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The Guardian

Associated Press

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Newsroom

June 16, 2016

The Guardian: Gutoff on Cook's 'Endeavour'

Professor Jonathan Gutoff on how "arresting" Captain Cook's famed ship Endeavour could secure ownership for the state if its wreckage is discovered in Newport Harbor.

From The Guardian, London: ["Captain Cook's ship Endeavour claimed by Rhode Island as search goes on"](#) by the Associated Press.



If the ship legendary explorer Captain James Cook used to sail around the world and claim Australia for the British [is found at the bottom of Newport Harbor](#), Rhode Island will own it outright because of a legal maneuver it took nearly two decades ago based on an obscure, centuries-old maritime practice.

In 1999, Rhode Island went to federal court in Providence to do what's known as "arresting" the shipwrecks in the harbor – having the government take possession of them so a federal court could consider the state's ownership claim.

The court agreed, and ultimately declared the state the owner.

Cook used the Endeavour to claim Australia during his historic 1768-71 voyage. Researchers now believe the Endeavour was part of a fleet of 13 ships scuttled by the British during the Revolutionary War in 1778 to blockade Newport Harbor from the French. [...]

The Rhode Island Marine Archaeology Project, which is leading the search effort, said in early May it was closing in on Cook's ship. It has narrowed its search to a group of five sunken wrecks, and already has mapped four of the five sites in that group.

Arresting the ship years ago was a smart move.



By courtesy of the Fisher Gallery, London
CAPTAIN COOK ARRIVING AT QUEEN CHARLOTTE'S SOUND, FEBRUARY 10th, 1777
Oil painting attributed to J. Cleverly

In the colonial era, if a ship was in port and money was owed for repairs, supplies or other fees, it could be impossible to locate the owner or even figure out who the owner was, said **Dennis Nixon, an expert in marine and coastal law** at the University of Rhode Island [and a marine lawyer who also teaches RWU Law students in the School of Law's J.D./Master of Marine Affairs joint degree program and is Director of Rhode Island Sea Grant].

"If you had a claim against the ship, you wanted to press your claim before it left your jurisdiction. This was before wire transfers," he said. "They had to have some security, and the security was the ship itself."

The claimant could go to an admiralty court to have his interest or ownership in the vessel declared. The court could secure the ship in port until the bill was paid or until an ownership dispute was settled, Nixon said. The court also could sell the ship at auction if the bill went unpaid.

In a modern twist, Rhode Island asked the federal court to use its admiralty and maritime jurisdiction to secure the wrecks and declare the state the owner. [...]

Rhode Island turned to the court in 1999 because a marine archaeologist, Kathy Abbass, had urged the state's attorney general to protect the area. Abbass and volunteers from her organisation, the Rhode Island Marine Archaeology Project, were searching for the Endeavour wreck. She feared divers or a commercial salvage company could get to the ship first.

U.S. Senator Sheldon Whitehouse, a Rhode Island Democrat [and also an adjunct faculty member at RWU Law], was the state's attorney general then. He said he filed a complaint to protect Rhode Island's rights in the vessel and to protect the vessel itself from pilferage or disturbance.

A warrant was issued, though the ship wasn't put into handcuffs, Whitehouse said with a laugh.

“Even going over to court and doing it in this paperwork way is pretty cool,” he said recently. “I hadn’t done that before. I don’t think the attorney general’s office had ever done that before.”



A 1988 federal law that gave states control of abandoned shipwrecks embedded in their waters was the basis for Rhode Island’s ownership claim, **said Roger Williams University law professor Jonathan Gutoff, an expert in maritime law.**

The Endeavour was a British-flagged vessel that was privately owned at the time it was sunk.

The British government could have claimed it owns the Endeavour if it compensated the owner for the loss, though it could be argued its rights were surrendered when the navy sank the vessel. No one came forward with a claim.

The court found Rhode Island is the “sole and only lawful, true and right owner” of all of the non-motor, wooden shipwrecks in the two-mile (3.2km) area where the ships were sunk, and the case was closed in 2000.

Both Gutoff and Nixon said it was doubtful any court today would reconsider the matter.