

ENVIRONMENTAL STUDIES PROGRAM: Ongoing Studies

Region: Headquarters

Planning Area(s): All

Title: Synthesis, Legislative Review, and Case Law History Applicable to Cultural Heritage in the Marine Environment

BOEM Cost: \$150,000

Period of Performance: FY 2012-2013

Conducting Organization(s): United States Department of Commerce (M11PG00050)

BOEM Contact: Brian.Jordan@boem.gov

Description:

Background: The interpretation of cultural resource legislation related to maritime heritage on the outer continental shelf is a challenging topic, relying on the understanding of U.S. law, customary maritime law, international conventions, and often confusing and overlapping maritime jurisdictions. Statutory interpretation is often complicated due to confusion surrounding agency jurisdiction over different resources on and under the seafloor. Many court cases revolving around the ownership, protection, and management of historic shipwrecks have relied on legal precedent and the analysis of congressional intent to come to a final decision. Without access to the extensive legal resources that law firms and the courts rely on to make these decisions, it is difficult for BOEM subject matter experts and management to have reliability in the limited interpretation of the existing statutes and regulations with which they must comply.

Objectives: This study will synthesize all of the information pertaining to cultural heritage legislation and case law relevant to BOEM's jurisdiction on the OCS to assist BOEM archaeologists and DOI solicitors with developing legally sound regulations and guidance. Products the study will generate include: a digital collection of all of the sources used in the study; annotated bibliography focusing on statute's applicability toward cultural resources on the OCS; bibliographic database of the sources hyperlinked to the digital collection; and, a report describing the methods and results of the study.

Importance to BOEM: BOEM is required under multiple statutes (OCSLA, NEPA, and NHPA) to take into consideration the impacts of OCS activities on cultural and archaeological resources. To achieve compliance with these laws, BOEM has developed regulations and guidance documents directing lease and permit holders to avoid impacting any archaeological resources found during the survey or development of their leases. With passage of the Energy Policy Act of 2005, BOEM has assumed jurisdiction for some types of renewable energy development on the OCS, and the expansion of cultural resource review responsibilities beyond those that might reside on or below the seafloor. The majority of the legal guidance regarding BOEM responsibilities for the survey and protection of archaeological resources was developed in the early 1980s with

periodic revisions in the 1990s. All of the guidance is dated and does not take into account revisions to the NHPA law and regulations, nor BOEM's expanded responsibilities for renewable energy development on the OCS. This study will synthesis all of the information pertaining to cultural heritage legislation and case law relevant to BOEM's jurisdiction on the OCS to assist BOEM archaeologists and DOI solicitors with developing legally sound regulations and guidance.

Current Status: Date of Award: August 03, 2011. The compilation of the "primary" legislative histories for the majority of laws related to this project has been completed on schedule. The legislative histories for the Antiquities Act, the National Historic Preservation Act of 1966 and relevant amendments, the National Environmental Policy Act, Sunken Military Craft Act, the Coastal Zone Management Act, portions of the legislative history for the National Marine Sanctuaries Act, the Abandoned Shipwreck Act, and RMS Titanic Memorial Act have been digitized and are available on the Department of Commerce, Law Library's website at <http://library.doc.gov/client/default> (click the digital legislative history link on the left side of the screen). The digital legislative history page contains a list of all legislative histories available on the Law Library's website. Each statute is listed according to its Public Law number and the common name of the statute. The link for each statute lists all of the legislative history documents available for that particular statute—the pdf of the Public Law is always the last document. The legislative histories for the remaining laws are now in the process of being digitized or are waiting to be sent for digitization. A case law database is being designed by NOAA's Coastal Services Center. Once the database is ready, the legislative histories will be uploaded.

Final Report Due: August 31, 2013

Publications: None to date.

Affiliated Web Sites: Department of Commerce, Law Library's website at <http://library.doc.gov/client/default> (click the digital legislative history link on the left side of the screen).

Revised Date: August 07, 2012

ESPIS: Environmental Studies Program Information System

All *completed* ESP studies can be found here:

http://www.data.boem.gov/homepg/data_center/other/espis/espisfront.asp