

ABANDONED SHIPWRECK ACT

Acronym: ASA

Citation: 43 U.S.C. §§ 2101-2106 (2002).

Legislative Purpose:

The act establishes a system of ownership rights in abandoned shipwrecks within state waters.

Summary:

Under the ASA, the United States asserts title to shipwrecks that are embedded in the submerged lands of a state. The federal government then transfers title to the state whose submerged lands contain the shipwreck, except when the wreck is located on public land of the United States or Indian Land, or is a U.S. warship that has not been affirmatively abandoned. The public is given notice of the location of any shipwreck when title is asserted under the ASA.

In the terms of the ASA, ‘embedded’ means firmly affixed in the submerged lands or in coral line formations such that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof. ‘Submerged lands’ means lands that are “lands beneath navigable waters,” as defined in § 1301.

Pursuant to the ASA, states manage a broad range of living and nonliving resources in their waters and submerged lands. Shipwrecks protected under the ASA offer recreational and educational opportunities for divers, tourists, users of biological sanctuaries, and historical researchers. States are encouraged to provide public access to shipwrecks by adopting guidelines for the creation of underwater parks. The act also authorizes appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites. Funds are made available to the states from the Historic Preservation Fund shall be available for the study, interpretation, protection, and preservation of historic shipwrecks and properties.

The Secretary of the Interior, through the National Park Service, publishes guideline to maximize the enhancement of shipwrecks as cultural resources; foster a partnership among sport divers, archaeologists, salvors, and other interests to manage shipwreck resources; facilitate access and utilization of the shipwrecks; and recognize the interests of groups engaged in shipwreck discovery and salvage.

It should be noted that the definition of “abandonment” under the act is uncertain and if a ship fails to satisfy the ASA requirements, then a court generally determines the proper claimant to title based upon the law of finds or the law of salvage.

TITLE 43. PUBLIC LANDS

CHAPTER 39. ABANDONED SHIPWRECKS

43 U.S.C. §§ 2101-2106 (2002).

§ 2101. Findings

The Congress finds that--

- (a) States have the responsibility for management of a broad range of living and nonliving resources in State waters and submerged lands; and
- (b) included in the range of resources are certain abandoned shipwrecks, which have been deserted and to which the owner has relinquished ownership rights with no retention.

§ 2102. Definitions

For purposes of this Act [43 USC §§ 2101 et seq.]--

- (a) the term "embedded" means firmly affixed in the submerged lands or in coralline formations such that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof;
- (b) the term "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the National Historic Preservation Act (16 U.S.C. 470a);
- (c) the terms "public lands", "Indian lands", and "Indian tribe" have the same meaning given the terms in the Archaeological Resource [Resources] Protection Act of 1979 (16 U.S.C. 470aa-470ll);
- (d) the term "shipwreck" means a vessel or wreck, its cargo, and other contents;
- (e) the term "State" means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and
- (f) the term "submerged lands" means the lands--
 - (1) that are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301);
 - (2) of Puerto Rico, as described in section 8 of the Act of March 2, 1917, as amended (48 U.S.C. 749);
 - (3) of Guam, the Virgin Islands and American Samoa, as described in section 1 of Public Law 93-435 (48 U.S.C. 1705); and
 - (4) of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Public Law 94-241 (48 U.S.C. 1681).

§ 2103. Rights of access

(a) Access rights. In order to--

- (1) clarify that State waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups, as well as irreplaceable State resources for tourism, biological sanctuaries, and historical research; and
- (2) provide that reasonable access by the public to such abandoned shipwrecks be permitted by the State

holding title to such shipwrecks pursuant to section 6 of this Act [43 USC § 2105], it is the declared policy of the Congress that States carry out their responsibilities under this Act [43 USC §§ 2101 et seq.] to develop appropriate and consistent policies so as to--

- (A) protect natural resources and habitat areas;
- (B) guarantee recreational exploration of shipwreck sites; and
- (C) allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites.

(b) Parks and protected areas. In managing the resources subject to the provisions of this Act [43 USC §§ 2101 et seq.], States are encouraged to create underwater parks or areas to provide additional protection for such resources. Funds available to States from grants from the Historic Preservation Fund shall be available, in accordance with the provisions of title I of the National Historic Preservation Act [16 USC §§ 470a et seq.], for the study, interpretation, protection, and preservation of historic shipwrecks and properties.

§ 2104. Preparation of guidelines

(a) Purposes of guidelines; publication in Federal Register. In order to encourage the development of underwater parks and the administrative cooperation necessary for the comprehensive management of underwater resources related to historic shipwrecks, the Secretary of the Interior, acting through the Director of the National Park Service, shall within nine months after the date of enactment of this Act [enacted April 28, 1988] prepare and publish guidelines in the Federal Register which shall seek to:

- (1) maximize the enhancement of cultural resources;
- (2) foster a partnership among sport divers, fishermen, archeologists, salvors, and other interests to manage shipwreck resources of the States and the United States;
- (3) facilitate access and utilization by recreational interests;
- (4) recognize the interests of individuals and groups engaged in shipwreck discovery and salvage.

(b) Consultation. Such guidelines shall be developed after consultation with appropriate public and private sector interests (including the Secretary of Commerce, the Advisory Council on Historic Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archeologists, historic preservationists, and fishermen).

(c) Use of guidelines developing legislation and regulations. Such guidelines shall be available to assist States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under this Act [43 USC §§ 2101 et seq.].

§ 2105. Rights of ownership

(a) United States title. The United States asserts title to any abandoned shipwreck that is--

- (1) embedded in submerged lands of a State;
- (2) embedded in coralline formations protected by a State on submerged lands of a State; or
- (3) on submerged lands of a State and is included in or determined eligible for inclusion in the National

Register.

(b) Notice of shipwreck location; eligibility determination for inclusion in National Register of Historic Places. The public shall be given adequate notice of the location of any shipwreck to which title is asserted under this section. The Secretary of the Interior, after consultation with the appropriate State Historic Preservation Officer, shall make a written determination that an abandoned shipwreck meets the criteria for eligibility for inclusion in the National Register of Historic Places under clause (a)(3).

(c) Transfer of title to States. The title of the United States to any abandoned shipwreck asserted under subsection (a) of this section is transferred to the State in or on whose submerged lands the shipwreck is located.

(d) Exception. Any abandoned shipwreck in or on the public lands of the United States is the property of the United States Government. Any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands.

(e) Reservation of rights. This section does not affect any right reserved by the United States or by any State (including any right reserved with respect to Indian lands) under--

(1) section 3, 5, or 6 of the Submerged Lands Act 43 U.S.C. 1311, 1313, and [or] 1314); or

(2) section 19 or 20 of the Act of March 3, 1899 33 U.S.C. 414 and [or] 415).

§ 2106. Relationship to other laws

(a) Law of salvage and law of finds. The law of salvage and the law of finds shall not apply to abandoned shipwrecks to which section 6 of this Act [43 USC § 2105] applies.

(b) Laws of United States. This Act [43 USC §§ 2101 et seq.] shall not change the laws of the United States relating to shipwrecks, other than those to which this Act [43 USC §§ 2101 et seq.] applies.

(c) Effective date. This Act [43 USC §§ 2101 et seq.] shall not affect any legal proceeding brought prior to the date of enactment of this Act [enacted April 28, 1988].