



NATIONAL TRUST
for HISTORIC PRESERVATION

December 23, 2002

Hon. Admiral James D. Watkins, USN (Ret.), Chairman
U.S. Commission on Ocean Policy
1120 20th Street, NW
Suite 200 North
Washington, D.C. 20036

Re: U.S. Commission on Ocean Policy on the Protection of Submerged Cultural Resources

Dear Chairman Watkins:

The National Trust for Historic Preservation in the United States (National Trust) is pleased to submit the following comments to the U.S. Commission on Ocean Policy concerning the management of our country's submerged cultural resources.

The National Trust was chartered by Congress in 1949 as a private charitable, educational, and nonprofit organization to "facilitate public participation in the preservation of sites, buildings and objects significant in American history and culture." 16 U.S.C. §§ 461, 468. The National Trust has grown to include more than 250,000 individual members and approximately 3,500 member organizations, as well as operating seven regional and field offices.

The National Trust has a strong interest in the preservation of submerged cultural resources for their historical, archaeological, scientific, and cultural value. The National Trust, for example, strongly supported enactment of the Abandoned Shipwreck Act of 1987, and has played a key role in litigation to defend the constitutionality of the Act over the years.

Technological advances in recent years, such as improvements in SCUBA technology and the development of side-scan sonar and remote-controlled submersible vessels, has led to the discovery of submerged cultural resources—in particular historic shipwrecks—on a much greater scale than ever before envisioned. Technological advances have improved the ability of archaeologists and historians to gain access to and to excavate these sites, uncovering vast information about maritime history and culture and making this information available for public interpretation. On the other hand, technological advances have also enabled others to gain access to these sites, including many individuals and entities who are not committed to protecting these resources as cultural resources.

The National Trust seeks to ensure that these fragile and irreplaceable resources are appropriately preserved and protected as cultural and archaeological sites for the public benefit, rather than solely as commercially exploitable or disposable property. The study of these sites is

Protecting the Irreplaceable



extremely important, as they provide valuable information about maritime history and technology, international and regional trade, and cultural contacts. It is imperative that these important resources be protected and carefully excavated in a regulated scientific manner so that the information they contain will not be lost, but will be preserved for public benefit.

The National Trust strongly urges the U.S. Commission on Ocean Policy to promote stronger federal policies to protect and manage submerged cultural resources. In particular, we would like to point out some issues that should be addressed by this Commission:

- We urge the Commission to promote federal policies to strengthen the management and protection of submerged cultural resources within the jurisdiction of the United States. Currently, the Abandoned Shipwreck Act of 1987, 43 U.S.C. §§ 2101-2106 (“ASA”), provides for protection of shipwrecks within state jurisdictional waters, which leaves shipwrecks located outside of this jurisdictional limit without protection. Management and protection of these submerged cultural resources, including shipwrecks, beyond state territorial waters must be expanded through the Contiguous Zone and the Exclusive Economic Zone.
- We urge the Commission to identify ways to protect resources that have been identified under other federal laws, and may be subject to exploitation. Under Section 106 of the National Historic Preservation Act (NHPA) federal agencies must consider the effects their actions will have on historic resources that are eligible for inclusion in the National Register of Historic Places before proceeding. For example, the Mineral Management Service (MMS) manages the exploration and development of mineral resources on the Outer Continental Shelf (OCS) and issues leases for oil and gas development in this area. Under Section 106, MMS must conduct a survey of the historic resources within the area of potential effect and identify submerged cultural resources that may be adversely impacted before allowing oil and gas development to proceed. The MMS has the authority to require its lessee to avoid or mitigate submerged cultural resources that may be adversely affected, but it does not have the authority to prevent other, independent third parties, from exploiting and looting these resources after they have been identified. This puts the agency in a very awkward position of being required to identify resources but not being able to prevent their removal or mistreatment.
- The United States should strengthen its international position in this area by ratifying the United Nations Education, Scientific and Cultural Organization (UNESCO) Convention on the Protection of the Underwater Cultural Heritage. Due to the degradation of the world’s submerged cultural resources, the United Nations established a Commission to address the pressing need to “adopt a universal legal instrument to preserve the

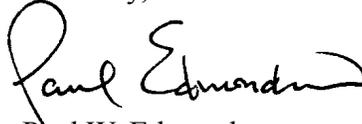
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underwater cultural heritage in the interest of humanity as a whole.” The treaty’s intent is to prohibit commercial exploitation of submerged cultural resources through international cooperation, and to impose sanctions for violations. The international treaty was adopted in November 2001 by the 31st General Conference of the United Nations; many member states have already ratified this agreement.

The National Trust appreciates the opportunity to comment on the importance of protecting submerged cultural resources. Without proper regulation, the commercial salvage of submerged cultural resources can easily result in the loss or destruction of priceless historical and archaeological resources. Once lost, these resources can never be recovered or replaced. We urge the U.S. Commission on Ocean Policy to promote the adoption and implementation of federal policies that will better protect and manage these resources.

If we can provide you with additional information or otherwise be of assistance in the development of the final report, please contact Anita Canovas of my staff at 202-588-6035.

Sincerely,

A handwritten signature in black ink that reads "Paul Edmondson". The signature is written in a cursive style with a large initial "P" and "E".

Paul W. Edmondson
Vice President and General Counsel

PWE/ac