

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
Docket No. 10-10269J**

Odyssey Marine Exploration, Inc.
Plaintiff-Appellant

v.

The Kingdom of Spain
Defendant-Appellee.

ON APPEAL FROM THE U.S. DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
The Hon. Steven D. Merryday, Presiding

**BRIEF *AMICUS CURIAE*
OF MEMBERS OF CONGRESS ON THE
PROPER CONSTRUCTION
OF THE SUNKEN MILITARY CRAFT ACT
IN SUPPORT OF NEITHER PARTY**

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**Related cases:* This appeal is the lead case and is related to the following docketed appeals: 10-10317, 10-10318, 10-10319, 10-10320, 10-10374, 10-10375.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 10-10269-J

D.C. Docket No. 8:07-cv-00614-SDM-MAP

ODYSSEY MARINE EXPLORATION,
INC.,

Plaintiff—Appellant,

v.

KINGDOM OF SPAIN,

Claimant—Appellee. _____/

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

The undersigned counsel of record for the *Amici*, R. Jeffrey Stull, Esq., in compliance with Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, certifies that the following listed persons and parties, in addition to those named in the caption, have an interest in the outcome of this case:

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BRIEF *AMICUS CURIAE*
OF MEMBERS OF CONGRESS ON THE
PROPER CONSTRUCTION OF THE SUNKEN MILITARY CRAFT ACT

INTEREST OF *AMICI*

A group of former and current Members of Congress (“Members”) hereby submits the attached brief *amicus curiae* to inform the Court of their views concerning the proper construction of the Sunken Military Craft Act (SMCA). A complete list of Members who subscribe to this brief appears as Appendix “A” to this filing.

This brief is not submitted in support of any party in the case. Rather, its purpose is to respond to the position taken by the United States in its amicus brief before the district court, filed on September 29, 2009 (Doc. 247) (hereinafter “U.S. Br.”), with respect to crucial language in the SMCA. U.S. Br. 7-9. The Kingdom of Spain, in a supporting filing also before the district court (Doc. 236) (hereinafter “Spain Br.”), adopted a similar position as to the SMCA. Spain Br. 27-30. *Amici* expect Spain and the United States to renew these positions on appeal, and the SMCA’s proper interpretation may well be decisive for this Court’s decision.

The group of Members have each been on record as being concerned about matters of homeland security, environmental protection, and the preservation of this nation’s maritime heritage, areas that are affected by SMCA, title XIV of the

Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375, div. A, 118 Stat. 2094 (passed Oct. 8, 2004) (signed into law Oct. 28, 2004) (codified at 10 U.S.C.A. § 113 notes).¹

It is certainly appropriate for Members of Congress, individually and collectively, to express their views when questions of statutory construction have been raised in a matter of foreign policy or national security, and where the views of the legislative branch may be at variance with those of the executive.² It is particularly fitting in a case involving the construction of the SMCA where the legislation, *see* §§ 1402(a)(2), 1403(a), 1404(a), 1405(a); (App.B:1-4), contemplates the issuance of regulations by the relevant military branches in further construction and clarification of the SMCA's terms, but – nearly five years later after the SMCA's passage – no such explanatory regulations have been issued for notice and comment.

¹ For the convenience of the Court, the full text of the SMCA is reprinted as Appendix B to this brief, and will be referenced by page [“App. #”].

² For examples of such filings, *see Crosby v. National Foreign Trade Council*, 530 U.S. 363, 387 n.25 (2000), *aff'g*, 181 F.3d 38 (1st Cir. 1999) (*amici* Members of Congress filed briefs in both court of appeals and Supreme Court); *Sahu v. Union Carbide Corp.*, 548 F.3d 59, 60 (2d Cir. 2008); *Nation Magazine v. U.S. Dept. of Defense*, 762 F. Supp. 1558, 1560 (S.D.N.Y. 1991). *See also* Brief of Senator Arlen Specter, Senator Russell D. Feingold and Representative Sheila Jackson Lee as Amicus Curiae in Support of Respondents, filed in *Samantar v. Yusuf* (U.S. S. Ct. docket 08-1555) (filed Jan. 27, 2010) (discussing issues of foreign sovereign immunity).

STATEMENT OF THE ISSUES ADDRESSED BY AMICI

Whether the Sunken Military Craft Act (SMCA) is properly construed to extend its protections to vessels engaged in substantial commercial activities.

SUMMARY OF THE ARGUMENT

The United States' and Spain's interpretation that a "warship" may be engaged in substantial commercial activities – and still be entitled to sovereign immunity and protection under the Sunken Military Craft Act (SMCA), *see* U.S. Br. 8; Spain Br. 28 – is expansive and contrary to the SMCA's language, and Congress's intent for this legislation. Acceptance of this construction would be deleterious to U.S. national security, and would inappropriately expand the class of vessels rightfully entitled to protection under the SMCA.

ARGUMENT AND AUTHORITIES

Among the many issues presented for resolution in this case, it appears that a key question is what protections would be afforded to a U.S. vessel having the same characteristics and nature as the *Nuestra Señora de las Mercedes*.³ *Amici* assume, for present purposes, that the 1902 Friendship Treaty between Spain and the United States would accord to Spanish shipwrecks the same status as similarly-situated U.S. vessels.⁴ Both the United States and Spain, in their briefs filed before the district court, appear to rely on language in the Sunken Military Craft Act (SMCA), Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375, title XIV, div. A, 118 Stat. 2094 (passed Oct. 8, 2004) (signed into law Oct. 28, 2004) (codified at 10 U.S.C.A. § 113 notes), to contend that the *Mercedes* qualifies as a vessel subject to the protections of the Act. Spain argues that because the *Mercedes* was a “warship” within the meaning of the SMCA, that concludes the analysis and it is presumptively covered by the Act, irrespective of whether it was engaged in a commercial mission at the time of its

³ *Amici* take no position on the factual matter whether the site at issue here is the remains of the *Mercedes* or is too incoherent and disassociated to be regarded as a shipwreck site in any event. This brief addresses the issues as presented if the Plaintiff vessel or site – and the cargo recovered therefrom – are proven to be associated with the *Mercedes*.

⁴ *Amici* take no position on the threshold question whether the 1902 Friendship Treaty even applies in this case because of the geographic scope of the Treaty, its limitation to “vessels,” or its status as a non-self-executing treaty.

sinking. Spain Br. 28. The United States apparently agrees with this contention. U.S. Br. 8.

Amici strongly object to this argument. In our view, the SMCA requires that *any* vessel subject to its protections have been “on military noncommercial service when it sank.” SMCA § 1408(3)(A); App.B:6. We believe our reading of the SMCA is superior to that advanced by the United States and Spain, and, moreover, accords with (1) the SMCA’s text, grammar, and structure; (2) is consistent with the purposes underlying the statute, as intended by Congress; (3) is consistent with the United States Department of the Navy; and (4) avoids a construction that would be deleterious to homeland security, including environmental protection and national security interests. We will briefly discuss each of these points in turn.

1. *The Text, Grammar and Structure of the SMCA.*

The SMCA provides a definition of a “sunken military craft,” subject to its protections, in these terms:

- (3) Sunken military craft.--The term 'sunken military craft' means all or any portion of --
- (A) any sunken warship, naval auxiliary, or other vessel that was owned or operated by a government on military noncommercial service when it sank;
 - (B) any sunken military aircraft or military spacecraft that was owned or operated by a government when it sank; and
 - (C) the associated contents of a craft referred to in subparagraph (A) or (B), if title thereto has not been abandoned or transferred by the government concerned.

SMCA § 1408(3); App.B:6. The United States apparently contends that the clause – “that was owned or operated by a government on military noncommercial service when it sank” – modifies only “or other vessel” and does not impose an additional qualification for the status of a “warship” or “naval auxiliary” in SMCA section 1408(3)(A); App.B:6. *See* U.S. Br. 8-9. With great respect, *Amici* believe that such a grammatical construct of the SMCA would be bizarre and does not represent an educated interpretation. As a structural matter, if the United States’ position is correct – that the “owned or operated by a government on military noncommercial service when it sank” language only modifies the last in a sequence listing of clauses – then it would create a highly anomalous result in the next definition. Section 1408(3)(B); App.B:6, includes within the definition of “sunken military craft,” “any sunken military aircraft or military spacecraft that was owned or operated by a government when it sank.” If the U.S. construction is accepted, it would mean that “military spacecraft” would have to be shown to be “owned or operated by a government when it sank,” but not “military aircraft.” The clear intent of section 1408(3)(B); App.B:6, is that *both* military aircraft and military spacecraft are subject to the requirement that they be “owned or operated by a government when it sank.” Likewise, in section 1408(3)(A); App.B:6, the language “owned or operated by a government on military noncommercial service

when it sank” qualifies each of the antecedents: “warships,” “naval auxiliaries” and “other vessels.”

The parallel reading of SMCA sections 1408(3)(A) and 1408(3)(B); App.B:6, is sufficient to overcome the “rough” presumption of the “rule of the last antecedent.” *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003) (“a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediate follows.”); *In re Sanders*, 551 F.3d 397, 399 (6th Cir. 2008) (“rough presumption”). Many courts have departed from this presumption. *See United States v. UPS Customhouse Brokerage, Inc.*, 2009 WL 2432735, at *3 (Fed. Cir. August 11, 2009) (the United States argued against the presumption of the last antecedent, and the court agreed: “Applying this rule in the manner *UPS* suggests strains logic and grammar.”). The United States Supreme Court has indicated that the rule of the last antecedent “can assuredly be overcome by other indicia of meaning.” *Barnhart*, 540 U.S. at 26. As one federal court of appeals observed, “[w]e recognize that the rule of the last antecedent is not a rigid, exceptionless rule, but is rather an ‘aid to discovery of intent’.” *Contrans, Inc. v. Ryder Truck Rental, Inc.*, 836 F.2d 163, 167 (3d Cir. 1987) (quoting *Midboe v. State Farm Mutual Automobile Insurance Co.*, 495 Pa. 348, 433 A.2d 1342, 1343 (1981) (plurality

opinion) (quoting *Commonwealth v. Rosenbloom Finance Corp.*, 457 Pa. 496, 325 A.2d 907, 909 (1974))).

The “logic and grammar” of SMCA section 1408(3); App.B:6, clearly indicate that when Congress used the qualifying phrase “owned or operated by a government on military noncommercial service when it sank,” it was meant to qualify the status of “warships,” “naval auxiliaries” and “other vessels.”

2. *Congressional Intent.*

The fundamental objective of the SMCA was to “protect sunken United States military vessels, aircraft and spacecraft.” *Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005*, H.R. Rep. 108-491, 2004 U.S.C.C.A.N. at 359; H.R. Conf. Rep. 108-767, 2004 U.S.C.C.A.N. at 2139. The SMCA was intended to extend the same protections “to foreign military craft,” *provided* they are “located in U.S. waters.” H.R. Conf. Rep. 108-767, 2004 U.S.C.C.A.N. at 2140. The overriding condition for a craft to be protected by the SMCA is that it be “military” in function. It was not the intent of Congress to extend the SMCA’s protections to craft that were on non-military commercial service at the time of their sinking. To do so would be to inappropriately extend sovereign immunity to cover the commercial activities of foreign sovereigns, which would mean that the SMCA would be in direct conflict with the relevant

provisions of the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. § 1602 (“Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities.”). Nothing in the text or legislative history of the SMCA indicates that it was intended to repeal the relevant provisions of the FSIA.

Moreover, *Amici* would observe that, in reference to SMCA section 1408(3)(A); App.B:6, the statute nowhere further defines “warship” or “naval auxiliary.” But Congress is assumed to legislate against the backdrop of its earlier enactments. *See, e.g., Erlenbaugh v. United States*, 409 U.S. 239, 243-44 (1972); 2B Norman J. Singer & Shambie Singer, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 49:11 (7th ed. 2009). In previous statutes dealing with the character of U.S. military vessels, warships and naval auxiliaries are understood to be engaged in non-commercial missions. *See, e.g.,* 18 U.S.C. § 2280 (“ship” – for purposes of a statute dealing with violence against maritime navigation – “means a vessel of any type whatsoever . . . but does not include a warship, a ship owned or operated by a government when being used as a naval auxiliary or for customs or police purposes”); 33 U.S.C.A. § 1902(b)(1) (“Except as provided in

paragraph (2), this chapter shall not apply to – (A) a warship, naval auxiliary, or other ship owned or operated by the United States when engaged in noncommercial service.”).⁵

To construe the SMCA as Spain and the United States desire – to allow a vessel ostensibly qualifying as a “warship” or “naval auxiliary” to be covered, even if that vessel was engaged in a commercial mission at the time of its sinking – runs counter to the clear intent of Congress in legislating the SMCA. The protections of the SMCA are reserved to vessels engaged in exclusively military, non-commercial operations at the time of their sinking.

Amici understand that there is a factual dispute as to the character of the *Mercedes*’ final mission. *Amici* take no position on that factual question; that is for the trial court’s determination. But if that court finds that if more than two-thirds of the *Mercedes*’ cargo was privately owned and consigned, and that the vessel

⁵ *Amici* note that in recent, proposed legislation, the administration has adopted a definition of “naval auxiliary” as meaning “a vessel, other than a warship, that is owned by or under the exclusive control of a uniformed service and used at the time of the [incident] . . . for government, non-commercial service, including combat logistics force vessels, pre-positioned vessels, special mission vessels, or vessels exclusively used to transport military supplies and materials.” Reauthorization of Coral Reef Conservation Act of 2000, S. 2859, section 16 (amending section 14(b)(2) of the 2000 Act) (introduced Dec. 9, 2009). This formulation clearly indicates that naval auxiliaries must be used for “government, non-commercial service,” and such only applies if the vessel is “*exclusively* used to transport military supplies and materials.” *Id.* (emphasis added).

was being used to convey passengers and cargo in exchange for a fee, then it seems clear that the *Mercedes* was not engaged “on military noncommercial service when it sank,” as required by the SMCA.⁶

3. *Position of the United States Navy.*

Chapter 2 of the July 2007 edition of The Commander’s Handbook on the Law of Naval Operations, issued by the Department of the Navy, the Office of the Chief of Naval Operations, Headquarters, U.S. Marine Corps, the Department of Homeland Security and the U.S. Coast Guard, at NWP 1-14M/MCWP 5-2.1/COMDTPUB P5800.7A, “sets out those fundamental principles of international and domestic law that govern U.S. naval operations at sea.” (The text is available online at [http://www.nwc.navy.mil/cnws/ild/documents/1-14M_\(Jul_2007_\(NWP\)\).pdf](http://www.nwc.navy.mil/cnws/ild/documents/1-14M_(Jul_2007_(NWP)).pdf).)

This publication addresses the international status of warships, naval craft and military aircraft. Section 2.1.1 provides a definition of sovereign immunity, which reads in part as follows: “As a matter of customary international law, *all* vessels owned or operated by a state, and used, for the time being, *only* on

⁶ *Amici* do not suggest that a single commercial shipment on board a vessel would disqualify it from protection under the SMCA. But *Amici* do contend that if a vessel’s commercial mission was substantial, and such facts are found by a trial court, then the *Mercedes* would fail the SMCA’s “military noncommercial service” requirement.

government noncommercial service are entitled to sovereign immunity The United States asserts the principle of sovereign immunity for all United States ship (USS) and United States Coast Guard cutter (USCGC) vessels described below.”⁷ (Emphasis added).

The section on warships does not discuss the possibility of U.S. warships being on commercial service. However, the discussion of auxiliary vessels in section 2.3.1 includes the following statement: “Auxiliary vessels are vessels, other than warships, that are owned by or under the exclusive control of the armed forces. *Because they are State owned or operated and used for the time being only on government noncommercial service, auxiliary vessels enjoy sovereign immunity*” (Emphasis added.)

The Director of Naval Intelligence recently issued revised instructions on clearance procedures for visits to U.S. ports by foreign naval and public vessels, i.e., those foreign vessels entitled to sovereign immunity. The instruction expressly limits its application to warships and foreign public vessels on non-commercial service. It excludes warships carrying commercial cargo or passengers for hire, thereby indicating that visits to U.S. ports by such vessels will be handled as if they were ordinary merchant ships not entitled to sovereign immunity (and

⁷ This paragraph is new in the Commander’s Handbook. It was not included in the first edition, NWP 9 (July 1987).

subject to boarding and inspection by the U.S. Coast Guard, U.S. Customs and the Environmental Protection Agency).

For the purpose of OPNAV Instruction 3128.10G, 9 June 2008, paragraph 4.a, initially defines a “foreign naval vessel” in traditional terms defining a warship: “Any ship belonging to the armed forces of a foreign state, bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline” However, the definition adds the following conditions: “*and engaged solely in government service, not carrying commercial cargo or passengers for hire*” (emphasis added). Thus, for the purposes of regulating visits of foreign warships to United States ports, the position of the United States Navy is that a warship may not be engaging in commercial activities if it is to retain its immunities.

The position of the United States Navy, as exhibited in the foregoing documents, is completely consistent with the intent of Congress: that the protections of the SMCA are reserved to vessels engaged in exclusively military, non-commercial operations at the time of their sinking.

4. *Avoiding a Deleterious Construction.*

Lastly, *Amici* would observe that if the United States' construction of the SMCA was accepted, it could result in a precedent highly deleterious to homeland security. Essentially, the United States and Spain argue that if a foreign sovereign simply declares a vessel to be a "warship," that is enough, and it is covered by the SMCA and enjoys the benefits of sovereign immunity, including immunity from salvage or recovery. Aside from the obvious point that this would unreasonably extend the SMCA's protections to commercial vessels or cargoes that were never meant to be immunized from salvage, there are profound national security and environmental protection implications to the United States' position.

What if a foreign government-owned vessel, denominated as a "warship" or "naval auxiliary" by that country, entered a busy U.S. port (Tampa, perhaps) and because of an error of its navigation, sank and blocked shipping channels or spilled oil or other hazardous and noxious substances into the environment.⁸ Even if that

⁸ *Amici* are hardly extravagant in propounding this scenario. This was precisely the situation in the 1989 *Presidente Rivera* incident, in which the U.S. government correctly took the position that the Uruguayan naval auxiliary (carrying oil on a commercial charter to a U.S. port) was not sovereign immune because it was engaged in a commercial activity. See *Immunity of Uruguayan Oil Tanker Presidente Rivera*, DIGEST OF U.S. PRACTICE IN INTERNATIONAL LAW (1989-90), at 3, available at <http://www.state.gov/documents/organization/28486.pdf> (July 13, 1989) ("The *Presidente Rivera* is properly characterized, at the time of its grounding, as a government ship operated for commercial purposes

vessel was engaged in a commercial mission at the time of its sinking, according to United States’ construction of the SMCA, no private salvage could occur to clear the wreck or contain the environmental contamination on the vessel. While the SMCA includes a reservation clause for the Coast Guard’s criminal enforcement powers, *see* section 1406(g); App.B:5, that does not speak to other response actions that are traditionally engaged in by the private sector. In short, the United States’ construction of the SMCA exposes this country to possible homeland security threats – whether intentional in planning, or merely negligent in occurrence – and complicates response to those threats if they eventuate.

Whatever the wisdom of extending reciprocal benefits for the protection of sunken military craft and our nautical heritage, it should not come at the cost of distorting the text of the SMCA and Congress’s intent in legislating that statute. It certainly should not come at the expense of homeland security.

CONCLUSION

Properly construed, the SMCA’s protections do not extend to vessels (whether denominated as “warships,” “naval auxiliaries” or “other vessels”), which are engaged in substantial “commercial service” at the time of their sinking.

and engaged in commercial activity, and not as a warship.”). *Amici* are at a loss why this precedent – which was certainly material in Congress’s deliberations of the SMCA – would now be renounced.

Carrying private passengers and commercial cargo for freight, payable to the government, should not be construed as “military non-commercial service” such as to bring a vessel within the protections of the SMCA. Any other interpretation would be contrary to the clear language of the SMCA, the position of the United States Navy and Congress’s intent in legislating that statute.

Respectfully submitted,

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Submitted: May 14, 2010

FRAP 32(a)(7) CERTIFICATE OF COMPLIANCE

The applicable portions of this brief are proportionately spaced, has a typeface of 14 points or more, and contains 2,964 words, and were otherwise prepared in compliance with 11th Cir. R. 32-4.

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Submitted: May 14, 2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 14, 2010, a true and correct copy of this document has been served by U.S. Mail to those on the attached Service List.

/s/ R. Jeffrey Stull
R. Jeffrey Stull, F.B.N. 241008

10-10269-J
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APPENDIX A

List of *Amicus Curiae*

/s/ Gus M. Bilirakis

Gus M. Bilirakis
Member of Congress

/s/ Vern Buchanan

Vern Buchanan
Member of Congress

/s/ Connie Mack

Connie Mack
Member of Congress

/s/ C.W. Bill Young

C.W. Bill Young
Member of Congress

/s/ Thomas Rooney

Thomas Rooney
Member of Congress

/s/ Thaddeus McCotter

Thaddeus McCotter
Member of Congress

/s/ Robin M. Tallon

Robin M. Tallon
Former Member of Congress

APPENDIX B

TEXT OF SUNKEN MILITARY CRAFT ACT (SMCA)

Pub.L. 108-375, Div. A, Title XIV, §§ 1401 to 1408, Oct. 28, 2004, 118 Stat. 2094, provided that:

Sec. 1401. Preservation of title to sunken military craft and associated contents.

Right, title, and interest of the United States in and to any United States sunken military craft--

- (1) shall not be extinguished except by an express divestiture of title by the United States; and
- (2) shall not be extinguished by the passage of time, regardless of when the sunken military craft sank.

Sec. 1402. Prohibitions.

(a) Unauthorized activities directed at sunken military craft.--No person shall engage in or attempt to engage in any activity directed at a sunken military craft that disturbs, removes, or injures any sunken military craft, except--

- (1) as authorized by a permit under this title;
- (2) as authorized by regulations issued under this title; or
- (3) as otherwise authorized by law.

(b) Possession of sunken military craft.--No person may possess, disturb, remove, or injure any sunken military craft in violation of--

- (1) this section; or
- (2) any prohibition, rule, regulation, ordinance, or permit that applies under any other applicable law.

(c) Limitations on application.--

(1) Actions by United States.--This section shall not apply to actions taken by, or at the direction of, the United States.

(2) Foreign persons.--This section shall not apply to any action by a person who is not a citizen, national, or resident alien of the United States, except in accordance with--

(A) generally recognized principles of international law;

(B) an agreement between the United States and the foreign country of which the person is a citizen; or

(C) in the case of an individual who is a crew member or other individual on a foreign vessel or foreign aircraft, an agreement between the United States and the flag State of the foreign vessel or aircraft that applies to the individual.

(3) Loan of sunken military craft.--This section does not prohibit the loan of United States sunken military craft in accordance with regulations issued by the Secretary concerned.

Sec. 1403. Permits.

(a) In general.--The Secretary concerned may issue a permit authorizing a person to engage in an activity otherwise prohibited by section 1402 with respect to a United States sunken military craft, for archaeological, historical, or educational purposes, in accordance with regulations issued by such Secretary that implement this section.

(b) Consistency with other laws.--The Secretary concerned shall require that any activity carried out under a permit issued by such Secretary under this section must be consistent with all requirements and restrictions that apply under any other provision of Federal law.

(c) Consultation.--In carrying out this section (including the issuance after the date of the enactment of this Act [Oct. 28, 2004] of regulations implementing this section), the Secretary concerned shall consult with the head of each Federal agency having authority under Federal law with respect to activities directed at sunken military craft or the locations of such craft.

(d) Application to foreign craft.--At the request of any foreign State, the Secretary of the Navy, in consultation with the Secretary of State, may carry out this section (including regulations promulgated pursuant to this section) with respect to any foreign sunken military craft of that foreign State located in United States waters.

Sec. 1404. Penalties.

(a) In general.--Any person who violates this title, or any regulation or permit issued under this title, shall be liable to the United States for a civil penalty under this section.

(b) Assessment and amount.--The Secretary concerned may assess a civil penalty under this section, after notice and an opportunity for a hearing, of not more than \$100,000 for each violation.

(c) Continuing violations.--Each day of a continued violation of this title or a regulation or permit issued under this title shall constitute a separate violation for purposes of this section.

(d) In rem liability.--A vessel used to violate this title shall be liable in rem for a penalty under this section for such violation.

(e) Other relief.--If the Secretary concerned determines that there is an imminent risk of disturbance of, removal of, or injury to any sunken military craft, or that there has been actual disturbance of, removal of, or injury to a sunken military craft, the Attorney General, upon request of the Secretary concerned, may seek such relief as may be necessary to abate such risk or actual disturbance, removal, or injury and to return or restore the sunken military craft. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.

(f) Limitations.--An action to enforce a violation of section 1402 or any regulation or permit issued under this title may not be brought more than 8 years after the date on which--

(1) all facts material to the right of action are known or should have been

known by the Secretary concerned; and

(2) the defendant is subject to the jurisdiction of the appropriate district court of the United States or administrative forum.

Sec. 1405. Liability for damages.

(a) In general.--Any person who engages in an activity in violation of section 1402 or any regulation or permit issued under this title that disturbs, removes, or injures any United States sunken military craft shall pay the United States enforcement costs and damages resulting from such disturbance, removal, or injury.

(b) Included damages.--Damages referred to in subsection (a) may include--

(1) the reasonable costs incurred in storage, restoration, care, maintenance, conservation, and curation of any sunken military craft that is disturbed, removed, or injured in violation of section 1402 or any regulation or permit issued under this title; and

(2) the cost of retrieving, from the site where the sunken military craft was disturbed, removed, or injured, any information of an archaeological, historical, or cultural nature.

Sec. 1406. Relationship to other laws.

(a) In general.--Except to the extent that an activity is undertaken as a subterfuge for activities prohibited by this title, nothing in this title is intended to affect--

(1) any activity that is not directed at a sunken military craft; or

(2) The traditional high seas freedoms of navigation, including--

(A) the laying of submarine cables and pipelines;

(B) operation of vessels;

(C) fishing; or

(D) other internationally lawful uses of the sea related to such freedoms.

(b) International law.--This title and any regulations implementing this title shall

be applied in accordance with generally recognized principles of international law and in accordance with the treaties, conventions, and other agreements to which the United States is a party.

(c) Law of finds.--The law of finds shall not apply to--

- (1) any United States sunken military craft, wherever located; or
- (2) any foreign sunken military craft located in United States waters.

(d) Law of salvage.--No salvage rights or awards shall be granted with respect to--

- (1) any United States sunken military craft without the express permission of the United States; or
- (2) any foreign sunken military craft located in United States waters without the express permission of the relevant foreign state.

(e) Law of capture or prize.--Nothing in this title is intended to alter the international law of capture or prize with respect to sunken military craft.

(f) Limitation of liability.--Nothing in sections 4281 through 4287 and 4289 of the Revised Statutes (46 U.S.C. App. 181 et seq.) or section 3 of the Act of February 13, 1893 (chapter 105; 27 Stat. 445; 46 U.S.C. App. 192), shall limit the liability of any person under this section.

(g) Authorities of the Commandant of the Coast Guard.--Nothing in this title is intended to preclude or limit the application of any other law enforcement authorities of the Commandant of the Coast Guard.

(h) Prior delegations, authorizations, and related regulations.--Nothing in this title shall invalidate any prior delegation, authorization, or related regulation that is consistent with this title.

(i) Criminal law.--Nothing in this title is intended to prevent the United States from pursuing criminal sanctions for plundering of wrecks, larceny of Government property, or violation of any applicable criminal law.

Sec. 1407. Encouragement of agreements with foreign countries.

The Secretary of State, in consultation with the Secretary of Defense, is encouraged to negotiate and conclude bilateral and multilateral agreements with foreign countries with regard to sunken military craft consistent with this title.

Sec. 1408. Definitions.

In this title:

- (1) Associated contents.--The term 'associated contents' means--
 - (A) the equipment, cargo, and contents of a sunken military craft that are within its debris field; and
 - (B) the remains and personal effects of the crew and passengers of a sunken military craft that are within its debris field.
- (2) Secretary concerned.--The term 'Secretary concerned' means--
 - (A) subject to subparagraph (B), the Secretary of a military department; and
 - (B) in the case of a Coast Guard vessel, the Secretary of the Department in which the Coast Guard is operating.
- (3) Sunken military craft.--The term 'sunken military craft' means all or any portion of--
 - (A) any sunken warship, naval auxiliary, or other vessel that was owned or operated by a government on military noncommercial service when it sank;
 - (B) any sunken military aircraft or military spacecraft that was owned or operated by a government when it sank; and
 - (C) the associated contents of a craft referred to in subparagraph (A) or (B), if title thereto has not been abandoned or transferred by the government concerned.
- (4) United States contiguous zone.--The term 'United States contiguous zone' means the contiguous zone of the United States under Presidential Proclamation 7219, dated September 2, 1999.

(5) United States internal waters.--The term 'United States internal waters' means all waters of the United States on the landward side of the baseline from which the breadth of the United States territorial sea is measured.

(6) United States territorial sea.--The term 'United States territorial sea' means the waters of the United States territorial sea under Presidential Proclamation 5928, dated December 27, 1988.

(7) United States waters.--The term 'United States waters' means United States internal waters, the United States territorial sea, and the United States contiguous zone.