

R.M.S. Titanic Maritime Memorial Preservation Act of 2007

Section-by-Section Analysis

Section 1. Short Title.

The short title of the Act is set out in Section 1 as the “R.M.S. Titanic Maritime Memorial Preservation Act of 2007.”

Section 2. Findings and Purposes.

Section 2 sets forth the findings and purposes of this Act. In particular, Section 2 establishes that the requirements of the R.M.S. Titanic Maritime Memorial Act of 1986 (“the 1986 Act”) have been satisfied. First, this Act expressly recognizes R.M.S. *Titanic* and its wreksite as an international maritime memorial and gravesite to the 1,517 people onboard the vessel who were lost. *See S. Rep. No. 62-806, at 5* (Senate Commerce Committee’s May 28, 1912 report on the “‘Titanic’ Disaster”). Second, the United States, the United Kingdom, France, and Canada negotiated an international agreement that provides for the designation of R.M.S. *Titanic* and its wreksite as an international maritime memorial. The international agreement also sets forth the substantive requirements to manage activities directed at R.M.S. *Titanic*, including the research and recovery of artifacts. Third, the Secretary of Commerce, after consultation with the Secretary of State, several interested nations, the public, and others, issued guidelines for conducting research on, exploration of, and if appropriate, salvage of R.M.S. *Titanic* (66 Fed. Reg. 18,905). The guidelines were prepared by the National Oceanic and Atmospheric Administration’s National Marine Sanctuary Program. The National Marine Sanctuary Program has extensive experience managing deep shipwrecks of cultural importance such as the USS *Monitor*. Fourth, on June 18, 2004, the Secretary of State signed, subject to acceptance by the United States, the “International Agreement Concerning the Shipwrecked Vessel, RMS *Titanic*.” Section 2 also clarifies that the planning and conduct of any activities directed at R.M.S. *Titanic* and its wreksite must be consistent with applicable law, including the International Agreement and its annexed Rules.

Section 3. Definitions.

Section 3 defines six new terms used in the Act, and deletes three terms from the 1986 Act. The definition of “person” from the 1986 Act is retained. The new term, “collection,” refers to all artifacts recovered from R.M.S. *Titanic* and its wreksite during an individual expedition or project since September 1, 1985, pursuant to court order or permit granted by the Secretary of Commerce. The Act’s definition of “collection” refers to such artifacts as a “grouping of R.M.S. *Titanic* property.” For purposes of the Act, all artifacts recovered from R.M.S. *Titanic* and its wreksite since the discovery of the shipwrecked vessel on September 1, 1985, pursuant to an order issued by the United States District Court for the Eastern District of Virginia or the United States Court of Appeals for the Fourth Circuit in the matter of *R.M.S. Titanic, Inc. v. The Wrecked and Abandoned Vessel*, Civil Action No. 2:93-cv902 (E.D. Va., filed 1993), are to be considered a single collection or “grouping of R.M.S. *Titanic* property.” The definition of “collection” also includes those authorized by France, Canada, the United Kingdom and Parties

to the Agreement. In particular, this is intended to include the 1993 salvage award of certain artifacts to Titanic Ventures Limited Partnership by the French Office of Maritime Affairs in accordance with the provisions of Article 13 of Decree No. 61-1547 of December 26, 1961. That French award of certain artifacts salvaged in the 1987 expedition incorporated the following conditions based on assurances made by Titanic Ventures: “that [Titanic Ventures] agreed to make use of such objects in conformity with the respect due the memory of their initial owners and to not carry out any commercial transaction concerning such objects nor any sale of any one of them nor any transaction entailing their dispersion, if not for the purposes of an exhibition.” *R.M.S. Titanic, Inc. v. The Wrecked and Abandoned Vessel*, 435 F.3d 521, 528-529 (4th Cir., January 31, 2006). While the 4th Circuit Court determined it lacked in rem jurisdiction over these artifacts to refuse comity to the French salvage award, the legislation intends to recognize this French award including the conditions to the extent that they are consistent with the Agreement and the implementing legislation.

Section 4. Implementation of the International Agreement.

Section 4 of the Act implements the “International Agreement Concerning the Shipwrecked Vessel RMS *Titanic*” by adding 13 new sections to the 1986 Act (new sections 5 through 17):

Sec. 5. Scope and Applicability of Act. This section, which draws heavily from 46 App. U.S.C. § 1903, provides that the Act applies to any person (as defined in the Act) subject to the jurisdiction of the United States at the time such person engages in an activity described in section 6. This section also provides that the Act applies to any vessel over which the United States exercises, or may exercise jurisdiction under international law, after the effective date of the Act. The intent of this section is that the Act apply expansively and reach as many persons and vessels as possible consistent with United States’ and international law. Vessels of the United States are expressly excluded from the Act unless they engage in any activity the purpose of which is to disturb, remove, or injure R.M.S. *Titanic* property. Likewise, all persons aboard such vessels acting in the course of their duties are expressly excluded from the Act unless they engage in any activity the purpose of which is to disturb, remove, or injure R.M.S. *Titanic* property. Vessels of the United States and persons aboard such vessels conducting research or recovery activities directed at R.M.S. *Titanic* or its wrecksite are subject to this Act.

Sec. 6. Prohibitions. This section sets forth activities prohibited by the Act unless authorized pursuant to a permit issued under the Act. These prohibitions recognize the historical and cultural significance of R.M.S. *Titanic* and its wrecksite, and reflect the United States’ preferred resource management policy of *in situ* preservation. These prohibitions also implement Article 4 of the International Agreement and are consistent with the courts’ orders in the matter of *R.M.S. Titanic, Inc. v. The Wrecked and Abandoned Vessel*, Civil Action No. 2:93-cv902 (E.D. Va., filed 1993). See, e.g., June 7, 1994 Order (granting R.M.S. *Titanic*, Inc.’s quest to become the exclusive salvor-in-possession based in part on the company’s promise not to sell the artifacts piecemeal to

any individual or private collector, but keep them together as an intact collection to be exhibited to the public); July 28, 2000 Order (prohibiting the sale of individual artifacts and the cutting into or cutting off of any part of the wreck); and the October 19, 2001 Order (summarizing the court's Orders of June 7, 1994, July 28, 2000, and September 21, 2001, regarding the sale of artifacts and requirement to keep the collection together for public exhibition).

Sec. 7. Permits. This section establishes the permitting authority of the Secretary of Commerce. It also authorizes the imposition of reasonable fees and their retention to offset expenses of the permitting process. Subsection 7(b) of the Act takes into consideration the salvor-in-possession status awarded to R.M.S. *Titanic*, Inc. by the U.S. District Court for the Eastern District of Virginia on June 7, 1994. Any person holding the status of salvor-in-possession as of the effective date of the Act is subject to the Act's permitting regime. Consistent with the federal admiralty court orders, the Act does not prohibit such salvor-in-possession from selling all of the artifacts that it recovered from R.M.S. *Titanic* or its wrecksites, provided that any such sale is of the entire collection of recovered artifacts. The Act does not extinguish R.M.S. *Titanic*, Inc.'s salvor-in-possession status; nor does it deprive the district court of jurisdiction over R.M.S. *Titanic*, Inc.'s pending salvage action. Subsection 7(c) requires vessels subject to the Act to provide advance notice to the Secretary of Commerce if they intend to stop within a specified zone above the wrecksites. One purpose of this notice provision is to ensure that the Secretary of Commerce has prior knowledge of the timing and purpose of the presence of a vessel in this zone so that the Secretary of Commerce can determine whether a permit is required. Another purpose for this notice provision is to facilitate fulfillment of the coordination requirements in Article 5 of the International Agreement. The notice provision will help the United States, through the Secretary of Commerce, to protect the wrecksites and manage activities directed at it. Sharing information about vessels that plan to be in this zone at the same time may also help to address safety concerns. Subsection 7(f) has been added to address a request from RMS *Titanic*, Inc. for a reasonable time frame for permit decisions by the Secretary and for the confidential treatment of proprietary information.

Sec. 8. Liability for Damages. This section provides liability for damages, response costs, and enforcement costs arising from a violation of the Act. Damages are defined to include all costs related to the conservation and curation of R.M.S. *Titanic* property and all costs associated with the retrieval of any contextual and other information of a scientific, archeological, cultural, or historical nature that remains at the site where the prohibited activity occurred. This section also provides for *in rem* liability.

Sec. 9. Civil Enforcement. This section authorizes the Secretary of Commerce to assess administrative penalties of not more than \$250,000 per day of violation. The Secretary of Commerce may also request the Attorney General to file suit in federal district court to seek civil penalties of not more than \$500,000 per day of violation, recover costs and

damages, bring an *in rem* action, and obtain injunctive relief.

Sec. 10. Criminal Enforcement. Section 10 authorizes the Attorney General to criminally prosecute knowing violations of the Act. Persons convicted of an offense may be fined no more than \$250,000 per day of violation or imprisoned for not more than five years, or both.

Sec. 11. Seizure and Forfeiture. This section provides for seizure and administrative, civil, and criminal forfeiture of unlawfully obtained artifacts and proceeds derived there from. Any R.M.S. *Titanic* property forfeited to the United States may be loaned to a public or private institution that provides for the conservation, curation, and public access of such property, consistent with the International Agreement, the Rules, and any regulations promulgated by the Secretary of Commerce pursuant to this Act. Commerce and DHS will only use Section 11 to authorize arrests by trained law enforcement personnel who already possess firearms and arrest powers pursuant to other statutes.

Sec. 12. Disposition of Monies Recovered. This section provides that any monies recovered for violations of the Act are authorized to be paid into one or more special accounts of the United States Department of the Treasury and are to be used by the Secretary of Commerce for conservation of *Titanic* artifacts recovered pursuant to an enforcement action, conservation of any *Titanic* collection of lawfully salvaged artifacts, or the collection of the *USS Monitor* National Marine Sanctuary artifacts at The Mariners' Museum. If the amount of proceeds from an enforcement action exceeds the amount of funds needed for the conservation of artifacts from that case, the *Titanic* collection, and the *Monitor* collection, then that amount shall be deposited in the General Fund of the Treasury.

Sec. 13. International Cooperation. This section authorizes the Secretary of Commerce, in cooperation with the Secretary of State, to share information and consult with interested nations regarding R.M.S. *Titanic*.

Sec. 14. Agreements and Authority to Utilize Grant Funds. This section authorizes the Secretary of Commerce to enter into cooperative agreements and to apply for, accept and obligate grants to carry out the purposes of the Act.

Sec. 15. Monitoring Authorization. This section authorizes the Secretary of Commerce to monitor the wrecksites of R.M.S. *Titanic* with the assistance of other federal instrumentalities as available. Such monitoring is not required under the Agreement but is generally done as part of the management of such resources by the National Marine Sanctuary program.

Sec. 16. Regulations. This section authorizes the Secretary of Commerce to promulgate regulations as necessary to implement the Act. Promulgation of any such regulations,

however, is not a prerequisite to application (including the issuance of permits) or enforcement of the Act.

Sec. 17. Relationship to Other Laws. This section contains a number of provisions clarifying the relationship of the Act with other laws. Subsection 17(a) precludes application of the Limitation of Shipowner Liability Act. Subsection 17(b) makes clear that the customs laws of the United States are in no way affected, modified, or amended by the Act. Subsection 17(c) provides that the Act shall be applied in accordance with applicable law and international agreements to which the United States is a party. Subsection 17(d) provides that nothing in the Act affects the exercise of traditional high seas freedoms of navigation, including the laying of underseas cables and pipelines, the operation of vessels, fishing, or other internationally lawful uses of the sea related to such freedoms. Subsection 17(e) permits a provision of the Act to be held invalid without rendering the entire Act void. Subsection 17(f) makes clear that an order granting salvage rights to R.M.S. *Titanic* prior to the effective date of this Act does not exempt any person from compliance with the Act. Subsection 17(g) provides that the law of finds does not apply to R.M.S. *Titanic* or R.M.S. *Titanic* property. Subsection 17(h) precludes any person from obtaining salvage rights to R.M.S. *Titanic* or R.M.S. *Titanic* property after the effective date of the Act. At the request of RMS Titanic, Inc., language has been added to clarify the intent that this limit on new salvage rights is not intended to prevent a U.S. court of competent jurisdiction from authorizing the transfer of existing salvage rights. Subsection 17(i) requires that each collection (as defined in the Act) be managed and maintained in accordance with the Rules annexed to the International Agreement.

Sec. 18. Statute of Limitations. This section establishes an eight-year statute of limitations on the initiation of any action, whether criminal, civil, or administrative, to enforce the Act, any regulation implementing the Act, or any permit issued under the Act. This section is intended to extend the customary criminal period of limitations in 18 U.S.C. § 3282, and the customary civil period of limitations in 28 U.S.C. § 2415. The tolling provision contained in this section is modeled after that in 28 U.S.C. § 2416. Section 18 of the Act is modeled after the statute of limitations provision contained in the Sunken Military Craft Act, Title XIV, Pub. L. No. 108-375 (October 28, 2004), 118 Stat. 2094. For purposes of this section, an action to enforce this Act includes the return of an indictment and the filing of an information.

Sec. 19. Authorization of Appropriations. This section authorizes the appropriation of monies necessary to carry out the Act, not to exceed \$1,000,000 for each of fiscal years 2008 through 2012.

Section 5. Effective Date.

Section 5 of the Act adds a new section to the 1986 Act (new section 21):

Sec. 21. Effective Date. This section provides that the effective date of the Act shall be the date of its enactment.