

John L. Amrhein, Jr.
117 Clipper Ct.
Kill Devil Hills, NC 27948
252-202-5118

June 4, 2009

Señor Jorge Sobredo
Cultural Counselor
The Embassy of Spain
2375 Pennsylvania Ave., NW
Washington, DC 20037

Dear Señor Sobredo:

Your letter to John Wilson of the U.S. Fish & Wildlife Service dated September 30, 2008 (attached) just recently reached my hands. From your letter it appears that you are unsure of Gray & Pape's involvement with the permit application that they filed to do a remote sensing survey within the Chincoteague National Wildlife Refuge. Any permit would be issued to them not me. I have attached the letter of Brad MacDonald of Gray & Pape which clarifies that issue. His credentials were included with the original application to USFWS. It appears that USFWS has asked you render an opinion on the Sunken Military Craft Act of 2005 as it affects *La Galga* believed to be buried within continental lands of the United States. Since the record shows that I am probably the only person interested in seeing *La Galga* get on our National Register of Historic Places I feel it is appropriate for me to weigh in on that issue.

In your letter you have suggested that the Act would bar Gray & Pape from doing a non-intrusive magnetometer survey on Assateague Island without the express permission of the Kingdom of Spain. That Act does not address the unique particulars of a Spanish warship buried beneath United States soil. I think to properly comment on its applicability a short review of events prior to 2005 are important.

In 1943, the U.S. Department of Interior filed a Declaration of Taking for the lands that are now the Chincoteague National Wildlife Refuge. That Declaration said:

"the said lands, interests and estates therein are to be taken by the United States of America for public use...It is further ADJUDGED, ORDERED and DECREED that the said United States of America, petitioner herein, shall have the right and power to take possession of the lands condemned, and all fixtures, buildings and improvements thereon,

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or any part thereof, as of this date, and all persons in possession and control of any part or any of the said lands, buildings and improvements thereon, or any part thereof, shall immediately upon said date surrender the same to the United States of America..."

In 1983, I released my report on the historical research and field investigations on *La Galga* to federal and state agencies who would have had an interest. It was also released to the media. The *Washington Post* of December 13, 1983 gave an account of the believed discovery. I have attached a copy here. Statements were made then that we believed that the remains of the wreck belonged to the federal government. Spain filed no claim and made no objections to this representation. NOAA included this wreck in its database describing it as buried in the Chincoteague National Wildlife Refuge. I believe that the remains of *La Galga* are a "fixture" of Assateague Island and therefore property of the United States of America and no longer can be considered movable personal property.

In 1987, Congress passed the Abandoned Shipwreck Act. This did not include shipwrecks embedded in federal lands. The legal status of *La Galga* was not affected.

In 2000, the 4th Circuit Court of Appeals awarded *La Galga* to the Kingdom of Spain. This award was premised entirely on the misunderstanding that the wreck was in the ocean and was covered by the Abandoned Shipwreck Act. While interpreting Article XX of the 1763 Treaty the court said that, "the cession of state property in Article XX is limited to all that Spain possesses "on the continent of North America... The plain meaning of this is that Spain ceded to Great Britain only what was located on land." It is abundantly clear as to where the court thought *La Galga* was located, "the shipwreck lies scattered and buried in the sand beneath the water." And elsewhere, "This limitation excludes wrecks like *La Galga* that were located not on the continent, but in the seabed." After the district court issued its judgment, the United Kingdom issued a formal Diplomatic Note clarifying that Article XX of the 1763 Treaty "cannot be interpreted as involving an express abandonment by Spain of its rights to the shipwreck of LA GALGA." But, "[T]he intention behind Article XX was to transfer sovereignty over the territories mentioned in that Article, and not to deal with, or otherwise affect, the quite separate issue of the ownership of shipwrecks on the waters adjacent to these or other territories in North America." That Diplomatic Note would not apply to shipwrecks buried beneath the sovereign soil of the United States. It appears that after careful reading of the 4th Circuit opinion: (1) *La Galga* was ceded to England in 1763 as it was buried under Assateague and is therefore property of the United States today; (2) the court did not intend to award *La Galga* to Spain if it was not in the ocean.

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It is clear that prior to 1987, or 2000 for that matter, that the remains of *La Galga* buried beneath federal lands would properly be considered property of the United States or at least the United States would have a colorable claim. The United States was not a party to the *Sea Hunt* case so the rights of the United States were not represented. I believe that *Sea Hunt* is of no force and effect on the rights of the United States. They were an indispensable and necessary party and not represented. The Sunken Craft Act only addresses submerged ships and planes. It did not transfer previous ownership rights of the United States to Spain. That would take a separate act of Congress. I believe that the easiest way to cut through all of the legal interpretation/misinterpretation is to look back to what was said in 1750 at the wreck site by Daniel Huony, captain of *La Galga*: "The Owner of the Land owns the Ship." When he returned to Spain he told the investigating tribunal that he let the English have the ship rather than set her on fire. This was done to guarantee the safe passage of his crew. The tribunal absolved him of any wrong doing. Huony later rose to second in command of the Spanish Navy.

On April 1, 1999, Sea Hunt, the Commonwealth of Virginia, and Spain agreed to a stipulation as to the location of *La Galga* and *Juno*. This was done because the parties did not really know for sure where the wrecks were. "All parties agree that *Juno* and *La Galga* are located within three miles of shore of the Commonwealth of Virginia in very shallow water." The court did not rely on any historical or factual information as to locations. It relied solely on this stipulation that the Kingdom of Spain was a party to. Had adequate historical documentation been provided or artifacts produced that were irrefutably from a Spanish warship, this stipulation would not have been necessary. Proof of no-discovery can be found in Mr. Goold's later statement to the court that the shipwrecks would be Spain's "if they were ever found." So if Spain is not sure where one of her lost warships is actually located, why would it object to discovering its location for the sake of its own historical patrimony? The issue of a non-intrusive magnetometer survey and the recovery of artifacts are two separate issues. Gray & Pape's permit application never suggested or asked for permission to recover artifacts. The only potential interest I have in artifacts is to see them preserved in a museum. The policy of the federal government outlined in the National Historic Preservation Act of 1966 is to foster preservation efforts of not only government agencies but individuals as well. That is why I am involved. The Act says that historic sites and structures should be documented to such a level that they may be included in the National Register of Historic Places. This register already has several Spanish ships from the 1733 fleet, and, more importantly, British warships lost in American waters. *La Galga* should be put on our National Register since it is the shipwreck that legend says left the wild ponies on Assateague Island.

The *Sea Hunt* case has had another negative impact on historical preservation. Three square miles of seabed has been placed off limits because of the misplaced notion that *La Galga* lies somewhere in that area. Shipwrecks belonging to the Commonwealth of Virginia by virtue of the Abandoned Shipwreck Act cannot be investigated by Virginia or organizations or individuals that they would choose to authorize.

The possibility of *La Galga* being in a different location indicated by the federal court creates an interesting situation. The federal admiralty court assumed it had valid *in rem* jurisdiction. This jurisdiction is based on the premise that items from *La Galga* were arrested and brought into court, symbolically bringing the whole wreck into its jurisdiction. If artifacts from a non Spanish ship were mistakenly brought into court I find it hard to understand how the federal court could proceed to adjudicate the rights of Spain over the artifacts and the shipwreck when no Spanish property had in fact been arrested. It seems that because a few Spanish coins were found at one site it was assumed that the wrecks were Spanish. Any archaeologist can tell you that Spanish coins were legal tender in this country until 1857. I recently saw some Spanish coins from the 1770s auctioned on Ebay. They were dug from a Civil War campsite. I don't believe there were any Spaniards present at the campsite. I was once taken in by a con man who produced such coins as proof of a Spanish treasure ship. I found out the hard way. To the uninformed, it is an easy sale. Federal judges are not generally versed in such issues. There is a danger in accepting unsupported claims at face value. If that was true, treasure hunters would be flocking to federal court and plopping down old rusty nails and claiming they came from some valuable treasure ship and ask the court to award them title or salvage rights. There is no equity in such practice. This was tried in Delaware in 1985. The court asked me to testify as to the identities of the vessels and their historical background. The cases were thrown out. The historical record remained intact.

In the case of *La Galga*, the court was presented with very little information to determine the accuracy of Sea Hunt's claim. The essential information on the boundary line question was not presented by Sea Hunt, even though they had access to all the relevant information. Scholarly research addresses all possibilities while dismissing the unlikely and then reaching a reasoned conclusion. Sea Hunt and the federal government had my report about the wreck's location that I wrote in 1983. That report contained valuable information on the Maryland-Virginia boundary line. That information was derived from a survey prepared by the federal government. Information in that report clearly contradicted Sea Hunt's fantasy of discovering *La Galga*. That information was not disclosed to the court. However, Sea Hunt did tell the court that I had claimed that the wreck was found in a different location. From the record, it appears that Spain made no investigation into that statement or the possibility of a different location.

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My efforts to communicate to Spain my findings related to *La Galga* have always been ignored. On July 20, 1999, I sent the attached letter to Señor Rafael Conde de Taro at the Spanish Embassy in Washington. With it was my research report written in 1983. This report gave essential information on the boundary line question and the believed location of *La Galga*. It is the same report that Sea Hunt had in its possession but failed to share with the court. At that time, the 4th Circuit Court of Appeals had not rendered its decision.

On November 11, 2008, I sent the Cultural Affairs Officer two copies of *The Hidden Galleon* and told him about the model of *La Galga* being built and the plans for it to be displayed at the wildlife refuge visitors' center (see copy attached). I was not given the courtesy of a thank you for the contribution. On April 4, at the unveiling of the model, I had brought with me a framed print of the model, an autographed copy of the *The Hidden Galleon* signed to you, and the Spanish version of *Misty of Chincoteague*. Since you did not attend as hoped, Elaine Sampson of our State Department assured me that these items would be presented to you. Again, I have not received any acknowledgement from any representative of Spain.

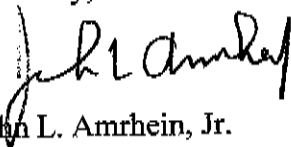
I have noted that the Kingdom of Spain has loaned artifacts reputed to be from *La Galga* and the *Juno* to the National Park Service to be put on public display. The American public loves this type historical exhibition. But the record in the case shows a great deal of confusion over the origin of these artifacts. On March 16, 2001, a year after the two shipwrecks were awarded to Spain, the federal court who tried the case said "The court is faced with a problem that, in reading through this very thick file, that there is really no -- been any statement made by Sea Hunt positively this stuff came from *Juno* or these artifacts came from *Juno* or *La Galga*."

If the wreck is buried under Assateague, then why not make plans to allow testing and excavation of it and put it in a museum along with the artifacts? Why close the door to educational and scientific study, not to mention a piece of Americana known to millions of people through the story of *Misty of Chincoteague*? I have been told that the federal government would have no objection to Gray & Pape's non-intrusive magnetometer survey on land in the Chincoteague National Wildlife Refuge if Spain would remove their previous denial of the application. If the shipwreck is not in the location specified in the permit application, Spain's objections would be unwarranted. I feel this is a win-win opportunity for both Spain and the United States. At no cost to either, a reputable and highly skilled cultural resource manager will be working with the most knowledgeable person in the world on *La Galga*. I look forward to

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hearing from you to discuss further our common maritime history. If you would like, I am happy to travel to meet with you in Washington.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. Amrhein, Jr.", written in a cursive style.

John L. Amrhein, Jr.

cc John S. Wilson USFWS



Embajada de España
Oficina Cultural

September 30, 2008

John S. Wilson
Regional Historical Preservation Officer
Fish and Wildlife Service
U.S. Department of the Interior
300 Westgate Center Drive
Hadley, MA 01035-9599

Marvin E. Moriarty
Acting Regional Director
Fish and Wildlife Service
U.S. Department of the Interior
300 Westgate Center Drive
Hadley, MA 01035-9599

Re: FWS/Region 5/NWRS

Dear Messrs. Wilson and Moriarty:

On behalf of the Embassy of Spain, I express appreciation to U.S. Fish and Wildlife Service for having contacted us for consultation under the Sunken Military Craft Act. We are pleased to assist the United States Government and the Fish and Wildlife Service in the consultation process provided in this legislation.

We have given the application careful review and note the following:

The application states that it has been submitted on behalf of John Amrhein, Jr. However, the application contains no information concerning archaeological credentials or qualifications of Mr. Amrhein to be responsible for a project of this nature.

The application includes statements that indicate that it has not shown due recognition of the legal proceedings that have definitively recognized Spain's ownership of the Royal Spanish Navy Frigate *La Galga*. In the section entitled "Legal Questions as to Ownership," the application states that "No evidence identifying this vessel was presented to the court."

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September 30, 2008
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Extensive evidence of the identity and history of the vessel was provided to and reviewed by the courts. That evidence, and application of relevant principles of Spanish, U.S. and international law, resulted in a decision that is final and definitive that the Frigate *La Galga* is the property of Spain.

The application also appears to be based on a misunderstanding relevant decision of the court in other respects. That decision, and the underlying principles on which the decision is based, do not limit Spain's ownership of *La Galga* to artifacts or vessel remains at one specific location. We also note that the theory advanced in the application as to the location of *La Galga* is not supported by the historical record, as reviewed and found by the court, but in any case the failure of the application to acknowledge the legal status of *La Galga* does not indicate that approval is appropriate.

We are therefore unable to conclude that it would be appropriate to approve this application as regards the Spanish Navy Frigate *La Galga*. We wish to note again our appreciation for the consultation process.

Sikandey,



Jorge Sobredo

Cultural Counselor



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f 804.643.8119

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f 401.273.9944

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Bloomington IN
47404
812.339.7300
f 812.339.7900

Kentucky Branch Office
10056 Lower River Road
Rabbit Hash KY
41005
859.795.1832
f 859.795.1790

June 3, 2009

John S. Wilson
Regional Historic Preservation Officer
Fish and Wildlife Service
U.S. Department of the Interior
300 Westgate Center Drive
Hadley, MA 01035

Dear Mr. Wilson:

Recently, we received a copy of the September 30, 2008 letter from the Spanish Embassy detailing the results of their review of the Archaeological Resources Protection Act (ARPA) permit application to conduct a remote sensing survey within the boundaries of the Chincoteague National Wildlife Refuge in the hopes of locating the remains of the eighteenth century Spanish shipwreck, *La Galga*.

We are most appreciative of the comments provided in the letter and as the archaeological consultant retained by Mr. John Amrhein, Jr., Gray & Pape wanted to respond to one of the issues raised in the September 2008 letter. The second paragraph of the letter states that the application contains no information concerning the credentials or qualifications of Mr. Amrhein to conduct an archaeological investigation of this nature. In the interest of transparency, we want to make it clear that Mr. Amrhein retained the services of Gray & Pape as his cultural resources consultant for this project over a year ago. In this capacity, Gray & Pape has submitted an ARPA permit application to conduct archaeological survey on Federal land and will be guiding the development and implementation of the research design for this project, conducting any field investigations, and synthesizing the data collected from these investigations into a technical report suitable for review by the Federal government and the Kingdom of Spain as well as public dissemination if it is deemed appropriate by the U.S. Fish and Wildlife Service (USFWS). Mr. Amrhein will only serve as a historical consultant. Gray & Pape is a full-service cultural resources consulting firm that has been in business for 22 years. While we have offices spread throughout the eastern United States, Gray & Pape has operated in the Commonwealth of Virginia for 17 years and during that time our staff have become extremely conversant with all of the various cultural resource types which may be encountered in this region. We would be glad to discuss the rich and varied backgrounds and research interests of our staff at any time.

Regarding the current ARPA application, Gray & Pape is proposing limited remote sensing survey utilizing a magnetometer in the hopes of verifying several previously identified anomalies which based on the results of exhaustive historical and documentary research on the part of Mr. Amrhein may indicate the resting place of the *La Galga* remains. At this time, no systematic archaeological excavation is recommended or warranted.

Gray & Pape is proud to be a part of this very important project and it is our hope that through continued discussion, all of the interested parties may reach an agreeable conclusion. In the spirit of the National Historic Preservation Act of 1966, as amended which charges the managers of Federal agencies with the responsibility of identifying the cultural resources located within their boundaries for the purpose of future preservation planning, it is our hope that eventually we all may take the first step together in preserving a resource that has international cultural significance. In closing, if there is any assistance or information that Gray & Pape may provide to help the conversation, we are at your service.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad McDonald". The signature is stylized and cursive.

Brad McDonald
Regional Manager
GRAY & PAPE

John L. Amrhein, Jr.
117 Clipper Court
Kill Devil Hills, NC 27948
Telephone
252-441-1106 Days
252-480-2833 Eves.

July 20, 1999

Senor Rafael Conde de Taro
Deputy Chief of Mission
Spanish Embassy
2375 Pennsylvania Ave.NW
Washington, DC 20037

Dear Senor de Taro:

I have been following with great interest the stories on the shipwrecks *Juno* and *La Galga*. The reason is that I have been there before. Enclosed you will find a report that was written and filed with the government and historical agencies about my work on *La Galga*. Rather than reiterate the details please read the report. The point is that the ship is now under land. Assateague Island has undergone many changes since 1750. Based on my research with land records I was able to produce the enclosed chart of Assateague circa 1690. As to the *Juno* I truly believe that Mr. Benson has discovered some vessel other than the *Juno*. There are many wrecks in this vicinity and I have enclosed a list of those which are documented. It has been my experience that many vessels in the Colonial period to the 1820's carried Spanish money. This Spanish money is not proof that a Spanish vessel wrecked, although many would like to believe this. Furthermore the accounts of the *Juno* which I have read seem to indicate a position well out of site of land. Whatever wreck Mr. Benson has, given its proximity to the present shoreline, it is most likely that a majority of the vessel's remains lie under the beach. That shoreline is well documented as having grown out since the early 1800's. I have penciled in the present shoreline on the enclosed chart.

I have seen too many times people getting caught up in the excitement of shipwreck discovery and getting burned in the end. I have more to share with you if you like, if you have any questions please do not hesitate to call or write.

Sincerely,

John L. Amrhein, Jr.

John L. Amrhein, Jr
117 Clipper Ct.
Kill Devil Hills, NC 27948
252-202-5118
amrheinjl@embarqmail.com

November 11, 2008

The Embassy of Spain
Cultural Affairs Officer
2375 Pennsylvania Avenue, NW
Washington DC, 20037

Esteemed Sir:

On September 5, 1750, the Spanish warship *La Galga* ran ashore on Assateague Island, Virginia. From that point on the residents of the area attributed the origin of the wild ponies of the island as having come from a Spanish shipwreck. This legend was memorialized in Marguerite Henry's *Misty of Chincoteague* in 1947 and in 1961 it became a movie. Each year nearly 50,000 tourists come to the Pony Swim at Chincoteague to see the legendary ponies. *La Galga* has become part of our American heritage. This shipwreck certainly qualifies for listing on the National Register of Historic Places. All that is necessary to finalize that process is for our government to officially verify the wreck's final resting place. Several other Spanish shipwrecks in Florida are already on the National Register.

As Americans await that process, steps are being taken to present the history of this ship to an eager public. My book, *The Hidden Galleon*, published October, 2007 is the complete history of *La Galga*. I have enclosed two copies here for your review. Secondly, a model of the ship has been constructed at great time and expense that will be soon be put on display at the Chincoteague National Wildlife Refuge Visitors Center. I hope when that time is announced that the Kingdom of Spain will send a representative for the ribbon cutting. This will be a great opportunity for our two countries to celebrate a shipwreck that has become our common history and cultural heritage. In the meantime, should you or any official of Spain wish to meet with me about this project, I would be most happy to travel to Washington. I look forward in any event in hearing from you.

Sincerely yours,

John L. Amrhein, Jr..