

## FREQUENTLY ASKED QUESTIONS REGARDING THE *R.M.S. TITANIC*

1. **Russia and Japan have submersibles capable of reaching *R.M.S. Titanic*. What provisions in the proposed legislation regulate their submersibles' activities at the *R.M.S. Titanic* wreck site?**

Under international law, nations, such as the United States, do not have the jurisdiction and authority to regulate the activities of foreign flagged vessels operating outside their nation's Territorial Sea and Exclusive Economic Zone. As the *R.M.S. Titanic* wreck site is well outside the U.S. EEZ, it would not be appropriate for the U.S. to assert jurisdiction over foreign flagged vessels including submersibles. However, the proposed legislation does maximize the jurisdiction and authority available to the U.S. consistent with international law, including port State jurisdiction, flag State jurisdiction and persons over which the U.S. may exercise jurisdiction consistent with international law. For example, it provides express authority over foreign flagged vessels if the foreign nation consents. See Sec 5 Scope and Application.

2. **How does the proposed legislation address activities of surface ships in deploying remotely-operated vehicles (ROV's) to scavenge for and retrieve artifacts, assuming these ships and their personnel are not nationals of, nor financed by nationals of the signatory countries? Would it prevent an American national from paying, say, a Russian entity to do retrieval work?**

As indicated above, the proposed legislation implements a jurisdictional approach that is consistent with international law. Thus, it does not assert jurisdiction over the activities of foreign nationals on foreign flagged vessels operating on the high seas outside of the U.S. EEZ. However, a foreign flagged vessel or national may be subject to U.S. law if the foreign nation consents or when the vessel or national consents to be subject to U.S. law by coming into a U.S. port (i.e., port State jurisdiction). Of particular importance in this context would be prohibitions in Section 6 (d) where it is unlawful to: "Sell, purchase, barter, import, export, or offer to sell, purchase, barter, import, export, in interstate or foreign commerce, *R.M.S. Titanic* property not constituting a collection." If these acts are conducted in the U.S., then of course the prohibitions could be enforced against foreign nationals and vessels as well as U.S. vessels and nationals. Also, if this proposed legislation became U.S. law, then it would apply to an American national even if the prohibited activity was conducted on a foreign flagged vessel at the wreck site.

3. **What specific evidence has been offered to NOAA of human remains being present at the wreck site and in the ship's hull?**

Organic material associated with *R.M.S. Titanic* that has been exposed to the marine environment most likely deteriorated by the 1940's, with the exception of treated organic material, such as tanned leathers used in boots or suitcases. Thus, the debris field is void of human remains, and only contains personal effects. Interior spaces of the hull, especially the intact bow section, even if flooded during the sinking process, may not be exposed to the current outside environment. These types of isolated environments create a condition of stasis where constant pressure, low temperatures, no flow, and anoxic water levels have been known to preserve organic matter for centuries.

4. **Does the legislation prohibit artifact removal except as authorized by NOAA? If the answer is "yes," how would R.M.S. Titanic, Inc., the present legal salvor-in-possession, maintain its status with the court if it is prevented from recovering additional artifacts to lodge with the court? If R.M.S. Titanic, Inc. were to lose its status, how would the legislation prevent a free-for-all among non-signatories to collect artifacts by whatever means?**

Yes, the legislation prohibits a number of future activities except as authorized by a permit issued by the Department of Commerce [National Oceanic and Atmospheric Administration]. See Sections 6 and 7. The proposed legislation contemplates that the U.S. District Court will continue to determine the rights of the salvor in possession, *R.M.S. Titanic, Inc.*, under maritime law of salvage consistent with the Agreement and implementing legislation. The proposed legislation does not prevent *R.M.S. Titanic, Inc.* from recovering additional artifacts. It does, however, require that the recovery be conducted in accordance with the law, including a DOC/NOAA permit to ensure the recovery is consistent with the Agreement and implementing legislation. At the request of *R.M.S. Titanic, Inc.*, the proposed legislation submitted to the 109<sup>th</sup> Congress was modified to expressly address their rights under salvage law. See the proposed legislation submitted to the 110<sup>th</sup> Congress specifically SEC. 17. RELATIONSHIP TO OTHER LAWS (h) "Without prejudice to the orders of a United States Court of competent jurisdiction, issued in reference to the entity known as '*R.M.S. Titanic, Inc.*', prior to the effective date of this legislation (the status of such orders to be unaffected by this legislation), no person may obtain salvage rights to *R.M.S. Titanic* or *R.M.S. Titanic* property, after the effective date of this Act, except by an assignment or transfer of existing rights or through the orders of a United States Court of competent jurisdiction issued in reference to the entity known as "*R.M.S. Titanic, Inc.*"

5. **What scientific evidence has been offered to NOAA that *R.M.S. Titanic's* deterioration is the result of submarine visits and human activities, rather than bacteriological degradation, metallurgical decay and/or the effects of electrolysis in salt water, the expected aging of 98-year-old steel, etc.?**

When examining shipwrecks, NOAA considers all aspects of deterioration, including biological, chemical and physical processes. In the case of *R.M.S. Titanic*, NOAA has maintained that all three processes currently impact the site. Examples of each include, but are not limited to: biological deterioration through rusticle growth; chemical deterioration through electrolysis; and physical deterioration through underwater vehicles coming into contact with the wreck site.

6. **Aside from Robert Ballard and the *R.M.S. Titanic* Historical Society, were views of other experts such as Cdr. Paul-Henri Nargeolet (co-leader of the 1987, 1993, 1994, 1996 and 1998 expeditions and now a U. S. resident) and other organizations (such as the British *R.M.S. Titanic* Society or the U.S.-based *R.M.S. Titanic* International Society) solicited in drafting this legislation?**

When preparing proposed legislation for Congress, the executive branch often uses existing policy and procedures as a basis for moving forward. In the case of *R.M.S. Titanic*, NOAA used the existing *R.M.S. Titanic* Maritime Memorial Act, and the 2001 NOAA Guidelines for Research, Exploration and Salvage of *R.M.S. Titanic* as a foundation. Comments were not solicited from or by Dr. Robert Ballard, *R.M.S. Titanic* Historical Society, or anyone else in the outside community. Since this legislation is only in draft form and only one step in the legislative system, Congress will implement its own review process, as it does with all bills.

7. **I've read that Canada and perhaps France have not ratified this legislation. Must all four countries ratify it for it to become effective?**

No, the Agreement enters into force when two parties sign and agree to be bound under international law.

8. **What effect, if any, would the legislation have on the movement into and out of the U. S. of already-retrieved artifacts for exhibition purposes?**

As indicated above, the prohibited activities may apply to artifacts being moved in and out of the country that do not constitute a collection. See Sec 6(d). This prohibition was primarily developed to codify U.S. Federal Admiralty Court orders prohibiting the sale of individual artifacts and requiring that the collection stay together. However, in response to a request from *R.M.S. Titanic* Inc., the definition of "collection" has been revised so that the definition also recognizes collections

authorized by foreign governments. As such, this would include the award by the Government of France for certain artifacts salvaged in 1987.

**9. When and by whom will hearings occur on this legislation? Are the hearings open to the public?**

Legislative calendars for the U.S. House of Representatives and the U.S. Senate, which include hearing schedules, are determined by Congress, not NOAA. However, NOAA is not aware of any immediate hearings planned for this particular legislation.

**10. Does the Administration's proposed legislation contain a loophole in regard to salvage by persons that are from nations that are not party to the Agreement?**

The proposed legislation maximizes the jurisdiction and authority that the United States (U.S.) may assert over party and non-party foreign persons to the extent recognized under current international law. For example, the unauthorized sale or trafficking of artifacts in the United States may be enforced against persons that are from nations that are not party to the Agreement. Of course, no nation – other than the flag state – has jurisdiction over foreign persons on foreign-flagged vessels located in international waters. The absence of the assertion of U.S. jurisdiction over foreign vessels and persons in international waters is not a loophole in the legislation but rather respect for the law of nations. To assert U.S. jurisdiction over foreign persons in international waters would be inappropriate and a dangerous precedent. Under Article 4 of the international agreement on *R.M.S. Titanic*, the parties agree to regulate the activities of persons and vessels subject to the jurisdiction and authority of respective parties. Consistent with the Agreement, and the scope of other laws, jurisdiction and authority in the proposed legislation is appropriately focused on activities conducted by U.S. citizens and U.S.-flagged vessels, as well as others subject to U.S. jurisdiction (e.g., foreigners visiting the United States or vessels located in the U.S. territorial sea and EEZ). Finally, it is important to note that the exercise of jurisdiction and authority under the proposed legislation is far greater than that which the U.S. District Court for the Eastern District of Virginia sitting in Admiralty may currently exercise and enforce. At present, that court's jurisdiction (in terms of *R.M.S. Titanic*) is limited to *R.M.S. Titanic, Inc.* (RMST). The court and RMST are unable to prevent salvage by other persons unless such persons become subject to the *in personam* jurisdiction of the court.

**11. Have there been any negotiations with Japan or Russia to formally bring them under the law's provisions?**

Representatives of the U.S. (Department of State and NOAA) have informed Japan, Russia, and other nations of the Agreement and of the U.S. interest in having other

nations join the Agreement. To date, however, this has not resulted in any negotiations. Upon the enactment of domestic implementing legislation and the resulting entry into force of the Agreement, DOS and NOAA plan to increase the level of outreach to other nations, particularly Japan, Russia, and other nations with deep water technology.

12. **Given the site's remoteness, how would monitoring of the wreck site be accomplished? Was such monitoring in effect in 2002 when a British-flagged vessel not authorized by R.M.S. Titanic, Inc. apparently visited the wreck site and allegedly retrieved artifacts?**

The site's remoteness and its depth make it very difficult and challenging to monitor. There are, however, a number of options including the use of remote sensing equipment. One of the options that has been studied is surveillance using satellites. U.S. District Court directed RMST, as the custodian of the wreck site, to investigate reports of an interloper looting or conducting unauthorized salvage of the wreck. RMST in turn contacted NOAA and DOS for assistance on this matter. As a result, NOAA used existing satellite information to determine if data acquired in the area could facilitate monitoring and enforcement. DOS requested that the U.K. investigate a vessel that was subject to its jurisdiction as a port state. Problems, however, were encountered because the U.S. had not signed the Agreement at the time.

13. **Was the proposed legislation developed based on the assumption that human remains still exist within *R.M.S. Titanic's* hull and that it is not rapidly deteriorating because of environmental conditions including high currents?**

The provisions in the proposed legislation and Agreement limiting salvage or recovery to artifacts in the debris field and protecting the two large hull portions from disturbance are largely based on orders of the U.S. District Court for the Eastern District of Virginia sitting in Admiralty, the business plans of RMST, and provisions in the *R.M.S. Titanic* Maritime Memorial Act of 1986 recognizing the wreck site of *R.M.S. Titanic* as a maritime memorial. More than 1500 men, women and children lost their lives when *R.M.S. Titanic* sank on April 15, 1912, and a large number of those lost were likely trapped in the ship's hull. This tragic loss of life and the encasement of the remains of many passengers and crew in the hull sections have caused many people around the world, including descendants of *R.M.S. Titanic's* passengers and crew, to view the shipwreck as a grave site. Assumptions about the existence of human remains do not appear to have been significant factors in relevant provisions of the 1986 Act; nor were they factors in the development of the Agreement, Guidelines, and proposed legislation. While the Guidelines' provisions may be consistent with an *in situ* preservation approach to management, it is important to understand that *in situ* preservation is more of a scientific approach or methodology than a decision about the ultimate disposition of a site.

The Annexed Rules of the Agreement and the “Guidelines for Research, Exploration and Salvage of *R.M.S. Titanic*” 66 Fed. Reg. 18905-18913 (April 12, 2001), which are in line with the 1986 Act, set forth detailed information on artifact recovery. The preamble to the Federal Register notice includes responses to comments including an explanation of *in situ* preservation, analysis of how it works under the Guidelines, and examination of how it is a scientific precautionary approach for protecting the wreck site and assisting in decision making about if-and-when salvage or recovery is necessary or appropriate.

14. **Why does NOAA prefer *in situ* preservation over artifact recovery and conservation? Why has *in situ* preservation policy resulted in artifact recovery in the case of the NOAA-sponsored expeditions to *Monitor*, where remains of some of the sixteen men have been found? Why is *R.M.S. Titanic* the sole subject of these rules whereby the presumed existence of human remains results in *in situ* preservation?**

*In situ* preservation does not preclude intrusive research, exploration or appropriate salvage. Consistent with a precautionary management approach, once there is a scientific, cultural, or educational justification, then research, exploration, or appropriate salvage activities may be permitted. The Annexed Rules and Guidelines were developed for the implementation of plans for intrusive research, salvage, or recovery. To fulfill the public interest in *R.M.S. Titanic* under salvage law and the 1986 Act, such salvage should only be conducted in accordance with the scientific and conservation standards set forth in the proposed legislation, Agreement, and Guidelines.

The proposed legislation, Agreement, and Guidelines provide that *in situ* preservation is the preferred policy approach for memorializing and conserving *R.M.S. Titanic*. This approach is consistent with widely accepted international and domestic professional archaeological standards and embodies the broader public interest in conservation of *R.M.S. Titanic*. Under this policy, non-intrusive research and exploration of *R.M.S. Titanic* is encouraged in order to protect the wreck site for future research and access. The public interest in *R.M.S. Titanic* is diverse. Congress and others view the site as a maritime memorial, a grave site, and an underwater museum and laboratory. The hull and cargo can be seen as a time capsule of a tragic event and a snapshot of another historical period. Because intrusive activities may damage or destroy *R.M.S. Titanic*, these restrictions on disturbance support the presumption that such activities should not be conducted unless justified by scientific, cultural, or educational interests. This *in situ* preservation policy is compatible with non-destructive uses of the site, such as non-intrusive research, education, public viewing, and even commercial use. This policy is also consistent with the treatment of *R.M.S. Titanic* as the final resting place for many people, and the conservation of the surrounding natural environment.

*In situ* preservation has been incorporated into the Agreement, Guidelines, and proposed legislation to protect *R.M.S. Titanic*, but such actions will not necessarily preclude the continued salvage of artifacts in the debris field. This is consistent with NOAA's application of the *in situ* preservation approach in regards to the *USS Monitor*. At the *USS Monitor* site, artifacts have been periodically recovered over the last several decades. Perhaps most notably, when the science and public interest in recovery of portions of the vessel was well established, the turret, engine, and other artifacts were removed. The existence of human remains on a wreck site are, of course, an important issue to be considered, but should be done on a case-by-case basis and not, in itself, dictate whether there should be recovery or salvage. Unlike the *R.M.S. Titanic*, the *USS Monitor* has not been designated as a maritime memorial by an international instrument. As indicated above, the wreck site of *R.M.S. Titanic* was designated as a maritime memorial in the Agreement in part because the loss of life is such an integral part of why the site became historic and even iconic. The historical and cultural significance of the *USS Monitor* is based on its design, construction, and its place in naval history. The loss of life on *USS Monitor* is no less tragic, but does not relate to the place of the *USS Monitor* in history and culture. A better analogy to the *R.M.S. Titanic* is the wreck site of the *USS Arizona*, a site which is also tied closely to the tragic loss of life of more than 1,000 individuals.

**15. What was US Position at UNESCO UCH Meetings regarding regulation of wreck hunters outside territorial waters? Has it changed from position at meeting in 2002? If so, why?**

From the outset of the UNESCO UCH Meetings, the U.S. supported the regulation or control of activities directed at underwater cultural heritage in all of the maritime zones in manner consistent with international law as reflected by the Law of the Sea Convention (LOSC). As such, coastal State jurisdiction was limited to UCH in internal waters, the 12 nm territorial sea, and the 24 nm contiguous zone. In terms of UCH on the continental shelf and EEZ, the US was concerned about "creeping jurisdiction" of coastal States, but specifically supported the use of existing provisions of the LOSC regarding jurisdiction and authority over natural resources to indirectly protect UCH. As to UCH in the Area underneath the high seas, the U.S. supported the use of flag State jurisdiction and other jurisdiction consistent with the LOSC. The jurisdictional approach agreed to by the US, UK, France, and Canada under the *R.M.S. Titanic* Agreement is consistent with the LOSC and was suggested as a model for protecting UCH on the continental shelf and EEZ without raising concerns of coastal State "creeping jurisdiction".

**16. Why has it taken so long for this, if the *R.M.S. Titanic* Maritime Memorial Act was passed in 1986?**

There are a number of reasons it has taken so long to negotiate the Agreement and develop the proposed implementing legislation. In sum, it was a combination of

factors including delayed interest in negotiation, litigation, and a lengthy, thorough, deliberative process in negotiating the Agreement as well as in developing the legislation.

Following enactment of the *R.M.S. Titanic* Maritime Memorial Preservation Act of 1986, France, the UK, and Canada did not express immediate interest in negotiating an international agreement called for in the Act. The 1995 Greenwich Conference sponsored by the British National Museum was the first forum where countries other than the U.S. expressed an interest in negotiating an agreement to protect *R.M.S. Titanic*. It took four years to negotiate the Agreement. After that the US DOS and NOAA were sued by *R.M.S. Titanic, Inc.* to prevent the U.S. from signing and implementing the Agreement and Guidelines. After the suit was dismissed, NOAA published proposed Guidelines and ultimately final Guidelines in 2000. The U.S. subsequently signed the Agreement in 2004 after lengthy deliberations with France and the other parties over the French translation of the Agreement. In signing the Agreement, The United States made clear that the U.S. could not consent to be bound until implementing legislation was enacted by Congress and signed by the President. It took two years of a lengthy but comprehensive interagency deliberative process to develop proposed legislation that was submitted last year to the 109<sup>th</sup> Congress but which did not act upon the legislation. DOS recently submitted similar legislation to the 110<sup>th</sup> Congress after additional process and deliberations to address comments and concerns of RMST as well as some clarifications to address concerns within the Administration.

Below is a more detailed background and history of the negotiation of the Agreement and Guidelines which is based on information published in the preamble of the Federal Register Notice for the proposed Guidelines for the Research, Exploration, and Salvage of *R.M.S. Titanic* (65 FR 35326-35331, June 2, 2000).

In 1986, the U.S. Department of State (DOS) contacted the referenced nations regarding the development of international guidelines and an international agreement. Despite the continued international interest in *R.M.S. Titanic*, other countries exhibited little interest in developing international guidelines or an agreement. In 1995, the United Kingdom, France, Canada and the U.S initiated talks on negotiating guidelines and an agreement. The initiation of international discussion on the guidelines and agreement, at least in part, was based on information about the commercial salvage of *R.M.S. Titanic* and the exhibition of recovered artifacts in the British National Maritime Museum.

In February 1995, the British National Maritime Museum sponsored a conference of experts in the fields of law, archaeology, history, science, and salvage in Greenwich, England to discuss the protection and management of *R.M.S. Titanic* and other historic shipwrecks. Participants presented papers and discussions were held regarding the differences in approach between archaeologists and salvors, the Law of the Sea, the draft convention on underwater cultural heritage (UCH)



prepared by the International Law Association, and the practices of various nations with respect to the protection and management of UCH.

In January 1996, the British National Maritime Museum held a second conference at the International Maritime Organization in London, England. The conference resulted in a statement of principle, called the Greenwich Declaration, concerning the management of UCH. The significance of UCH to humankind was recognized, as was the threat of its irrevocable loss unless its disturbance or removal is conducted in accordance with best archaeological practices and under the supervision of national authorities having jurisdiction over such activities. While *R.M.S. Titanic* was an impetus for the conferences, the focus was to provide protection for all UCH. The preparation of an international instrument by UNESCO for the protection of UCH was discussed as was the International Council of Monuments and Sites (ICOMOS) International Charter on the Protection and Management of Underwater Cultural Heritage. At both conferences there were also informal discussions on the international agreement and guidelines for research on, exploration of, and if determined appropriate, salvage of *R.M.S. Titanic*.

Delegations representing the Governments of Canada, France, the United Kingdom of Great Britain and Northern Ireland, and the U.S. conducted negotiations between 1997 and 2000 in London and by video-conference to develop the text of an international agreement to protect *R.M.S. Titanic*. Specifically, negotiations were held on September 29 and December 1, 1997; February 12, 1998; January 12, June 18, and December 2, 1999; and January 5, 2000.

**17. What are the next steps for Congress to pass the proposed legislation?**

The Administration's package (letters, Agreement and proposed implementing legislation) will be referred to the standing committee or committees having jurisdiction over the *R.M.S. Titanic* in both the House and the Senate. As a courtesy, the chairman or the ranking minority member of these committees may introduce the bill in the form in which it was received on behalf of the Administration (alternatively, they may also introduce a bill with their own changes to also be considered). Once the bill has been introduced, it is formally referred to the committees of jurisdiction and placed on their Legislative Calendar. If one or more Committees decide to move forward, then the next steps may include hearings, reports and recommendations for action by the full House and/or Senate. If both the House and the Senate pass a bill to implement the legislation, the final step would be to send the legislation to the President for his signature.