

Galleon Yields Gold, Silver, and Archeology

The legal status of historic wrecks is being shaped by the ongoing litigation over the Atocha and Santa Margarita

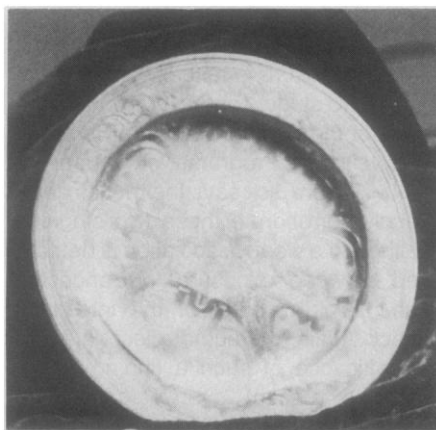
Key West, Florida. Twenty-four solid citizens and their families are boarding a boat to sail to the site of a sunken Spanish galleon. Called the *Santa Margarita*, she lies some 40 miles out to sea, her equipment and cargo strewn over acres of the sea bottom. The citizens are members of the *Margarita* expedition of 1981. Between them they have put up some \$4.5 million to finance the salvage of the ship. In return they get 10 percent of whatever comes up out of the waters over the next 5 years.

The *Margarita* was an armed galleon appointed to guard the Spanish treasure fleet of 1622. She sank during a hurricane, 2 days after leaving Havana, on 6 September 1622, with loss of 143 lives and a vast cargo of precious metals. The expedition of the investors is being taken to see the largest visible remains of the ship. Some 20 feet beneath the surface, scoured by a strong rip current, lies a fragment of the *Margarita's* wooden hull, a ragged raft of timbers some 18 feet long and 9 feet wide. A diver brings up a silver coin from the sand around the timbers, its face blackened with sulfate from its 359 years of submersion.

Two days later, on 18 May, the United States Supreme Court announced that it will hear the case brought by the state of Florida against Treasure Salvors, the company that located the *Margarita* and its sister ship, the *Nuestra Senora de Atocha*. The case is only the latest in a protracted series of legal confrontations between Treasure Salvors and the federal and Florida State governments. The results of that dispute will profoundly influence marine archeology in the United States. Previously, state governments possessed legal control of historical shipwreck sites within the 3-mile limit, and some moral suasion as to what went on beyond. The precedents set by the governments' series of losses against Treasure Salvors seem likely to bring about a law of finders' keepers even within the 3-mile limit.

There has been a legacy of rancorous argument between Treasure Salvors and its former supervisor, the Florida State Division of Archives, History and Records Management, as to whether the company was retrieving adequate archeological information while it salvaged the

wrecks. Ross Morrell, the present director of the division, says the company repeatedly ignored regulations yet the division graciously refrained from canceling its contract. Treasure Salvors contends that it would have done more archeology if the state had interfered less in its business. "For years the state of Florida was trying to harass and make it impossible for the company to get on with what it wanted to do. I am confident that we are now doing the best job anyone could possibly do on a site 40 miles



Nicholas Wade

Treasure from the Santa Margarita

Plate that sank on 6 September 1622.

out at sea and spread over 2 miles," says Duncan Mathewson, the archeologist who has been a consultant to the company since 1973.

Through Mathewson's persuasion, and maybe the constant pressure from the state, Treasure Salvors has developed what seems to be a genuine commitment to archeology. Although now legally free to strip the galleon sites of their treasure without spending a cent on archeology, the company is in fact investing some \$80,000 this year in archeological and conservation activities. One expert who approves of the company's efforts is Charles McKinney, manager of the Federal Antiquities Program in the Department of the Interior. "It was not true in the early days, but I think that right now they are doing the best possible job," says McKinney, who describes the Florida State archeologists as "a bunch of purists."

The goal of the treasure hunter and of the underwater archeologist may often be diametrically opposed, since the treasure hunter may need to blast a wreck apart as quickly and cheaply as possible, while the archeologist wishes to recover every scrap and artifact without damage. But Mathewson and Treasure Salvors have established a substantial area of common ground between the two professions. Mathewson recognizes that it is the income from the treasure that finances the expeditions. His colleagues in the company have come to accept that archeological information may help in locating treasure, as well as enhancing the value of the objects that are recovered.

To some archeologists it is a matter of principle that historical finds should stay in the public domain, and that underwater sites should be as rigorously protected as those on land. "Is it not fortunate that King Tut's tomb, recently viewed by millions of Americans, was not dug by treasure hunters to dispose of as they saw fit?" marine archeologist George Bass remarked in a recent interview with *Sport Diver*. Underwater archeology, however, may be a special case, at least when the costs of excavation far exceed the resources of public agencies. Treasure Salvors claims to have spent a quarter of a million dollars just in searching the length of the Florida keys for the 1622 fleet, and the costs of maintaining a team of divers 40 miles out at sea are considerable; the company's operating costs last year came to \$1.7 million.

Treasure Salvors operates on private capital, which it has managed to raise on particularly advantageous terms. Its investors, who enjoy certain tax advantages afforded by the nature of the enterprise, have claim to so small a fraction of the recoveries that the company has been able to keep the bulk of the treasure intact in its possession. As a money-making venture, but one that will give the public full access, it plans to put the treasure on a permanent traveling exhibition.

Four years ago Treasure Salvors was almost bankrupt and its morale at rock bottom. Then came two lucky breaks. One was a turn in the almost perpetual legal problems that had stymied the com-

pany's operations. The basic dispute concerned jurisdiction over the *Atocha*, the galleon which Treasure Salvors had located by its iron anchor in 1971, following clues turned up by its archivist, Eugene Lyon, from the Spanish records in Seville (see *Science*, 8 November 1974, p. 509).^{*} The *Atocha* lay outside the 3-mile limit, but in waters claimed by the state of Florida, which accorded the company salvage rights in return for 25 percent of the treasure. In 1973, in a different case, the Supreme Court had struck down Florida's claims to own anything beyond the 3-mile limit. Although the state then had no rights in the site, Treasure Salvors offered to continue on the same basis as before—a quarter of the treasure in return for the state's protection.

Florida, however, had other ideas. At the state's encouragement, the federal government laid claims to the *Atocha* site, citing among other grounds that the American "Crown," as successor to the English monarchs, held sovereign rights over treasure trove found by any American citizen. The argument did not fly well in the Republic's district court in Miami. The judge not only flung the federal government out with the judicial insult of a summary dismissal, but also wrote a withering report card for the state of Florida, which he accused of "coveting" the treasure and of using the federal government as a front by which to lay hands on it after the state's own efforts had failed. "The acts of the state . . . are egregious acts of bad faith amounting to collusion to defeat the claims of a person standing in a fiduciary relationship to the state," the judge remarked.

His decision was upheld in federal appeals court in 1980, giving Treasure Salvors clear title to the wreck, free of both state and federal government claims. Meanwhile, the company also prevailed in legal action to recover from the state museum in Tallahassee the 25 percent of the *Atocha* treasure given up to the state under the earlier agreement. After retrieving the treasure, the company complained that an emerald set in a gold poison cup was missing. Ross Morrell, director of the state's archeology division, says that no emerald was ever there, just a "glass paste object" consisting of "very friable material which was lost in cleaning." "There is just no way that that could be true," says Bleth McHaley of Treasure Salvors: "This is a very elaborate, ornate piece which just

would not have been set with glass." The state's contention that the 25 percent share of the *Atocha* treasure should be returned to its museum is the subject of the case that is now before the Supreme Court.

On 9 June this year, a federal judge began hearing arguments on yet another aspect of the Treasure Salvors case, that of whether the company can claim exclusive rights on the site, even though it is



Don Kincaid

Surveying the seascape

Archeologist Duncan Mathewson at work.

outside federal jurisdiction. Two rival salvors, Olin Frick and John Gasque, attempted to work the site, and were branded as "modern day pirates" by a judge who ordered them to stay away from the *Atocha*. Treasure Salvors is seeking a permanent injunction against them.

The resolution of its legal difficulties allowed the company to raise more capital and put its boats back to sea. Then came a second stroke of luck. Although the *Atocha* had carried a hoard of treasure—some 29 tons of silver and more than 3500 ounces of gold, according to the manifest located in Seville—its widely scattered remains were buried in sand

and had proved extremely difficult to salvage. Of the 901 silver ingots known to be on board, only five had been recovered, together with a handful of gold bars and chains. The eyewitness accounts discovered by Lyon recorded that the *Santa Margarita* had sunk within a league of the *Atocha*. The second galleon had hitherto been ignored by the company but at the beginning of 1980 it contracted with a local salvor, Bob Jordan, to find the *Margarita* in return for 5 percent of her treasure.

Using a magnetometer owned by Treasure Salvors, Jordan located the *Margarita*. Shortly afterward, he found 20 gold bars and made off with them, claiming the site as his own. Jordan was found guilty and the gold bars recovered, but he had established that the *Margarita* was a much easier vessel to salvage than the *Atocha*. The fragment of her hull was lying in plain view on rock bottom. The Spaniards had recovered a large fraction of the *Margarita*'s bullion through use of an ingenious diving bell in around 1626, but a lot was left. Over the last 18 months Treasure Salvors has recovered precious objects from the sea at a faster rate than ever before. The inventory for the period includes 6928 loose silver coins, 292 pounds of silver coins in clumps, 48 gold coins, 190 pounds of gold in the form of 55 bars and 180 feet of gold chain, 1673 pounds of silver ingots, 31 copper ingots, an astrolabe, silver knives, forks and spoons, a gold plate, crucifixes, reliquaries, a gold whistle, and a silver sand shaker. Altogether the company claims to have discovered \$60 million worth of treasure from the two wrecks.

Because of the success of Treasure Salvors, the present legal status of shipwreck sites around the United States leaves much to be desired. Treasure Salvors and other treasure hunters are contesting Florida's right to the wrecks even within the 3-mile limit. If they again prevail in court, almost all wreck sites will be open to their finders to do as they please, and many hunters of treasure are interested only in plundering a site as cheaply and quickly as possible. "I have a great deal of trouble understanding how Florida can be at fault in defending the public's heritage," says Morrell, who helped draft the state's present antiquities law. The problem is that by fighting so hard against Treasure Salvors and losing so badly, the state has severely damaged the legal framework of control it once had. The hazardous legal void now opening up can probably be closed only by a new federal law.

—NICHOLAS WADE

^{*}The definitive and best written of many accounts is *The Search for the Atocha* by Eugene Lyon (Harper & Row, New York, 1979). \$11.95.