MARINE PARK SHIPWRECKS
and other underwater relics

Management Principles

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Heritage Office, NSW

and the
NSW Marine Parks Authority

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1. Introduction

In Marine Parks, issues regarding heritage that is subject to either the NSW Heritage Act 1977 or the Commonwealth Historic Shipwrecks Act 1976 will be managed within the requirements of that legislation. Such heritage will also be managed in accordance with guidelines issued by the Heritage Office to the extent that such guidelines are consistent with the objects of the Marine Parks Act.

This document does not cover recent shipwrecks, fish attracting devices or artificial reefs.

2. Management Structure for relics in Marine Parks

2.1 The NSW Marine Parks Authority

The NSW Marine Parks Authority came into existence in 1997 under the Marine Parks Act 1997 with the particular aim of managing marine parks for the conservation of marine biodiversity and to maintain ecological processes. The responsibilities of the Marine Parks Authority are to:

- Investigate, assess and consider proposals for marine parks or variations of the areas of marine parks;
- Make recommendations as to the appropriate classification of areas within marine parks;
- Prepare an operational plan in respect of each marine park;
- Manage and control activities that may affect marine biological diversity, marine habitats and marine ecological processes in marine parks;
- Provide for and regulate the ecologically sustainable use (including commercial and recreational fishing) of marine parks;
- Disseminate information about marine parks;
- Encourage public appreciation, understanding and enjoyment of marine parks and, where consistent with other functions of the Authority, public recreation in marine parks; and
- Encourage and permit, when appropriate, scientific research into the ecology of marine systems.

2.2 The NSW Heritage Office

The Heritage Office is an independent NSW Government agency within the portfolio of the Minister for Planning. It was established in 1996 and is responsible for providing advice to the Heritage Council and the community about the management of heritage in NSW. This heritage includes items of built form, including shipwrecks and movable heritage, natural and Aboriginal.

The vision, or mission statement of the Heritage Office is:
“Helping the community to conserve our heritage.”

Heritage education and information programs are targeted at schools, local government, corporations and the general community.

Maritime Archaeology Unit:
This unit implements the NSW maritime heritage responsibilities under both the State Heritage Act, 1977 and the Commonwealth Historic Shipwrecks Act 1976. It
also is responsible for the Heritage Office’s various wreck survey projects and extensive liaison with the dive industry.

Underwater heritage refers to all those submerged sites in coastal and inland waterways of shipwrecks, port facilities and other relics considered to be of heritage significance.

Maritime archaeologists in the Heritage Office help to coordinate the conservation, management and interpretation of the State’s underwater heritage. Activities include:

- Liaising with State and local government organisations
- Education and information programs
- Liaising with the Commonwealth Government to ensure a consistency of approach
- Encouraging the participation of private individuals and organisations in the recording, assessment and management of underwater sites undertaking wreck site surveys and other research

2.3 Environment Australia

Environment Australia is the Commonwealth body administering the Historic Shipwrecks Act 1976. Through nominated State delegates, the Commonwealth, States and the Northern Territory have developed a cooperative national program to survey, manage and protect shipwrecks in Commonwealth waters. The ultimate objective of the program is to promote the understanding and appreciation of the Australian people for their maritime heritage and its place in the wider history of Australia.

In NSW the State Delegate is the Director of the Heritage Office.

3. Legislation

Cultural heritage in marine parks is covered by three pieces of legislation.

- The NSW Heritage Act 1977 covers relics in State waters out to the 3-mile limit, other than shipwrecks protected by the Commonwealth Historic Shipwrecks Act.
- The Commonwealth Historic Shipwrecks Act 1976 covers shipwrecks out to the limit of Australian Territorial Waters and up to the low water mark but does not include State waters in rivers, harbours and enclosed bays.
- Aboriginal heritage is covered under the National Parks and Wildlife Act, 1974.

Natural heritage is also protected by the

- Marine Parks Act, 1998 and the

3.1 Commonwealth Historic Shipwrecks Act 1976

In Marine Parks located in Commonwealth waters, the requirements of the Historic Shipwrecks Act 1976 will govern management practices of historic shipwrecks in those parks.

The Historic Shipwrecks Act 1976 applies to Australian Territorial waters extending from the low water mark of the NSW coast to the outer edge of the continental shelf. It does not cover the State’s internal waterways such as lakes, rivers and harbours.
The Act is administered in NSW by the Director of the Heritage Office as the delegated authority. Under section 4, all shipwrecks 75 years of age and older are declared historic and accorded permanent protection. Other shipwrecks may be declared historic and granted this protection on an individual basis according to their particular merits. Provisional protection can also be provided for a maximum of five years. The Act prohibits damage, interference, removal or destruction and also contains provisions for the declaration of a protected zone around an historic shipwreck. A protected zone can be declared if the site is:

- particularly sensitive to damage by divers, fishing activity or anchors
- in an area where large vessels are known to moor
- vulnerable to dredging
- a war grave
- currently under detailed investigation, with survey lines and poles likely to be left on the site for extended periods

The Act also allows for:

- acknowledgment of people who reveal the location of an historic shipwreck to the Minister
- archaeological investigation of shipwrecks and relics
- establishing and maintenance of a register of historic shipwrecks
- enforcement of the legislation through the appointment of Wreck Inspectors
- directions to be given regarding the custody of historic shipwrecks or relics

OFFENCES
Section 13 of the Act makes it an offence to do any of the following, unless the person has a permit:

- damage or destroy an historic shipwreck or historic relic;
- interfere with an historic shipwreck or historic relic;
- dispose of an historic shipwreck or historic relic; or
- remove an historic shipwreck or historic relic from Australian waters or from waters above the continental shelf of Australia.
- moor or use ships within a protected zone

Regulation 4 provides for offences in relation to protected zones, unless authorised by permit. They are:

(a) bring into a protected zone equipment constructed or adapted for the purpose of diving, salvage or recovery operations, or any explosives, instruments or tools the use of which would be likely to damage or interfere with an historic shipwreck or an historic relic situated within that protected zone;
(b) use within a protected zone any such equipment, explosives, instruments or tools;
(c) cause a ship carrying any such equipment, explosives, instruments or tools to enter, or remain within, a protected zone;
(d) trawl, or dive or engage in any other underwater activity, within a protected zone.

A protected zone is that area surrounding a wreck declared by the Minister to be protected. At present only two wrecks have a protected zone in this State. These are the ss *Duckenfield* (200m radius protected zone) off Long Reef near Sydney and the ss *Lady Darling* (150m radius protected zone) between Narooma and Bermagui on the NSW south coast.
Other Offences under the Act include:

- Failing to notify the Minister within 30 days of possession, custody or control of an historic relic or article (S.9);
- Failing to provide, or providing of false information upon request by the Minister (S.10);
- Failing to comply with a direction given by the Minister (S.11);
- Contravening a condition of a permit (S.15) and
- Failing to notify the discovery of a shipwreck or relic or providing false or misleading information in respect of the same (S.17).

3.2 Heritage Act, 1977

_In Marine Parks located in State waters, the requirements of the Heritage Act 1977 will govern management practices for all submerged relics of cultural heritage in those parks. The Heritage Act 1977 will also govern management practices for non-historic shipwreck relics in Commonwealth waters out to the three-mile limit._

The NSW _Heritage Act 1977_ is the state legislation administered by the NSW Heritage Office and amended 2001 to include specific protection for historic shipwrecks within the boundaries of the State. These boundaries are limited by the mean low water mark and the internal side of Australia’s territorial baselines across harbours and river mouths. The amendments complement the provisions of the Commonwealth _Historic Shipwrecks Act 1976_ which apply to seawards of the above boundaries. The amendments do not limit the relics provisions of the _Heritage act_ which extend out to the three nautical mile State limit. A Register of Historic Shipwrecks is maintained by the Heritage Council.

For marine parks located in State waters, the requirements of the _Heritage Act 1977_ will govern management practices for all historic shipwrecks and other submerged relics of cultural heritage in those parks. The _Heritage Act 1977_ will also govern management practices for relics other than shipwrecks in Commonwealth waters out to the three nautical mile State limit.

Shipwrecks in territorial waters of the State which are more than 75 years old are protected as designated Historic Shipwrecks. Shipwrecks less than 75 years may fall within the definition of ‘relics’ if they are over 50 years old. Whether they have Historic Shipwreck status or relic status they cannot be disturbed or altered without a permit issued by the NSW Heritage Council of NSW. The Minister can also place Heritage Orders on sites if advised to do so by the heritage council.

Under section 170 of the Act, all State Government instrumentalities and departments need to keep a register of heritage assets. These may include shipwrecks and other archaeological sites within marine parks.

3.3 National Parks and Wildlife Act 1974

Responsibilities for the management of Indigenous cultural heritage within marine parks will be subject to working agreements between Marine Parks and the National Parks and Wildlife Service. Accordingly, this document deals only with cultural heritage other than Indigenous heritage.
3.4 Marine Parks Act 1998

The Marine Parks Act 1997 governs activities in marine parks to ensure the protection, conservation and sustainable use of natural systems. One of the principal mechanisms of management established under the Act is the designation of zones where particular classes of activity are prohibited or regulated. The Marine Parks Regulation 1999 prohibits certain activities generally within marine parks, except with the consent of the Marine Parks Authority. These activities include placement and removal of moorings, introduction of exotic animals or pests, organised research activities, commercial activities, and organised sporting, educational and recreational activities.

The Marine Parks Act 1997 also requires that the concurrence of the relevant Ministers is obtained before consent is granted to any development (as defined by Part 4 of the Environmental Planning and Assessment Act 1979) within a marine park.

The Act provides for the closure of areas of marine parks, prohibiting the carrying out of any specified activity.

4. Guidelines

4.1 The importance of shipwrecks and other relics

The records and physical evidence of shipwrecks and other underwater relics are unique archaeological deposits that often have the potential to yield vital information about our past. They are fragile and irreplaceable. Left in-situ they can provide an archaeological deposit that will survive for hundreds or even thousands of years.

Shipwrecks also find their own place in the natural environment. They become artificial reefs attracting a wide range of plant and animal life, often different to the surrounding areas. Interaction between the marine ecology and the remains of a shipwreck or other relic is complex: the site can become a home, a nursery and a food source. Marine organisms can be found feeding directly on the components of a ship or on smaller inhabitants.

4.2 Heritage Considerations

The heritage values of shipwrecks and other relics are intrinsically linked to their in-situ context. Any disturbance of this context can only be justified if there is:

- an adequate research design;
- full archaeological recording prior to and during the disturbance or removal;
- appropriate stabilisation of the site and any recovered artefacts; and,
- storage in a suitable repository where the collection as a whole can be accessed for purposes of study or public display.

It is generally more appropriate to undertake in-situ interpretation and site stabilisation rather than to remove artefacts from a site.

In managing underwater cultural heritage in Marine Parks, the Marine Parks Authority will draw upon advice from specialist heritage agencies like the NSW Heritage Office and upon specialists in maritime archaeology and materials conservation.

4.3 Recreational Considerations
Shipwrecks and other underwater cultural heritage can form important aspects of recreational activity including diving. The interpretation of such sites can also form a significant component of non-diving visitation to an area.

4.4 Access
Individuals, community groups and researchers are encouraged to visit underwater cultural heritage sites for non-disturbance purposes. However, any activities that may result in the disturbance of a site may only occur within the following guidelines.

4.5 Protected zones

4.5.1 Historic Shipwrecks Act
Permits are required prior to entry into a protected zone where such a zone has been specifically gazetted around an historic shipwreck.

4.5.2 Marine Parks Act
The Marine Parks Authority will give particular consideration to the vulnerability of historic shipwrecks to damage from fishing and anchoring activities when conducting consultation regarding draft plans and when formulating recommendations for the adoption of zoning plans.

4.6 Research
Research may involve disturbance and non-disturbance of heritage sites. Both types of research within marine parks will require ‘use’ consent from the Marine Parks Authority.

4.6.1 Archaeological research

4.6.1.1 Non-disturbance surveys
Non-disturbance surveys can be undertaken without a requirement to obtain a permit from the Director of the Heritage Office or the Heritage Council.

Non-disturbance may be conducted professional archaeologists and other scientists but are also an important way to involve recreational divers in understanding and caring for underwater archaeological sites, particularly shipwrecks. Where a protected zone applies to a particular site then a permit will still be required to enter the designated protected area.

4.6.1.2 Excavation or artefact recovery
Disturbance of a shipwreck, apart from natural sources, should only occur in a controlled environment of accurate archaeological recording, materials conservation, data analysis, report preparation and public access to any resultant collection.

Persons seeking to disturb a protected underwater relic that is not an historic shipwreck in Commonwealth waters are required to apply for an excavation permit from the NSW Heritage Council. If the disturbance relates to an historic shipwreck in Commonwealth waters then the application is made to the Director of the Heritage Office as Delegate for the Historic Shipwrecks Act 1976.
4.6.1.3 Marine biological research
Where marine biological research is proposed for an underwater archaeological site including historic shipwrecks, the project must consider cultural heritage issues and comply with relevant legislation.

4.7 Recreational diving
Recreational diving will be encouraged on submerged archaeological sites where it complies with the relevant legislation and all Marine Parks policies. Mooring onto a shipwreck by use of an anchor or other direct attachment will not be permitted.

4.8 Fishing
The Marine Parks Authority will give particular consideration to the vulnerability of historic shipwrecks to damage from fishing and anchoring activities when conducting consultation regarding draft plans and when formulating recommendations for the adoption of zoning plans.

5. Procedures

5.1 Access Application forms

5.1.1 Entry into Protected zones
Application forms to enter an historic shipwreck Protected Zone will be provided on request from the NSW Heritage Office.

5.1.2 Excavation permits
Excavation permits related to archaeological sites in Marine Parks will not be issued by the Heritage Office without prior consultation with the Marine Parks Authority to determine any concerns regarding bio-diversity, ecological processes, conservation of cultural heritage or other issues. The Heritage Office will forward copies of approved excavation permits to the Marine Parks Authority.

Permits for recovery and excavation will be considered if:
• the proposed project is directed by a qualified archaeologist who has successfully completed graduate studies in maritime archaeology, or who has equivalent qualifications and experience
• two referees who qualify under these criteria affirm the suitability of the supervising maritime archaeologist
• the project adheres to the principles of the Australasian Institute for Maritime Archaeology’s (AIMA) code of ethics
• an appropriate research design brief has been prepared
• adequate conservation and storage facilities are available for the project
• there is adequate funding for the project
• the application is accompanied by a letter of non-objection from the Marine Parks Authority

5.1.2.1 Permits under the Historic Shipwrecks Act, 1976
Permit application forms will be available from the NSW Heritage Office. Applications will be forwarded to the Director of the Heritage Office.
5.1.2.2 Permits under the Heritage Act, 1977
Permit application forms will be available from the NSW Heritage Office. Applications will be forwarded to the Heritage Council.

5.2 Notification of a newly found shipwreck site
Under the provisions of the Historic Shipwrecks Act, any newly discovered shipwreck that may be an historic shipwreck must be reported to the State delegate (ie the Director of the NSW Heritage Office) or the Minister for Environment and Heritage within 30 days of finding the vessel.

Notification of a newly located shipwreck may be submitted directly to the NSW Heritage Office or through the Marine Parks Authority.

A notification form may be obtained from the NSW Heritage Office or the Marine Parks Authority.

5.3 Notification of damage to a shipwreck site
In the event that an historic shipwreck is damaged or observed to be damaged, notification should be sent immediately to the Heritage Office.

6. Compliance
Enforcement procedures relating to cultural heritage in marine parks will be undertaken by designated marine parks officers as part of their park management duties.

6.1 Wreck Inspectors under the Historic Shipwrecks Act
Marine park officers who are appointed as wreck inspectors under the Historic Shipwrecks Act 1976 (Cth) will undertake as enforcement procedures relating to cultural heritage as part of their management duties, subject to priorities established in annual work programs and at the discretion of the officer in the circumstances.

6.1.1 Appointment and training
Appointment of Wreck Inspectors proceeds on the recommendation of the State Historic Shipwrecks Delegate to the Minister for Environment and Heritage.

Upon issue of certificates by the Commonwealth, Environment Australia and the NSW Heritage Office will assist with training of the appointed Wreck Inspectors at venues and times that are agreeable to those organisations and the Marine Parks Authority.

6.1.2 Role and duties
The role of Wreck Inspectors is primarily to facilitate information exchange and education of the diving and fishing public.

In the event that a breach of the legislation is reported to a Wreck Inspector or observed by that inspector then, unless impractical, arrangements should be made for trained police officers to apprehend the party or parties involved.

Wreck Inspectors under the Act must, unless police in uniform, carry their identification when carrying out activities under this Act.
6.1.3 **Wreck Inspectors Powers**

The powers of inspectors are contained within Sections 23-25 of the Act.

Under Section 23 where an inspector has reasonable grounds for believing that an offence has been committed, or believes that evidence of an offence may be obtained by such action, the inspector may:

- board a ship;
- require a person in charge of a ship to facilitate boarding;
- open, or require a person to open, any cargo holds, compartments or containers and inspect the contents;
- require a person in charge of a ship to produce any permit in force under the Act;
- require a person to answer questions.

Section 23 makes it an offence to:

- fail, without reasonable excuse, to comply with a requirement of an inspector, made under the Section;
- make a statement that is false or misleading in a material particular in response to a question required to be answered. Note: It is reasonable excuse not to answer a question on the grounds that it may incriminate a person;
- hinder, obstruct, assault or threaten an officer exercising powers under the Section.

There is a specific power of arrest, without warrant, granted under Section 24. This power relates to instances where Wreck Inspectors reasonable believe that an offence against Section 13 (interference with a declared wreck) or the regulations made in relation to protected zones has been committed and that proceedings by way of summons will not be effective. Where an arrest is made in accordance with Section 24, Wreck Inspectors must, unless police in uniform, produce to the person arrested the member’s identification certificate. Wreck Inspectors powers of arrest in relation to other offences under the Act are not affected by Section 24.

Section 25 permits the seizure of the ship, equipment or article reasonably believed to have been used or otherwise involved in the commission of an offence against this Act. Anything seized under this provision may be retained for 60 days or until any prosecution is finalised. The Minister responsible for administering the Act may direct that anything seized under this Section be returned to the owner or the person from whom it was seized. Upon conviction, a court may order forfeiture of anything seized.

6.1.4 **Procedures**

If a breach is being committed, the procedure is as follows:

1. Obtain particulars of the master of the vessel and all parties involved;
2. Inform them that they will be reported under the Commonwealth *Historic Shipwrecks Act*, 1976;
3. Retain any items taken from the wreck. If small enough, place them immediately in a bucket of salt water and keep them in salt water on return to base. With larger items, return to base and place them in salt water on return.
4. Notify the Director of the NSW Heritage Office.
6.1.5 Contacts

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<tr>
<th>NSW Heritage Office</th>
<th>Maritime Archaeologists:</th>
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<tbody>
<tr>
<td>Level 11, 2-10 Wentworth St Locked Bag 5020 Parramatta 2124 Ph 02-9635 6155 Fax 02-9891 4688</td>
<td>David Nutley (Coordinator) Ph 02-9849 9574 <a href="mailto:nutleyd@heritage.nsw.gov.au">nutleyd@heritage.nsw.gov.au</a></td>
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7. Other relevant documents

- Public Access Guidelines, Department of Arts and Administrative Services
- Shipwreck Atlas of New South Wales, Heritage Office 1997
- Zoning Plans for each Marine Park
- Operational Plans for each Marine Park
- Legislation
- Marine Parks Act, 1998
- NSW Heritage Act, 1977
- Historic Shipwrecks Act, 1976
- National Parks and Wildlife Act, 1974