public use.

★ ★ ★ ★ ★ ★ ★ ★

ALASKA ADMINISTRATIVE CODE

The following portions of the Alaska Administrative Code are relative to the Alaska Historic Preservation Act:

CHAPTER 16. HISTORIC, PREHISTORIC AND ARCHEOLOGICAL RESOURCES

Article

1. Procedure (11 AAC 16.010 - 11 AAC 16.160)
2. National Register of Historic Places (11 AAC 16.120 - 11 AAC 16.230)
3. General Provisions (11 AAC 16.900)

ARTICLE 1. PROCEDURE

Section

10. Jurisdiction
20. Title to collected items
30. Investigation and collection permits
40. Qualified person
50. Reports
60. Restoration of area
70. Permit restrictions
80. Cancellation of permits
90. Examination of site
100. Maintenance of privately-owned sites
110. Administrative responsibility
120. Eligibility
130. Application
140. Allocation of funds
150. Definitions (Relocated to 11 AAC 16.900)
160. Project Agreement

11 AAC 16.010. JURISDICTION. The division of parks shall administer the historic, prehistoric and archeological resources of the state.

11 AAC 16.020. TITLE TO COLLECTED ITEMS. (a) Each item collected from lands owned or controlled by the state is the property of the state and shall be registered with the division.

(b) An item may be removed from the state in accordance with a permit from the director. The repository of the item is subject to his restrictions. The director may require the items to be returned to the state upon giving 60 days' notice.

APPENDIX 7

ABANDONED SHIPWRECK ACT OF 1987

Public Law 100-298—APR. 28, 1988

ABANDONED SHIPWRECK ACT OF 1987

DECEMBER 9 (legislative day, DECEMBER 8), 1987.—Ordered to be printed

Mr. JOHNSTON from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 858]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 858) to establish the title of States in certain abandoned shipwrecks, and for other purposes, having considered the same, reports favorably thereon with an amendment to the text and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Abandoned Shipwreck Act of 1987".

SEC. 2. FINDINGS.

The Congress finds that:—

- (a) States have the responsibility for management of a broad range of living and nonliving resources in State waters and submerged lands; and
- (b) included in the range of resources are certain abandoned shipwrecks, which have been deserted and to which the owner has relinquished ownership rights with no retention.

SEC. 3. DEFINITIONS.

For purposes of this Act—

- (a) the term "embedded" means firmly affixed in the submerged lands or in coralline formations such that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof;

- (b) the term "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the National Historic Preservation Act (16 U.S.C. 470a);

- (c) the terms "public lands," "Indian lands" and "Indian tribe" have the same meaning given the terms in the Archaeological Resource Protection Act of 1979 (16 U.S.C. 470aa-47011);

Public
information.
Historic
preservation.

(3) on submerged lands of a State and is included in or determined eligible for inclusion in the National Register.

(b) The public shall be given adequate notice of the location of any shipwreck to which title is asserted under this section. The Secretary of the Interior, after consultation with the appropriate State Historic Preservation Officer, shall make a written determination that an abandoned shipwreck meets the criteria for eligibility for inclusion in the National Register of Historic Places under clause (a)(3).

(c) **TRANSFER OF TITLE TO STATES.**—The title of the United States to any abandoned shipwreck asserted under subsection (a) of this section is transferred to the State in or on whose submerged lands the shipwreck is located.

Gifts and
property.
Indiana.

(d) **EXCEPTION.**—Any abandoned shipwreck in or on the public lands of the United States is the property of the United States Government. Any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands.

(e) **RESERVATION OF RIGHTS.**—This section does not affect any right reserved by the United States or by any State (including any right reserved with respect to Indian lands) under—

(1) section 3, 5, or 6 of the Submerged Lands Act (43 U.S.C. 1311, 1313, and 1314); or

(2) section 19 or 20 of the Act of March 3, 1899 (33 U.S.C. 414 and 415).

43 USC 2106.

SEC. 7. RELATIONSHIP TO OTHER LAWS.

(a) **LAW OF SALVAGE AND THE LAW OF FINDS.**—The law of salvage and the law of finds shall not apply to abandoned shipwrecks to which section 6 of this Act applies.

(b) **LAWS OF THE UNITED STATES.**—This Act shall not change the laws of the United States relating to shipwrecks, other than those to which this Act applies.

(c) **EFFECTIVE DATE.**—This Act shall not affect any legal proceeding brought prior to the date of enactment of this Act.

Approved April 28, 1988.

LEGISLATIVE HISTORY—S. 858:

HOUSE REPORTS: No. 100-514, Pt. 1 (Comm. on Interior and Insular Affairs) and Pt. 2 (Comm. on Merchant Marine and Fisheries).

SENATE REPORTS: No. 100-241 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 133 (1987): Dec. 19, considered and passed Senate.

Vol. 134 (1988): Mar. 28, 29, Apr. 13, considered and passed House.

Public Law 100-298
100th Congress

An Act

Apr. 28, 1988
[S. 858]

To establish the title of States in certain abandoned shipwrecks, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Abandoned Shipwreck Act of 1987".

SEC. 2. FINDINGS.

The Congress finds that—

(a) States have the responsibility for management of a broad range of living and nonliving resources in State waters and submerged lands; and

(b) included in the range of resources are certain abandoned shipwrecks, which have been deserted and to which the owner has relinquished ownership rights with no retention.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(a) the term "embedded" means firmly affixed in the submerged lands or in coralline formations such that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof;

(b) the term "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the National Historic Preservation Act (16 U.S.C. 470a);

(c) the terms "public lands", "Indian lands", and "Indian tribe" have the same meaning given the terms in the Archaeological Resource Protection Act of 1979 (16 U.S.C. 470aa-470ll);

(d) the term "shipwreck" means a vessel or wreck, its cargo, and other contents;

(e) the term "State" means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and

(f) the term "submerged lands" means the lands—

(1) that are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301);

(2) of Puerto Rico, as described in section 8 of the Act of March 2, 1917, as amended (48 U.S.C. 749);

(3) of Guam, the Virgin Islands and American Samoa, as described in section 1 of Public Law 93-435 (48 U.S.C. 1705); and

(4) of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Public Law 94-241 (48 U.S.C. 1681).

Abandoned
Shipwreck
Act of 1987.
Maritime
affairs.
43 USC 2101
note.
43 USC 2101.

43 USC 2102.

SEC. 4. RIGHTS OF ACCESS.**(a) ACCESS RIGHTS.**—In order to—

(1) clarify that State waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups, as well as irreplaceable State resources for tourism, biological sanctuaries, and historical research; and

(2) provide that reasonable access by the public to such abandoned shipwrecks be permitted by the State holding title to such shipwrecks pursuant to section 6 of this Act,

it is the declared policy of the Congress that States carry out their responsibilities under this Act to develop appropriate and consistent policies so as to—

(A) protect natural resources and habitat areas;

(B) guarantee recreational exploration of shipwreck sites; and

(C) allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites.

(b) PARKS AND PROTECTED AREAS.—In managing the resources subject to the provisions of this Act, States are encouraged to create underwater parks or areas to provide additional protection for such resources. Funds available to States from grants from the Historic Preservation Fund shall be available, in accordance with the provisions of title I of the National Historic Preservation Act, for the study, interpretation, protection, and preservation of historic shipwrecks and properties.

SEC. 5. PREPARATION OF GUIDELINES.

(a) In order to encourage the development of underwater parks and the administrative cooperation necessary for the comprehensive management of underwater resources related to historic shipwrecks, the Secretary of the Interior, acting through the Director of the National Park Service, shall within nine months after the date of enactment of this Act prepare and publish guidelines in the Federal Register which shall seek to:

(1) maximize the enhancement of cultural resources;

(2) foster a partnership among sport divers, fishermen, archeologists, salvors, and other interests to manage shipwreck resources of the States and the United States;

(3) facilitate access and utilization by recreational interests;

(4) recognize the interests of individuals and groups engaged in shipwreck discovery and salvage.

(b) Such guidelines shall be developed after consultation with appropriate public and private sector interests (including the Secretary of Commerce, the Advisory Council on Historic Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archeologists, historic preservationists, and fishermen).

(c) Such guidelines shall be available to assist States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under this Act.

SEC. 6. RIGHTS OF OWNERSHIP.

(a) UNITED STATES TITLE.—The United States asserts title to any abandoned shipwreck that is—

(1) embedded in submerged lands of a State;

(2) embedded in coralline formations protected by a State on submerged lands of a State; or

Cultural
programs.
Historic
preservation.
Environmental
protection.
42 USC 2103.

Grants.

43 USC 2104.

National parks,
monuments, etc.
Federal
Register,
publication.

43 USC 2105.

(d) the term "shipwreck" means a vessel or wreck, its cargo, and other contents;

(e) the term "State" means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and

(f) the term "submerged lands" means the lands—

- (1) that are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301);
- (2) of Puerto Rico, as described in section 8 of the Act of March 2, 1917, as amended (48 U.S.C. 749);
- (3) of Guam, the Virgin Islands and American Samoa, as described in section 1 of Public Law 93-453 (48 U.S.C. 1705); and
- (4) of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Public Law 92-311 (48 U.S.C. 1681).

SEC. 4. SHORTS OF ACCESS.

(a) ACCESS RIGHTS.—In order to—

- (1) clarify that State waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups, as well as irreplaceable State resources for tourism, biological sanctuaries, and historical research; and

(2) provide that reasonable access by the public to such abandoned shipwrecks be permitted by the State holding title to such shipwrecks pursuant to section 6 of this Act,

it is the declared policy of the Congress that States carry out their responsibilities under this Act to develop appropriate and consistent policies so as to—

- (A) protect natural resources and habitat areas;
- (B) guarantee recreational exploration of shipwreck sites; and
- (C) allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites.

(b) PARKS AND PROTECTED AREAS.—In managing the resources subject to the provisions of this Act, States are encouraged to create underwater parks or areas to provide additional protection for such resources. Funds available to States from grants from the Historic Preservation Fund shall be available, in accordance with the provisions of title 1 of the National Historic Preservation Act, for the study, interpretation, protection, and preservation of historic shipwrecks and properties.

SEC. 5. PREPARATION OF GUIDELINES.

(a) In order to encourage the development of underwater parks and the administrative cooperation necessary for the comprehensive management of underwater resources related to historic shipwrecks, the Secretary of the Interior, acting through the Director of the National Park Service, shall within nine months after the date of enactment of this Act prepare and publish guidelines in the Federal Register which shall seek to:

- (1) maximize the enhancement of cultural resources;
- (2) foster a partnership among sport divers, fishermen, archaeologists, salvors, and other interests to manage shipwreck resources of the States and the United States;
- (3) facilitate access and utilization by recreational interests;
- (4) recognize the interests of individuals and groups engaged in shipwreck discovery and salvage.

(b) Such guidelines shall be developed after consultation with appropriate public and private sector interests (including the Secretary of Commerce, the Advisory Council on Historic Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archaeologists, historic preservationists, and fishermen).

(c) Such guidelines shall be available to assist States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under this Act.

SEC. 6. RIGHTS OF OWNERSHIP.

(a) UNDETERMINED STATUS.—The United States asserts title to any abandoned shipwreck that is—

- (1) embedded in submerged lands of a State;
- (2) embedded in coralline formations protected by a State on submerged lands of a State; or

(3) on submerged lands of a State and is included in or determined eligible for inclusion in the National Register.

(b) The public shall be given adequate notice of the location of any shipwreck to which title is asserted under this section. The Secretary of the Interior, after consultation with the appropriate State Historic Preservation Officer, shall make a written determination that an abandoned shipwreck meets the criteria for eligibility for inclusion in the National Register of Historic Places under clause (a)(3).

(c) TRANSFER OF TITLE TO STATES.—The title of the United States to any abandoned shipwreck asserted under subsection (a) of this section is transferred to the State in or on whose submerged lands the shipwreck is located.

(d) EXEMPTION.—Any abandoned shipwreck in or on the public lands of the United States is the property of the United States Government. Any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands.

(e) RESERVATION OF RIGHTS.—This section does not affect any right reserved by the United States or by any State (including any right reserved with respect to Indian lands) under—

- (1) section 3, 5, or 6 of the Submerged Lands Act (43 U.S.C. 1311, 1313, and 1314); or
- (2) section 19 or 20 of the Act of March 3, 1899 (33 U.S.C. 414 and 416).

SEC. 7. RELATIONSHIP TO OTHER LAWS.

(a) LAW OF SALVAGE AND THE LAW OF FINDS.—The law of salvage and the law of finds shall not apply to abandoned shipwrecks to which section 6 of this Act applies.

(b) LAWS OF THE UNITED STATES.—This Act shall not change the laws of the United States relating to shipwrecks, other than those to which this Act applies.

(c) EFFECTIVE DATE.—This Act shall not affect any legal proceeding brought prior to the date of enactment of this Act.

PURPOSE OF THE MEASURE

The purpose of S. 858 is to vest title to certain abandoned shipwrecks that are buried in State lands to the respective States and clarify the management authority of the States for these abandoned shipwrecks.

BACKGROUND AND NEED

The central issue underlying this legislation is the ownership and the authority to manage abandoned shipwrecks on State lands. Currently, States claim title to and regulatory authority over abandoned historic shipwrecks. However, the Federal Admiralty Court has also claimed jurisdiction over these resources, creating confusion over ownership of the resource and in some cases resulting in inadequate protection of historical artifacts.

The Submerged Lands Act of 1953 gave the States title to the "land and natural resources" within 3 miles of their coasts. The States have contended that "lands and natural resources" include abandoned shipwrecks. Since the 1950's, the States have managed historic shipwreck archaeological sites as part of their historic preservation programs. In addition, 27 States have established specific laws regulating abandoned historic shipwrecks. The laws differ by State, but none prohibit sport diving on historic shipwrecks and about half of the laws provide for compensation for recovery activities undertaken by private parties.

Federal Admiralty Court and the admiralty system, which have their roots in English history and common law, were developed to deal with the recovery or salvage of goods lost at sea. The Admiralty Court makes a determination of a salvage award and ownership of a shipwreck depending on success in recovering the vessel or cargo, the danger present in the rescue, the value of the property recovered, and the time and labor expended by the salvor. Such a

determination for historic shipwrecks often times does not consider the archeological, historical, and other values associated with these wrecks which would preserve part of our nation's heritage.

This legislation would clarify that situation by asserting Federal ownership over these shipwrecks and then transferring title to the States for administration, management, and regulation.

LEGISLATIVE HISTORY

S. 858 was introduced by Senator Bradley on March 26, 1987. A hearing was held by the Subcommittee on Public Lands, National Parks and Forests on September 29, 1987.

At a business meeting on December 2, 1987, the Senate Committee on Energy and Natural Resources ordered S. 858, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on December 2, 1987, by a unanimous vote of a quorum present, recommends that the Senate pass S. 858, if amended, as described herein.

The rollcall vote on reporting the measure was 19 yeas, 0 nays as follows:

YEAS

Mr. Johnston
Mr. Bumpers
Mr. Ford
Mr. Metzenbaum
Mr. Melcher
Mr. Bradley
Mr. Bingham
Mr. Wirth
Mr. Fowler
Mr. Conrad
Mr. McClure
Mr. Hatfield
Mr. Weicker
Mr. Domenici
Mr. Wallop
Mr. Murkowski
Mr. Nickles
Mr. Hecht
Mr. Evans

NAYS

*Indicates voted by proxy.

COMMITTEE AMENDMENTS

During the consideration of S. 858, the Committee adopted an amendment in the nature of a substitute. The substitute includes a number of technical and conforming amendments and some substantive changes. A discussion of those substantive differences follows. Additional information on the substitute is included in the "Section-by-Section Analysis" of this report.

1. Findings and definitions

The substitute clarifies that "abandoned shipwrecks" refers to those shipwrecks which have been deserted and to which all owner-ship rights have been relinquished. It also expands the definition of "embedded" to include the requirement that tools of excavation would have to be used to gain access to the shipwreck.

2. Guidelines

The substitute changes the authority for promulgation of the guidelines from the Advisory Council on Historic Preservation to the Secretary of the Interior, acting through the Director of the Park Service. In preparing the guidelines, the Secretary is required to consult with a variety of interests, including the Secretary of Commerce, the Advisory Council on Historic Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archaeologists, historic preservationists, and fishermen. The guidelines were expanded to include the recognition of the interests of those engaged in shipwreck discovery and salvage. The purpose of these changes was to broaden the focus of the guidelines from primarily historic preservation to include the consideration of recreational and commercial interests as well.

SECTION-BY-SECTION ANALYSIS

Section 1 provides a short title for S. 858, the "Abandoned Shipwreck Act of 1987".

Section 2 includes a set of Congressional findings.

Section 3 contains definitions of key terms in the Act.

Section 4 sets forth the general responsibilities of the States under this Act. The States are directed to develop policies to protect shipwrecks, guarantee recreational exploration of shipwreck sites, and allow for recovery of shipwrecks which are consistent with the protection of historical and environmental values. This section also encourages the States to create underwater parks to give further protection of these resources.

Section 5 provides for advisory guidelines to be developed by the Secretary of the Interior, acting through the Director of the National Park Service. The purpose of the guidelines is to assist the States and the appropriate Federal agencies in developing legislation and regulations to carry out the purposes of the Act. The guidelines are intended to enhance cultural resources; foster a partnership among a variety of parties including sportdivers, fishermen, archaeologists and salvors; facilitate access by recreational users; and recognize the interests of those engaged in shipwreck discovery or salvage.

Section 6 asserts that title to certain abandoned shipwrecks vests in the United States. These shipwrecks include those which are embedded in the submerged lands of a State, are located on coral-line formations protected by a State or have been determined to be eligible for inclusion in the National Register. Notice of the location of these shipwrecks are to be provided to the public.

The purpose of providing notice to the public is to ensure that sport divers and others seeking to use abandoned shipwrecks know that wrecks have been found to be historically significant. The

need to give such advance notice must be balanced, however, against the danger that notice of location will lead to damage and pilferage.

Accordingly, it is expected that the degree of specificity with which such wrecks are located in public notices will vary from circumstance to circumstance. The Committee concurs that appropriate public notice of the site location may be accomplished in many different ways, including notice in the Federal Register, the marking of charts, a site marker, notice in local newspapers or diving information centers. The specificity of such notice may vary, and may be accomplished by other means, such as the 1-mile lease-tract method used by some States for offshore oil and gas leases.

The title of those abandoned shipwrecks which meet the specified criteria outlined above are to be transferred to the appropriate State. The United States retains title only if the shipwreck is located on public lands, and any shipwrecks located on Indian lands is the property of Indian tribe owning the land.

There are some units of the National Park System where abandoned shipwrecks are found on lands which are owned by the United States, for example at Biscayne National Park in Florida. Section 6(d) would ensure that the United States retains title to these shipwrecks. In other park units, however, the submerged lands within the park boundaries are owned by the State. Section 6(c) would transfer title to these shipwrecks to the States.

The Committee is concerned that historic shipwrecks within national park boundaries be preserved, regardless of whether they lie in State or Federal waters. Accordingly, the Committee encourages the National Park Service and the States to enter into management agreements whereby any historic shipwrecks within national park boundaries will be protected by the National Park Service. The Committee expects the guidelines issued pursuant to section 5 to reflect this need to manage historic resources within park boundaries consistently.

Section 7 describes the relationship of the Abandoned Shipwrecks Act to other laws. In particular, the Law of Salvage and the Law of Finds do not apply to shipwrecks described in section 6.

The Committee recognizes that the management of long-submerged and abandoned shipwrecks now presents concerns far removed from the traditional admiralty interests in safety and in returning goods to the streams of commerce. As new technologies have allowed the recovery of wrecks that have been lost for long periods of time, a new concern has been developed for the historic and recreational interests in shipwrecks. Shipwrecks are no longer viewed as only lost commercial resources that should be salvaged so that the goods can be returned to commerce. Rather, many shipwrecks are now used as recreational resources for sport divers and fishermen and are viewed as invaluable and irreplaceable archeological resources.

The archeological and recreational interests require that certain shipwrecks be managed by entities with experience in these areas and a broad concern with historic and recreational resources as well as an awareness of the unique needs of their local resources. It is no longer appropriate for the admiralty courts to adjudicate these interests based on traditional admiralty concerns. Admiralty

courts remain best equipped to deal with issues essential to a national maritime jurisdiction, primarily the adjudication of commercial interests, as would be present in the wreck of ships that are currently engaged in commerce and their cargo.

The States and the Federal Government, both of which have extensive experience in recreational and historic site management as well as broad interests in a range of other historic and recreational resources, should manage the shipwrecks covered by this Act.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 8, 1987.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 858, the Abandoned Shipwreck Act of 1987, as ordered reported by the Senate Committee on Energy and Natural Resources, December 2, 1987. We estimate that this bill would have no significant impact on the budget of the federal government, or of state or local governments.

S. 858 would assert federal title to certain abandoned shipwrecks and would transfer title to the state on whose submerged lands the shipwreck is located, unless the shipwreck lies within the boundaries of lands administered by the National Park Service (NPS). This bill would also direct the NPS to develop guidelines on managing shipwrecks and providing public access. Neither the NPS nor the affected states are expected to incur significant additional costs as a result of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 858. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy. Little, if any, additional paperwork would result from the enactment of S. 858, as reported.

EXECUTIVE COMMUNICATIONS

On September 22, 1987, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior, the National Oceanographic and Atmospheric Administration and the Office of Management and Budget setting forth executive views on S. 858. These reports had not been received at the time the report on S. 858 was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 858, as reported.

○

ESTABLISHING THE TITLE OF STATES IN CERTAIN ABANDONED SHIPWRECKS

MARCH 28, 1988.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany S. 858]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (S. 858) to establish the title of States in certain abandoned shipwrecks, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF LEGISLATION

The purpose of S. 858 is to vest title to certain abandoned shipwrecks that are embedded in or located on State lands to the respective States and clarify the management authority of the States for these abandoned shipwrecks.

SUMMARY OF BILL

S. 858 asserts U.S. title to three classes of abandoned shipwrecks in State waters: (1) those embedded in submerged lands of a State; (2) those embedded in coralline formations protected by a State on submerged lands; and (3) those on submerged lands of a State and included or determined eligible for inclusion in the National Register of Historic Places. Title to shipwrecks in these categories is transferred to the States within whose waters they lie. S. 858 de-

*S-436

clares as Congressional policy that States should manage these wrecks to protect natural resources and habitat areas, guarantee recreational exploration of shipwreck sites, and allow for appropriate public and private sector recovery. S. 858 also directs the Director of the National Park Service, after consultation with all affected interests, to develop guidelines for States and federal agencies to use in managing these shipwrecks. S. 858 specifically supercedes the law of salvage and the law of finds with respect to shipwrecks for which title is asserted.

BACKGROUND AND NEED

The central issue intended to be resolved by the legislation is the ownership and the authority to manage certain abandoned shipwrecks on State lands. In 1953, Congress passed the Submerged Lands Act (SLA, 43 U.S.C. 1301 *et seq.*) and transferred ownership to the States of all natural resources and submerged lands out to a distance of three miles (except in the case of Texas, Puerto Rico, and the west coast of Florida where it is three marine leagues or nine statute miles).

Congress did not specify in the SLA whether the states also owned non-natural objects such as shipwrecks that rested on or within submerged lands. Notwithstanding this lack of clarity, some 28 States have laws that pertain to the management of abandoned or historic shipwrecks in state waters. It is estimated that the total number of shipwrecks in State waters is more than 50,000, of which some 5-10 percent may be of historical significance.

Existing State laws assert title to shipwrecks in State waters and prescribe regulations for the protection and salvage of wrecks of historic significance. To the Committee's knowledge, none of the existing laws prohibit access by sport divers, although those wishing to recover artifacts from wrecks are frequently required to obtain state permits.

States have been constrained in applying their shipwreck management and preservation laws because of conflicts with federal admiralty principles and mixed judicial decisions. Under Article III, section 2 of the Constitution and 28 U.S.C. 1333, federal district courts have original jurisdiction over all admiralty and maritime cases. This jurisdiction includes claims for the salvage of abandoned shipwrecks. In exercising this jurisdiction, federal courts apply common law principles of admiralty, including the law of finds and the law of salvage.

Under the American law of finds, the finder of an abandoned shipwreck is allowed to keep the wreck and its cargo. Under the law of salvage, the owner of the shipwreck retains title to the wreck but the salvor may be entitled to a salvage award.

The majority of federal courts presented with a salvage claim to resolve have decided that (1) the SLA did not specifically assert U.S. title to shipwrecks and transfer that title to the states; and (2) state historic preservation laws whose provisions are inconsistent with federal common law admiralty principles are superceded by those principles under the supremacy clause of the Constitution. (*Cobb Coin Co., Inc. v. The Unidentified, Wrecked and Abandoned Sailing Vessel*, 525 F. Supp. 186 (S.D. Fla. 1981); *Treasure Salvors,*

Inc. v. The Unidentified, Wrecked and Abandoned Sailing Vessel, 569 F.2d 380 (5th Cir. 1978).) A minority of courts have decided that the SLA did provide the states with jurisdiction over shipwrecks in state waters. (*Subaqueous Exploration and Archaeology, Ltd., v. The Unidentified, Wrecked and Abandoned Sailing Vessel*, 577 F. Supp. 597 (D. Md. 1983).)

At a minimum, these decisions have led to confusion over the ownership of, and responsibility for, historic shipwrecks in State waters. This confusion led to the introduction of historic shipwreck legislation in the 97th Congress and the passage by the House, in the 98th Congress, of H.R. 3194. The Abandoned Shipwreck Act of 1984 would have transferred title of a certain class of historic shipwrecks lying on submerged lands to the States. The Senate took no action on H.R. 3194.

COMMITTEE ACTION

The original House legislation on abandoned shipwrecks in the 100th Congress was H.R. 74, introduced on January 6, 1987, by Congressman Charles Bennett and four cosponsors. As introduced, H.R. 74 is similar to S. 858. On April 9, 1987, Congressman Norman Shumway introduced H.R. 2071, a bill to establish that federal district courts exercising admiralty jurisdiction have the exclusive power to control and dispose of abandoned historic shipwrecks located in State waters. H.R. 2071 provided guidelines for the court to follow to protect historically significant shipwrecks and also created a right of intervention for affected states. Both bills were jointly referred to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries and were the subject of a hearing in the Oceanography Subcommittee of the latter Committee on April 21, 1987.

The Subcommittee reported H.R. 74 with an amendment in the nature of a substitute on August 5, 1987. As reported, H.R. 74 would transfer the title of certain abandoned shipwrecks to States conditioned on the States developing plans for the protection of the shipwrecks and having those plans approved by the Secretary of the Interior within five years from enactment of the bill. If the State plan is not approved, title reverts to the United States. The bill reported by the Subcommittee also establishes a 16-member advisory committee to assist the Secretary of the Interior in the development of guidelines for the States to use in the management of historic shipwrecks.

S. 858 was introduced on March 26, 1987. On December 2, 1987, the Senate Committee on Energy and Natural Resources ordered the bill, as amended, favorably reported by a 19-0 roll call vote. On December 19, 1987, S. 858 was passed by the Senate on a voice vote. On December 20, 1987, the bill was jointly referred to the Committees on Merchant Marine and Fisheries and Interior and Insular Affairs.

Within the Committee on Interior and Insular Affairs, a hearing was held on S. 858 by the Subcommittee on National Parks and Public Lands on February 4, 1988. The bill was favorably recommended to the full Committee on February 18, 1988. The Committee on Interior and Insular Affairs ordered S. 858 favorably report-

ed to the House by voice vote on February 24, 1988, and filed its report on the legislation on March 14, 1988 (Rept. 100-514, Part 1). On March 23, 1988, the Committee on Merchant Marine and Fisheries marked up S. 858. Congressman Shumway offered an amendment to make the congressional policy statement about rights of access in section 4 of the bill binding on the States and to make any dispute about State implementation of the rights of access reviewable in a federal district court. Mr. Shumway's amendment was defeated by a 14-25 roll call vote.

Mr. Shumway offered a second amendment to conform the geographic scope of the Act to three nautical miles off the U.S. coast, consistent with international law and as recommended by the State Department. This amendment was defeated by a voice vote.

No other amendments were offered to the bill and it was ordered reported to the House, without amendment, by a 30-10 roll call vote. A majority quorum was present.

BOULGAT VOTE ON: 133—FIRM PASSAGE

Number	Age	Sex
Arthur G. Jones, North Carolina		X
Charles H. King, New York		P
John H. Anderson, California		X
Harry C. Smith, Massachusetts		X
David Johnson, Jr., Kentucky		X
John Baker, Washington		X
William J. Hughes, New Jersey		P
William Lewis, Washington		P
Ed L. Smith, Florida		X
W. J. A. (1884) Smith, Louisiana		X
Thomas H. Hughes, Pennsylvania		P
Samuel H. David, Michigan		X
Ray Davis, Maryland		X
William B. Updell, Black		X
Robert A. David, Pennsylvania		X
Thomas B. Cooper, Indiana		X
Stephen Davis, California		P
William L. Smith, South Carolina		P
John P. Smith, Texas		X
Charles E. Smith, Florida		P
Thomas J. Smith, New York		X
John B. Smith, Virginia		X
Joseph E. Smith, Idaho		X
George J. Smith, New York		X
John C. Smith, Tennessee		X
Richard W. Smith, Michigan		X
Sam Wang, Alaska		X
Thomas F. Lee, New York		X
Thomas B. Smith, California		X
Jack Fish, Texas		X
Charles Smith, Rhode Island		X
Robert H. Smith, Virginia		X
Sam Smith, New Jersey		X
John B. Smith, Washington		X
John Smith, Maryland		X
Samuel O. Smith, North Carolina		X
John Smith, Texas		X
Carl Smith, Pennsylvania		X
Patrick Smith, South		X
Walter Smith, California		X
Walter Smith, Kentucky		X

ROLLCALL VOTE ON S. 858—FINAL PASSAGE—Continued

	Number	Yrs	Ln
Grand L. Knight, California			
Total		30	10

一、二、三、四、五、六、七、八、九、十、十一、十二、十三、十四、十五、十六、十七、十八、十九、二十、二十一、二十二、二十三、二十四、二十五、二十六、二十七、二十八、二十九、三十、三十一、三十二、三十三、三十四、三十五、三十六、三十七、三十八、三十九、四十、四十一、四十二、四十三、四十四、四十五、四十六、四十七、四十八、四十九、五十、五十一、五十二、五十三、五十四、五十五、五十六、五十七、五十八、五十九、六十、六十一、六十二、六十三、六十四、六十五、六十六、六十七、六十八、六十九、七十、七十一、七十二、七十三、七十四、七十五、七十六、七十七、七十八、七十九、八十、八十一、八十二、八十三、八十四、八十五、八十六、八十七、八十八、八十九、九十、九十一、九十二、九十三、九十四、九十五、九十六、九十七、九十八、九十九、一百。

SECTION-BY-SECTION ANALYSIS

Section 1 provides that this Act may be cited as the "Abandoned Shipwreck Act of 1987."

Section 2 contains the Congressional finding that states should have jurisdiction over and management responsibility for certain abandoned shipwrecks in state waters and submerged lands. The first finding in subsection (a) recognizes that, under the Submerged Lands Act (43 U.S.C. 1301 *et seq.*), states already have the responsibility for all living and nonliving resources in state waters and submerged lands. The second finding in subsection (b) confirms that, consistent with their existing responsibility, states also should have the responsibility for certain abandoned shipwrecks. Abandoned shipwrecks within the scope of this Act include those which have been deserted and to which the owner has relinquished all ownership rights. Except in the case of U.S. warships or other public vessels (which require an affirmative act of abandonment), the act of abandonment may be implied or inferred from the circumstances of the shipwreck as when an owner has never asserted any control over or otherwise indicated a claim of possession.

Section 3 defines the specific terms used in the Act, including "embedded," "National Register," "public lands," "shipwreck," "state" and "submerged lands." The Committee does not consider that diving equipment, normally worn by a recreational diver while exploring or viewing a shipwreck site, constitutes tools of excavation within the meaning of this term as used in the definition of "embedded." The Committee notes that, for purposes of this Act, the submerged lands of the Commonwealth of the Northern Mariana Islands include those lands three geographic miles seaward from the coastline of the Northern Mariana Islands. The term "submerged lands" set forth in section 8(f) is not intended to constitute an assertion of U.S. sovereignty under international law beyond the currently recognized U.S. territorial sea limit. Those states (Texas, Florida, and Puerto Rico) which have submerged lands extending beyond the current U.S. territorial sea limit shall exercise their jurisdiction over abandoned shipwrecks in those waters consistent with international law principles.

Section 4(a) sets forth the Congressional policy under which states are to carry out their responsibilities for abandoned shipwrecks to which title is transferred under this Act. Two of the central purposes of this Act are contained in this section: (1) to clarify that state waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups; and (2) to provide that reasonable access by the public to certain abandoned shipwrecks be permitted. It is the intent of the Committee that

states manage shipwrecks covered by Section 6 of this Act so as to protect natural resources and habitat areas, guarantee recreational exploration of shipwreck sites, and allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and the environmental integrity of the shipwrecks and their sites.

The Committee intends that states should provide sport divers with recreational access to all non-historic shipwrecks. The states can take into account human safety or the fragility of particular shipwrecks as legitimate exceptions to this policy. A State law that does not provide a method of legal recourse to individuals denied access is inconsistent with this bill and the Committee's intent. The Committee distinguishes between providing non-destructive access to shipwrecks and the salvage or collection of artifacts from historic shipwrecks. Further, it is not the intent of the Committee that states discourage private salvage of shipwrecks that is consistent with the protection of historical values and the environmental integrity of the shipwrecks and the sites.

Section 4(b) encourages states to create underwater parks or areas to provide additional protection for shipwrecks subject to this Act. Federal funds available to states from grants under the Historic Preservation Fund established under the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) shall be available to states for the study, interpretation, protection, and preservation of historic shipwrecks and properties covered by this Act. The Committee encourages states to work with sport divers to locate shipwrecks and establish underwater parks.

Section 5 authorizes the issuance of federal guidelines to encourage the development of underwater parks and to foster the administrative cooperation necessary for the comprehensive management of abandoned shipwrecks and underwater resources under this Act. The Secretary of the Interior, acting through the Director of the National Park Service, shall prepare and publish the guidelines in the Federal Register within nine months from the date of enactment of this Act. The guidelines should attempt to maximize the enhancement of underwater cultural resources; foster a partnership among sport divers, fishermen, archeologists, salvors and other interested parties; facilitate recreational access and utilization of shipwrecks; and recognize the interests of individuals and groups engaged in shipwreck discovery and salvage. The Committee encourages the Director to consider existing uses by both sport divers and archeologists in developing the guidelines.

Subsection 5(b) requires the guidelines to be developed only after consultation with all appropriate public and private sector interests, including the Secretary of Commerce (acting through the Under Secretary for Oceans and Atmosphere), the Advisory Council on Historic Preservation, sport divers, state Historic Preservation Officers, professional dive operators, salvors, archeologists, historic preservationists, and fishermen. The Committee encourages the Director of the National Park Service to form a committee of these interest groups for the purpose of assisting the Director in the development of the guidelines.

Subsection 5(c) provides that the guidelines shall be available to assist states and appropriate Federal agencies in developing legisla-

tion and regulations to carry out their responsibilities under this Act. While recognizing that the guidelines are non-binding, the Committee strongly encourages the states to act consistently with the guidelines. If an affected party believes that a state is not acting generally consistent with the guidelines, that individual should bring that fact to the state's attention and legal recourse should be provided under state law. Federal agencies also should manage their historic shipwrecks consistent with the guidelines to the extent consistent with other applicable federal law.

Section 6 defines the rights of ownership to those abandoned shipwrecks covered by this Act. Section 6(a) asserts the title of the United States to any abandoned shipwreck that is: (1) embedded in submerged lands of a state; (2) embedded in coralline formations protected by a state on submerged lands of a state; or (3) on submerged lands of a state and is included in or determined eligible for inclusion in the National Register. This assertion of title by the United States is an exercise of its recognized sovereign prerogative to assert title to abandoned shipwrecks that lie within waters of the United States. (See *Treasure Salvors, Inc., v. Unidentified, Wrecked and Abandoned Sailing Vessel*, 567 F.2d 330 (5th Cir. 1978).) The title asserted in subsection (a)(1) is also consistent with the recognized exception from the law of finds for shipwrecks embedded in submerged lands of a state. (See *Chance v. Certain Artifacts Found and Salvaged*, 606 F. Supp. 301 (S.D. Ga. 1984), *aff'd* 775 F.2d 302 (11th Cir. 1985).) The Committee intends, with respect to the second category, to cover any abandoned shipwreck that is embedded in a coral formation protected by a state such as in a state park or protected by state order or regulation. As to those shipwrecks in the third category, the Committee intends that the abandoned shipwrecks should meet the criteria for eligibility for inclusion in the National Register of Historic Places (36 CFR 60.4), but does not intend that the shipwreck must be listed formally on the Register.

Section 6(b) provides that the public shall be given adequate notice of the location of any shipwreck to which title is asserted under this section. The notice may be provided by a state or federal agency. The notice should advise the public that the wreck comes within one of the three categories of shipwrecks to which title has been asserted. The degree of specificity of the notice will depend on balancing the need to inform the public of the exact location of the shipwreck against the possible need to protect an historic shipwreck from possible vandalism. Therefore, the type of notice may vary from shipwreck to shipwreck and may be accomplished in different ways, including publication by the State of notice in local newspapers, publication in the *FEDERAL REGISTER*, the marking of nautical charts, onsite markers, or publication of notice in local diving information centers.

Except as provided under section 6(d), section 6(c) transfers title of the abandoned shipwrecks that fall within section 6(a) from the United States to the respective state in which the shipwreck is located. The transfer of title takes place immediately upon enactment of this Act and simultaneously with the U.S. assertion of title under section 6(a).

Section 6(d) contains an exception from the transfer of title to the states for any abandoned shipwreck in or on the public lands of the United States or in or on any Indian lands. The United States Government retains title, which it has asserted, to any abandoned shipwreck that is located in or on the public lands of the United States as these lands are defined in the Archaeological Resources Protection Act of 1979 (ARPA, 16 U.S.C. 470aa-470ll). The Committee encourages the National Park Service and the states to enter into management agreements for abandoned historic shipwrecks within national park boundaries. Any abandoned shipwreck located in or on any Indian lands, also as defined in the ARPA, remains the property of the Indian tribe owning such lands.

Section 6(e) preserves the rights granted to the United States and to the states under certain provisions of the Submerged Lands Act and the Rivers and Harbors Act of 1899. This provision recognizes the traditional navigational servitude reserved to the United States under these two laws.

Section 7 explains the relationship between this Act and other federal law. Section 7(a) specifies that the law of salvage and the law of finds shall not apply to abandoned shipwrecks to which title has been asserted under section 6. The law of salvage and the law of finds have been applied by federal admiralty courts to claims for the salvage of abandoned shipwrecks. Under the American law of finds, the finder of an abandoned shipwreck may be declared the owner of the wreck or its cargo; under the law of salvage, the owner retains title to the shipwreck, but, depending on certain factors, the finder may be entitled to a salvage award.

The Committee finds that these admiralty principles are not well-suited to the preservation of historic and other shipwrecks to which this Act applies. Abandoned shipwrecks covered by this Act are not considered by the Committee to be in marine peril, necessitating their recovery by salvage companies. Further, the Committee intends that states should have title to historic and certain other abandoned shipwrecks in state waters, thereby eliminating the assumption that there is no owner of these wrecks. This succession of the law of finds also recognizes that wrecks embedded in submerged lands of a state belong to the state. In light of today's experiences and conditions, the Committee does not believe that the law of finds and the law of salvage well serve the protection of our nation's maritime heritage. This heritage is best protected by states acting through their historic preservation programs consistent with federal guidance. The Committee also believes that it is acting fully within its authority under Article III, section 2, of the Constitution (the admiralty clause) and the necessary and proper clause of the Constitution by modifying admiralty law in this way. The Committee intends to carve out a limited exception from general admiralty principles for those classes of shipwrecks to which this Act applies. All other shipwrecks, including those in federal waters, remain subject to the uniform principles of admiralty law, except as may be provided in other federal law.

Section 7(b) affirms that this Act does not change the laws of the United States relating to shipwrecks, other than those to which this Act applies. The Committee notes, for example, that this Act does not change the authority of the Under Secretary for Oceans

and Atmosphere in the Commerce Department to designate and manage abandoned shipwrecks within national marine sanctuaries in state waters. The Committee encourages the Under Secretary and the states to work together to manage abandoned shipwrecks within national marine sanctuaries in state waters.

Section 7(c) provides that this Act does not affect any legal proceeding filed prior to the date of enactment of this Act.

INFLATIONARY IMPACT STATEMENT

Pursuant to the requirements of clause (2)(X)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of S. 858 will have no significant inflationary impact upon prices and costs in the operation of the national economy.

COST OF THE LEGISLATION

Clause 7(a) of Rule XIII of the House of Representatives requires a statement of the estimated cost to the United States which would be incurred in carrying out S. 858. However, under paragraph (d) of Clause 7, the provisions of (a) do not apply when the Committee has received a timely report from the Congressional Budget Office.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirements of clause (2)(X)(3)(A) of Rule XI of the Rules of the House of Representatives, no oversight findings or recommendations on the subject of S. 858 have been made by the Committee during the 100th Congress.

2. With respect to the requirements of Clause (2)(X)(3)(B) of Rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, S. 858 does not contain any new budget authority or tax exemptions.

3. With respect to the requirement of clause (2)(X)(3)(D) of Rule XI of the Rules of the House of Representatives, the Committee has received no report from the Committee on Government Operations on the subject of S. 858.

4. With respect to the requirements of clause (2)(X)(3)(C) of Rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following estimate of the cost of S. 858 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 28, 1988.

Hon. WALTER B. JONES,

Chairman, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 858, the Abandoned Shipwreck Act of 1987, as ordered reported by the Senate Committee on Merchant Marine and Fisheries on March 23, 1988. We estimate that this bill would have no

significant impact on the budget of the federal government, or of state or local governments.

S. 858 would assert federal title to certain abandoned shipwrecks and would transfer title to the state on whose submerged lands the shipwreck is located, unless the shipwreck lies within the boundaries of lands administered by the National Park Service (NPS). This bill would also direct the NPS to develop guidelines on managing shipwrecks and providing public access. Neither the NPS nor the affected states are expected to incur significant additional costs as a result of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
Acting Director.

DEPARTMENTAL REPORT

GENERAL COUNSEL OF THE
U.S. DEPARTMENT OF COMMERCE,
Washington, DC, February 17, 1988.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Commerce on S. 858, the "Abandoned Shipwreck Act of 1987."

Section 6 of S. 858 asserts title for the United States to all abandoned shipwrecks that are: (1) embedded in submerged lands of a State; (2) embedded in coralline formations protected by a State on its submerged lands; or (3) on submerged lands of a State when the shipwreck is included in, or eligible for inclusion in, the National Register of Historic Places. Except for a shipwreck located in or on the public lands of the United States, the title of the United States asserted by section 6 is then transferred by section 6 to the State in or on whose submerged lands the shipwreck is located. Section 7(a) states that the laws of salvage and finds shall not apply to shipwrecks covered by section 6. Section 7(b) states that S. 858 shall not change the laws of the United States relating to shipwrecks, other than those to which S. 858 applies.

The Department of Commerce supports enactment of S. 858 but believes it should be amended as set forth below.

Although S. 858 as passed by the Senate asserts United States title for all abandoned historic shipwrecks lying in territorial waters, it does not retain United States title for those shipwrecks of "special national significance." Further, it would not allow the United States Government to reassert title to any abandoned historic shipwreck of national significance that is discovered in territorial waters in the future. As a result, it does not adequately protect the national interest in such shipwrecks.

We have carefully examined the relationship of S. 858 to title III of the Marine Protection, Research and Sanctuaries Act (MPRSA) with respect to the protection of historic shipwrecks lying in territorial waters. Title III of the MPRSA authorizes the Secretary of

Commerce to designate discrete areas of the marine environment as national marine sanctuaries if he determines, in pertinent part, that the area is of "special national significance due to its resource and human-use values" and existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education. As most recently amended in 1984, section 303 of title III directs the Secretary to consider, among other factors, an area's historic, cultural, and archaeological significance in determining whether the area is of special national significance. Thus, the 1984 amendments provide for the designation and protection of abandoned historic shipwrecks as national marine sanctuaries if they are of "special national significance" and existing Federal and State authorities are inadequate to protect them. The National Marine Sanctuary Program has in place detailed policies and guidelines for protecting historic resources located in national marine sanctuaries.

Some abandoned historic shipwrecks located in territorial waters are within national marine sanctuaries established to protect natural and cultural resources of special national significance. Because section 7(b) specifies that S. 858 shall not change the laws of the United States relating to shipwrecks, other than those to which S. 858 applies, S. 858 would not affect the existing regulatory authority of the Secretary of Commerce under title III of the MPRSA with respect to abandoned shipwrecks on State-owned submerged lands in existing or future national marine sanctuaries. However, in the absence of a proprietary interest (i.e., United States title), questions remain as to the authority of the Secretary, under current law or under S. 858, to control the disposition of recovered historic resources of national significance. We believe that the national interest in abandoned shipwrecks of special national significance can only be fully protected if the authority of the Secretary to protect such shipwrecks within national marine sanctuaries is supported by United States title.

The United States Government could fully protect the national interest in abandoned historic shipwrecks of special national significance located in state waters if section 6 is amended in accordance with the enclosed draft language to retain title in the United States for those shipwrecks and to authorize the United States Government to reassert title to any abandoned historic shipwreck discovered in territorial waters in the future that is of sufficient national significance to merit inclusion in a future national marine sanctuary.

We have been advised by the Office of Management and Budget that there is no objection to submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

ROBERT H. BAUMLEY,
Deputy General Counsel.

Enclosure.

DEPARTMENT OF COMMERCE PROPOSED AMENDMENT TO S. 858

(a) Section 6(d) should be amended to read as follows:

"(d) **Excursion.**—Any abandoned shipwreck in or on the public lands of the United States, any abandoned shipwreck in or on the submerged lands of a State and managed by law or agreement by a Federal agency, and any abandoned shipwreck in or on the submerged lands of a State and within a national marine sanctuary established under title III of the Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. 1431 *et seq.*) is the property of the United States Government. Any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands."

(b) Section 6 should be amended further by redesignating subsection (c) as (f) and adding immediately after subsection (d) the following new subsection (e):

"(e) **REASSESSMENT OF TITLE.**—"(1) The United States may reassess title to any abandoned shipwreck that was transferred to a State under subsection (c) of this section if, after the date of enactment of this Act, the abandoned shipwreck is found to be of sufficient national significance to merit inclusion within a national marine sanctuary under the provisions of title III of the Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. 1431 *et seq.*)"

"(2) Reassessment of United States title to an abandoned shipwreck under paragraph (1) of this subsection is effective on the date designation of the national marine sanctuary becomes effective, but the reassessment is subject to any right, title or interest to such shipwreck that was granted by the State before such date by permit, contract, license, or otherwise."

U.S. DEPARTMENT OF STATE,
Washington, DC, February 19, 1988.

HON. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives.

DEAR MR. CHAIRMAN: Pursuant to your request of January 7, 1988, I am pleased to provide the Department's views on S. 858, entitled the "Abandoned Shipwreck Act of 1987." This Department has, apart from the comments below, no objections to the legislation.

As drafted, S. 858 would assert U.S. title to any abandoned shipwreck located in or on submerged lands of a State. The term "submerged lands" is defined in Section 8(f) of the draft legislation as the lands:

(1) that are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301);

(2) of Puerto Rico, as described in section 8 of the Act of March 2, 1917, as amended (48 U.S.C. 749);

(3) of Guam, the Virgin Islands and American Samoa, as described in section 1 of Public Law 93-435 (48 U.S.C. 1705); and

(4) of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Public Law 94-241 (48 U.S.C. 1681).

There is a difficulty with the definitions incorporated, at least with respect to Texas, Florida and Puerto Rico, because each of those jurisdictions has rights in submerged lands out to a distance of three marine leagues (nine nautical miles).

Notwithstanding these special rights of Texas, Florida and Puerto Rico, the United States claims only a three-nautical-mile territorial sea. The United States asserts no sovereignty seaward of that three-mile limit, even off the coasts of those jurisdictions. S. 858 would, however, assert U.S. title to abandoned shipwrecks more than three nautical miles off the Texas, Florida and Puerto Rico coasts, and title could only derive from sovereignty. This assertion cannot be supported in international law. To be sure, the areas in question fall within the U.S. exclusive economic zone (EEZ) and are part of the U.S. continental shelf. A country's sovereign rights in its EEZ and on its shelf do not, however, extend to ownership rights of objects that are not natural resources, which category does not comprise shipwrecks.

There appears to be a simple way to address this problem. That is to limit assertion of U.S. title to shipwrecks beneath "navigable waters," incorporating by reference the definition of that term in 33 U.S.C. 2316(7). Use of that definition will ensure that there is no assertion of ownership rights beyond the territorial sea.

A second matter involves vessels that, at the time of their sinking, were governmental vessels engaged in non-commercial service (generally, but not always, warships). The Department appreciates the careful manner in which S. 858 limits U.S. assertion of title to shipwrecks that are abandoned. As you know, the U.S. only abandons its sovereignty over, and title to, sunken U.S. warships by affirmative act; mere passage of time or lack of positive assertions of right are insufficient to establish such abandonment. This fact has two implications for the application of S. 858. First, we understand that the same presumption against abandonment will be accorded vessels within the U.S. territorial sea that, at the time of their sinking, were on the non-commercial service of another State. Second, S. 858 does not apply to U.S. warships sunk within the territorial sea, unless they have been affirmatively abandoned by the U.S. Government.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

With best wishes,
Sincerely,

J. EDWARD FOX,
Assistant Secretary, Legislative Affairs.

CHANGES IN EXISTING LAW

If this bill is enacted, it will make no changes in existing statutory law.

This includes the salvage of shipwrecks. Section 7 of S. 858 bro-
 gates this 200-year old tradition by specifically removing affected
 shipwrecks from the admiralty laws of salvage and finds.

Sixth, *the bill is overly expansive, applying to almost all ship-
 wrecks regardless of historical value.* The intention of the bill, as
 announced by its drafters, is to protect historic shipwrecks from de-
 struction. However, the bill sweeps much too broadly, awarding
 title to any abandoned shipwreck which is "embedded" on lands be-
 neath state waters, as well as any abandoned shipwreck on or eligi-
 ble for inclusion on the National Register of Historic Places. As
 almost any diver knows, ocean currents will drive shifting sands to
 cover items placed on the ocean floor almost immediately. There-
 fore, recent shipwrecks with no historic value are also covered by
 S. 858.

All these problems with S. 858 were identified at the Full Com-
 mittee markup, and many Members acknowledged that these are
 deficiencies that should be repaired. However, because of a percep-
 tion that if S. 858 were altered from the version passed unanimo-
 usly from the Senate, it would not again pass from that Chamber,
 none of these needed changes were made. This is shortsighted, un-
 necessarily cautious, and certainly not consistent with our respon-
 sibilities to enact the best legislation possible.

NORMAN D. SHUMWAY.
 WALLY HERGER.
 BOB DAVIS.
 NORMAN F. LENT.
 HOWARD COBLE.
 JACK FIELDS.

ADDITIONAL VIEWS OF MR. COBLE, MR. DAVIS OF MICHIGAN, MR. FIELDS, MR. HERGER, MR. LENT, AND MR. SHUMWAY ON S. 858

S. 858 is designed to address conflicting state and Federal court decisions which have created confusion over the ownership and control of abandoned shipwrecks located within state territorial waters. While S. 858, as passed by the Full Committee, may achieve this end by merely transferring title to states and abdicating any federal role with regard to shipwrecks covered by this Act, it will also create a variety of new and disturbing legal problems for these historic resources.

First, S. 858 does not guarantee reasonable access to shipwrecks by recreational divers and salvors. Despite numerous concerns expressed by recreational divers and salvors that they will be barred access to these vessels, the Committee voted down a provision which would guarantee that the states would allow benign access by these groups. By leaving the Sec. 4 provisions nonbinding, they are unenforceable and thus may not result in the uniformity sought by the bill. As a result, there is no way the Federal Government can ensure that a state will not capriciously restrict access of sport divers or other legitimate private sector interests.

Second, S. 858 does not comport with international law. Under the bill, title to shipwrecks is claimed by the U.S. (and transferred to states) in areas beyond three nautical miles off of Texas, Florida, and Puerto Rico. International law recognizes a state's management jurisdiction to non-natural resources, like shipwrecks, in this area of the oceans, but not title.

Third, this bill creates conflicts with the national Marine Sanctuary Program established under Title III of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1431-1439). Under the Federal program, the National Oceanic and Atmospheric Administration manages areas within the U.S. Exclusive Economic Zone of national significance due to their conservation, recreational, educational, ecological, historical, research, or aesthetic importance; one example of such a sanctuary is the U.S.S. Monitor, the famous Civil War vessel. Under S. 858, states would take title to any abandoned shipwreck in a National Marine Sanctuary within territorial waters. This will likely lead to conflicts between Federal sanctuary regulations and the state shipwreck program.

Fourth, abandoned shipwrecks which are retained by the United States (on public lands) need not be managed consistently with the guidelines prepared under Section 5 of the bill to balance the interests of all affected groups. In addition, these guidelines are devoid of any diving safety requirement.

Fifth, admiralty law is not respected under this bill. Under Article III, Section 2 of the U.S. Constitution, Federal district courts have original jurisdiction over all admiralty and maritime issues.

volved in our courts over centuries. The bill does so by requiring the courts to impose upon salvors new historic protection requirements to responsibly regulate the salvage activity; H.R. 2071 then requires salvors to adequately meet these requirements as a prerequisite to receiving a salvage award from the court.

My legislation also specifically allows states or Federal agencies (or anyone for that matter) to intervene in the salvage litigation as a trustee of the public interest to ensure protection of the historical and archaeological significance of these shipwrecks. This would allow, for example, a state to place an agent or employee on board a salvage vessel to monitor a salvage operation. States could also request an award of a representative sample of the artifacts or treasures recovered during salvage which otherwise are not represented in their state museums, and which are important to the preservation of the nation's or the state's cultural, historical, or scientific heritage.

With respect to sport diving access, H.R. 2071 actually goes further than leaving intact the status quo regarding access by sport divers. Specifically, H.R. 2071 provides a clear, direct Federal statement to district courts regarding access for sport divers; whereas S. 858 contains only "Sense-of-the Congress" type language regarding sport diving access.

In summary, H.R. 2071 balances the concerns of each of the major interest groups involved in this issue, and I believe is far preferable to the approach taken in S. 858 as reported by the Committee which does not achieve this appropriate balance.

NORMAN D. SHUMWAY.

○

DISSENTING VIEWS OF MR. SHUMWAY ON S. 858

While I appreciate the efforts of Mr. Bennett, who has guided S. 858 through the Merchant Marine and Fisheries Committee, I oppose the bill as written because it fails to protect the legitimate interests of all the groups affected by this bill. Simply stated, S. 858 as written does not contain any binding provisions to ensure that a state, after receiving title to the shipwrecks off its coast, will protect the right to access for the more than four million sport divers in the U.S. Nor does it contain any assurance that a state will allow private salvors to conduct salvage operations—even if the salvage operation can be conducted in a responsible fashion which ensures that the integrity of the wreck is preserved.

S. 858 as written accomplishes only one thing—and that is to unconditionally give states title to a certain class of "abandoned shipwrecks". By doing so, the bill only addresses the question of ownership of these wrecks—nothing more, nothing less.

Unfortunately, in the past, states, which have assumed they have had legal title to these wrecks but which several Federal court decisions have said otherwise, have seen fit to greatly restrict activities on shipwrecks in their state waters. Texas, for example, has legislated in essence that private salvors can not even explore for vessels—historic or otherwise. Now I am not suggesting that we should allow salvors unrestricted access once a wreck is found; however, if S. 858 as written were passed, we would likely see a situation where state regulation, to benefit state-sponsored archeology, forbids private salvage operations. Such state regimes would dramatically reduce the number of private exploration activities and, correspondingly, the number of shipwrecks discovered. How, then, by passing S. 858 are we protecting shipwrecks and promoting opportunities for learning from these historic vessels if the likely result will be state laws which create major disincentives to private efforts to discover historic shipwrecks?

It has only been in the past three years or so that the sport diving public has become aware of this proposal, and far and away the majority of the divers oppose S. 858—and the key here is that they are the one group that is by far the most affected. I have personally received hundreds of letters and post cards from divers all around the country and 99% express strong opposition to S. 858.

I believe a better approach to handling shipwrecks is embodied in H.R. 2071, legislation I introduced last year which takes positive steps to ensure that historic protection of abandoned shipwrecks will be implemented as a matter of national policy, and which protects the private sector interest in both sport diving and salvage.

Article III section 2 of the U.S. Constitution states, "The judicial power shall extend to . . . all cases of admiralty and maritime jurisdiction." H.R. 2071 builds upon, rather than abandons, a body of admiralty law which is constitutionally founded and which has en-

(16)

VI. APPENDICES

1. SELECT BIBLIOGRAPHY
2. INVENTORY OF CULTURAL RESOURCES
3. NATIONAL HISTORIC PRESERVATION ACT OF 1966,
(SECTIONS 1, 2 and 106)
4. ABANDONED SHIPWRECK ACT OF 1987

APPENDIX 1

SELECT BIBLIOGRAPHY

- Bank, Theodore P., II. "Ecology of Prehistoric Aleutian Village Sites." Ecology 34, no 2 (April 1953): 246-264.
- Beaglehole, James C., Editor. The Voyage of the "Resolution" and "Discovery", 1776-80. Vol. 3 of the Journals of Captain James Cook on His Voyages of Discovery. Cambridge University Press, 1967.
- Berkh, Vasilii Nikolaevich. Chronological History of the Discovery of the Aleutian Islands, or the Exploits of Russian Merchants. Edited by Richard A. Pierce and translated by Dmitri Krenov. Materials for the Study of Alaska History. No.5. Kingston, Ontario: The Limestone Press, 1974.
- Brown, John E. Unalaska Preliminary Development Plan. Resources Development Internship Program. Western Interstate Commission for Higher Education. September 1973.
- Calasanz, Sister Marie Joseph. The Voice of Alaska. Lachine, Quebec: Sisters of St. Anne, 1935.
- Colyer, Vincent H. Special Indian Commissioner on the Indian Tribes and Their Surroundings in the Alaska Territory from Personal Observations and Inspection. Report of the Secretary of the Interior, 1870.
- Conn, Stetson, Rose C. Engelman, and Byron Fairchild. The Western Hemisphere, Guarding the United States and Its Outposts. Washington, D.C.: Office of the Chief of Military History, Department of the Army, 1964.
- Coxe, William A.M. F.R.S. [1787}. Account of the Russian Discoveries Between Asia and America. 3rd edition. Ann Arbor: Michigan University Microfilms, 1966.
- Dall, William H. "Exploration in the Aleutian Islands and Their Vicinity". American Geographic, 5: 243-245.
- Damas, David, editor. Subarctic. Vol. 5 of Handbook of North American Indians. Edited by William C. Sturtevant. Washington, D.C.: Smithsonian Institution, 1984.
- Davydov, G.J. Two Voyages to Russian American 1802-1807. Edited by Richard A. Pierce and translated by Colin Bearne. Kingston, Ontario: The Limestone Press, 1977.
- Downs, Michael Alan. Sociocultural Change and Ethnic Identity: The Effect of the Alaska Native Claims Settlement Act in Unalaska, Alaska. Ann Arbor, Michigan: University Microfilms International, 1985.

- Dmytryshyn, Basil, E.A.P. Vaughan-Crownhart, and Thomas Vaughan, editors and translators. Russian Penetration of the North Pacific Ocean. A Documentary Record 1700-1799. Vol.2 Portland: Oregon Historical Press, 1988.
- Drewes, Harald, et al. Geology of Unalaska Island and Adjacent Insular Shelf, Aleutian Islands, Alaska. U.S. Geological Survey Bulletin. no. 1028-S. Washington, D.C.: Government Printing Office, 1961.
- Dumond, Don E. The Eskimos and the Aleuts. London: Thames and Hudson Ltd., 1977.
- Elliott, Henry W. Our Arctic Province, Alaska and the Seal Islands. New York: Charles Scribners, 1887.
- Executive Order #1733. President Taft declaring the Aleutians a National Wildlife Refuge, March 3, 1913.
- Fedorova, Svetlana G. The Russian Population in Alaska and California. Edited and translated by Richard A. Pierce and Alton S. Donnelly. Kingston, Ontario: The Limestone Press, 1973.
- Ford, John Donaldson. An American Cruiser in the East. New York: A.S. Barnes and Company, 1898.
- Healy, Captain M.A. Report on the Cruise of the Revenue Marine Steamer Corwin in the Arctic Ocean in the Year 1884. Washington, D.C.: Government Printing Office, 1889.
- Hrdlicka, Ales. The Aleutian and Commander Islands. Philadelphia: Wistar Institute of Anatomy and Biology, 1945.
- Hrdlicka, Ales. "The Exploration of Mummy Caves in the Aleutian Islands". The Scientific Monthly (January 1941): 4-23.
- Hutchinson, Isobell Wylie. "Riddle of the Aleutians". National Geographic Magazine 82, no.6, (1942), 769-792.
- Impact Assessment, Inc. Analysis of the Aleut Institutional Response and Change: 1980-1985. U.S. Department of Interior, Minerals Management Service. August 4, 1987.
- Innokentii, Father Ivan Veniaminov. [1840] Notes on the Islands of the Unalaska District. Alaska History, #27. Reprint. translated by Lydia T. Black and R.H. Geoghegan and edited by Richard A. Pierce. Published jointly by the Elmer E. Rasmuson Library Translation and The Limestone Press. 1984.

- Jennings, Jesse D. Ancient North Americans. San Francisco: W.H. Freeman and Company, 1983.
- Jochelson, Waldernar. Archeological Investigation in the Aleutian Islands. Carnegie Institute, 1925.
- Jochelson, Waldernar. "People of the Foggy Seas." Natural History 28, no.4, (1928), 413-424.
- John, Betty, compiler. Libby: The Alaska Diary and Letters of Libby Beaman, 1879-1880. Boston: Houghton Mifflin Company, 1989.
- Johnston, Samuel P., Editor. Alaska Commercial Company 1868-1940. Seattle: Alaska Commercial Company Report, 1940.
- Karig, Capt. Walter and Comdr. Eric Purdon. Battle Report, Pacific War: Middle Phase. New York: Rinehart and Company, Inc. 1947.
- Kitchener, Lois Delano. Flag Over the North: The Story of the Northern Commercial Company. Seattle: Superior Publishing Company, 1954.
- Laughlin, William S. Aleuts: Survivors of the Bering Land Bridge. New York: Holt Rinehart and Winston, 1980.
- Laughlin, William S. and Jean S. Aigner. "Aleut Adaptation and Evolution," in Prehistoric Maritime Adaptations of the Circumpolar Zone, William Fitzhugh, editor. The Hague: Mouton Publishers, 1975.
- Litke, Frederic P. A Voyage Around the World 1826-1829. Vol.1 of To Russian America and Siberia. Translated by Renee Marshall and edited by Richard A. Pierce. Kingston, Ontario: The Limestone Press, 1987.
- Lopez de Haro, Gonzalo. Spaniards and Russians Meet in Alaskan Waters, 1788: the Voyage of the Princessa and the San Carlos to Prince William Sound, Kodiak and Unalaska March to October 1788. Typescript. Translation and notes by Katrina H. Moore, January 1975. 1991: Making it Work, A guide to Public Law 100-241. 1987 Amendments to the Alaska Native Claims Settlement Act. Alaska Federation of Natives, 1988.
- Makarova, Raisa V. Russians on the Pacific 1743-1799. Edited and translated by Richard A. Pierce and Alton S. Donnelly. Kingston, Ontario: The Limestone Press.
- Morison, Samuel Eliot. The Aleutians, Gilberts and Marshalls. Volume VII of History of United States Naval Operations in World War II. Boston: Little, Brown and Company, 1962.

- Muir, John. The Cruise of the Corwin. Journal of the Arctic Expedition of 1881 in Search of DeLong and the Jeannette. Edited by William Frederic Bade. Boston: Houghton, Mifflin Company, 1917.
- Munford, James Kenneth, editor. John Ledyard's Journal of Captain Cook's Last Voyage. Corvallis, Oregon: Oregon State University Press, 1963.
- Okun, S.B. The Russian-American Company. Translated by Carl Ginsburg and edited with introduction by B.D. Grekov. New York: Farrar, Straus and Giroux, 1979.
- Pacific Coast Pilot. Coast and Islands of Alaska. USCG Survey second series. Washington, D.C.: Government Printing Office 1879.
- Petroff, Ivan. Report on the Population, Industries, and Resources of Alaska. Washington, D.C.: Government Printing Office, 1884.
- Ransom, Lt. Comdr. M.A. Sea of the Bear: Journal of a Voyage to Alaska and the Arctic, 1921. Annapolis, Maryland: United States Naval Institute, 1964.
- Report of the Commission on Wartime Relocation and Internment of Civilians. Personal Justice Denied. Washington, D.C. December 1982.
- Report on Population and Resources of Alaska at the 11th Census 1890. Washington, D.C., December 1982.
- Sarytschew, Gawrila. Account of the Voyage of the Discovery to Siberia. Richard Phillips, London, vols. 1 and 2. Translated from the Russian, 1806.
- Scidmore, Eliza Ruhamah. The Guidebook to Alaska and the Northwest Coast. London: William Heinemann, 1893.
- Scidmore, Eliza Ruhamah. Appleton's Guidebook to Alaska and the Northwest Coast. New York: Appleton, 1898.
- Schwatka, Frederick. Military Reconnaissance in Alaska: Made in 1883. Washington, D.C.: Government Printing Office, 1885.
- Shepard, Isabel Sharpe. The Cruise of the U.S. Steamer Rush in the Behring Sea. San Francisco: Bancroft, 1889.
- Starr, Frederick S., editor. Russia's American Colony. Durham, North Carolina: Duke University Press, 1987.

Surla, Jr. Leo T. Economic Potential of Alaskan Military Surplus Property, Vol II: Recommendations for the Development of Unalaska. Doxiadis-System Development Corporation, March 1970.

Tikhenev. P.A. A History of the Russian America Company. Translated and edited by Richard A. Pierce and Alton S. Donnelly. Seattle and London: University of Washington Press, 1978.

U.S. Report of the Cruise of the U.S. Revenue Cutter Bear and the Overland Expedition for the Relief of Whalers in the Arctic Ocean, From November 27, 1897 to September 7, 1898. Washington, D.C.: Government Printing Office, 1899.

Vanstone, James W. "An Early Nineteenth Century Artist in Alaska: Louis Choris and the First Kotzebue Expedition." Pacific Northwest Quarterly, 51, no.4 (1960): 145-58.

Veltre, Douglas W. and Mary J. Veltre Resource Utilization in Unalaska, Aleutian Islands, Alaska. Technical Paper #58. Alaska Department of Fish and Game, Division of Subsistence, Technical Paper Series, Oct.23, 1982.

Veltre, Douglas W. et al. An Archaeological Site Survey of Amaknak and Unalaska Islands. Alaska Division of Parks and Outdoor Recreation, Anchorage, Alaska. November 1984.

Walker, Ernest P. Alaska: America's Continental Frontier Outpost. Smithsonian Institution War Background Studies Number 13. Publication No. 3733. July 8, 1943. November 1984.

APPENDIX 2

INVENTORY OF CULTURAL RESOURCES

THE INVENTORY IS NOT COMPLETE.

APPENDIX 3

NATIONAL HISTORIC PRESERVATION ACT OF 1966, (SECTIONS 1, 2 AND 106)

National Historic Preservation Act of 1966, as amended

AN ACT to Establish a Program for the Preservation of Additional Historic Properties throughout the Nation, and for Other Purposes, Approved October 15, 1966 (Public Law 89-665; 80 STAT. 915; 16 U.S.C. 470) as amended by Public Law 91-243, Public Law 93-54, Public Law 94-422, Public Law 94-458, Public Law 96-199, Public Law 96-244, and Public Law 96-515).

Section 1 (16 U.S.C. 470)

Short title

(a) This Act may be cited as the "National Historic Preservation Act."

Purpose of the Act

(b) The Congress finds and declares that—

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Section 2 (16 U.S.C. 470-1)

Declaration of policy

It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to—

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

- (2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations;
- (3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;
- (4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;
- (5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and
- (6) assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Section 106 (16 U.S.C. 470f)

*Advisory Council on Historic Preservation,
comment on Federal undertakings*

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

Section 107 (16 U.S.C. 470g)

*Exemption of White House, Supreme
Court, and Capitol*

Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.

Section 108 (16 U.S.C. 470h)

*Establishment of Historic Preservation
Fund; authorization for appropriations*

To carry out the provisions of this Act, there is hereby established the Historic Preservation Fund (hereafter referred to as the "fund") in the Treasury of the United States.

There shall be covered into such fund \$24,400,000 for fiscal year 1977, \$100,000,000 for fiscal year 1978, \$100,000,000 for fiscal year 1979, \$150,000,000 for fiscal year 1980, \$150,000,000 for fiscal year 1981, and \$150,000,000 for each of fiscal years 1982 through 1987, from revenues due and payable to the United States under the Outer Continental Shelf Lands Act (67 Stat. 462, 469) as amended (43 U.S.C. 338) and/or under the Act of June 4, 1920 (41 Stat. 813) as amended (30 U.S.C. 191), notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Such moneys shall be used only to carry out the purposes of this Act and shall be available for expenditure only when appropriated by the Congress. Any moneys not appropriated shall remain available in the fund until appropriated for said purposes: Provided, that appropriations made pursuant to this paragraph may be made without fiscal year limitation.

Section 109 (16 U.S.C. 470h-1)

Donations to the Secretary

(a) In furtherance of the purposes of sections of this Act, the Secretary may accept the donation of funds which may be expended by him for projects to acquire, restore, preserve, or recover data from any district, building, structure, site, or object which is listed on the National Register of Historic Places established pursuant to section 101 of this Act, so long as the project is owned by a State, any unit of local government, or any nonprofit entity.

Expenditure of donated funds

(b) In expending said funds, the Secretary shall give due consideration to the following factors: the national significance of the project; its historical value to the community; the imminence of its destruction or loss; and the expressed intentions of the donor. Funds expended under this subsection shall be made available without regard to the matching requirements established by section 102 of this Act, but the recipient of such funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund established by section 108 of this Act.

*Transfer of funds donated for the National
Park Service*

(c) The Secretary is hereby authorized to transfer unobligated funds previously donated to the Secretary for purposes of the National Park Service, with the consent of the donor, and any funds so transferred shall be used or expended in accordance with the provisions of this Act.

APPENDIX 4

**ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979
WITH 1988 AMENDMENTS**

Public Law 96-95
96th Congress

An Act

To protect archaeological resources on public lands and Indian lands, and for other purposes.

Oct. 31, 1979
[H.R. 1825]*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*Archaeological
Resources
Protection Act of
1979.

SHORT TITLE

SECTION 1. This Act may be cited as the "Archaeological Resources Protection Act of 1979".

16 USC 470aa
note.

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

16 USC 470aa.

- (1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;
 - (2) these resources are increasingly endangered because of their commercial attractiveness;
 - (3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and
 - (4) there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.
- (b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act.

DEFINITIONS

SEC. 3. As used in this Act—

16 USC 470bb.

- (1) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological

context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

(2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "public lands" means—

(A) lands which are owned and administered by the United States as part of—

- (i) the national park system,
- (ii) the national wildlife refuge system, or
- (iii) the national forest system; and

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution;

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688).

(6) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

43 USC 1601
note.

EXCAVATION AND REMOVAL

Permit
application.
16 USC 470cc.

SEC. 4. (a) Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this Act, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

(b) A permit may be issued pursuant to an application under subsection (a) if the Federal land manager determines, pursuant to uniform regulations under this Act, that—

(1) the applicant is qualified, to carry out the permitted activity,

(2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest,

(3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9.

(d) Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this Act, as the Federal land manager concerned deems necessary to carry out the purposes of this Act.

(e) Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Act and other law applicable to the permitted activity.

(f) Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 6. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 7 against the permittee or upon the permittee's conviction under section 6.

(g)(1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.

(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h)(1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431-433), for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906, shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before the date of the enactment of this Act which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

(i) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917, 16 U.S.C. 470f).

(j) Upon the written request of the Governor of any State, the Federal land manager shall issue a permit, subject to the provisions of subsections (b)(3), (b)(4), (c), (e), (f), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this Act.

CUSTODY OF RESOURCES

Regulations.
16 USC 470dd.

SEC. 5. The Secretary of the Interior may promulgate regulations providing for—

(1) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archaeological resources removed from public lands and Indian lands pursuant to this Act, and

(2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 U.S.C. 469-469c) or the Act of June 8, 1906 (16 U.S.C. 431-433).

Any exchange or ultimate disposition under such regulation of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands. Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this Act.

PROHIBITED ACTS AND CRIMINAL PENALTIES

16 USC 470ee.

SEC. 6. (a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(h)(2), or the exemption contained in section 4(g)(1).

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a), or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both: *Provided, however*, That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$5,000, such person shall be fined not more than \$20,000 or impris-

oned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than \$100,000, or imprisoned not more than five years, or both.

(e) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.

(g) Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

CIVIL PENALTIES

SEC. 7. (a)(1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this Act may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

16 USC 470ff.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost of restoration and repair of the resource and the archaeological site involved.

Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed an amount equal to double the cost of restoration and repair of resources and archaeological sites damaged and double the fair market value of resources destroyed or not recovered.

(3) No penalty shall be assessed under this section for the removal of arrowheads located on the surface of the ground.

(b)(1) Any person aggrieved by an order assessing a civil penalty under subsection (a) may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty,

the Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

Subpenas.

Witness fees.

(c) Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) shall be conducted in accordance with section 554 of title 5 of the United States Code. The Federal land manager may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

REWARDS; FORFEITURE

16 USC 470gg.

SEC. 8. (a) Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay from penalties and fines collected under sections 6 and 7 an amount equal to one-half of such penalty or fine, but not to exceed \$500, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 6 occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

- (1) such person's conviction of such violation under section 6,
- (2) assessment of a civil penalty against such person under section 7 with respect to such violation, or
- (3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 6 involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 7 and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

CONFIDENTIALITY

SEC. 9. (a) Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 of the United States Code or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

16 USC 470hh.

5 USC 551.

(1) further the purposes of this Act or the Act of June 27, 1960 (16 U.S.C. 469–469c), and

(2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Notwithstanding the provisions of subsection (a), upon the written request of the Governor of any State, which request shall state—

(1) the specific site or area for which information is sought,

(2) the purpose for which such information is sought,

(3) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation,

the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor.

REGULATIONS; INTERGOVERNMENTAL COORDINATION

SEC. 10. (a) The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). Each uniform rule or regulation promulgated under this Act shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives, and no such uniform rule or regulation may take effect before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

Rules and
regulations.
16 USC 470ii.

Submittal to
congressional
committees.

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

Rules and
regulations.

COOPERATION WITH PRIVATE INDIVIDUALS

SEC. 11. The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this Act, to foster and improve the communication, cooperation, and exchange of information between—

16 USC 470jj.

(1) private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act, and

(2) Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and

professional archaeologists and associations of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this Act, make efforts to expand the archaeological data base for the archaeological resources of the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations.

SAVINGS PROVISIONS

16 USC 470kk.

SEC. 12. (a) Nothing in this Act shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock, coin, bullet, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 3(1).

(c) Nothing in this Act shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land.

REPORT

16 USC 470ll.

SEC. 13. As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 5(c) of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469-469a), the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this Act, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this Act. Such report shall include a brief summary of the actions undertaken by the Secretary under section 11 of this Act, relating to cooperation with private individuals.

Approved October 31, 1979.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-311 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 96-179 accompanying S. 490 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 125 (1979):

July 9, considered and passed House.

July 30, considered and passed Senate, amended, in lieu of S. 490.

Oct. 12, House agreed to Senate amendments with an amendment.

Oct. 17, Senate concurred in House amendment.



PUBLIC LAW 100-588 [H.R. 4068]: November 3, 1988

ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979, AMENDMENT

An Act to amend the Archaeological Resources Protection Act of 1979 to strengthen the enforcement provisions of that Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENTS TO ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979.

(a) Section 3(3) of such Act is amended by striking out the semicolon at the end thereof and substituting a period.

(b) Section 6(a) of such Act is amended by inserting after "deface" the following: "; or attempt to excavate, remove, damage, or otherwise alter or deface".

(c) Section 6(d) of such Act is amended by striking "\$5,000" and inserting in lieu thereof "\$500".

(d) Section 10 of such Act is amended by adding the following new subsection at the end thereof:

"(c) Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. Each such land manager shall submit an annual report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate regarding the actions taken under such program."

Approved November 3, 1988.

APPENDIX 5

UNALASKA HISTORIC PRESERVATION ORDINANCE

CHAPTER 2.76

HISTORIC PRESERVATION COMMISSION

SECTIONS:

<u>2.76.010</u>	<u>COMMISSION ESTABLISHMENT.</u>
<u>2.76.020</u>	<u>OFFICERS.</u>
<u>2.76.030</u>	<u>MEETINGS.</u>
<u>2.76.040</u>	<u>DUTIES.</u>
<u>2.76.050</u>	<u>SUPPORT STAFF.</u>

2.76.010 MEMBERSHIP. The Historic Preservation Commission is hereby established. Such Commission to consist of seven members who reside in the community and have demonstrated interest in, competence or knowledge of historic preservation, history, anthropology, or architecture. Those filling the professional positions of historian, anthropologist, and architect, as required by the National Park Service regulations, may reside outside the community and are ex officio members of the Commission. A professional may reside within the community and be a member of the Commission while serving in their professional capacity.

2.76.020 OFFICERS. The Historic Preservation Commission shall designate a member as its clerk.

2.76.030 MEETINGS. The Historic Preservation Commission shall meet at least twice each year.

2.76.040 DUTIES. The duties of the Historic Preservation Commission shall be as follows:

(1) Survey and inventory community historic resources. The Commission shall conduct or cause to be conducted a survey of the historic, architectural, and archeological resources within the community. The survey shall be compatible with the Alaska Heritage Resources Survey and able to be readily integrated into statewide comprehensive historic preservation planning and other planning processes. Survey and inventory documents shall be maintained and released on a need-to-know basis to protect the site location from possible vandalism. The survey will be updated at least every ten years.

(2) Review proposed nominations to the National Register of Historic Places. The Historic Preservation Commission shall review and comment to the State Historic Preservation Officer on all

proposed National Register nominations for properties within the boundaries of the community. When the Historic Preservation Commission considers a National Register nomination which is not represented on the Commission, the Commission will seek expertise in this area before rendering its decision.

(3) Provide advice and information. The Historic Preservation Commission shall act in an advisory role to other officials and Departments of local government regarding the identification and protection of local historic and archaeological resources. The Commission shall work toward the continuing education of the public regarding historic preservation and the community's history.

(4) Enforcement of state historic preservation laws. The Historic Preservation Commission shall support the enforcement of the Alaska Historic Preservation Act.

2.76.050 SUPPORT STAFF. The Department of Parks, Culture and Recreation shall provide assistance and staff support to the Historic Preservation Commission.