

# THE WARSHIP *SCHLESWIG-HOLSTEIN*: HISTORY, CULTURAL VALUE AND LEGAL STATUS

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## ABSTRACT

The current paper\* looks into the issues connected with underwater cultural heritage in Estonia and deals with its legal and physical protection. The report discusses the topic of what we actually mean by underwater heritage, what are the threats in terms of preservation and what are the possibilities to protect underwater heritage in Estonia. The paper analyses objects that are not defined by the UNESCO convention from 2001 as underwater cultural heritage, but which form a considerable part of underwater objects in Estonia that are protected by the state. A wide range of challenges – protection, ownership, value – is illustrated by the study of the history and present state of the battleship *Schleswig-Holstein*.

KEYWORDS: underwater heritage • jurisdiction • warships • management • UNESCO convention

## INTRODUCTION

The term “underwater cultural heritage” refers to the part of heritage that has been discovered underwater either in open sea or internal waters. Underwater cultural heritage comprises of wrecks (e.g. the wrecks of vessels and aircraft), buildings that were originally constructed partially or entirely under water (e.g. harbour constructions, bridges, weirs, pile dwellings) and heritage objects that were originally located on dry land, but have since submerged because of either floods or natural disasters (e.g. settlement and burial sites, towns).

One of the most significant symbols of underwater cultural heritage is shipwrecks. It was unavoidable that anywhere where ships sailed, some of them sunk due to natural disasters or human error. The rapid development of extensive sea trade and seafaring brought piracy and robbery, which in turn accelerated the necessity to develop new trading standards. When people started to see wrecks as sources of material, historical or cultural value, they immediately became targets for treasure hunters yearning for wealth and glory. The absence of international treaties regulating underwater cultural heritage and national acts on finds created favourable conditions for treasure hunters to act legally, but also initiated the necessity for discussion (Green 2004: 399–407). Protection of underwater cultural heritage on an international scale was first introduced only

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in the 20th century when the UNESCO convention on the protection of underwater cultural heritage was adopted.

Protection of underwater cultural heritage is closely connected with the development of underwater archaeology as a science, and the necessary technical equipment. Underwater archaeology saw a boost in its development only in the 1940s, when an engineer named Émile Gagnan and a diver, Jacques-Yves Cousteau, introduced the aqualung. The first archaeological studies on wrecks were carried out in the 1960s, when Georg F. Bass conducted investigations on the Cape Gelidonya wreck in the Mediterranean Sea (Barstad 2002: 4–5). Today modern wrecks are also studied by archaeologists and the role of underwater archaeological investigations in the context of historical archaeology is considerable (see Flatman, Staniforth 2006). Richard A. Gould (2000) has indicated the increasing approach of the treatments of archaeologists as being part of social sciences, especially regarding the study of 19th and 20th century wrecks. Nevertheless, several archaeologists do not consider the study of First and Second World War wrecks as archaeology. For example, Keith Muckelroy has claimed:

As an academic discipline, archaeology interprets the past on the basis of surviving object; it becomes redundant at that point in the past after which surviving records, descriptions, plans, and drawings of contemporary objects can tell us more about the culture of the time than we can learn by digging up a few relics. (Muckelroy 1980: 10)

He draws the time line to the 18th century. However, recent studies of the modern wrecks have proved that they do have source value and quite a few well documented historic events may get a new interpretation after underwater archaeological studies.

The potential of underwater cultural heritage is becoming more and more evident not only for history or archaeological science, but also for tourism. Considering the preservation and safety of underwater monuments, we cannot compare diving to underwater heritage to walking on a prehistoric hillfort. It is possible to limit the chaotic looting of find spots by hobby divers by regulating access and increasing people's awareness with special courses that introduce relevant legislation and make people aware of the consequences of their actions (see Guérout, Vecella 2006; Stanley 2006).

Military vessels face the strongest pressure from divers, looking very impressive in the deep seas. Hobby divers and people interested in marine war history have taken an interest in the wreck of the armoured ship *Schleswig-Holstein* in Estonian waters. The ship fought both in the First and Second World Wars and was used as a target ship during the Soviet occupation. This article will concentrate more precisely on the challenges and tasks that Estonia faces in the protection of underwater cultural heritage as seen from the viewpoint of international law, and the value of war ships from the First and Second World Wars to society.

## BACKGROUND

Underwater cultural objects and protected areas give rise to various management, protection and preservation problems that are impossible to solve using current strategies. Because such strategies are valid on dry land, independent approaches are required. For example, a large part of underwater cultural heritage is located outside the juris-

diction and control of coastal states, whereas heritage objects on dry land can only be situated on the territory of a state. A significant part of underwater cultural heritage is comprised of wrecks that, due to their location on the seabed, and in its sediments, belong to the jurisdiction of international maritime law. Yet the protection and conservation of underwater heritage is one of the least-dealt-with topics in the 1982 United Nations Convention on the Law of the Sea (UNCLOS).<sup>1</sup> Although UNCLOS is certainly one of the most important 20th century achievements regulating marine territories and is the first international convention to deal with the protection of underwater monuments, it still offers insufficient protection to underwater heritage. Rights and duties are limited and apply really only in “the Area”<sup>2</sup> and “the contiguous zone”<sup>3</sup> (O’Keefe 2002: 17–20).

The first multilateral treaty solely dealing with the protection of underwater cultural heritage is the UNESCO convention on the protection of underwater cultural heritage, adopted in 2001 and coming into force in January 2009. The convention defines underwater cultural heritage as, “all traces of human existence having a cultural, historical or archaeological character which have been partially or totally underwater, periodically or continuously, for at least 100 years.” The 100-year age limit, which has mainly been set for the protection of wrecks, is included in most national legislations, yet this has no scientific grounds and was at the time included in most national legislations mainly for administrative reasons, and also to simplify the work of rescue companies. Yet it is not right to conclude that wrecks or other objects younger than 100 years do not have historic, or any other, cultural value. Therefore the Code of Good Practice for the Management of the Underwater Cultural Heritage in the Baltic Sea Region<sup>4</sup> has supplemented the 100-year boundary with the notion, “or which otherwise are regarded as historically significant or protected by heritage legislation” (Varenus 2008: 23).

Two different approaches can be distinguished in national legislations. First, the concept of unconditional protection is applied – a certain age limit is taken as a basis and any monument older than this is automatically taken under state protection. Many countries apply this principle to protect wrecks with historic value. The time limit may vary by country, e.g. in Australia the limit is 75 years, in Finland it is 100 years and in South Africa a 60 year limit is applied to all underwater monuments (see Dromgoole 2006). Such legislation was as a rule adopted in the 1970s and the acts do not usually specify whether the date is counted from the time of the construction or the time of sinking. Such undefined wording has caused numerous disputes. The second approach is similar to the first, except that instead of the age of the wreck a certain year is set, from which an object is not considered cultural heritage, for example in China the year is 1911 (Fu 2006). The other approach considers each object individually, taking into consideration its value and importance (for example, Mecklenburg-Vorpommern in Germany).

## PROTECTION MEASURES

One of the most important principles in protecting underwater cultural heritage is their preservation *in situ*. This principle stresses the importance of historic and natural context and good preservation conditions created by environment. In time most underwater sites reach a certain balanced state, after which their natural deterioration slows down considerably. Later, such heritage may be damaged by various develop-

ment activities, like the construction of harbours, installation of cables and pipelines, excavation of gravel and sand and intensive fishing. In order to avoid damage caused by natural destruction such as waves or storms it is common practice to cover the protruding parts of wrecks with sandbags and polypropylene net, which should safeguard the preservation of wrecks for centuries (Coroneos 2006; Manders 2006).

#### MILITARY VESSELS

The UNESCO convention says that, "State vessels and aircraft" means warships, and other vessels or aircraft that were owned or operated by a State and used, at the time of sinking, only for government non-commercial purposes, that are identified as such and that meet the definition of underwater cultural heritage (Article 1, paragraph 8).

Depending on the present location of the underwater cultural heritage special regulations may be applied in the cooperation between the coastal states and flag states (and in exceptional cases also with other relevant countries) (UNESCO 2001, article 7–13). The maritime ports of coastal countries and other internal waters are the territory of the state in a similar way to mainland territories; upon entering the internal waters of a state, foreign vessels become subject to the territorial sovereignty of the coastal state and they are treated similarly to any other foreigner, except persons with diplomatic immunity or exterritorial ships. Only the jurisdiction of the flag State of the ship may be a competitive jurisdiction. Warships in outports are exterritorial (servicing the governments operated for non-commercial purposes) and are not subject to the jurisdiction of the country of residence. Exterritorial principles are extended to members of the crew as well, who go on land to fulfil their duties. When a hostile act is being carried out against the coastal state, the warship will lose its immunity (see UNCLOS, article 95 and 96).

Two positions exist in applying the status of a ship to sunken vessels (Strati 1995: 220–221):

- 1) All sunken vessels, whether State-owned or not, have ceased to be 'ships' and therefore are not subject to the exclusive jurisdiction of their flag States;
- 2) Sunken vessels retain their legal status as ships with all the subsequent implications.

Anastasia Strati finds that a sunken vessel might not qualify as a ship<sup>5</sup> and therefore the exclusive jurisdiction of its flag State as well as sovereign immunity might not be applicable.

#### THE MANAGEMENT OF UNDERWATER CULTURAL HERITAGE IN ESTONIA

The area of Estonian mainland territory is 43,698 sq. km, 889 sq. km of which consists of inland water bodies. Besides these, 1,529 sq. km of the total area of Lake Peipsi, Lake Lämmijärv and Lake Pihkva, inland sea and territorial sea with an area of 24,950 sq. km also belong to Estonia. Thus the total area of Estonian territory is 70,177 sq. km, and the total length of Estonian coastline is 3,780 km (Veskimets 2004: 9–10).

Underwater archaeological research in Estonia – as everywhere – has been a closely connected cooperation between archaeologists and amateur divers. The first fieldwork to investigate an underwater site took place in Koorküla Valgjärv, South Estonia, under the leadership of the archaeologist Jüri Selirand in 1958. There the only hitherto known construction remains of a pile dwelling on Estonian territory were discovered. The first underwater archaeological maritime expedition took place on Neckmansgrund in 1978. It worked under the leadership of Bruno Pao,<sup>6</sup> the researcher of the Estonian Maritime Museum; the archaeological consultant of the expedition was Vello Lõugas from the Institute of History of the Academy of Sciences. The organisation of the first maritime expedition in Estonia under the constitution of the Soviet Union and the keen attention of security agencies, was really an unprecedented event that proved the possibility of carrying out such investigations in Estonian waters (Roio 2006: 303). The first wreck in the sea was taken under state protection in the year 1986. This wreck, the so-called Maasilinn ship, dating from the 16th century, was discovered on Saaremaa in 1985 and raised and conserved a couple of years later.

The protection of cultural monuments in Estonia is regulated by the Heritage Conservation Act (2004). Questions concerning underwater heritage are also resolved according to this Act. Although the act does not once mention shipwrecks – the most numerous category of monuments of underwater cultural heritage – they still fit the description of a monument and therefore the protection of shipwrecks may be carried out both in territorial waters and in the exclusive economic zone.

Shipwrecks, by their nature are archaeological sites, tied to scattered artefacts and details partly buried under sediments. Since 2006, all shipwrecks that have some cultural value have been classified as archaeological monuments. The numerous monuments of war history in waters under Estonian jurisdiction have been included in this category. In the past decade, these wrecks have become the most popular place for hobby divers to visit. The activities of hobby divers may be regulated on a wreck listed as a monument – it is possible for the National Heritage Board to limit access to a site, if it is endangered by free access. Diving to a cultural heritage monument is regulated with permits issued by the National Heritage Board. The protection of underwater cultural heritage in sea territory is executed by the National Heritage Board in cooperation with the Border Guard of Estonia. Nevertheless, today, only 34 shipwrecks<sup>7</sup> are under legal protection, which constitutes only a fraction of the sunken ships deserving and needing it. The shipwrecks not listed as monuments by the National Heritage Board are situated in a legal loophole, and any actions concerning them are practically unregulated.

The question of ownership of the wrecks has also not been regulated. Rules and regulations concerning state- and privately owned monuments are the same for both. Issues of ownership in Estonia are regulated by the Law of Property Act (2005), according to which (in paragraph 68, subsection 1) the property only comes into existence in cases provided by the law, and according to § 96, subsection 3, “A thing is ownerless if it has not yet been in the ownership of anyone or if the owner has terminated possession with the intention of relinquishing ownership.” If the owner of an object has not declared such intent in any way, he or she still owns the wreck. At the same time, the matter of ownership is unregulated in cases of finding sunken property without an owner, or the owner being unknown. This means a necessity of supplements concerning the matter of ownership of property. Hopefully, the necessary changes and supplements concerning

the ownership and protection of shipwrecks will be brought into the Heritage Conservation Act in foreseeable future.<sup>8</sup>

Management of underwater cultural heritage involves locating the object, documenting it, determining its value, protection and preservation of the monument, discussions about the criteria of the value. As a rule, two benchmarks are considered in deciding about the value and protection of an object: the social value of the location of the find and its value for academic research. If the find is of important value for research, the need to take it under protection is easily understood by everybody. Yet there are a number of objects with little source information and poor preservation state. The reason for taking such objects under state protection has mainly been their importance for the public or their aesthetic value, but supplementary to that, such objects are immediate reflections of the past and are in direct contact with historic events. Furthermore, their importance as source material cannot be reduced. In the case of the discussed objects it was clear that under the present legal system in Estonia the objects would have been looted and consequently destroyed without state protection and possible questions would have remained unanswered in the future.

#### FROM FLAGSHIPS TO TARGET SHIPS

The *Schleswig-Holstein* was built as one of the five Deutschland-class battleships, also known as The Five Sisters – *Deutschland*, *Pommern*, *Hannover*, *Schlesien* and *Schleswig-Holstein*. These were powerful, well-armed ships that carried far better armour than earlier battleships. They were double-bottomed to the extent of 84 per cent. Because of their advantages, they would probably have been the most powerful European vessels of their time, if the British *HMS Dreadnought* hadn't been completed. And so, obsolete since birth but still too new to be written off, the ships served in the German Navy until the end of the Battle of Jutland, when *Pommern* was sunk by a hit from a British torpedo and the remaining four ships were sent into the reserve. Directly after the First World War, the first ship of the Deutschland series disappeared from the list of the German fleet – on 25th January 1920, she was sent to be demolished. *Schleswig-Holstein* went through several courses of modernisation between 1925 and 1931, resulting in a change of her silhouette and armament as well as movement characteristics. From 1927 to September 1935, she was the flagship of the German Navy (Õun 2004: 6–7).

*Schleswig-Holstein* made history as the warship involved with the first shots of the Second World War on sea. On the night before 19th December 1944, the ship was bombed on the coast of Eastern Prussia, in Gotenhafen (today Gdynia in Poland), probably by the Royal Air Force, and sustained severe damage. On 21st March 1945, the ship was scuttled on the Gotenhafen roadstead by her crew. After the war, in 1946, *Schleswig-Holstein* was salvaged and brought to Kopli Shipyard in Tallinn, with the intention of repairing the ship and using it as a training ship for the Soviet Baltic Navy, renamed the *Borodino*. This, however, drew protests from the Western allies – according to the peace treaty with Germany, damaged German warships ought not to have been used. And so, on the 25th September 1947, *Schleswig-Holstein* was towed from Kopli Shipyard to Neugrund shallows near Osmussaar (Figure 1). There she was used as a target for Russian air force bombs and missiles. The old armoured ship stood above water level, being a good landmark for ships arriving to and leaving from the Gulf of Finland (Pho-

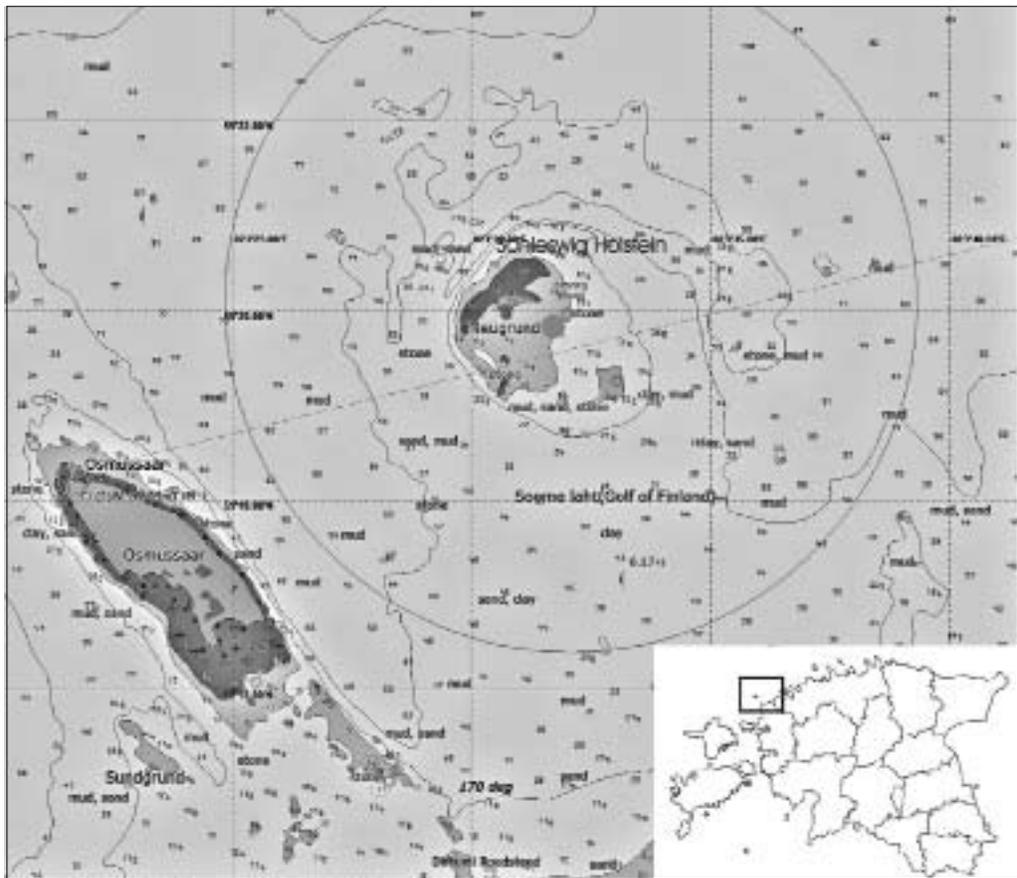


Figure 1. Location map of the Schleswig-Holstein (based on Estonian Maritime Administration map).

to 1). Between 1970 and 1971, the part above water was cut away for scrap iron (Õun 1999: 54). The underwater parts are preserved at a depth of 8–9 meters, over an area approximately 130 meters long and up to 50 meters wide. Smaller pieces can be found further away. During the fieldwork carried out in 2006 (Peremees 2006), the following preserved details were found:

- The double-bottomed hull, thanks to which the engines and the larger elements remain in place; in the early 1990s it was even possible to swim through the rooms of the double-bottomed hull. Today, however, these passages have become covered by details of the hull and are blocked.
- Three steam engines with two brass condenser boilers and one steel boiler in front of the engines.
- The ventilation grates of the engine room.
- Bases of the large calibre gun tower, pieces of armour.
- A fragment of the bow laying on its side.
- The rudder with remains of the stern line and the shafts, the propellers having been cut away.
- Some of the stern magazine shells, which can be found in ample amounts among the pieces of the hull 6 to 10 meters to the aft from the steam engines.



Photo 1. Schleswig-Holstein in 1961, the fore and aft gun towers can be seen, as well as the remains of a funnel.

Photo by Vladimir Koppelman.

In the case of the *Schleswig-Holstein*, two main points of view spread through Estonian society and may be outlined here. Firstly, that what we are dealing with is a context-free element at the bottom of the sea that needs to be removed and sold as scrap iron; secondly, that we are dealing with a dignified warship that has a long and interesting history and deserves preservation. Supporters of the first position refer to the fact that *Schleswig-Holstein* as a warship has no connection whatsoever with its present location. Those of the other opinion consider the ship's history as a whole – i.e. the further fate of ships that fell booty is also important, often such ships ended as target ships after the Second World War.

#### THE ROLE OF HOBBY DIVERS

For years, the shipwreck has been a favourite site for hobby diving. The value of the monument stems from its ties to important historical events, for example the First and the Second World War and the Soviet occupation – it is still “a living monument”. Most Poles associate the name Schleswig-Holstein specifically with the 1st of September 1939 – the date when Germany attacked Poland and Poland lost her independence for years. Regardless of the negative historical background, the wreck of the *Schleswig-Holstein* has become a popular site for Polish hobby divers. In 2008 two major Polish expeditions took place that were linked with the following year's 70th anniversary of the beginning of the II World War (see Bizoń, Ostasz 2008). The main aim was to dive to the *Schleswig-Holstein*, with documentation informing the public, through the media, of the personal experiences of the divers.

From 2006, the *Schleswig-Holstein* has been under state protection because looting of the wreck has become more common, a fact that came to light thanks to observations made by hobby divers (Photos 2, 3).



*Photo 2. Underwater cutting marks. Photo by Priit Pärigmaa 2006.*



*Photo 3. Details of Schleswig-Holstein roadstead on their way to the iron yard in 2006.*

## CURRENT STATUS OF THE *SCHLESWIG-HOLSTEIN*

The *Schleswig-Holstein* has been listed under state protection as a “shipwreck”, stressing its historical importance and its status as the flagship of the German Navy. An alternative nomination may be “target ship”, and this point is of importance primarily when resolving questions of ownership. In legal terms, at the moment of sinking, the *Schleswig-Holstein* was not a warship but a target. The history of the ship as a warship ended in 1945, when she was scuttled in the Gotenhafen roadstead. However, there remains in my mind the question: did the salvaging of the ship by Russia in 1946 end her status as a German warship? It is not only the history of the *Schleswig-Holstein* that has changed over time – its legal status has also been changed several times. Russia took the *Schleswig-Holstein* as booty, then after the collapse of the Soviet Union the Republic of Estonia declared in 1992 all property of the armed forces of the USSR on the territory of Estonia were to become the property of the Republic of Estonia. Although legally the warship no longer belongs to Germany, it has retained its historic connections and origin.

## CONCLUSION

In recognised seafaring countries, the arrangement of maritime affairs is based on centuries-old naval history, as well as the experience and international authority that stems from that history. Estonia’s experience in organising maritime affairs, however, comprises only two decades from the first half of the 20th century, in addition to the last 19 years. Gaps exist in every legal system. Positive law, being a human creation, can never be a definitive system. In addition, the Estonian legal system is characterised by the feature of its youth. There is no doubt that there are fewer gaps in the continental law-based legal systems of countries in which the formation of national legal systems goes back more than a century, than there are in the Estonian legal system.

Underwater heritage is an integral part of Estonian cultural tradition. The possibility to protect the shipwrecks in Estonia under national law raises considerations about whether different sites are of cultural value or not. A source once declared worthless may become a participant in irreversible processes, which may result in scientific problems and unanswered questions in the future. In assessing value and making choices, two general starting points may be brought out. These points take into consideration both the value of the site to society as well as the value for future academic research. The level of danger to the object has also become a decisive element in taking a site under legal protection – the objects in danger of being destroyed without this protection will be dealt with. The efficiency of all protection measures depends greatly on the scope of cooperation between the general public and the various offices. It may often prove to be much more efficient to educate the public than to enforce new legislation.

The *Schleswig-Holstein* has been listed under state protection as a “shipwreck”, stressing its historical importance and value to the society. If we fail to deal with the protection of the warships from the First and Second World War today, in twenty years’ time it may already be too late. Hobby divers take special interest in warships, the number of divers to the ships has increased considerably over the past years and leaving the wrecks with no laws regulating diving may cause irreparable damage to these wrecks.

## NOTES

1 Estonia signed UNCLOS on 31 May 2005, although the principles of the convention had previously been implemented in national legislation.

2 “Area” means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction (UNCLOS art 1).

3 The contiguous zone is a zone contiguous to its territorial sea. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured (see UNCLOS art 33).

4 The Code of Good Practice for the Management of Underwater Cultural Heritage in the Baltic Sea Region is drawn up by the Working Group of Underwater Cultural Heritage, the members of the WG represent all Baltic Sea countries: Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Russia and Sweden. The Code was signed in 2008 by Helena Edgren, Chair of the Monitoring Group of the Baltic Sea Cultural Heritage and Björn Varenius, Chair of the Working Group of Underwater Cultural Heritage.

5 The most common characteristic of the definition of “ships” is their ability to navigate; if they cannot navigate, they are not considered ships with all consequent implications (Strati 1995: 221).

6 Bruno Pao directed maritime expeditions in 1978–1986.

7 Kultuurimälestiste riiklik register.

8 By the time of writing this article the National Heritage Board has made its proposals about regulating the protection of underwater cultural heritage and awaits their approval.

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