

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

STATE OF RHODE ISLAND,  
Plaintiff

v.

99 1364

The Unidentified, Wrecked,  
and Abandoned Vessels,  
among which is believed to be  
the Lord Sandwich which, in turn,  
is believed to have formerly been  
the H.M.S. **ENDEAVOUR**,  
their apparel, tackle, furniture, equipment  
cargo, etc., located in Newport Harbor,

Defendants in rem

**ORDER APPOINTING RHODE ISLAND HISTORICAL  
PRESERVATION & HERITAGE COMMISSION  
AS SUBSTITUTE CUSTODIAN**

WHEREAS, this matter came before the Court on Rhode Island's petition  
in rem to protect and establish title to certain shipwrecks; and

WHEREAS, the Court has reviewed, inter alia:

1. The Affidavit of the State Underwater Archeologist (attesting to the risk of unauthorized scavenging and the high archaeological standards of the intended custody);
2. The Memorandum of Agreement between Rhode Island Historical Preservation & Heritage Commission and Rhode Island Marine Archaeology Project (reinforcing the high archaeological standards of the intended custody);
3. The Affidavit of Dr. D. K. Abbass (attesting to the highly historic significance of the vessels at issue); and

Attest to  
True Copy

DAVID A. DIMARZIO

By Pamette J. Suhel  
Deputy Clerk

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4. The Affidavit of Counsel (attesting to Rhode Island's intent to responsibly handle interim custody of the vessel).


It is hereby,

ORDERED, ADJUDGED AND DECREED that:

Edward F. Sanderson, as he is Director of the Rhode Island Historical Preservation and Heritage Commission, be appointed substitute custodian of the Defendant Vessels until further Order of the Court.

TO ENTER

PER ORDER

  
U.S. ~~M.~~J. 3/24/98

  
Deputy Clerk

Presented by:

STATE OF RHODE ISLAND  
By Its Attorney General

SHELDON WHITEHOUSE  
ATTORNEY GENERAL

Michael Rubin, Esq. #3656  
Assistant Attorney General  
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## Memorandum of Agreement

This agreement is made this 5th day of March, 1999 by and between the Rhode Island Historical Preservation and Heritage Commission, hereinafter referred to as the "RIHPHC", and the Rhode Island Marine Archaeology Project, hereinafter referred to as "RIMAP", and hereinafter together referred to as the "parties."

Whereas, the State of Rhode Island, represented by the RIHPHC, is charged pursuant to the State Antiquities Act (RIGL 42-45.1) with the protection of the underwater historic properties of the State of Rhode Island lying on or under the bottoms of any navigable waters of the state, and

Whereas, the State of Rhode Island reserves to itself the exclusive right and privilege of field investigation on sites owned or controlled by the state, to be conducted in accordance with National Park Service standards (RIGL 42-45.1-4; Archaeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines), and

Whereas, RIMAP is a non-profit organization dedicated to assisting the State in the protection, management, and investigation of the shipwrecks of Rhode Island, working under the regulatory and advisory oversight of the RIHPHC with federal grant monies administered by the RIHPHC, and

Whereas, RIMAP, while conducting research and field work funded by the above-referenced grants has concluded that the vessel that had formerly been Captain Cook's ship HMS ENDEAVOUR was, under new name and under private ownership, one of the fleet of British transports sunk off of Newport, RI, and has identified a particular shipwreck, site number RI 2125, as having a high possibility of being this vessel, and

Whereas, the State of Rhode Island asserts ownership of this vessel, pursuant to the Abandoned Shipwrecks Act (43 USC 2101 et seq.), the Antiquities Act of Rhode Island (RI Gen. Laws 42-45.1-4), the Law of Finds (Supplemental Admiralty Rule D and the General Maritime Law), the Submerged Lands Act (43 USC 1311a), and as a claim for salvage (Supplemental Admiralty Rule C and the General Maritime Law), unless and until a court of competent jurisdiction determines ownership to be with another, such as the Government of Great Britain, and

Whereas, RIMAP wishes to serve as the agent and associate of the State in the archaeological and historical investigation of RI 2125 in particular and the British transport fleet in general,

Now therefore, the parties do mutually agree as follows to RIMAP being designated by the State as the exclusive archaeological investigator of RI 2125 and the Newport transport fleet until such time as the State determines that this is no longer in its interest, or unless and until a court of competent jurisdiction determines ownership to be with another, such as the Government of Great Britain; in the case, for instance, of ownership being with the

government of Great Britain, the United States Navy would take precedence over the State in the management and protection of the said shipwreck(s).

1. Purpose: The purpose of this agreement is to provide for a cooperative arrangement between the RIHPHC and RIMAP for the archaeological evaluation of the vessel believed to be Captain Cook's ENDEAVOUR, and for the location and survey of other vessels in the transport fleet.

2. Scope of Work: RIMAP will provide for archaeological services in accordance with the following stipulations:

Archaeological fieldwork will be conducted in compliance with United States historic preservation laws and regulations, and any other applicable laws, with detailed research designs to be submitted to the RIHPHC for review and approval, signified by the issuance of a permit authorizing the proposed fieldwork. No changes can be made in the scope of work specified in the approved research design without the approval of the RIHPHC. All fieldwork designs will also be submitted to the United States Navy for review and comment.

RIMAP will be responsible for having in place facilities, personnel, and funds sufficient to conserve in a responsible manner any artifacts or archaeological materials recovered, consistent with 36 CFR 79 "Curation of Federally-Owned Archaeological Collections." All archaeological materials recovered will remain the property of the State of Rhode Island unless and until a court of competent jurisdiction determines ownership to be with another, such as the Government of Great Britain.

3. Monitoring and Inspection: RIMAP agrees that the RIHPHC may monitor RIMAP's investigations and that RIHPHC may inspect the shipwreck site, any artifacts recovered, the curation facilities, and any project documentation while this agreement holds.

4. Reporting: RIMAP will provide the RIHPHC with quarterly and annual reports, in accordance with State requirements, detailing the results of the archaeological fieldwork and artifact analysis.

5. Funding: No remuneration will be provided by the RIHPHC or any other agency of the State for the archaeological services to be conducted by RIMAP on the sites specified by this agreement, nor will any payment be made for archaeological materials recovered.

6. Amending or Terminating this Agreement: This agreement may be amended at any time at the instigation of either party only with the written consent of both parties. This agreement can be terminated at any time by either party, with 10 days notice being given, unless such termination would result in the disruption of data recovery and analysis of materials from the shipwreck site(s) such that information or cultural material could be lost or destroyed, or when the State decides that immediate termination is in the best archaeological interest of the

site. Should the agreement be terminated prior to the completion of data recovery and analysis, it will be the responsibility of the terminating partner to propose a mutually satisfactory means to complete the project. The RIHPHC and RIMAP may agree to terminate or amend this agreement if a court of competent jurisdiction determines ownership to be with another, such as the Government of Great Britain.

**Rhode Island Historical Preservation and Heritage Commission**



Edward F. Sanderson  
Executive Director  
Deputy State Historic  
Preservation Officer

**Rhode Island Marine Archaeology Project**



Dr. D.K. Abbass  
Director