Extending Admiralty Jurisdiction over Nonmaritime Property: Ascertaining the Salvor's Possessory and Proprietary Rights to Sunken Aircraft

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Extending Admiralty Jurisdiction over Nonmaritime Property: Ascertaining the Salvor’s Possessory and Proprietary Rights to Sunken Aircraft

In the last few years an increasing interest has emerged in the preservation of World War I and II aircraft. These monuments of an unforgettable era are sought by numerous private collectors and museums throughout the country. Every possible source is being investigated because demand for these aircraft far exceeds the supply available. In reaction to this scarcity, professional salvors have turned to the sea in search of these historical relics.

On August 11, 1983, after two years of extensive surveying and research, a salvage crew pulled a mud-caked Navy Corsair fighter plane out of the depths of Lake Washington near the Sand Point Naval Air Station in Seattle, Washington. The Corsair was one of six planes located by the salvage crew. This particular plane had sunk

1. Twenty-one museums are authorized by the Navy alone to display restored military aircraft. Conversation with Gary Larkin, President of Air-Marine Salvage, Jan. 9, 1984 (notes on file at the Pacific Law Journal) [hereinafter cited as Conversation].
2. With respect to Navy aircraft alone, 33 planes are requested by the 21 museums authorized to display naval aircraft. See Conversation, supra note 1.
3. See id.
4. Corsair has been defined as a pirate, a privateer, or a pirate ship. See WEBSTER’s THIRD NEW INTERNATIONAL DICTIONARY 513 (1971). The Navy began accepting shipments of Corsairs in the early 1940’s. The Corsair was designed primarily as a carrier fighter plane, although many were flown from land bases. See B. THIEMAN, CORSAIR, THE F4U IN WORLD WAR II AND KOREA 7-8 (2nd ed. 1982). The plane can be distinguished by its collapsible or bent wing. Id. at 3. The Corsair has a wing span of 41 feet; however, the span is reduced to 17 feet when the wings are folded. The Corsair’s length is a mere 33 feet and it stands only 16 feet high. Other specifications include an empty weight of 9,205 pounds, an engine rating of 2,000 h.p., a top speed of 446 miles per hour at 26,200 feet, and a cruise speed of 215 miles per hour. The Corsair has a range of 1,005 statute miles and boasts a standard armament of six .50 caliber machine guns and eight 5-inch rockets. As of 1974, a total of 62 Corsairs (including F4Us, FGs, F2Gs, and AUs) were known to exist. As of 1978, 15 Corsairs were licensed as airworthy. Id. at 196.
approximately 300 yards offshore shortly after it crashed on Lake Washington on July 29, 1950, following a midair collision.\(^7\)

Despite having spent thirty-three years 150 feet below the surface of the lake, the single-seat FG-1D was in remarkable condition.\(^8\) Salvage crews worked unceasingly for a week carefully raising the sunken aircraft from its marinal resting place.\(^9\) For Air Marine Salvage, the California firm responsible for the discovery and subsequent salvage of the aircraft, however, the two year salvage operation was plagued with setbacks and bureaucratic intervention.\(^10\) Air Marine Salvage now must confront a number of legal problems.

Although the six planes in Lake Washington have rested on the bottom of the lake for nearly forty years and appear to have been abandoned, the Navy asserts that it has retained ownership of the aircraft.\(^11\) Consequently, the Navy has assumed complete control over the salvage, restoration, and relocation of the sunken aircraft.\(^12\) If the need arises, the Navy asserts that it will enjoin the salvage of the airplane.\(^13\)

The resistance displayed by the Navy typifies the perplexity faced by salvors who seek to rescue sunken aircraft. Generally, salvors of sunken aircraft confront three distinct legal problems. First, the salvor must ascertain objectively whether the sunken property has been abandoned.\(^14\) This distinction ultimately will affect the rights to title of the aircraft.\(^15\) Under the maritime law of finds, most courts grant title to the salvor of lost, abandoned, or derelict property.\(^16\) If abandonment cannot be shown, however, the salvor merely holds possessory rights subject to the superior rights of the owner. Inclusive in these possessory rights is a maritime lien that entitles the salvor to a salvage award as compensation for services rendered in preserving the property.\(^17\) Second, if the sunken property is located within the ter-

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9. Id. at A1, col. 3.
10. See Conversation, supra note 1.
12. Id.; see also Correspondence between Department of the Navy and Admiral Holloway, Ret., President of the Association of Naval Aviation, Inc. (this letter dealt with the disposition of two of the planes located in Lake Washington, the provisions of the salvage arrangement with Air-Marine, and a waiver of liability) (copy on file at the Pacific Law Journal).
13. See Conversation, supra note 1. In Michigan, for example, the Navy had the salvor of a sunken airplane recovered from Lake Michigan arrested and imprisoned by the Federal Bureau of Investigation for stealing United States government property. Id.
14. See infra notes 42-64 and accompanying text.
15. See infra notes 173-224 and accompanying text.
16. See infra notes 207-24 and accompanying text.
17. See infra notes 175-206 and accompanying text.
ritorial boundaries of the state, the state may assert superior rights to title based upon statute or British Crown prerogatives inherited by the state in its capacity as a sovereign. Since few cases dealing with sunken aircraft have been reported, this issue has not arisen in the present context. Salvors of sunken vessels, however, have been faced with intervention by states on these grounds. Eventually, salvors of aircraft sunken within the boundaries of a state will have to face this problem. Third, the federal government has also asserted superior rights to abandoned property brought to shore by American citizens. This problem is compounded when the abandoned property originally belonged to the United States Government. Allegedly, the salvor must present stronger evidence of abandonment when federal property is at issue than when the property had been held privately.

A distinct legal problem is faced by salvors of sunken aircraft. To apply the maritime doctrine of salvage and the law of finds, aircraft must fit within the admiralty jurisdiction of the federal court. If the court determines that aircraft have no place in admiralty law, the rights of the salvor necessarily will be governed by common-law principles of abandonment and lost property.

The uncertainty in this area of the law has confounded salvors seeking to recover aircraft sunken at sea. To avoid legal pitfalls, they have refrained from pursuing salvage operations that otherwise would have contributed to the preservation of historical relics of great significance. The purpose of this comment is to discuss the relevant legal problems confronted by salvors of sunken aircraft and clarify the remedies available to salvors who engage in the beneficial activity of recovering historic property lost at sea. The legal rights to abandoned property are well established in the common law. When personality has been abandoned, ownership or title to the property rests in the person who first lawfully appropriates and reduces it to posses-

18. See infra notes 225-51 and accompanying text.
19. See infra notes 225-73 and accompanying text.
20. See infra notes 274-85 and accompanying text. This potential problem is evidenced by the recent action taken by the State of Alaska. The United States Air Force expressly has manifested that it no longer holds title to aircraft that have been wrecked, lost, or abandoned for a period exceeding five years, nor does it assert the right to pass title to these aircraft. See Conversation, supra note 1. In response to this manifestation, the State of Alaska has declared over 100 abandoned airplanes stranded on the Aleutian Islands off the coast of Alaska to be state historical monuments. Id. Alaska claims a possessory right or title to these planes as a prerogative of the state in its sovereign capacity. Id.
21. See infra notes 286-301 and accompanying text.
22. See infra notes 286-99 and accompanying text.
23. See infra notes 95-172 and accompanying text.
24. See infra notes 42-94 and accompanying text.
25. See infra notes 42-65 and accompanying text.
sion with the intent to become its owner. If the property merely has been lost, rather than abandoned, the finder, through adherence to provisions under statutory law, may obtain title to the lost goods under certain circumstances. This comment will demonstrate that these doctrines of abandonment and lost property may provide viable remedies for one who discovers and rescues sunken aircraft.

The author will focus primarily upon the rights under admiralty law of the finder of abandoned aircraft. Although adequate common-law remedies are available, maritime doctrines provide much more advantageous remedies to the salvor. To apply these more desirable remedies under the maritime law of salvage, courts must recognize sunken land-based aircraft as objects subject to the admiralty jurisdiction of the federal courts. This author will assert that the Supreme Court holding in Executive Jet Aviation v. City of Cleveland, which excludes aircraft from admiralty jurisdiction, is limited to cases involving aviation tort claims, and consequently, is not controlling for purposes of salvage. In determining admiralty jurisdiction, courts should not be constrained to a categorization of the object salved as “maritime in nature,” but rather should consider whether the property has been lost in navigable waters from which it was salved for the benefit of its owner. After establishing that sunken aircraft are proper objects of admiralty courts, this author will suggest that two alternative remedies are present for the finder of sunken aircraft, one based on a reward for salvage services and one based on the acquisition of title under the maritime law of finds. A discussion will be included regarding any superior rights to title of sunken aircraft possessed by the state and federal governments, either by statute or by common-law crown prerogatives in their sovereign capacities.

The greatest demand for the preservation of aircraft lies in vintage war planes; therefore, this author will emphasize the application of the law to aircraft specifically owned, or once owned, by the United States Government.

26. See infra notes 54-65 and accompanying text.
27. See infra notes 66-94 and accompanying text.
28. See infra notes 42-94 and accompanying text.
29. See infra notes 95-224 and accompanying text.
30. See id.
31. See infra notes 95-172 and accompanying text.
32. See infra notes 139-72 and accompanying text.
33. See infra notes 103-72 and accompanying text.
34. See infra notes 173-206 and accompanying text.
35. See infra notes 207-24 and accompanying text.
36. See infra notes 225-73 and accompanying text.
37. See infra notes 274-301 and accompanying text.
38. See infra notes 225-301 and accompanying text.
A discussion of the common-law principle of abandonment will be necessary for an adequate resolution of the salvor’s problem. For the salvor to obtain title to the sunken aircraft under the maritime law of finds, a determination first must be made that the aircraft was abandoned by the owner. In addition, if the court later determines that an airplane is not a proper subject of the admiralty jurisdiction of the court, the salvor will be forced to seek an alternative remedy under the common law of abandonment. This comment, therefore, will begin with an examination of the common-law doctrine of abandonment.

**COMMON-LAW DOCTRINE OF ABANDONMENT**

Abandonment is the intentional relinquishment of property. An owner abandons an airplane by voluntarily giving up the property because he no longer desires to possess it or to assert any right or dominion over it. Moreover, the owner must be entirely indifferent to what may become of the aircraft or who may possess it thereafter. The essential elements of abandonment are the intention to abandon and the external act by which the abandonment is carried into effect. To constitute an abandonment at law, these two elements must concur. Importantly, the question of abandonment turns on intent as determined in light of all the circumstances.

Relinquishment of the aircraft must be voluntary. The owner must form the intent to abandon the aircraft without being pressed by any duty, necessity, or utility to himself, but simply because he no longer desires to own the craft. Consequently, when an airplane has crashed at sea, the act of vacating the craft by parachuting to safety and allowing it to sink to the bottom, or some other apparent act of abandonment would be insufficient to constitute an actual abandonment. This type of relinquishment is not voluntary; rather, it is created by necessity. Subsequent acts and circumstances, however, may be sufficient to constitute an abandonment of that same airplane.

Abandonment may arise when, after a casual and unintentional loss,
all further purpose to seek and reclaim the lost property is forsaken. A federal district court held, in *Wiggins v. 1100 Tons, More or Less, of Italian Marble*, that while lapse of time and nonuse are insufficient in and of themselves to constitute an abandonment, these factors may, under certain circumstances, give rise to an implication of an intent to abandon. In *Wiggins*, a derelict vessel and cargo had remained for sixty-six years in the exact location where the vessel had sunk on the bottom of the Atlantic Ocean. The court concluded that while abandonment is essentially a question of fact, in this case only one inference could be drawn: the vessel and its cargo had long since been voluntarily abandoned. The facts that the court considered in determining abandonment were not the circumstances surrounding the sinking of the vessel, but were instead the acts and conduct of the owner subsequent to the wreck that evidenced an intention to abandon the vessel.

According to a well-settled principle, when personalty is abandoned, ownership of the property is lost. The court in *Wiggins* noted that personalty, after abandonment, ceases to be the property of any person. Accordingly, the personalty may be appropriated by anyone, and ownership of it rests, by operation of law, in the first person who, with the intent to become the owner, lawfully appropriates and reduces the personalty to possession. Once abandoned property has been appropriated by another, the former owner cannot reclaim it. An owner of personalty such as an airplane, therefore, may abandon the craft by relinquishing possession of it with the intent to divest himself of ownership.

In determining whether the FG-1D Navy Corsair fighter had been abandoned...

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48. *Brown, supra* note 46, §1.6, at 8.
50. Nonuse is a circumstance to be taken into consideration on the question of intention to abandon. More specifically, nonuse is evidence of abandonment, and its weight is proportionate to its duration. *See Home Real Estate Co. v. Los Angeles Pac. Co.*, 163 Cal. 710, 714, 126 P. 972, 973 (1912). Lapse of time, or delay in asserting a right, is closely associated with nonuse. Like nonuse, lapse of time does not in itself constitute abandonment, but is a material element to be considered in connection therewith. *See Lawrence v. Fulton*, 19 Cal. 683, 690-91 (1862). The probative force of lapse of time and nonuse may be rebutted by facts and circumstances explaining the inaction and showing that the owner did not intend to abandon the thing or right. *See Utt v. Frey*, 106 Cal. 392, 398, 39 P. 807, 809 (1895).
52. *Id.*
53. *Id.* at 456.
54. *Id.*
55. *See Collins v. Lewis*, 149 A. 668, 669 (1930).
57. *Id.*
abandoned, a court would be required to look objectively at all of the facts and circumstances of the case. Relinquishment of the Corsair is not evidenced necessarily by the fact that the Navy stood by and watched as the plane sank to the bottom. This relinquishment was created by necessity rather than intent. The failure of the Navy to retrieve the Corsair, or to make any efforts to do so, however, may be sufficient to show relinquishment. Intent to abandon, in this case, is evidenced by a number of facts including the following: (1) the location of the crash was known to the Navy, (2) the plane rested only 300 yards offshore from the Naval Air Station, (3) no efforts were made to salvage the plane, (4) thirty-three years had elapsed since the sinking, and (5) the Navy had stricken the serial number of the plane from its records.

In summary, upon examining the totality of the circumstances, a court could determine that the Navy fighter had been abandoned. In some cases the salvor has extreme difficulty in discerning whether the aircraft has been abandoned by the owner or merely lost. If a determination is made that the Corsair had been lost, rather than abandoned, a different body of law would apply. A comparison of these two distinct legal principles necessarily must follow to ascertain the common-law rights of the salvor of sunken aircraft.

THE SALVOR'S RIGHTS TO LOST PROPERTY

Whether the property is abandoned or lost, the result may be practically the same. In some instances, however, the differences between loss and abandonment will be vital to the original owner and the finder or the new possessor. Property is abandoned when it is discarded, or when ownership is voluntarily forsaken by the owner. In the case of abandonment, the plane will become the property of the first occupant with title good against the original owner. Property that is involuntarily lost or left by the owner without the hope and expectation of again acquiring it, however, becomes the property of the finder, subject to the superior rights of the owner.

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59. See supra notes 47-54 and accompanying text.
60. See id.
61. See Times, supra note 7, at A5, col. 1.
63. See id.
64. See Times, supra note 7, at A5, col. 1.
65. See Conversation, supra note 1.
67. Id.
69. Id. at 509; see also Brown, supra note 46, §3.1, at 24. In salvage cases under ad-
If a plane crashes and the location of the wreck is unknown to
the owner, the finder of that plane would have rights to possession,
subject to the superior right of the owner. Moreover, upon assuming
dominion and control of the plane, the finder attains the status of
a quasi-bailee. Once the finder takes the aircraft into his custody,
he assumes the obligations of a gratuitous bailee and may be liable
for negligence in keeping the plane, or for conversion by failing
to return the craft to the rightful owner upon demand. If the finder
knows or has a reasonable means of discovering the owner, but
feloniously appropriates the plane to his own use, he is guilty of
larceny. Many jurisdictions have statutes that require certain notice
and other procedures to be followed by finders of lost property.
In California, title to lost property is governed by statute.

ACQUISITION OF TITLE THROUGH COMPLIANCE WITH CALIFORNIA STATUTORY PROVISIONS

California has enacted various statutes that specify the rights and
duties of a finder of lost goods. The finder of a plane lost within
the territorial jurisdiction of the State of California is required to
comply with the statutory law governing lost property, rather than
the common law. In California, the finder of a lost plane is not bound
to take charge of it, but if he elects to do so, he becomes a bailee,
with the rights and obligations of a bailee for hire. The finder is
statutorily required to inform the owner, if known, within a reasonable
time, and return the property to the owner. The finder receives no

miralty law, however, the finder may hold possession until he is paid his compensation, or
until the property is submitted to legal jurisdiction for the ascertainment of the compensation.
Eads, 22 Ark. at 509.

70. See Brown, supra note 46, §3.5, at 30; see also Burns v. State, 128 N.W. 987, 990
(Wis. 1910); Cal. Civ. Code §1864.
71. Brown, supra note 46, §3.5, at 30; see Dougherty v. Posegate, 3 Iowa 88, 91 (1856);
Joy v. Crawford, 154 S. W. 337, 358 (1913). On duties of bailee generally, see Brown, supra
note 46, at 252-318.
72. See Brown, supra note 46, at §3.5, at 30; see also Ray v. Light, 34 Ark. 421, 427
(1879); Ryan v. Chown, 125 N.W. 46, 46 (Mich. 1910).
73. Brown, supra note 46, §3.5, at 30; see also Burns v. State, 128 N.W. 987, 990 (Wis.
1910).
74. Brown, supra note 46, §3.5, at 31.
76. See id.
77. The territory of the State of California extends one marine league or three English
78. Id. §2080. A finder who is trespassing can obtain no rights as a finder to possession
of property unlawfully removed from the premises of another. Bishop v. Ellsworth, 234 N.E.2d
49, 52 (Ill. 1968).
79. Cal. Civ. Code §2080. A bailee for hire is subject to a greater standard of care for
negligence in taking care of the property than is a mere gratuitous bailee. Compare Cal. Civ.
compensation,^{40} except for the payment of a reasonable amount for saving\(^8\) and taking care of the aircraft.\(^{52}\) Prior statutory law in California permitted the finder to place a lien on the aircraft.\(^{83}\) The finder then could sell the property if the owner refused to pay the lawful charges of the finder, provided the finder's charges amounted to two-thirds of the value of the property.\(^{84}\) Current law, however, merely conditions restitution of the property to the owner upon the payment of all reasonable charges,\(^{85}\) and is silent as to whether the finder is entitled to a lien\(^{86}\) for his services.\(^{87}\)

According to statutory law in California, if the owner is unknown or has not claimed the aircraft, the finder is required to turn the property over to the local police authorities.\(^{88}\) If the owner appears within ninety days, proves his ownership of the aircraft, and pays
all reasonable charges,\(^9\) the police will return the aircraft to him.\(^9\)
If the owner fails to appear or prove ownership of the aircraft within
the ninety day period, the police will publish notice of the lost aircraft
at least once in a newspaper of general circulation.\(^9\) If the owner
still does not claim the aircraft after seven days following the first
publication of notice, \textit{title} to the aircraft will vest in the finder.\(^9\)

In summary, California law provides that a finder of lost aircraft
may obtain possession to the craft, subject only to the superior rights
of the owner. Depending upon the applicable state statutes, the finder
may obtain absolute title to the lost aircraft, but only after compliance
with a considerable amount of red tape and statutory procedure. If
the aircraft is found in navigable waters,\(^9\) however, it may be con-
sidered an object subject to admiralty jurisdiction, governed by unique
maritime doctrines under the law of salvage.

Comparatively, the law of salvage portends a better result for the
salvor than that which is available under the common-law principles
of abandonment and lost property. The maritime law of salvage grants
the salvor an award for raising the sunken aircraft. The salvage award
is secured by a maritime lien on the salved aircraft.\(^9\) Moreover, if
the property is deemed lost, abandoned, or derelict, the maritime law
of finds may supplement the law of salvage, enabling the salvor to
obtain title by reducing the sunken aircraft to possession.\(^9\) To benefit
from these more favorable maritime remedies, the salvor must seek
admiralty jurisdiction in the federal courts.

\textbf{EXTENSION OF ADMIRALTY JURISDICTION TO AIRCRAFT}

Clearly, the owners of sunken or derelict vessels or their contents
may abandon them so effectively as to divest title and ownership.\(^9\)

\(89.\) See supra note 85, and accompanying text.
\(91.\) \textit{Id.} §2080.3(a). If the value of the property is less than $50, no publication of notice
is required for title to vest in the finder. \textit{Id.} §2080.3(b).
\(92.\) \textit{Id.} §2080.3(a). The vesting of title is conditioned upon two minor factors: (1) the
finder must pay the cost of publication; and (2) the finder must not have found the property
in the course of his employment as an employee of a public agency. \textit{Id.}
\(93.\) A body of water is navigable in law when it is navigable-in-fact. In other words, the
water must be capable of being used by the public as a highway for transportation and com-
\(94.\) See infra notes 175-206 and accompanying text.
\(95.\) See infra notes 206-23 and accompanying text.
\(96.\) State v. Flying "W" Enterprises, Inc., 160 S.E.2d 482, 488 (1968); see, e.g., Eads,
22 Ark. at 499; see also supra notes 38-49 and accompanying text.
This doctrine is established under the maritime law of finds,\textsuperscript{97} which is an adjunct to the maritime law of salvage.\textsuperscript{98} Apparently, for the law of finds to apply, the aircraft first must be categorized as property subject to a salvage award. Ample authority exists, both American and English, that property subject to a salvage award is limited to a ship or cargo or goods coming from a ship.\textsuperscript{99} The modern trend of authority, however, appears to have departed from this rigid limitation by focusing on the location of the property at the time of rescue rather than relying upon the characterization of the object salved. This modern standard of analysis is commonly referred to as the "locality" or "situs of the rescue" test.

**Acceptance of the Locality Test**

In 1887, the United States Supreme Court held in *Cope v. Vallette Dry Dock Co.*\textsuperscript{100} that services rendered to a floating drydock permanently moored to the shore were not compensable by a salvage award.\textsuperscript{101} The Court avoided expressing an opinion regarding older case law that required the property to be maritime in nature. The Court merely observed that when salved property has no connection with a ship "some authorities are against the claim, and others are in favor of it."\textsuperscript{102} The more recent American cases, however, suggest that anything rescued from navigable waters, without regard to the nature of the property, or how it got there, will be considered salvageable.\textsuperscript{103} In *Maltby v. Steam Derrick Boat*,\textsuperscript{104} the court determined that any property of value could be the subject of salvage provided that it was salved in navigable waters.\textsuperscript{105} Judge Hughes stated:

\begin{quote}
... I think the test as to what is the subject of salvage is no longer, whether it is a vessel engaged in commerce or its cargo or furniture, but whether the thing saved is a movable thing, possessing the attributes of property, susceptible to being lost and saved in places within the local jurisdiction of the admiralty.\textsuperscript{106}
\end{quote}

Martin J. Norris, a noted authority on the law of salvage, is in accord


\textsuperscript{98} See Treasure Salvors v. Unidentified Wrecked, Etc., 569 F.2d 330, 336 (5th Cir. 1978) [hereinafter referred to as *Treasure Salvors I*].

\textsuperscript{99} M. NORRIS, 3A BENEDICT ON ADMIRALTY: THE LAW OF SALVAGE, §32, at 3-1 (7th Ed. 1980).

\textsuperscript{100} 119 U.S. 625 (1887).

\textsuperscript{101} Id. at 627.

\textsuperscript{102} Id. at 629-30.

\textsuperscript{103} GILMORE & BLACK, THE LAW OF ADMIRALTY, §8-3, at 448 (1957).

\textsuperscript{104} 16 Fed. Cas. 564, (D.Va. 1879) (No. 9000).

\textsuperscript{105} Id. at 566.

\textsuperscript{106} Id.
with this view. Norris points out the difficulty in reconciling the beneficient maritime policy of rewarding the rescuer of property at sea, with the "hair-splitting" distinction based upon the "maritime in nature" characterization of the distressed property. Moreover, the proper test of admiralty jurisdiction should not end with a rigid characterization of the object salved as property closely related to a seagoing vessel. An analysis of modern case law indicates that for purposes of salvage, admiralty jurisdiction should be extended to all property susceptible of being lost and saved upon navigable waters.

The introduction of aircraft complicated the issue of determining the breadth of the admiralty jurisdiction of the federal courts. Although aircraft apparently may be considered property subject to admiralty jurisdiction under the Maltby locality test, courts initially were reluctant to apply this test to aircraft. Gradually, however, courts acknowledged the applicability of the Maltby locality test to aircraft wrecked at sea.

**APPLICATION OF THE MALTBY LOCALITY TEST**

Soon after Wilbur and Orville Wright's epoch-making flight at Kitty Hawk, the question whether aircraft lost at sea could be the subject of salvage was raised. In 1913, an airplane that had fallen into the waters of Puget Sound was salved and pulled ashore. The salvor filed a libel in admiralty, asserting a salvage lien on the plane. In what has been criticized as a rather unsatisfactory opinion, the court declined to take the case because of the absence of legislation conferring admiralty jurisdiction. Moreover, the court declared that aircraft are neither of the land nor sea, and because they are not of the sea or restricted in their activities to navigable waters, they are not maritime.

Seven years later, Judge Cardozo suggested in dictum that a seaplane may be considered a vessel for the purposes of sal-

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108. Id.
109. Id.
110. See Crawford Bros. No. 2, 215 F. 269, 269. (W.D. Wash. 1914); see also Norris, supra note 99, §38, at 3-11.
111. Crawford Bros., 215 F. at 269.
112. See Norris, supra note 99, §38, at 3-11.
114. Id.
115. No doubt exists that an imperiled vessel on navigable waters is a proper subject of salvage. Norris, supra note 99, §35, at 3.5. For the purposes of marine salvage, the term "vessel" includes a craft of every kind and description used or capable of being navigated
Judge Cardozo limited this proposition to situations in which the seaplane moves upon the water, becomes disabled, and then is rescued upon the high seas by a passing ship. Three decades later, this hypothetical situation materialized in *Lambros Seaplane Base, Inc. v. The Batory*. The S.S. Batory, a Polish transatlantic passenger liner, approximately fifty miles from New York en route to Southampton, England, sighted a seaplane that proceeded to circle the ship from five to twenty times. While circling the ship, the pilot of the plane shouted that he was lost and without gas or compass. On direction of the master of the Batory, the pilot landed the plane, the engines of the Batory were stopped, the pilot was rescued, and the plane was hoisted on board. In concluding that a seaplane, when of the sea, is a marine object subject to the maritime law of salvage, the court stressed that the underlying policy of the law to encourage salvage applies to seaplanes as well as to the other types of vessels long recognized under admiralty law. Moreover, the court in *Lambros* noted the "highly reputable concensus of thought" expressed in two separate international conventions on aviation and admiralty. These international delegations asserted that the salvage of aircraft wrecked at sea should be regulated, in the absence of any agreement to the contrary, by the principles of maritime law.

Only one reported case has held that a seaplane was not a marine object subject to the maritime law of salvage. This British decision, however, was criticized severely and promptly overruled by the British Air Navigation Act of 1920, which expressly extended the law of salvage to aircraft on or over the sea or tidal waters. At

or used on water and for the purposes of commerce and transportation. *Id.* Aside from the usual types of crafts such as a freighter and passenger ships, sail and steam, tramps and liners (and in addition to seaplanes), the following have been held to be vessels subject to salvage: scows, barges, tugs, ferries, sunken vessels, canal boats, fishing boats, a bath house, submarines, wrecks, public vessels, derrick boat, lightships, destroyer, and a dismantled ship. *Id.* at 3-6.

117. See *id*; see also Norris, supra note 99, at §35.
118. 215 F.2d 228 (2d Cir. 1954).
119. *Id.* at 230.
120. *Id.*
121. *Id.*
122. *Id.* at 233.
123. *Id.*
124. One noted authority, relying on the dictum in *Lambros*, was of the opinion that salvageability of aircraft at sea would apply regardless of the type of aircraft involved. Gilmore & Black, supra note 103, at 450.
126. *Id.* at 232.
127. See *id*.
128. *Id.*
least a seaplane, therefore, would be considered an object properly fitting within the realm of the admiralty jurisdiction of the court.

In a 1978 decision, *Mark v. South Continental Ins. Agency, Inc.*, a federal district court finally addressed the extension of admiralty jurisdiction to *land-based* aircraft in the context of salvage. The *Mark* court determined admiralty jurisdiction through an application of the *Maltby* locality test. Prior to 1972, several federal courts applied the *Maltby* locality test in granting admiralty jurisdiction over land-based aircraft in wrongful death actions initiated under the Death on the High Seas Act. In 1972, however, the United States Supreme Court in *Executive Jet Aviation v. City of Cleveland* rejected the applicability of the locality test to aviation tort cases involving land-based aircraft. An analysis of *Executive Jet* and its progeny demonstrates that, in granting admiralty jurisdiction, the underlying policy of the salvage award forcefully serves to distinguish aircraft involved in aviation tort actions from aircraft as objects of a salvage award.

**EXTENSION OF ADMIRALTY JURISDICTION:**

**AERONAUTICAL TORT ACTIONS INVOLVING LAND-BASED AIRCRAFT**

Admiralty jurisdiction originally was extended to land-based aircraft for wrongful death actions brought pursuant to the Death on the High Seas Act. Jurisdiction later was extended beyond actions for death on the high seas to personal injury actions resulting from aircraft crashes occurring on the high seas. The final jurisdictional expansion by courts involved an airplane crash within state territorial waters. In *Weinstein v. Eastern Airlines*, the court affirmed admiralty jurisdiction based upon a strict adherence to the "locality"

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129. 1978 A.M.C. 519.
130. Id. at 520.
131. See infra notes 133-38 and accompanying text.
   Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, . . . the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty. . . .
   Id. §761.
135. 316 F.2d 758 (3rd Cir. 1963).
test, even though the aircraft flight was not a transoceanic crossing. Weinstein was the forerunner of several aviation tort decisions that based admiralty jurisdiction upon a holding that an airplane was a vessel in the maritime sense of the word.

The validity of the "locality" test to determine the extension of admiralty jurisdiction to aircraft was presented to the United States Supreme Court in Executive Jet. In 1968, a private jet struck a flock of seagulls as it was taking off from an airport situated directly adjacent to Lake Erie. The ingestion of the seagulls caused an immediate loss of power. As a result, the plane crashed and ultimately sank in the navigable waters of Lake Erie. The question presented to the Supreme Court in this landmark case was whether the damage to the aircraft should fall within the realm of admiralty. The Court held that admiralty law was not applicable.

In arriving at the conclusion that the crash of the airplane into Lake Erie did not give rise to admiralty jurisdiction, the Court discussed in detail the difficulties presented in "aeronautical tort actions." The Court noted that aircraft, unlike waterborne vessels, are not restrained by one-dimensional geographic and physical boundaries. Moreover, in flights principally over land, the fact that an aircraft happens to fall in navigable waters rather than on land is "wholly fortuitous." For the next of kin of the passengers to expect anything other than the ordinary state court remedies makes little sense. The Court concluded that simply because the alleged tort "occurs" or "is located" on or over navigable waters of itself, is insufficient to transform an airplane negligence case into a maritime tort. Moreover, the Court held that to require, that the wrong bear a significant relationship to traditional maritime activity in addition

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136. Prior to 1972, the locality test was the traditional test employed to invoke admiralty jurisdiction, based upon the locality of the occurrence. See Note, supra note 134, at 597. See also supra notes 86-90 and accompanying text.
138. Id.; see also Hornsby v. Fish Meal Co., 431 F.2d 865, 867 (5th Cir. 1970); Scott v. Eastern Airlines, 399 F.2d 14, 22 (3rd Cir. 1968). For a brief discussion on vessels, see note 115 and accompanying text.
139. 409 U.S. 249 (1972).
140. Id. at 250-51.
141. Id. at 274.
142. Id. at 261-68.
143. Id. at 268.
144. Id. at 266.
145. Id.
146. Id. at 268.
to locality on or over navigable waters, is far more consistent with the history and purpose of admiralty law.\textsuperscript{147} The Court refused to decide whether, in the absence of legislation, an aviation tort case could ever bear a sufficient maritime nexus to come within admiralty jurisdiction.\textsuperscript{148} The Court noted, however, that an argument could be made that a maritime nexus exists, especially if the aircraft is engaged in a transoceanic crossing.\textsuperscript{149}

In subsequent cases dealing with the inclusion of aircraft in admiralty law, courts have been reluctant to accept the opinion of the Supreme Court in \textit{Executive Jet} that the laws of admiralty were designed and developed to regulate only seagoing vessels and have "no conceivable bearing on the operation of aircraft . . . over land or water."\textsuperscript{150} Purporting to stay within the holding of \textit{Executive Jet} that the aircraft bear a significant relationship to maritime commerce, courts have allowed aircraft involved in tort actions to be covered under admiralty law.\textsuperscript{151}

In \textit{Ledoux v. Petroleum Helicopters, Inc.},\textsuperscript{152} a federal district court held that the crash of a helicopter being used in place of a vessel to ferry personnel and supplies to and from offshore drilling structures bears the type of significant relationship to traditional maritime activity required by \textit{Executive Jet} to invoke admiralty jurisdiction.\textsuperscript{153} One year later, in a similar case involving the crash of a helicopter, the court, in \textit{Barger v. Petroleum Helicopters, Inc.},\textsuperscript{154} significantly expanded the role of aircraft to the very heart of admiralty law. The court found that a helicopter specifically designed for landings, takeoffs, and movement on water, used to transport personnel to and from an oil drilling platform, was engaged in a maritime endeavor and constituted a \textit{vessel}\textsuperscript{155} within the meaning of the general maritime

\textsuperscript{147} Id.
\textsuperscript{148} See id. at 271.
\textsuperscript{149} Id.
\textsuperscript{150} Id. at 270.
\textsuperscript{152} 609 F.2d 824 (5th Cir. 1980).
\textsuperscript{153} Id. The court interpreted \textit{Executive Jet} as holding that admiralty jurisdiction required not only maritime situs, but also maritime status, i.e., a significant relationship to traditional maritime activity. Id.
\textsuperscript{155} For a discussion on vessels, see supra note 115 and accompanying text. No doubt exists that an imperiled vessel on navigable waters (either on or below the surface, or after having been driven ashore) receiving services is a proper subject of salvage. See Norris, supra note 99, §35, at 3-5.
law. Barger used a three-prong test to determine whether the aircraft constituted a vessel. The test includes the following elements: (1) the purpose for which the craft was constructed, (2) the business in which the craft was engaged, and (3) the extent to which the craft was subjected to the risk and exposure from the hazards of the sea.

Many government aircraft, such as the FG-1D Corsair owned by the Navy, should constitute vessels under the Barger test. Naval aircraft, for example, are constructed for the purpose of transporting personnel and supplies over water. In fact, the Corsair pulled out of Lake Washington was built with a carrier hook to enable it to land and takeoff from mobile aircraft carriers. Moreover, when Navy aircraft are in operation, they are primarily engaged in maritime activities; that is, transportation across navigable waters. Finally, when a Navy plane malfunctions while travelling over the sea, the pilot and passengers stand a far greater chance of losing their lives in the mishap than their counterparts aboard a traditional seagoing vessel. These aircraft, therefore, are certainly exposed to the risk and hazards of the sea. Even if a sufficient maritime nexus is not found, for purposes of the remedies under the law of salvage, aircraft should fall within the admiralty jurisdiction of the federal court.

The Executive Jet Court seems to have limited its holding to cases involving aviation tort claims arising from flights by land-based aircraft between points within the continental United States. Specifically, the Court concluded that maritime locality alone is not a sufficient predicate for admiralty jurisdiction in aviation tort cases. Executive Jet has been interpreted, however, as an open criticism of the broad inclusion of aircraft in admiralty law. Martin J. Norris, in his book, The Law of Salvage, questions whether Executive Jet will mean that salvage law, as understood by the admiralty courts, cannot be applied in situations of rescue to fallen land-based aircraft on navigable waters. Norris believes that so long as the aircraft saved was engaged

156. Barger, 514 F. Supp. at 1208.
157. Id. at 1207.
158. Id.
159. Id. at 1207-08.
160. See Times, supra note 5, at A1, col. 2.
161. See Barger, 514 F. Supp. at 1208.
162. See Executive Jet, 409 U.S. at 274.
163. Id. at 261.
164. Note, supra note 134, at 600.
in commerce and transportation and the salvage service was performed at a place within admiralty jurisdiction, the admiralty courts "can and should" grant salvage awards to those who render beneficial service to distressed land-based planes.\textsuperscript{165}

In a case decided six years after \textit{Executive Jet}, \textit{Mark v. South Continental Ins. Agency, Inc.},\textsuperscript{166} a federal district court held that a land-based airplane which crashed in navigable waters could be the subject of salvage under admiralty law. The court, in finding admiralty jurisdiction, reasoned that the determining factor is whether the object salved comes within the category of \textit{derelict}. A derelict may be an aircraft that has been abandoned, deserted, or relinquished so that it may be the basis for an award to the person responsible for saving it.\textsuperscript{167} Regardless of the categorization of the object salved, if the object is \textit{property} that has been salved from navigable waters in which it was lost, for the benefit of its owner, the admiralty court has jurisdiction over the subject matter.\textsuperscript{168} The \textit{Mark} court did not even consider whether the aircraft had met the maritime nexus requirement of \textit{Executive Jet} in arriving at the decision that admiralty jurisdiction should be obtained.\textsuperscript{169} In light of \textit{Mark}, \textit{Executive Jet} can be interpreted as being limited only to cases involving aviation torts.

The holding in \textit{Executive Jet}, therefore, is not controlling in determining admiralty jurisdiction for the purpose of awarding compensation for \textit{salvage services}. The preferable approach in determining admiralty jurisdiction over sunken aircraft is the view expressed in \textit{Mark}, \textit{Maltby}, \textit{Lambros} and \textit{Weinstein}; that is, the salvage of aircraft lost at sea should be regulated by the principles of maritime law. These cases are in accord with the underlying public policy upon which the maritime law of salvage is founded, that the voluntary rescue of property imperiled at sea should be encouraged. Conditioning admiralty jurisdiction upon the finding of the \textit{Executive Jet} maritime nexus, and thus precluding an award for salvage when the maritime nexus cannot be found, would discourage salvors from voluntarily rescuing property imperiled at sea.

Clearly, the salvors of the FG-1D Corsair pulled from Lake Washington would be entitled to seek relief in admiralty court according to the principles of maritime law. This relief primarily stems either

\begin{footnotes}
\textsuperscript{165} See Norris, \textit{supra} note 99, §41, at 3-15.  \\
\textsuperscript{166} 1978 A.M.C. 519.  \\
\textsuperscript{167} Id. at 520.  \\
\textsuperscript{168} Id.  \\
\textsuperscript{169} See id. at 519.  \\
\end{footnotes}
from a right to title under the maritime law of finds or a right to an award for services rendered in the salvage of the aircraft. For example, evidence of abandonment may be admitted to justify a grant of title to the salvor who first reduces the aircraft to possession with the intent to become the owner. Alternatively, the salvors may rely upon a maritime lien to enforce their right to a generous salvage award. An overview of the salvage award is necessary to understand the applicability of these remedies to the salvage of sunken aircraft.

**THE SALVOR’S RIGHT TO A SALVAGE AWARD**

Salvage is a maritime doctrine and a stranger to terrestrial law. Under the common law, the passerby who notices an unoccupied automobile lunging forward down a hill, chases after it, overtakes it, and brings it safely to rest cannot compel compensation for his efforts. Furthermore, he cannot retain possession of the car to enforce his claim; at most, he may recover from the owner of the property on a theory of quantum meruit. A volunteer who saves a vessel from peril, however, obtains an inchoate and secret maritime lien on the vessel, cargo, and freight money. Moreover, he may file his libel for salvage and have a United States Marshal take possession of the property. A court then may decree the amount of his interest, and if need be, cause a marshal to sell the property to satisfy the decree. Public policy encourages the hardy and adventurous mariner to render these laborious and sometimes dangerous services. The doctrine of salvage is based on the notion that a special reward for voluntary effort in saving property in peril at sea will promote the orderly organization of reasonable salvage efforts. Widespread participation in this maritime practice, moreover, will minimize commercial losses and discourage struggles, theft, and piracy in situations in which police surveillance is not ordinarily available. Admiralty

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170. See infra notes 173-224 and accompanying text.
171. See infra notes 207-24 and accompanying text.
172. See infra notes 174-206 and accompanying text.
173. See Norris, supra note 99, §12, at 1-17-1-18.
174. The reward for salvage services is usually far more liberal than an allowance of mere quantum meruit for voluntary work or services. See Mason v. Ship Blaireau, 2 Cranch 240, 267 (U.S. 1804).
175. See Norris, supra note 99, §12, at 1-17.
176. Id.
177. The Blackwall, 77 U.S. 1, 14 (1869).
179. Id.
courts do not view the salvage award solely as compensation under the principle of quantum meruit, but also as a reward given for perilous services voluntarily rendered, and as an inducement to mariners to embark in these dangerous enterprises to save life and property.¹⁸⁰ Three elements are necessary for a valid salvage claim. These elements, which must be present in every case, include the following: (1) a marine peril from which the property could not have been rescued without the assistance of the salvor, (2) service voluntarily rendered when not required as an existing duty, and (3) success in whole or part, or that the service rendered contributed to such success.¹⁸¹

The peril necessary to constitute a salvage service need not be one of imminent and absolute danger.¹⁸² The property must be in present or foreseeable danger.¹⁸³ The degree of the peril, whether slight or serious, affects the amount of the award, but not the establishment of the salvage service.¹⁸⁴ Marine peril is considered to include more than the threat of storm, fire, or piracy to a vessel in navigation.¹⁸⁵ Aircraft wreckage, however, that has rested on the ocean floor may still be subjected to marine peril and warrant a salvage service. For example, continual exposure to the elements over the mere passage of time has been found sufficient to constitute a marine peril.¹⁸⁶ In Treasure Salvors v. Unidentified Wrecked, Etc. (hereinafter referred to as Treasure Salvors I),¹⁸⁷ a seventeenth century Spanish galleon had lain undisturbed for 350 years beneath the wide shoal west of the Marquesas Keys. The court found that despite this long period of time, the vessel was still in peril of being lost through the action of the elements. The court held that the requirement of marine peril had been met, and a salvage award could be granted to the salvors of the sunken vessel.¹⁸⁸

The second important element essential to the recognition of a valid salvage claim is that the service be voluntarily performed by those under no legal obligation to do so.¹⁸⁹ Voluntariness connotes perfor-

¹⁸⁰. The Sabine, 101 U.S. 384, 384 (1879).
¹⁸¹. Id.
¹⁸². See Norris, supra note 99, §63, at 5-1.
¹⁸³. Id.
¹⁸⁴. Id. at 5-2.
¹⁸⁵. Treasure Salvors I, 569 F.2d at 337. The peril required need not necessarily be one of imminent and absolute danger. "The property must be in danger, either presently or reasonably to be apprehended." Norris, supra note 99, §185, at 14-1; see also Fort Myers Shell & Dredging Co. v. Barge NBC 512, 404 F.2d 137, 139 (5th Cir. 1968).
¹⁸⁶. See Treasure Salvors I, 569 F.2d at 337.
¹⁸⁷. Id.
¹⁸⁸. Id. at 337.
¹⁸⁹. Norris, supra note 99, §68, at 6-1.
mance under circumstances in which the performer is not legally obligated to render the act. This element of voluntariness is a question of fact to be determined by the court in light of all the circumstances.

The third element necessary to a valid salvage claim is that the salvage operation end with success in whole or in part, or that at least the rendered services must have contributed to the ultimate success. If the operation is unsuccessful, the salvor cannot earn any compensation under a salvage award. Success in the rescue of sunken aircraft can be determined easily. The sunken aircraft must be raised and brought to shore.

No limitation has been imposed on the type of person who may be entitled to a salvage award. When property, including an aircraft, has been abandoned or become derelict, anyone may put himself forward as salvor. The finder of the aircraft possesses the right to exclude others from participating in the salvage operations, so long as the original finder appears ready, willing, and able to complete the salvage project. The salvor of sunken aircraft may desire title or ownership of the property. Alternatively, the salvor can seek a salvage award. The salvage award entitles the salvor to compensation for services rendered, and also enables the salvor to satisfy his award with a maritime lien on the aircraft. If the salvor can be enjoined by the owner from engaging in the salvage services, he may be precluded from seeking title to, or salvage rights in, the aircraft. In an ordinary case of disaster, when the master remains in command, he retains possession of the ship, and has discretion to determine the amount of assistance that is necessary under the circumstances. Moreover, if the master leaves the craft temporarily, upon his return the salvors are bound to relinquish possession of the

190. Id.
191. Id. at 6-2.
192. The Blackwall, 77 U.S. at 12.
193. United States v. Alaska, 422 U.S. 184, 195 (9th Cir. 1975); see also Cobb Coin, 525 F. Supp. at 203.
194. Treasure Salvors v. Unidentified Wrecked, Etc., 640 F.2d 560, 567 (5th Cir. 1981) [hereinafter referred to as Treasure Salvors II]. To ensure the right to exclusive possession, the finder must exercise an actual taking of the property with the intent to reduce it to possession. See Eads, 22 Ark. at 512. In Eads, even though the claimant marked trees on the bank of the river and placed buoys over the wreck, these acts were insufficient to obtain the right to exclusive possession under the law of salvage. Id. These acts merely indicated a desire or intent to appropriate the property. Id. If the claimant had placed his boat over the wreck, with means to raise it, and with persistent efforts to do so, the law would protect these acts of possession. Id.
195. See infra notes 207-24 and accompanying text.
ship. The owner of the distressed property, therefore, would be entitled to control all salvage efforts directed toward the rescue of his vessel. This fact, in and of itself, could be sufficient to discourage professional salvors from engaging in the salvage of economically valuable property sunken at sea. If the property is derelict, however, the salvors have absolute possession and control of the vessel. Thus, once the salvors have commenced their salvage operations, the owner of an abandoned and derelict airplane may not enjoin the raising of his aircraft.

As an incentive to encourage persons to assist distressed or endangered property at sea, the maritime law will grant the salvor a right to a monetary award for his voluntary services. The performance of salvage services gives rise to a maritime lien. The salvor of sunken aircraft may assert a right to a salvage award either in an in rem proceeding against the salved aircraft, or in an in personam proceeding against the owner of the salved aircraft. Salvage awards are not limited to a strict quantum meruit measure of the value of the services performed; rather, the award for salvage is calculated to include a bounty or premium based upon the risk involved in the operation and the skill with which the salvage was performed. The Supreme Court has suggested the following criteria for determining the amount of an appropriate salvage award: (1) the labor expended by the salvors in rendering the salvage services, (2) the promptness, skill, and energy displayed in rendering the service and saving the property, (3) the risk incurred by the salvors in securing the property from peril, (4) the value of the property saved, (5) the degree of danger from which the property was rescued, and (6) the value of the property employed by the salvors and the danger to which the salvor’s property was exposed. Once the right to a salvage award has been determined, the question remains whether the maritime law of finds supplements the law of salvage and grants the salvor the right to title

197. Id.
198. Id.; see also Howard v. Shariin, 61 So.2d 181, 181 (Fla. 1952); Baker v. Hoag, 7 N.Y. 555, 559 (1853).
199. This may indicate that the Navy cannot enjoin the salvage of the six planes discovered in the depths of Lake Washington. See supra notes 5-10 and accompanying text.
200. Treasure Salvors II, 640 F.2d at 567.
201. Id.; see Norris, supra note 99, §137, at 10-1.
202. See Treasure Salvors II, 640 F.2d at 567.
204. See Norris, supra note 99, §235, at 19-6-19-7.
and ownership of the recovered aircraft. Although the salvor may obtain adequate compensation for his services with a salvage award, the professional salvor will argue, in the alternative, that the aircraft is abandoned, and that consequently, he is entitled to ownership of the property under the maritime law of finds. Some controversy exists, however, regarding the application of this maritime doctrine.

THE SALVOR'S RIGHT TO TITLE UNDER THE MARITIME LAW OF FINDS

Once admiralty jurisdiction has been established, some dispute remains as to the rights of a party who reduces to possession lost or abandoned property found at sea. At least, the salvor may recover a salvage award for his meritorious services in the rescue of the imperiled craft. Norris, in his treatise on the law of salvage, states that under salvage law, the abandonment of property at sea does not divest the owner of title. Norris explains that the word "find" denotes that the property has never been owned by any person; therefore title to the property will vest in the finder. In other words, a finder may only acquire title to things commonly of nature such as wild animals. If, however, the property was previously possessed by an individual and subsequently lost or abandoned, the finder is entitled only to compensation for salvage services, rather than the right to title. A person who voluntarily saves imperiled property on navigable waters, therefore, does not become the title holder of that property, but instead saves the property for the benefit of the owner and may expect only an appropriate salvage award.

The overwhelming body of case law, however, rejects the theory that title to abandoned property can never be lost. The first case to reject this theory was Wiggins v. 1100 Tons, More or Less, of Italian Marble. In Wiggins, the court reasoned that the cases cited by Norris in support of his view that title to abandoned wrecks or

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206. See Wiggins, 186 F. Supp. 452, 456; see infra notes 207-224 and accompanying text.
209. Id. §158, at 11-14.
210. Id. §150, at 11-2.
211. Id.
cargo is never lost were not controlling.\textsuperscript{214} Relying upon the landmark case of \textit{Eads v. Brazelton},\textsuperscript{215} the \textit{Wiggins} court held that a party taking possession of a vessel and cargo under salvage operations may be characterized as a finder acquiring title good against the owner.\textsuperscript{216} 

In \textit{Eads}, a steamboat and cargo had been sunk in the Mississippi River for thirty years. The owners made no efforts to salvage the wreck, nor did they attempt any act evidencing an intent to save the property. The Arkansas Supreme Court held that the vessel had been abandoned, and the finder of the wreck was entitled to the property as owner.\textsuperscript{217} This view later was affirmed by the United States Court of Claims in \textit{Thompson v. United States}.\textsuperscript{218} In that case, the iron tanker \textit{Gut Heil} collided with two other vessels on April 27, 1913 and sank in the Mississippi River. Several unsuccessful attempts were made to recover the vessel. On February 3, 1914, the owner notified the Engineer’s Office of the United States Army of his abandonment of the vessel.\textsuperscript{219} The \textit{Thompson} court concluded that the vessel had been abandoned.\textsuperscript{220} The court then held that when a vessel is derelict\textsuperscript{221} and abandoned in the navigable waters of the United States or anywhere else, it belongs to the person who finds it and reduces it to possession.\textsuperscript{222} Currently, the view that a finder of abandoned property at sea acquires title and ownership is widely accepted.\textsuperscript{223}

In summary, prevailing case law indicates that abandoned sunken aircraft may fit properly under the maritime law of finds. Under the law of finds, once abandonment occurs, title to the aircraft will vest in one who discovers the derelict property and reduces it to possession.

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\textsuperscript{214} Id. at 456. The court elaborated by stressing that these cases involve instances in which the personalty had been separated from the vessel. \textit{Id.} at 456. See \textit{The Akaba}, 54 F. 197, 199 (4th Cir. 1893); see also \textit{The Bark Cleone}, 6 F. 517, 523 (D. Cal. 1881) (the intention to return to the vessel was apparent); \textit{The Port Hunter}, 6 F. Supp. 1009, 1010-11 (D. Mass. 1934) (the acts of the owners negated any intent to abandon the vessel).
\textsuperscript{215} 22 Ark. 499.
\textsuperscript{216} \textit{Wiggins}, 186 F. Supp. at 456.
\textsuperscript{217} \textit{Eads}, 22 Ark. at 508-09. The court noted, however, that property that is lost involuntarily, or left without the hope and expectation of again acquiring it, becomes the property of the finder subject to the superior right of the owner. \textit{Id.} at 509. In cases of admiralty, the finder may hold possession until he is paid his compensation. \textit{Id.}
\textsuperscript{218} 62 Ct. Cl. 516.
\textsuperscript{219} \textit{Id.} at 517.
\textsuperscript{220} \textit{Id.} at 524.
\textsuperscript{221} Derelict in the maritime sense of the word has been defined as a vessel, cargo, or other property that is abandoned without hope of recovery or without intention of returning. \textit{State v. Flying “W”}, 160 S.E.2d 482, 488 (1968).
\textsuperscript{222} \textit{Thompson}, 62 Ct. Cl. at 524.
\textsuperscript{223} See, e.g., \textit{Wiggins}, 186 F. Supp. at 456.
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The doctrine of finds provides the most favorable remedy for the salvor of sunken aircraft. Even if abandonment cannot be shown to invoke a grant of title to the sunken aircraft, the salvor may rely secondarily on the maritime law of salvage to compensate him generously for his labors. This does not, however, end the inquiry into a determination of the salvor’s rights. If the aircraft is located within the territorial boundaries of the state, the salvor may encounter an adversarial claim by the state founded upon statutory rights or rights inherited from the Crown of England as a prerogative of the state in its sovereign capacity. For example, in *State v. Flying "W" Enterprises, Inc.*, the Supreme Court of North Carolina held that sunken vessels abandoned for more than 100 years within the territorial limits of the state were within the purview of the common law and belonged to the state in its sovereign capacity.

**Applicability of State Rights**

Many aircraft have crashed upon, and sunk in, navigable bodies of water within state boundaries or off coastal waters within the geographical jurisdiction of the state. Under these circumstances, the salvor of the sunken aircraft may be faced with adversarial claims brought by the state, alleging a superior right to title. In *Flying "W"* the rights of the State of North Carolina to a derelict sunken vessel discovered beneath the surface of the ocean within territorial waters of the state were expressly determined. A salvage crew began conducting diving and salvage operations on a number of Confederate blockade runners sunk in the coastal waters of North Carolina during the Civil War, and upon the wreck of a Spanish privateer sunk off the coast during the first part of the eighteenth century. The State of North Carolina initiated an action to enjoin the salvors permanently from proceeding with these activities, and to command them to return to the state various artifacts of historical significance allegedly taken from the wrecks by the salvors. The State alleged title to the vessel and cargo on two separate grounds, one based upon state wreck statutes, the other based upon prerogatives of the British Crown inherited by the state in its sovereign capacity.

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224. 160 S.E.2d 482.
225. *Id.* at 492.
226. *Id.* at 482.
227. *Id.* at 483.
228. *Id.* at 494.
229. *Id.* at 492.
STATUTORY RIGHT TO TITLE—WRECK STATUTES

Many of the coastal states have enacted "wreck" statutes purporting to grant exclusive title to the state to stranded vessels, cargoes, or any property cast upon the shore.\(^{230}\) In *Flying "W"*, North Carolina asserted that the wreck statutes granting exclusive ownership to the state of any wrecks found within the territorial limits of the state had application to a sunken vessel and cargo located within a marine league of the coast.\(^{231}\) The North Carolina Supreme Court held, however, that these wreck statutes only applied to vessels or their cargo, or any property that was cast upon the shore. The wreck statutes, therefore, were inapplicable because the sunken vessel was located some distance from the shore.\(^{232}\)

California has enacted wreck statutes similar to those that existed in North Carolina at the time *Flying "W"* was decided.\(^{233}\) In a 1956 opinion, the California Attorney General asserted that the state wreck statute applied only to wrecks "in the old common law sense, i.e., vessels stranded on the coast and goods and merchandise which may be cast by the sea upon the land."\(^{234}\) The State of California, therefore, could not claim title, based upon the wreck statutes, to sunken aircraft located within the territorial limits of the state. Furthermore, an attempt to enforce this type of statute might be unconstitutional.

In *Wiggins*, the court questioned the constitutionality of a statute that recognized the rights of a state to lay claim to wrecked property.\(^{235}\) The court determined that this type of statute would be opposed to the policy of maritime law to encourage the recovery of distressed property by awarding compensation for salvage services.\(^{236}\) In dictum, the court expressed extreme doubt that any statute granting exclusive state rights to wrecked property could stand constitutional scrutiny.\(^{237}\) Unless the wrecked aircraft has been cast ashore, therefore, the state may not enjoin salvage operations based upon wreck statutes.

\(^{230}\) See, e.g., CAL. HAR. & NAV. CODE §§510-522.

\(^{231}\) *Flying "W"*, 160 S.E.2d at 494.

\(^{232}\) Id.

\(^{233}\) Compare CAL. HAR. & NAV. CODE §§510-522 with N.C. GEN. STAT. §§82-1-18 (repealed by 1971 N.C. Sess. Laws c. 882, §5). Subsequent to the decision of *Flying "W"*, the legislature in North Carolina enacted statutes that would expressly grant title to the State to property sunken within a marine league of the state, and would control the disposition of a dispute similar to that raised in *Flying "W"*. See N.C. GEN. STAT. §§121-22-28.


\(^{236}\) Id. at 455.

\(^{237}\) Id.
The State of California has intimated that it may assert exclusive title to property sunken within state territorial boundaries. An analysis of the position that California may take is necessary to demonstrate the salvor’s rights to aircraft or other property sunken in this state.

**ANTICIPATING AN ASSERTION OF SUPERIOR TITLE BY THE STATE OF CALIFORNIA**

The only recorded incident involving an assertion of title by the State of California to property abandoned at sea never came to trial, but was addressed by a 1956 California Attorney General Opinion. A skin diver discovered the remains of a sunken Spanish galleon off Solana Beach in San Diego County. Officials believed the wreck to be one of the vessels led by the explorer San Francisco del Ulloa that sank in that vicinity in 1541. The wreck was located in approximately sixty feet of water within the three-mile marginal belt off the coast of California. The skin diver allegedly recovered a massive gold and sapphire ring from the wreck. The Attorney General concluded that title to the wrecked vessel and cargo belonged to the state. This opinion was founded upon three separate bases: (1) succession to the common-law prerogative of the British Crown in derelict property, (2) state legislation, and (3) inapplicability of federal admiralty law. Through an analysis of current case law, this outdated opinion can be attacked on all three grounds.

**A. Title Under the Sovereign Prerogative**

According to the common law of England, under any of the Crown prerogatives, the sovereign possessed the absolute right to any wrecked or abandoned property found on the seas. The true owner, however, could reclaim the property provided he appeared within a year and a day. Several authorities have adopted the view that the “several states” inherited, as sovereigns, many of the prerogatives of the Crown of England, including the right to abandoned property recovered at sea by British subjects. In *Flying “W”*, the court held that the

238. See Sunken Vessels, supra note 234, at 2.
239. Id. at 1-2.
240. Id. at 2.
241. Id.
242. Id. at 2-6.
244. See Flying “W,” 160 S.E.2d at 490.
245. See infra note 50 and accompanying text.
state had title to abandoned marine property as an inherent sovereign prerogative.246

A subsequent court decision, Cobb Coin v. Unidentified Wrecked and Abandoned Sailing Vessel,247 expressly rejected the view of Flying "W".248 In that case, the court stated that under the prevailing American rule regarding ownership of lost or abandoned property, in the absence of any express statutory claim by the sovereign, abandoned property recovered at sea becomes the property of the salvor.249 The court in Cobb Coin also noted that the view expressed in Flying "W" has been recognized only in two other American cases,250 and all three cases have been severely criticized in academic literature.251 Based upon the preceding discussion, the California courts should not follow the 1956 Attorney General's opinion that the state possesses title to the sunken aircraft because of an inherent right as a sovereign state.

B. Title Under State Legislation

The opinion of the Attorney General also asserted that the state has jurisdiction to establish the rules by which interests in property are to be determined. Moreover, the opinion argued that the state has exercised this jurisdiction by declaring that the title to abandoned or lost property vests in the state.252 The opinion relied upon two very broad statutes that declare: (1) "the state is the owner of all land below tide-water,"253 and (2) "all property within the limits of the state, which does not belong to any person, belongs to the people."254 Importantly, the Attorney General claimed that the authority of the state to determine proprietary rights in abandoned or lost property was confirmed by Congress in the Submerged Lands Act of 1953.255

246. Flying "W," 160 S.E.2d at 492.
248. See id. at 213, n.24.
249. Id. at 213.
252. See Sunken Vessels, supra note 234, at 3.
253. See CAL. CIV. CODE §670.
254. See CAL. GOV'T CODE §182.
255. See Sunken Vessels, supra note 234, at 3; 43 U.S.C. §§1311(a)-1314(a). Section 1311 provides in part: "[T]itle to and ownership of the lands beneath navigable waters within the boundaries of the respective States . . . and the right and power to manage, administer, lease,
In a case with facts similar to those related in the Attorney General opinion, the State of Florida, also citing the Submerged Lands Act, claimed by statute to have plenary authority over sunken artifacts found within the territorial boundaries of the state. The Submerged Lands Act of 1953 granted the states title to, and ownership of, the lands beneath navigable waters within the boundaries of their respective states. More specifically, the "paramount rights" of the federal government to exercise full dominion and power over the lands, minerals, and other things underlying the ocean were ceded to the states through the Submerged Lands Act. The Fifth Circuit in Treasure Salvors I, however, has interpreted these "paramount rights" to pertain only to natural resources, and not to historic wreck sites discovered on continental shelf land. In Cobb Coin, the court affirmed this interpretation and concluded that the Submerged Lands Act does not empower the state to lay claim to abandoned wreck sites within the three mile limit recognized under that Act through legislation which purports to derogate both federal jurisdiction and the application of admiralty principles. Therefore, based upon the holdings in Treasure Salvors I and Cobb Coin, California may not rely on the Submerged Lands Act to assert jurisdiction over sunken aircraft.

C. Applicability of Admiralty Law

Alternatively, the opinion of the California Attorney General asserted that the resolution of proprietary disputes over wrecked property is not subject to federal admiralty jurisdiction. The opinion, therefore, implied that the disposition of the wrecked property should be controlled by state statutory or common-law principles rather than by maritime doctrines under admiralty law. This would preclude the salvor from asserting any rights to title under the law of finds or to an award under the law of salvage. This author has concluded, however, that the overwhelming majority of case law suggests that admiralty jurisdiction is appropriate.

and develop . . . said lands . . . are subject to . . . vested in and assigned to the respective States. . . ." Id. §131(a).
256. See Cobb Coin, 525 F. Supp. at 216.
259. Treasure Salvors I, 569 F.2d at 338-40.
262. See, e.g., Cobb Coin, 525 F. Supp. at 213.
The Attorney General claimed that even if the sunken vessel were within admiralty jurisdiction, the eleventh amendment to the United States Constitution would bar a suit by the skin diver-salvor. The eleventh amendment protects the state against unconsented actions in federal courts brought by citizens of the state or citizens of other states. The Attorney General contended that the eleventh amendment was applicable equally to proceedings in admiralty. In *Cobb Coin*, however, the court recognized that the immunity afforded by the eleventh amendment clearly extends only to suits in which a plaintiff seeks compensatory money damages that would be payable from the state treasury. The skin diver, in contrast, having retrieved the gold ring, would not be asking the court for an award of compensatory monetary damages payable from the state treasury, but instead would be asking the court to determine either that he owns the ring as a finder, or that by virtue of his salvage services, he is entitled to an appropriate salvage award from the state. The third claim raised by the Attorney General on behalf of the state, therefore, has been refuted by the court in *Cobb Coin*.

Finally, *Cobb Coin* held that under the supremacy clause of the United States Constitution, article VI, paragraph 2, state legislation that conflicts with federal maritime principles cannot be given effect. The principle that federal maritime law supersedes inconsistent state law has been followed regularly by the courts. Moreover, *Cobb Coin* holds that federal salvage law is central to the body of "customs and ordinances of the sea" and must preempt inconsistent state law. The State of California, therefore, cannot contravene established admiralty law by denying the finder of lost, abandoned, and derelict property at sea his substantive rights under the maritime laws of finds and salvage. In summary, the outdated California Attorney General Opinion is without support according to current case law. Based on the foregoing discussion, salvors can avoid state sovereignty claims because, as previously established: (1) the prevailing American view rejects the notion that the states inherited a right to abandoned property at sea from the British Crown, (2) the Submerged Lands Act

263. See Sunken Vessels, supra note 234, at 6.
264. U.S. Const. amend. XI; see also Hans v. Louisiana, 134 U.S. 1, 10 (1889).
265. Id.
266. Cobb Coin, 525 F. Supp. at 197.
267. See id.
268. Id. at 201.
269. Id.
270. Id. at 213.
of 1953 does not empower the states to lay claim to abandoned wreck sites within their state boundaries, (3) the eleventh amendment does not protect the state from suits initiated by salvors to obtain a decree of title or salvage award, and (4) state legislation conflicting with federal maritime principles cannot be given effect under the supremacy clause of the United States Constitution.

This author has concluded that salvors of sunken aircraft may claim title to the property under the maritime law of finds, provided that abandonment is shown, or receive a generous salvage award for the voluntary rescue of property imperiled at sea. Moreover, even if the sunken aircraft is located in navigable waters within the boundaries of a state, the salvor can overcome state claims to title of the aircraft. Nonetheless, salvors of sunken aircraft still may face claims by the federal government based upon rights to title as a sovereign. Additionally, since most of the demand in “restorable” aircraft is for vintage military planes, the rights of the federal government as the original owner must be considered. The following section will analyze the impact of federal rights upon the salvor’s rights in the sunken aircraft.

**FEDERAL GOVERNMENT RIGHTS TO TITLE**

Property not owned by the federal government that is brought to shore by American citizens may be disposed of by Congress. Legislation purporting to take control of abandoned property rescued at sea, however, has never been enacted. If the sunken aircraft was previously owned by the United States Government, the salvor’s rights will be governed by the traditional maritime doctrines of finds and salvage.

**A. Rights to Sunken Aircraft not Owned by the Federal Government**

In *Treasure Salvors I*, the United States Government claimed title to a sunken vessel discovered by American citizens off the coast of Florida. Two relevant issues raised by the Government in its claim to title concerned the Abandoned Property Act and the sovereign

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271. See *supra* notes 207-19 and accompanying text.
272. See *supra* notes 173-206 and accompanying text.
273. See *supra* notes 95-172 and accompanying text.
275. *Id.*
prerogative.\textsuperscript{277} The Abandoned Property Act authorizes the Administrator of General Services to protect the interest of the government in wrecked, abandoned, or derelict property "being within the jurisdiction of the United States, and which ought to come to the United States."\textsuperscript{278} In \textit{Russell v. Proceeds of Forty Bales of Cotton},\textsuperscript{279} the Government relied upon the Act as statutory authority for a claim to the proceeds from the sale of goods found derelict at sea.\textsuperscript{280} The court, however, determined that the Act applied only to property which should belong to the United States as a result of government participation in the Civil War, and not to wreckage of any other kind.\textsuperscript{281} Similarly, the court in \textit{Treasure Salvors I} reasoned that the Act had no application to a case involving the recovery of a sunken vessel and cargo lost at sea.\textsuperscript{282} The court noted that while Congress might have the constitutional power to take control of wrecked and abandoned property brought to shore by American citizens, legislation to that effect had never been enacted.\textsuperscript{283}

In \textit{Treasure Salvors I}, the Government also claimed the sunken treasure as a successor to the prerogative rights of the King of England.\textsuperscript{284} The court cited several decisions in concluding that the notion of sovereign prerogative never took root in America.\textsuperscript{285} In the absence of any specific legislation to the contrary, the United States Government does not possess superior rights to abandoned sunken aircraft brought to its shores by American citizens. A different result, however, will exist if the sunken aircraft was owned initially by the United States Government. The following discussion is especially important to the professional salvor of sunken aircraft since vintage military planes are high in demand.

\textbf{B. Ownership Rights to Sunken Aircraft}

When the Government stands in the position of an owner of the sunken aircraft, the doctrines of abandonment and lost property together with maritime laws of salvage and finds should apply to the government as they do to private owners. The enormity of the United

\textsuperscript{277} See supra notes 243-51 and accompanying text.
\textsuperscript{278} See 40 U.S.C. §310; see also \textit{Treasure Salvors I}, 569 F.2d at 342.
\textsuperscript{279} 21 Fed. Cas. 42 (S.D. Fla. 1872) (No. 12,154).
\textsuperscript{280} \textit{Id.} at 43.
\textsuperscript{281} \textit{Id.}
\textsuperscript{282} \textit{Treasure Salvors I}, 569 F.2d at 342.
\textsuperscript{283} \textit{Id.} at 341.
\textsuperscript{284} \textit{Id.} at 340.
\textsuperscript{285} \textit{Id.} at 342.
States Government and the inherent administrative complexities require that for purposes of abandonment and the maritime law of finds, the evidence of abandonment must be overwhelming. \(^{286}\) Personal property under the jurisdiction of the Navy may be disposed of under the authority contained in the Federal Property and Administrative Services Act of 1949. \(^{287}\) With the exception of battleships, carriers, cruisers, destroyers, and submarines, the Act provides that the Navy may sell or dispose of all of its personal property. \(^{288}\) Although no provision of the Act expressly provides for the abandonment of government property, the Ninth Circuit, in *Kern Copters, Inc. v. Allied Helicopter Service, Inc.*, \(^{289}\) held that the abandonment of government property must be effectuated in the authorized manner. \(^{290}\) In *Kern Copters*, a helicopter owned and operated by the United States Government crashed in the Guatemalan jungle. The Army attempted to retrieve certain parts of the aircraft, but made no effort to retrieve the remainder. \(^{291}\) A dispute to title arose between a party who had taken possession of the wreck and a party who subsequently had purchased the wreck from the Government. \(^{292}\)

Despite the fact that the Army had failed to seek recovery of the wrecked aircraft for a period of eighteen months, the court held that abandonment had not been established. \(^{293}\) Even though the Army did not have immediate possession of the wreck, the helicopter was under the control of the Army to the extent that the Army had the power or authority to manage and administer the property as against all other parties. \(^{294}\) The court in *Kern Copters* pointed out that Congress has the power to provide for the disposition of property of the United States. \(^{295}\) This power, moreover, must be exercised in the authorized manner. \(^{296}\) The authorized manner, in this instance, was governed by Army regulations, which required affirmative evidence of abandonment pursuant to the regulation. \(^{297}\) The pertinent regulation provided that abandonment could be accomplished only by the Army giving

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\(^{286}\) *See*, e.g., *Kern Copters, Inc. v. Allied Helicopter Service, Inc.*, 277 F.2d 308, 308.

\(^{287}\) *See* 32 C.F.R. 736.1. The intent of Congress in enacting this legislation is to provide an economical and efficient method for the disposition of government property. 40 U.S.C. §471.

\(^{288}\) *See* 32 C.F.R. 736.1.

\(^{289}\) 277 F.2d 308.

\(^{290}\) *Id.* at 313.

\(^{291}\) *Id.* at 309.

\(^{292}\) *Id.*

\(^{293}\) *Id.* at 313.

\(^{294}\) *Id.* at 311.

\(^{295}\) *Id.* at 313; *see* Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 330 (1936).

\(^{296}\) Finsky v. Union Carbide & Carbon Corp., 249 F.2d 449, 457 (7th Cir. 1957).

\(^{297}\) *Kern Copters*, 277 F.2d at 313.
wide public notice of intent to abandon, or by a finding of a board of officers that abandonment is required by military necessity, considerations of health, safety, and security, or low property value to the extent that retention is not justified. The court emphasized that mere inactivity, or neglect, upon the part of the government officers is insufficient to cause the Government to lose property through abandonment.

The court intimated, however, that a presumption of abandonment was possible on the ground that the Army had a duty to act promptly and either recover the wreck or abandon it. In this case, because no effort was made to recover the property promptly, the court presumed that the aircraft was abandoned. This presumption of abandonment was based upon the idea that Army officers should do their duty. Since the officers had a duty to abandon the property only in the authorized manner, failure to recover the wreck indicated that the helicopter was abandoned. This presumption was overcome, however, by contrary evidence of retention introduced by the government. Although *Kern Copters* suggested that the Government can relinquish ownership of property only by expressly manifesting an intent to abandon, one reported case held that the Government had divested itself of ownership by implied conduct evidencing abandonment.

In 1911, the Navy deliberately sank three battleships in target practice. Two of the vessels were later sold and removed from Chesapeake Bay. The San Marcos, however, was not sold and continued to lie in the same location. According to federal statute, the Government as owner of the vessel was required to place buoys to mark the location of the wreck and commence the immediate removal of the sunken craft. Failure to do so was considered an abandonment of the craft. Subsequently, the Lexington, a freight vessel, collided with the wreck and sank alongside the San Marcos. The owners of the Lexington brought a tort action against the United States alleging that the Government had not abandoned the vessel

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298. Id. at 311.
299. Id. at 313.
300. Id.
301. Id.
302. Id.
303. Id.
305. Id. at 231.
307. Id.
and remained liable as owner of the craft.\textsuperscript{308} In\textit{ Baltimore, Crisfield, Onancock Line, Inc. v. United States},\textsuperscript{309} the court held, however, that even though the Government had not taken any positive action by publishing notice or some similar act, the act of “shooting the battleship to pieces” and allowing the vessel to sit for twenty-nine years was sufficient to constitute an abandonment of the craft.\textsuperscript{310} In\textit{ Somerset Seafood Co. v. United States},\textsuperscript{311} another vessel collided with the San Marcos and ran aground. The court affirmed the finding in\textit{ Baltimore} that sometime prior to the collision of the Lexington in 1940, the San Marcos had been abandoned by the Government.\textsuperscript{312}

According to the\textit{ Baltimore} and\textit{ Somerset Seafood} cases, salvors who reduce sunken government aircraft to possession, thereafter may assert title to the property by introducing evidence of relinquishment and intent to abandon on the part of the Government. After examining the evidence of abandonment in light of all of the circumstances, the court will decide whether the Government has divested itself of ownership of the aircraft. The evidence of abandonment, however, must be overwhelming before the court will make this finding. Even in light of\textit{ Baltimore} and\textit{ Somerset Seafood}, a heavy burden is placed upon the salvor who alleges abandonment by the Government. Even if abandonment cannot be proven, however, the salvor will be entitled to a generous salvage award for his services rendered in restoring to the mainstream of commerce and culture historically invaluable goods left abandoned to the sea.

\textbf{Conclusion}

In recent years, the increase in demand for the restoration of vintage aircraft has caused professional salvors to turn to the sea in search of World War I and II aircraft. The common law establishes that when personality has been abandoned, title to the property vests in the first occupant who, with intent to become the owner, reduces the property to possession. According to California statutory law, if the property merely has been lost, rather than abandoned, the finder, under certain circumstances, may obtain title to the lost goods. The common-law doctrines of abandonment and lost property, standing

\textsuperscript{308} \textit{Baltimore}, 140 F.2d at 234.
\textsuperscript{309} 140 F.2d 230.
\textsuperscript{310} \textit{Id.} at 234.
\textsuperscript{311} 95 F. Supp. 298 (D. Maryland 1951).
\textsuperscript{312} \textit{Id.} at 300.
alone, provide viable remedies for one who discovers and rescues sunken aircraft.

By determining, however, that these aircraft through submersion in navigable waters, become proper subjects under admiralty law, remedies to the salvor of sunken aircraft are improved substantially. Under the maritime law of salvage, the salvor is entitled to a reward for his salvage services, regardless of a determination that the aircraft has not been abandoned. If the sunken aircraft can be categorized as a derelict, the owner may not enjoin the salvage of the property. Moreover, the salvage award is enforceable by a maritime lien on the aircraft. Finally, the maritime law of finds may supplement the law of salvage and grant title to the finder of lost, abandoned, or derelict aircraft recovered at sea.

This author has demonstrated that the rights to title will withstand an attack based upon any current state or federal legislation. The state cannot claim superior title to the sunken aircraft, either under the wreck statutes or in accordance with any sovereign prerogatives. The federal government cannot assert superior title under any sovereign prerogatives, nor has Congress enacted any statute granting the federal government title to abandoned property brought to American shores. If the sunken aircraft is military, however, the federal government, as an owner, possesses superior rights to title, unless it has relinquished that title by abandoning the property. The policy underlying these maritime remedies that encourages the rescue of distressed property at sea is based soundly in admiralty law. The equitable application of these admiralty doctrines will ensure consistency and promote the orderly rescue of all property imperiled at sea.

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