

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANCHOR VENTURES LLC,  
  
Plaintiff,  
  
v.  
  
MARINE PROPERTY FROM  
UNIDENTIFIED SAILING VESSEL, in  
rem, and THE UNITED KINGDOM, and  
JOHN DOES 1-100, in personam,  
  
Defendants.

CASE NO. C09-67 MJP  
  
ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT

This matter comes before the Court on Plaintiff's motion for summary judgment. (Dkt. No. 45.) Having reviewed the motion, the State of Washington's response (Dkt. No. 46), and all papers related thereto, the Court GRANTS the motion.

**Background**

On January 22, 2008, Doug Monk, the sole member of Plaintiff Anchor Ventures LLC, located an unidentified anchor and chair (referred to collectively as "Anchor") in Admiralty Inlet near the westerly shore of Whidbey Island, Washington. (Monk Decl. ¶¶ 1-2.) Monk believes

1 the anchor dates from 1800-1840. (Id. ¶ 2.) He has visited the site of the Anchor multiple times  
2 and has “not located any shipwreck or other marine artifacts with in [sic] a one mile radius.” (Id.  
3 ¶ 3.) He avers that he has 20 years of experience and adequate equipment to salvage and recover  
4 the marine property. (Id. ¶ 4.)

5 Plaintiff originally thought the Anchor was from the HMS Chatham, which was under  
6 Captain George Vancouver’s command. (Ivy Decl. ¶ 2.) An expert examined photos of the  
7 Anchor, reviewed various historical sources, and concluded that the Anchor is not from the HMS  
8 Chatham. (Dkt. No. 45-1 at 11-15.)

9 Plaintiff has moved for summary judgment. The State of Washington is an interested  
10 party and does not oppose the motion. (Dkt. No. 46.) The State requests that any award be  
11 expressly subjected to applicable local and federal statutes and regulations relating to recovery of  
12 the anchor. (Dkt. No. 46.)

### 13 **Analysis**

#### 14 A. The Law of Finds Applies and Title is Awarded to Plaintiff

15 Plaintiff asks the Court to find the Anchor abandoned and award title to Plaintiff, the  
16 finder. The Court agrees.

17 The main question presented is whether the law of finds or the law of salvage applies to  
18 this case. If the Anchor is abandoned, the law of finds will generally apply, whereas the law of  
19 salvage will apply if the Anchor is not abandoned. “The law of finds is disfavored in admiralty,”  
20 in large part because marine property is presumed not to be abandoned even when lost at sea.  
21 Hener v. United States, 515 F. Supp. 350, 356 (D.C.N.Y. 1981); accord Columbus-American  
22 Discovery Group v. Atlantic Mut. Ins. Co., 974 F.3d 450, 460 (4th Cir. 1992). However,  
23 property may be abandoned “where (1) articles have been presumptively abandoned, i.e., either  
24

1 affirmatively renounced, or so long lost that time can be presumed to have eroded any realistic  
2 claim of original title, and (2) those articles are now in hand, having been actually recovered.  
3 . . .” Martha’s Vineyard Scuba Headquarters, Inc. v. Unidentified, Wrecked and Abandoned  
4 Steam Vessel, etc., et al., 833 F.2d 1059, 1065 (1st Cir. 1987). The Ninth Circuit requires proof  
5 of abandonment by clear and convincing evidence. Deep Sea Research, Inc. v. Brother Jonathan,  
6 89 F.3d 680, 688 (9th Cir. 1996), rev’d on other grounds California v. Deep Sea Research, Inc.,  
7 523 U.S. 491 (1998).

8 As a related matter, the law of finds assigns ownership to the finder without regard to  
9 where the property is found. However, two exceptions exist: (1) when the abandoned property is  
10 embedded in the soil it belongs to the owner of the soil; or (2) where the owner of the land has  
11 constructive possession it belongs to the land owner. See Klein v. Unidentified Wrecked &  
12 Abandoned Sailing Vessel, 758 F.2d 1511, 1514 (11th Cir. 1985).

13 The Court is convinced that the Anchor has been abandoned, that law of finds applies and  
14 that title should be awarded to Plaintiff. All evidence suggests the Anchor has spent more than  
15 150 years at the bottom of Admiralty Inlet, being otherwise untouched and left to waste. There  
16 is no evidence of any claim ever being made regarding the Anchor. The United Kingdom was  
17 notified of the Anchor’s existence, but did not file a claim of ownership. (Dkt. No. 45-1 at 3-5.)  
18 The State of Washington makes no claim of ownership, stating that it “takes no position  
19 regarding whether or not the Anchor has been abandoned.” (Dkt. No. 46.) This is significant  
20 because although the Anchor is likely embedded in land belonging to the State, the State makes  
21 no claim of ownership or constructive possession. Thus, no exception to the assignment of  
22 ownership to the finder is warranted here. See Klein, 758 F.2d at 1514. On the present record,  
23 the Court finds that the Anchor is a long forgotten antique to which no realistic claim of original  
24

1 title can be laid or presumed. The Court finds the anchor abandoned, applies the law of finds,  
2 and awards title to the Anchor to Plaintiff.

3 As the State requests, the Court admonishes Plaintiff to comply with applicable state and  
4 federal statutes and regulations relating to recovery of the Anchor. (Dkt. No. 46.) However, the  
5 State does not provide any citation to relevant regulations and the Court cannot state precisely  
6 what laws and regulations should guide Plaintiff's recovery effort. The Court thus advises  
7 Plaintiff and the State to meet and confer and come to some mutual understanding as to the  
8 parameters that Plaintiff should follow in recovering the Anchor. Should the parties disagree as  
9 to the applicable laws and regulations, the Court will entertain a joint submission under Local  
10 Rule 37 to resolve any dispute.

11 B. Abandoned Shipwreck Act Does Not Apply

12 The Court also finds that the Abandoned Shipwreck Act does not apply or alter the  
13 application of the law of finds.

14 The Abandoned Shipwreck Act gives the United States title to any abandoned shipwreck  
15 that is (1) embedded in submerged lands of a state or (2) on submerged lands of a state and is  
16 included in or determined eligible for inclusion in the National Register. 43 U.S.C. § 2105(a).  
17 Critically, the Act applies only to "shipwrecks," a term from which federal regulations exclude  
18 "isolated artifacts and materials not in association with a wrecked vessel, whether intact or  
19 broken and scattered or embedded." Abandoned Shipwreck Act Guidelines, 55 Fed. Reg. at  
20 50121 (Dec. 4, 1990).

21 Here, the Anchor is an isolated artifact on the sea floor that is not near or associated with  
22 any actual wrecked vessel within at least a one mile radius. (Monk Decl. ¶ 2.) Applying the  
23  
24

1 Abandoned Shipwreck Act Guidelines, the Court finds the Act inapplicable because the Anchor  
2 does not qualify as a shipwreck. Thus, the Act does not alter the application of the law of finds.

3 **Conclusion**

4 The Court finds the Anchor is abandoned and applies the law of finds, awarding title to  
5 the Anchor to Plaintiff. Plaintiff's recovery of the Anchor must comply with state and federal  
6 laws and regulations. The Court urges Plaintiff and the State to agree on the method of recovery  
7 so that Plaintiff complies with all relevant laws and regulations. The Court will retain  
8 jurisdiction to hear any dispute regarding such compliance as set forth above. This order,  
9 however, disposes of the case and the Court shall separately enter final judgment.

10 The clerk is ordered to provide copies of this order to all counsel.

11 Dated this 30th day of November, 2010.

12  
13 

14 Marsha J. Pechman  
15 United States District Judge  
16  
17  
18  
19  
20  
21  
22  
23  
24