

Chapter 8

Beneath a Façade: The Unscientific Justification of Treasure Salvage



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Professor Thijs Maarleveld of the University of Southern Denmark and co-founder of the ICOMOS International Committee on the Underwater Cultural Heritage (ICUCH), was a fierce guardian of underwater cultural heritage and proponent of the UNESCO recommendation of *in situ* preservation as a first option. Despite his unfortunate and untimely passing in 2020, Prof. Maarleveld's efforts to combat the misrepresentation of commercial salvage as archaeological investigation remains a beacon in the field and a reminder of best practices for protecting UCH. He championed the guiding principle that 'the preservation *in situ* of underwater cultural heritage shall be considered as the first option'. Maarleveld noted that 'the principle to consider *in situ* preservation first is not to be confused with the foregone conclusion that *in situ* preservation is what is to be decided to' (2016, p. 478), only that it is considered as a first option. In addition, strides have been made by UNESCO and other organisations to develop tools for preservation *in situ* of shipwreck sites that contribute to long term management options but do not 'reduce a central principle to a management tool' and it is even understood that there are situations and conditions in which *in situ* preservation is not a preferred or feasible option (Maarleveld, 2016). However, there are those that have used this as a way to argue instead for commercial salvage of any shipwrecks, not just those that are threatened.

If one does an online search for information about trawl damage to shipwreck sites, a number of grey literature sources come up relating to the work conducted by treasure hunting company Odyssey Marine Exploration, which attempts to exploit the fact that some shipwrecks are damaged by bottom trawling activities into a broad justification for commercial salvage. Through their work surveying in the English Channel, upon observing that many shipwrecks there exhibited evidence of impacts from fishing gear, the company used this as an opportunity to argue against

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UNESCO's principle of *in situ* preservation as the first option. However, the recovery of entire shipwrecks-worth of artefacts is not the answer to the problem of trawl damage to wrecks, as this volume addresses. What is needed is further documentation of trawl damage to shipwrecks, which in turn requires expanded deep-water exploration to locate, document, and conduct repeat visits in order to quantify damage (Brennan et al., 2016). Most imperative is locating sites in deep water within range of trawls, particularly depths from 200 to 2000 m. It is as important to protect known shipwrecks from trawling as it is to find unknown wrecks to document and protect, as mentioned in a previous chapter by Brennan (Chap. 4, this volume). Expanded funding for exploration is sorely needed. We cannot protect or manage shipwreck sites we don't know about.

That said, the publications by Odyssey Marine are professionally formatted with the appearance of an academic publication. The flashy logo and colour photos engage the reader with an appearance of scientific rigor, which is only present on the surface, and which archaeologists have referred to as creating 'an illusion of research' (Greene et al., 2011, p. 115). Their Oceans Odyssey books and handful of other papers published on their website have no overt reference to them having been peer reviewed, which is troubling. Why is this important? Peer review is done by external reviewers with familiarity of the subject to ensure the work is original, scholarly and in the case of this subject, meets professional archaeological standards including the use of appropriate scientific methodologies, and that the projects were conducted in accordance with professional ethics of archaeologists and conservators. Odyssey Marine used glossy underwater photographs of damage to shipwrecks from bottom-fishing activities to justify the 'salvage' of our common heritage and sale of it for private profit. It of course, does not save our heritage for future generations and instead uses public resources for personal gain. In all of Odyssey's writings, there is a clear, systematic justification of their salvage being presented to the reader.

Four volumes of 'Oceans Odyssey' were released through the Odyssey Marine website and printed by Oxbow Books. They contain a variety of papers by expedition personnel that strive to look like an assemblage of scholarly works. In the Preface, Odyssey Marine founder, Greg Stemm, lays out the idea that trawl damage to wrecks justifies their commercial salvage and sale: 'We found that even in deep water, shipwrecks were being destroyed at an alarming rate and that the politics of underwater cultural heritage were so complex that some government bureaucrats were happier to see shipwrecks being destroyed *in situ* than to consider a new private sector model for managing cultural heritage... It was a very expensive endeavour – far beyond the budgets of academic archaeological institution... we also allowed for generating of profits by... making large quantities of duplicate artefacts – such as coins – available to the public' (Stemm, 2010, p. vii).

Their plan for the privatisation of our public heritage is further presented by John Kimball in Oceans Odyssey 2: 'Only artefacts that fit our Trade Good definition are offered for sale. This is a category characterized by large quantities of mass-produced objects, such a coins, bottles, pottery and other mass-produced cargo... Duplicates are only sold to private collectors after thorough study and recording'

(2011, p. 14). This business model is ‘commercial exploitation’ and inconsistent with the 2001 Convention and US historic preservation law (Ole Varmer, personal communication). The fact that some shipwreck sites are threatened by anthropogenic or natural factors is convenient to their objective. However, it does not overcome the conflicts with heritage law and policy or justify privatising public resources. Kimball further writes: ‘Odyssey has discovered hundreds of shipwrecks... Our policy is to record the site, and then either pick up a small selection of diagnostic artefacts for study and permanent retention or, in the majority of cases, leave the site undisturbed *in situ*’ (2011, p. 16), which further illustrates that they only recover things of monetary value that they can sell for a profit. A major problem with Odyssey Marine’s business model is the speculative sale of duplicate coins and other artefacts to try and secure funds for exploration and recovery. As indicated, there is also the problem of the sale of artefacts salvaged from shipwrecks resulting in the privatisation of public resources. Such sales then may be used to raise funds for future treasure hunting, commercial salvaging, if not looting, of other wrecks. In reference to the Oceans Odyssey volumes, Liz Greene writes, ‘such seemingly innocuous descriptions serve as a veiled justification for the sale of artefacts and reflect Odyssey CEO Greg Stemm’s desire to separate ‘cultural artefacts’ and ‘trade goods’ so the latter can be sold on the open market’ (Greene et al., 2011, p. 115).

Stemm leans further into the façade of good science in the Oceans Odyssey I Preface regarding archaeologists’ views: ‘Their stated position is that any company with a profit motive could not possibly be concerned with science’ (Stemm, 2010, p. viii). This is far from the case, as cultural resource management (CRM) firms conduct rigorous archaeology worldwide, particularly in the United States, where it is reported to, reviewed by, and approved by both State and Federal archaeologists for concurrence. Numerous government and private industry archaeological projects have developed into peer reviewed publications, for example that on USS *Monitor* (Broadwater, 2012), Japanese midget submarines off Pearl Harbor (Delgado et al., 2016), World War II shipwrecks in the Gulf of Mexico (Church & Warren, 2008), and the wreck of *Clotilda* in the Mobile River (Delgado et al., 2023), just to name a few. If Odyssey Marine was so concerned with science, where are their academic publications? What journal articles have come out using any of the scientific data collected by any of these expeditions? In one chapter, Sean Kingsley emphasises the observation that there are a scarcity of shipwrecks predating 1800 in the English Channel (Kingsley, 2010, p. 226). The implication here is that bottom trawling has erased them entirely. It is possible this occurred. However, if a scientific approach were to be taken in writing this chapter, sedimentation, sediment load from nearby rivers, burial, tidal flux and current dynamics would be researched and presented, but no such information is even hinted at. Such omissions would likely have been caught by peer reviewers. Odyssey Marine’s publications are an attempt to appear legitimate and scientific, only to then rationalise commercial sales of their recovered artefacts. However, not only is the work unscientific, but the work is also unauthorised and unregulated, and often destructive.

Kingsley's later book, *Fishing and Shipwreck Heritage*, is not officially part of the Oceans Odyssey series but has the same underlying objective. In the Preface, Kingsley complains that the UK's Joint Nautical Archaeology Policy Committee (JNAPC) tried to 'suppress and discredit all research' by Odyssey Marine in an effort to stop them from excavating the wreck of HMS *Victory*, which Odyssey Marine discovered in 2008 (Kingsley, 2016, p. xiv). The author states that the committee questioned the evidence of trawling presented by Odyssey Marine. While that may be the case, it is clear that the JNAPC did not want to see Odyssey Marine involved in the recovery of British heritage particularly the plan that the artefacts were to be sold. This led to statements such as 'the notion of selling shipwreck artefacts, from potsherds to coins, whether for direct profit or to channel back into funding science, is portrayed as the slaying of archaeology's most sacred cow' (2016, p. 9). Such actions are what led to the UNESCO Annex Rule 2 that 'the commercial exploitation of underwater cultural heritage for trade or speculation or its irretrievable dispersal is fundamentally incompatible with the protection and proper management of underwater cultural heritage. Underwater cultural heritage shall not be traded, sold, bought or bartered as commercial goods' (as cited by Kingsley, 2016, p. 10). Bottom trawl fishing is a problem for the preservation of shipwrecks in many parts of the world, and as this volume illustrates, it is one the archaeological community is working to address. Blatant and intentional destruction of a shipwreck site for the purpose of selling the artefacts for profit, regardless of whatever 'science' is done ahead of it, goes against all principles of archaeology. Kingsley also states that 'wrecks subjected to treasure hunting are typically not published scientifically' (2016, p. 11). While trying to separate Odyssey Marine from other treasure hunters, as discussed previously, Odyssey Marine's publications do not qualify as scientific.

In his review of Kingsley's book, Prof. Maarleveld wrote, 'neither fishing nor heritage lie at the heart of this book. Rather, I get the impression that they serve as a decoy for continuous complaint about the archaeological profession, authorities, international organizations such as UNESCO, regulations, committees and bureaucracy that curb the freedom of action of everyone, but first and foremost of Dr Kingsley himself' (Maarleveld, 2016, p. 478). In other words, Odyssey Marine's arguments regarding trawling damage are not so much that archaeological sites are being damaged, but if fishers can damage sites, why can't we? 'Much treasure hunting has disguised itself with an image of respectable explorative research' Maarleveld further wrote (2016, p. 479). The hidden agenda of Odyssey Marine is not a new tactic. Maarleveld concludes his review by directing readers to another book in the same series as Kingsley's by Colin Renfrew, *Loot, Legitimacy and Ownership*, which 'explains why archaeologists should steer clear of operations purporting to work as archaeologists while selling artefacts and promoting the market for archaeological objects' (p. 479).

Mischaracterisations plague Odyssey Marine's writings as they try to warp actual scientific publications to fit their narrative. One example is some of the work I've put forth from expeditions in the Black Sea. *Nautilus* expeditions in the Black Sea in 2011 and 2012 followed work by Robert Ballard in 2000 and 2003 that located four Byzantine shipwrecks off Sinop. These expeditions discovered additional

shipwrecks, both off Sinop as well as off Ereğli along the northern coast of Turkey (Brennan et al., 2013, 2016). Many of these wrecks exhibited trawl damage, which we had also documented on ancient shipwrecks in the Aegean Sea (Brennan et al., 2012, Brennan, Chap. 4, this volume). Like off southwestern Turkey in the Aegean, we proposed marine protected areas and regions of additional trawling prohibitions to begin to protect these newly discovered wrecks (Brennan et al., 2012; Krumholz & Brennan, 2015). We concluded, ‘It is essential to continue to conduct rapid comprehensive surveys of such threatened areas before these sites are damaged further, potentially beyond the point at which they can be detected’ (Brennan et al., 2012, p. 69, cited in Kingsley, 2016, p. 95). Kingsley states that ‘The team’s deductions are hard to square with their own additional conclusions’ (p. 95). The point made in our Black Sea articles is the same as here: we cannot protect underwater cultural resources we do not know about. Ocean exploration, especially in depths that are in the range of trawlers (200–2000 m), is essential to locate wrecks that need to be protected through marine protected areas (MPAs) or other exclusion zones. This is a consistent argument throughout all the publications related to trawling stemming from the *Nautilus* expeditions.

One wreck in the Black Sea, Ereğli E, was of particular importance for a number of reasons. It is the oldest shipwreck in deep water found along the southern Black Sea coast of Turkey, and also exhibited extensive damage from trawls (Brennan et al., 2013, 2016; Davis et al., 2018). The wreck was discovered in 2011 and mapped with video, still cameras and multibeam sonar. In this imagery were objects that we suspected may be human bones, which were likely trawled up from below the mudline. Upon our return and remapping of the site in 2012, approximately 11 months later, the site had been further trawled, many of the artefacts moved off-site, and the bones were no longer visible (Brennan et al., 2016). Kingsley states ‘This data loss can hardly have come as a shock’ (2019, p. 18). He adds, ‘leaving wrecks *in situ* without selective sampling or excavation seems at best counter-intuitive’ (2016, p. 96). Odyssey Marine may not have been too concerned about obtaining permits. *Nautilus* was operating in Turkish waters and had Turkish observers aboard with specific stipulations in our marine scientific research permits through the Ministry of Foreign Affairs that prohibited touching or removing anything from a shipwreck. We were very aware of the fragile state of Ereğli E and would have collected the bones for analysis had we been able. In fact, when we returned in 2012, it was with specific permission from Turkey to recover the bones that we sought through proper channels. It was an unfortunate circumstance that they were no longer there. However, the urgency of a site’s imminent danger from trawls does not supersede the need for legal compliance through permissions from the coastal state.

In 2007, Odyssey Marine located the wreck of what they called the ‘Black Swan’ that was subsequently proven to be the Spanish Navy frigate, *Nuestra Señora de las Mercedes*. *Mercedes* sank off Portugal in 1804 with a cargo of gold and silver specie in a battle with the British. Evidence showed Odyssey Marine’s discovery came after researching the potential location of the wreck in order to find and recover its

treasure. After doing so, they moved the artefacts to Gibraltar for a quick air shipment home to Tampa and the filing of a claim in a Federal Admiralty court. Spain intervened in the US court to contest the Florida-based company's assertion of rights to recover the artefacts taken from the wreck site on the continental shelf of Portugal, which remained the property of the State and subject to sovereign immunity from an admiralty arrest since it was a sunken state craft. Odyssey Marine claimed in court that the 17 tonnes of coins it had recovered were jettisoned cargo from an unknown ship (Delgado & Goold, 2021, p. 352). Video and photographic data were mischaracterised, diagnostic artefacts either hidden in a locked storage unit in Gibraltar or left undocumented on the site, and knowingly false statements were made to the court. While their operations were self-proclaimed to be scientific and adhering to archaeological standards, what the court unveiled was that recovery operations by Odyssey Marine were 'consistent with a sustained effort using sophisticated ROV systems to recover as many of the 900,000 pesos presumed to be on the site as could be accomplished in a one-two month period... [and] very few artefacts of other types were recovered' (Delgado & Goold, 2021, p. 358). Artefacts that were recovered that were diagnostic and refuted Odyssey Marine's claim were not disclosed, including uniform buttons of a Captain of the Spanish Royal Navy Marine. If diagnostic information was collected from other artefacts, such as bronze culverins that had the Spanish coat of arms, it was not disclosed, and Spain later documented these during their own visit to the site. As a witness in the case, Kingsley stated under oath: '[n]o stamped or incised epigraphic evidence has been recorded... to identify the Black Swan site' (Delgado & Goold, 2021, p. 359). In other words, Odyssey Marine intentionally did not record essential data for proper archaeology.

The Federal Admiralty court in Florida noted that Odyssey Marine researched *Mercedes* and intentionally surveyed waters off Portugal for the wreck, that the wreck's identity was 'well known to Odyssey from the start', and that their efforts had 'concentrated on a sustained effort to recover coins and little else' (Delgado & Goold, 2021, p. 359). That is not scientific. That is not archaeology. That is commercial salvage and treasure hunting. The court ultimately ordered the coins returned to Spain and fined Odyssey Marine in excess of \$1 million for false representations to the court and to Spain. This case serves as a prime example of how this for-profit company was not concerned with legitimate archaeological or scientific practices, despite what they may try to market or project.

Returning to the subject at hand of bottom trawl fishing damage to shipwrecks, Kingsley undercuts his entire argument in the conclusion of his book: 'When confronted by the figure of three million shipwrecks worldwide, this aspiration appears not just daunting but crippling. The number of sites actually requiring attention, however, is a minimal percentage of the global total' (Kingsley, 2016, p. 118). It is clear that his concern for shipwrecks being damaged does not apply equally to all shipwrecks. Ostensibly, those of interest are those of potential commercial value.

Odyssey found 267 wrecks in the English Channel, and they concluded that only a handful of those deserved full excavation—likely to be followed by recovery and sale of artefacts. What about the rest? It hardly has to be said that it is not possible to fully excavate and recover every shipwreck in the world. This is one of the main

reasons behind the *in situ* preservation policy of professional archaeologists, and codified in domestic and international law including the UNESCO 2001 Convention. It is not a prohibition on recovery under the Annex rules but rather a policy or practice ‘as the first option’ to be considered in the management of the resource in the public interest and not for private profit. Who should decide what wreck is most important to excavate, and based on what? Its potential value to collectors? What about the other 200+ wrecks in the English Channel? Should those deemed less important (i.e., less valuable) be left to be destroyed? There are solutions that can help protect all shipwrecks, those deemed valuable and those mundane wrecks that treasure hunters would not care about, but which hold the stories of everyday mariners that are equally engaging and historically important.

Potential solutions become apparent with advances in technology, such as satellite and digital infrastructure, that can enable government and international organisational oversight of known shipwreck sites, be it in established Marine Protected Areas or some other sort of exclusion zone. This can include all types of shipwrecks, even those deemed mundane. Kingsley (2016) states: ‘vast slices of the world’s sunken history are almost impossible to police’ (p. 120) and considers such efforts ‘a fool’s paradise’ (2012, p. 24). This is convenient for his argument, and also incorrect. Through tracking of vessels by Automatic Identification Systems (AIS) and other global positional systems, management of sensitive areas and sites is achievable with the right level of funding and infrastructure, and we have been moving in that direction.

A good example is Stellwagen National Marine Sanctuary located offshore of New England. The Shipwreck Avoidance Pilot Program is making an effort to protect shipwrecks within the sanctuary, which does not prohibit fishing from active trawlers. The program disclosed wreck locations and installed geofences around them (Trethewey, 2023; Mires et al., Chap. 6, this volume). When a vessel crossed one of these boundaries, monitored through its GPS navigation system, a warning would come up stating, ‘Captain, your vessel has entered a shipwreck avoidance area... NOAA requests that you keep your gear at least 400 feet [122 m] away’ (Trethewey, 2023). This system is a strong stride forward. A colleague and I proposed a series of marine protected areas (MPAs) for the wrecks *Nautilus* found off Turkey in high densities in the Black and Aegean Seas over a series of expeditions (Krumholz & Brennan, 2015). The argument is that protection of such resources, which serve as hard substrate and artificial reefs, can allow for juvenile fish to survive and ‘spillover’ into fishable areas, thereby both protecting shipwrecks and helping to sustain local fisheries. Such marine protected areas do not, however, need to be wide swaths of seabed in the traditional MPA structure, but could be as small as geofences that modern technology can assist with ensuring fisher avoidance.

Recent international treaties have continued to further the implementation of protected areas worldwide. The United Nations’ Biodiversity Beyond National Jurisdiction (BBNJ) resolution is a new legally binding instrument adopted in June 2023. This treaty addresses, among other things, Area Based Management Tools (ABMT) and marine protected areas and includes protective measures that all ships must adhere to (IMO, 2023). Such sensitive areas could include a broader use of

geofences around areas of known shipwreck sites, noting that such geofences can be larger areas so as not to completely disclose a wreck's location. I propose that an international automated system be established with stronger penalties for trawlers entering shipwreck geofences and MPAs or turning off their AIS, including fines that can be automatically deducted from an account, similar to EZPass for tolls on the highways in the United States. In today's era of modern technology, this is realistic. What is required, in addition to funding and organising this sort of infrastructure development and implementation, is vastly larger support for ocean exploration to find shipwrecks that can then be documented, managed, and ultimately, protected.

In situ preservation efforts as a first option to management of UCH does not imply that such effort will be successful in preserving a shipwreck forever. A shipwreck has been stated to have a 'life cycle' (e.g., Muckelroy, 1978; Brennan et al., 2011) that begins with the vessel's sinking until which time it is either degraded or corroded to the point that it no longer exists, or it is completely buried in sediment and no longer discoverable. Such a life cycle is natural. Protection of shipwreck sites, and their preservation *in situ*, does not seek to stop this natural process. *Titanic* will one day—centuries from now—be a pile of rust on the seabed of the Atlantic Ocean; this is a fitting end to the site as the resting place of 1,517 souls. A shipwreck is like an ancient redwood tree in the forest that will one day die and fall. *In situ* preservation efforts, archaeological characterisation of shipwreck sites, and the high-resolution documentation of them—which increases as technology advances—is the work of maritime archaeologists to preserve the shipwreck is as much detail for the historical record as possible before this happens. In the same way that we would make every effort to protect the redwood from forest fires, we would also protect it from those looking to cut the tree down to profit from its wood. That is the effort by UNESCO and archaeologists to prevent both bottom trawlers and treasure hunters from destroying shipwreck sites, whether incidentally or for profit. Similarly, while the warships sunk in World Wars I and II will corrode and deteriorate over time, that is different than the commercial salvage of these hulls for steel that eradicate the site from the seabed, which has been ongoing in the South Pacific. The fact that a shipwreck may one day disappear through natural degradation or burial does not mean it should be ripped from the seabed and its parts sold to the highest bidder.

Bottom trawling is a profound threat to our Ocean Heritage, but recent scientific work to address this threat and the implementation of modern technology can begin to establish protections for shipwrecks in jeopardy from this activity. It is certainly not a justification for the commercial salvage of valuable artefacts from select shipwrecks for sale. Nor is trawling the greatest threat to shipwrecks. As Professor Maarleveld stated in his review of *Fishing and Shipwreck Heritage*, 'the greatest threat to archaeology, is bad archaeology'.

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