

HISTORIC WRECKS ACT 2001

WHEREAS it is expedient to establish a Custodian of Historic Wrecks and an Historic Wrecks Authority to preserve, protect and safeguard Bermuda's underwater cultural heritage by making provision for the classification of wrecks and to control the archaeological and scientific examination of historic wrecks; and for purposes connected therewith:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

PART 1 PRELIMINARY

Citation

1 This Act may be cited as the Historic Wrecks Act 2001.

Interpretation

2 In this Act—

"the Authority" means the Historic Wrecks Authority established under section 3;

"cultural remains" means deposits containing artefacts and evidence of human habits and customs;

"the Custodian" means the Custodian of Historic Wrecks appointed under section 5;

"historic artefact" means flotsam, jetsam, lagan and any artefact found in the waters of Bermuda which is associated with a wreck or a marine heritage site and which is more than 50 years old;

"licence" means a licence issued under section 8;

"licensee" means a person, institution or body of persons who holds a licence;

"marine heritage site" means a site classified under section 6 as a marine heritage site;

"the Minister" means the Minister charged with responsibility for wrecks;

"the National Collection" and "the Collection" mean the National Collection established under section 13;

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"open wreck" means a wreck which—

- (a) the Custodian has classified under section 6 as an open wreck; and
- (b) is open to recreational use by divers;

"operative date" means the date on which this Act comes into operation;

"restricted wreck" means a wreck which—

- (a) the Custodian has classified under section 6 as a restricted wreck; and
- (b) is not open to recreational use by divers;

"site" means a submarine area within the waters of Bermuda containing a wreck or a marine heritage site;

"waters of Bermuda" includes the contiguous zone within 24 nautical miles of the nearest point on the baselines defined in the Bermuda (Territorial Sea) Order in Council 1988;

"wreck" or "historic wreck" means the remains of any vessel found on the shores or in the waters of Bermuda which has been abandoned by its owner for at least 50 years and which is not at the relevant time being processed for salvage or sale under the Wreck and Salvage Act 1959, and includes flotsam, jetsam, lagan, and anything associated with a shipwreck or derived therefrom.

PART II THE HISTORIC WRECKS AUTHORITY

Establishment of the Authority

3 (1) There is established a body of persons to be called the Historic Wrecks Authority which shall perform the functions assigned to them by this Act and such other functions as the Minister may determine.

(2) The Authority shall consist of a chairman appointed by the Minister and seven members appointed by the Minister appearing to him to represent Bermuda interests related to scientific research, cultural resource management, tourism, diving or dive boat operators, and education.

(3) The Custodian shall *ex officio* be a member of the Authority.

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(4) The chairman and members of the Authority shall hold office at the Minister's pleasure.

(5) The Authority shall regulate its own procedure.

(6) The Authority shall, within three months of the end of each year, submit a report on its activities for that year to the Minister.

(7) The Minister shall, as soon as practicable after receipt of the report under subsection (6), cause a copy of the report to be laid before both Houses of the Legislature.

(8) Fees shall be paid to the members of the Authority in accordance with the provisions of the Government Authorities (Fees) Act 1971.

Functions of the Authority

4 (1) The functions of the Authority are—

(a) to advise the Minister—

(i) on matters relating to the management of historic wrecks and marine heritage sites in the waters of Bermuda; and

(ii) on the management of the National Collection under section 12;

(b) to advise the Custodian on—

(i) the classification of wrecks and sites under section 6; and

(ii) the issuance of licences and the conditions which shall be attached thereto under section 8; and

(2) No proceedings shall lie against the Authority or any member of the Authority in respect of anything done in good faith in the exercise or intended exercise of their functions.

PART III

CLASSIFICATION AND PROTECTION OF WRECKS, ETC.

Appointment of Custodian

5 The Minister shall appoint a Custodian of Historic Wrecks, who shall be deemed to be a public officer and who shall—

(a) after consultation with the Authority, classify wrecks and sites and issue licences; and

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- (b) perform the duties and discharge the functions assigned to him by this Act and by any other statutory provision.

Custodian to classify wrecks and sites

6 (1) The Custodian, not later than three months after the operative date or such longer period as the Minister may authorize, by notice published in the Gazette, shall—

- (a) classify all known wrecks on the shores, or in the waters, of Bermuda;
- (b) enter the classification in an official Register of Wrecks and, in the case of open wrecks, identify the location of the site of the wreck;
- (c) classify any submarine area that is not known to contain a wreck but that contains or may contain historical artefacts as a marine heritage site and identify the location of the site.

(2) Where a wreck or prospective marine heritage site is discovered after the coming into operation of this Act, the Custodian shall exercise the powers conferred by subsection (1) in respect of that wreck or site.

(3) A wreck referred to in subsection (1) shall be classified as an open wreck or a restricted wreck.

(4) The Custodian may, after consultation with the Authority, reclassify a wreck that has been classified under subsection (1) or (2) and, where he does so, he shall publish a notice of the reclassification in the Gazette.

(5) Where a wreck or site is classified under subsection (1) or (2), the Custodian shall cause the wreck or site to be identified by green or red submarine markers indicating that the wreck or site is or is not open to recreational use by divers.

Protection of wrecks and marine heritage sites

7 (1) No person shall mark, remove or otherwise interfere with, deal in or possess any wreck or historic artefact unless he is licensed under section 8 and authorised by the licence to do so.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of \$25,000 or imprisonment for one year, or both.

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(3) Where a person is convicted of an offence under this section, the court shall order that anything removed in contravention of subsection (1) be forfeited to the Crown.

Licences

8 (1) Subject to subsections (2) and (3), the Custodian, after consultation with the Authority, may issue licences to conduct surveys of, or to investigate or conduct research in respect of, wrecks and sites of the following classes—

- (a) a licence authorizing the licensee to carry out a pre-disturbance survey, using only hand tools and survey techniques that are not invasive, of a submarine area to document the location and structure of a wreck, cultural remains or other elements of historical or archaeological interest with such minimal disturbance of the area as is authorized in the licence;
- (b) a licence authorising the licensee to conduct research on a restricted wreck site or marine heritage site including authorization to recover and remove artefacts and cultural remains and to conduct research pertaining to the site subject to conditions imposing requirements with respect to—
 - (i) the use of scientific methods,
 - (ii) the provision of an archaeological plan to be approved by the Authority,
 - (iii) regular reporting and monitoring of work on the site,
 - (iv) archaeological expertise or previous experience with work of this nature, and
 - (v) the publication of the results of the work;
- (c) a licence authorising the licensee to carry out work on an open wreck site subject to such conditions as the Custodian, after consultation with the Authority, may impose.

(2) When consulted on an application for a licence under this section the Authority shall consider—

- (a) in the case of an institution, whether it is a *bona fide* institution;

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(b) in the case of a person or body of persons, whether the person or persons are fit and proper to carry out the work; and

(c) in both cases, whether the applicant has the resources, expertise, experience with submarine activity and affiliation with any maritime or archaeological organization necessary to enable the work to be done competently and to fulfil any conditions.

(3) Applications for licences shall be accompanied by a statement which shall include—

(a) specifications for the area to be covered by the licence and demarcation of the site;

(b) measures for the protection of the environment and of the wreck or site;

(c) the objectives of the project;

(d) the methods and techniques to be employed;

(e) the composition, qualifications and experience of the project team;

(f) documentation of the project;

(g) the field stabilization and conservation of the artefacts; and

(h) the deposit of records of the project.

(4) A licence shall remain in force for a period of one year commencing on the date of issue and may be renewed.

(5) A licensee shall deposit a copy of the records related to the project with the Custodian within six months of the completion of the project.

(6) If, at any time, the Custodian finds that circumstances have changed or the conditions imposed are not being complied with, he may, after consultation with the Authority, alter the conditions or suspend a licence by giving notice in writing of the alteration or suspension to the licensee.

(7) Where a licensee has been convicted of an offence under this Act, the Custodian may, by notice in writing, cancel the licence of that licensee with effect from the date specified in the notice.

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(8) A licensee who is aggrieved by the refusal of a licence or by the conditions of a licence, or the alteration of any conditions or the suspension or cancellation of a licence under subsection (6) or (7) may by notice in writing appeal to the Minister and the Minister, after giving the Custodian and the licensee full opportunity to make representations, may confirm the decision of the Custodian, or reverse it and issue or reinstate the licence, or revise the conditions of the licence.

(9) Licences may not be transferred by the licensee to any other person or institution.

(10) Any licence issued under section 30 of the Wreck and Salvage Act 1959 shall expire in accordance with the terms thereof but in any event no later than six months after the operative date.

(11) Fees for licences are as prescribed under the Government Fees Act 1965.

Penalties

9 (1) Any licensee, or the agent or employee of a licensee, who fails to comply with any condition of a licence is guilty of an offence and is liable on summary conviction to a fine of \$10,000 or imprisonment for one year, or both.

(2) Any person, not being a person referred to in subsection (1) or a person specifically authorized to do so by the Custodian, who—

- (a) removes any artefacts or other thing from a site;
- (b) disturbs a site; or
- (c) interferes with any marker or with anything placed on a site by the Custodian or by the licensee or his agent or employee,

is guilty of an offence and is liable on summary conviction to a fine of \$25,000 or imprisonment for one year, or both.

(3) Any person, not being a person referred to in subsection (1) or a person specifically authorized to do so by the Custodian, who wilfully dives on the site of a restricted wreck is guilty of an offence and is liable on summary conviction to a fine of \$5,000.

(4) Where a licensee or the agent or employee of a licensee is convicted of an offence under this section, the court shall order that anything removed from the site be forfeited to the Crown.

(5) Where a person other than a licensee or the agent or employee of a licensee is convicted of an offence under this section, the

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court shall order that anything removed from the site be forfeited and returned to the licensee.

PART IV OWNERSHIP, FINDERS' REGISTER AND THE NATIONAL COLLECTION

Ownership of wreck and historic artefacts

10 Notwithstanding section 12, all wrecks and historic artefacts are vested in the Crown absolutely and shall be deemed to be in the possession of the Minister.

Register of finders

11 (1) Where any person finds any previously unreported wreck or historic artefact and gives the notice required by section 9 of the Wreck and Salvage Act 1959, the Custodian shall enter details of the name of the finder and the location at which the wreck or historic artefact was found in a register of finders.

(2) Where a person finds any previously unreported wreck or historic artefact and gives the notice referred to in subsection (1), the Minister may, having regard to the circumstances in which the artefact or wreck was found, pay a good faith honorarium, without prejudice, to the person finding the wreck or artefact:

provided that in considering such payment due regard shall be taken of the national interest, specifically the need to preserve, protect and safeguard Bermuda's underwater cultural heritage.

(3) Any honorarium under subsection (2) shall be paid out of the Consolidated Fund.

National Collection

12 (1) There shall be created a National Collection designed to display Bermuda's underwater cultural heritage which may include, in addition to such items as the Minister after consultation with the Authority may decide, an electronic virtual database of both public and private collections.

(2) The Collection may contain—

- (a) any artefacts retained by the Minister;
- (b) artefacts donated or on loan from private collections or otherwise acquired by the Minister; and

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- (c) a virtual image of any wreck or historic artefacts which have been recovered from a site and which the Authority considers to be of cultural, historical or scientific interest;
- (3) The Minister, after consultation with the Authority, shall establish standards for data to be deposited with the Collection and the standards shall provide for protection of the data under the law of copyright.
- (4) The Minister, after consultation with the Authority, shall decide—
 - (a) which institution or body of persons located in Bermuda shall be awarded custody of the records and the recovered artefacts of the project;
 - (b) the conditions to be imposed for the care and conservation of, and public access to, the Collection; and
 - (c) the circumstances under which any portion of the Collection may be sent out of Bermuda.
- (5) When consulted under subsection (4) the Authority shall consider—
 - (a) whether the institution or body of persons is *bona fide*; and
 - (b) whether the institution or body of persons has the facilities to care for the Collection in a professional manner and to ensure access to the Collection by the public.
- (6) The Minister, after consultation with the Authority, may withdraw part or all of the Collection from any institution or body of persons if the Minister determines that the conditions imposed under subsection (4)(b) for the care and conservation of, and public access to, the Collection are not complied with.

PART V MISCELLANEOUS

Inspectors

- 13 (1) The Minister shall designate persons to be inspectors for the purpose of enforcement of this Act and shall give every such person a

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certificate of his designation signed by the Minister and the person so designated.

(2) For the purpose of ensuring that any conditions of a licence are complied with an inspector may require a licensee to produce such records relating to work at a site as the inspector may specify and to permit the inspector to take copies of them.

(3) Any person who obstructs or hinders an inspector in carrying out his functions is guilty of an offence and liable on summary conviction to a fine of \$5,000.

Amnesty and abandonment of Crown claims

14 (1) No prosecution of any person shall be laid in respect of any offence under section 9 of the Wreck and Salvage Act 1959 that occurred before the coming into operation of this Act if the person, within six months of the operative date or such longer period as the Minister may authorize by notice published in the Gazette—

- (a) reports to the Custodian that he has found and taken possession of artefacts at the site of a wreck; and
- (b) permits the Custodian to photograph and record pertinent details of the artefacts for inclusion in the database of the National Collection.

(2) The Minister, on behalf of the Government of Bermuda, hereby abandons any claim that the Crown in right of Bermuda may have in respect of any artefact recovered from a wreck that—

- (a) a person has found or taken possession of before the coming into operation of this Act; and
- (b) has been reported to the Custodian and photographed and recorded under subsection (1).

Regulations

15 (1) The Minister may, after consultation with the Authority, make regulations—

- (a) for bringing into operation the provisions of this Act;
- (b) providing for the forms and procedure to be employed in the issue of licences;
- (c) prescribing the means of marking a wreck site or marine heritage site;

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(d) setting out the powers of inspectors.

(2) Regulations made under subsection (1) are subject to the affirmative resolution procedure.

Repeal

16 Part II of the Wreck and Salvage Act 1959 is repealed.

Commencement

17 This Act comes into operation on such date as the Minister may appoint by notice published in the Gazette.