

Legal Issues  
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## ***LEGISLATION AND REGULATIONS***

### **Port Authorities Act**

The Port Authorities Act specifies the powers and duties of port authorities- see Section 13 of the Port Authorities Act. The duty of the Port Controller is also stipulated with the Port Authorities Act- see Section 19.

Special powers are granted to the New Providence Port Authority- see Section 14-16 of the Port Authorities Act. The New Providence Port Authority is granted with the same powers to compel witnesses and parties as magistrates- see Section 16.

Port authorities and port areas are defined in accordance with the Port Authorities Act-see Section 11 of the Act.

### **Legal Parameters of The New Providence Port Authority**

The New Providence Port Authority is a statutory board that ultimately is responsible for the approval of vessel registration and master licences. The board is empowered with broad discretionary powers in determining whether a licence or registration should be granted.

Section 8 of the Boat Registration Act provides the following:

- (1) Subject to the provisions of this Act and the rules, the registration of a boat and the granting of a licence to a master shall be at the discretion of the New Providence Port Authority and such registration and license shall contain such conditions and restrictions as that Authority may determine. All such conditions and restrictions (if any) shall be endorsed on the certificate of registration or the licence as the case may be.*
- (2) The New Providence Port Authority may at any time on good cause being shown and after an owner of a boat for hire or a licensed master, as the case may be, has had an opportunity to explain any complaint against him before the Authority, cancel, a registration or a licence, or impose conditions and restrictions.*

- (3) *The registration of a boat or the licence issued to a master under this Act shall be granted or renewed for a period not exceeding one year and ending on the thirty-first day of December.*

The New Providence Port Authority meets once a month to consider all pending applications and other matters. The meeting is the last Thursday of each month. Persons may apply for temporary licences and registration, prior to the meeting of the New Providence Port Authority.

### **Legal Requirements for Registration of Commercial Crafts**

All vessels/crafts that ply for hire within the territorial waters of the Bahamas must be registered to conduct such activities by the New Providence Port Authority.

This includes all vessels and watercrafts (inclusive of jet skis, sailboats, and any equipment used in water for commercial purposes.

Section 3 (1) of the Boat Registration Act states:

*No boat shall ply, be offered or let for hire for use in the waters of the Bahama Islands unless and until it is registered with the New Providence Port Authority under this Act.*

Persons who operate vessels that ply for hire (operate commercially via inter-island trade) without being registered in accordance with the Boat Registration Act do so illegally. Persons are advised to pay particular attention to the provisions of the Act, inclusive of conditions expressed on licences and registrations already granted.

### **Objections to licence/registration be granted**

It should be noted that all persons are permitted to object to the granting of a licence or a registration once certain procedures are followed. Persons must give written notice to the New Providence Port Authority and to the applicant. The written notice must be given to the New Providence Port Authority and to the applicant at least six days before the fixed hearing of the applicant (**see Section 10 of the Boat Registration Act**). All applicants are published in the Nassau Guardian and the Tribune.

### **Safety Provisions for Crafts**

There are various legal provisions within the law that seeks to promote and facilitate the safety of vessels.

The first safety provision in law is the requirement for the vessel to be inspected, along with all machinery and safety equipment, prior to being registered and annually thereafter.

The Boat Registration Act, Section 6 (1) provides:

*Subject to the provisions of subsection (3) of this section, every boat before being registered under this Act shall, together with the machinery, sail, gear, fixtures, equipment, apparel and appurtenances used therewith, be submitted for the inspection of the New Providence Port Authority, and that Authority shall decide whether such a boat is fit and proper to be registered, and after registration inspection shall take place annually.*

If a vessel undergoes alterations that affect the terms of the licence or the safety of the vessel, it is mandatory for the vessel to be submitted for a safety inspection within fourteen (14) days of the alteration.

Section 6 of the Boat Registration Act stipulates:

*Where any alteration affecting the terms of the licence or safety of such boat to any boat which is registered under this Act, or to any machinery, sail, gear, fixtures, equipment, apparel or appurtenances thereof, such boat shall within fourteen days of the making of such alteration be submitted for the inspection of the New Providence Port Authority.*

**Obligation of Master, Owner and Operator (anyone responsible for the operation of the ship) as to seaworthiness of a ship**

Every owner, operator and master have legal obligations to ensure that their vessel is seaworthy. Failure to observe this obligation may be disastrous from a legal standpoint. Persons who intentionally place vessels in an unsafe condition may find themselves criminally liable.

Section 278 (1) of the Penal Code states:

*Whoever causes the safety of any vessel to be endangered, with intent to cause harm or danger of harm to any person, shall be liable to imprisonment for twenty years.*

The provisions of this section are of severe significance to those connected with the operation of a ship. Persons must realise the huge responsibility placed upon those who are responsible for the operation of a ship. Safety is of paramount concern, and it is the responsibility of management, the master and the crew to ensure that ships are operated in a safe manner at all times.

All operators of ships are encouraged and mandated in some cases to review the International Safety Management Code for procedures concerned in establishing and implementing a safety management system.

## **Oil Pollution and other forms of pollution**

Various provisions are legislated concerning pollution of the marine environment.

Dumping or pollution of any kind in harbour areas is absolutely restricted.

The Pilotage (Port of Nassau) Rules –subsidiary legislation of the Port Authorities Act-, Section 18 provides:

- (1) *No person shall-*
- (a) *throw ballast, dirt, garbage or rubbish of any kind into or in the vicinity of any part of the anchorage of New Providence;*
  - (b) *empty, spill, throw or conduct through pipes or cause to be emptied, spilled, thrown or conducted any oil, grease or other substance whatsoever into the waters of the harbour or other anchorages of the Island of New Providence*

The Merchant Shipping (Oil Pollution) Act is the principle legislation dealing with the prevention of oil pollution. Discharges of oil as defined by the Act, is prohibited. The Bahamas is party to MARPOL 73/78- international convention regulating the prevention of oil pollution.

Section 14 of the Merchant Shipping (Oil Pollution) Act places a duty on the owner/master of a vessel and the occupier of land, as the case may be, to report the discharge of oil into waters of ports.

## **Legal Requirements for Licencing of Boat Masters**

Provisions within the Boat Registration Act, stipulates that all persons acting as boat masters for vessels registered in accordance with the Boat Registration Act must obtain a licence from the New Providence Port Authority.

Section 3(2) of the Boat Registration Act states:

*No person shall act as master of a boat required to be registered under this Act (hereinafter in this Act referred to as “a boat for hire”) unless and until he has obtained a licence issued from the New Providence Port Authority so to do.*

Section 5 (1) of the Boat Registration Act further provides:

- (1) *Every owner desirous of acting as master of a boat for hire shall apply for a licence under the provisions of this Act.*
- (2) *Every person desirous of acting as master of a boat for hire shall apply for a licence under the provisions of this Act.*

## **Foreign Yacht Registration**

Provisions within the Boat Registration (Yacht) Rules 1991 facilitate foreign yachts operating charters within the territorial waters of The Bahamas. There are stipulations that must be satisfied prior to foreign yachts operating charters within the territorial waters of The Bahamas.

In order to operate under these rules the following is stipulated:

- submit application- applications available at Department and Department's web site
- vessel inspection by the Port Department- for vessel inspections please call Mr. Cyril Roker at (242)322-8832 or fax (242)322-5545
- registration of crafts via Port Department- (registration must be valid)
- licence of master (licence must be valid)- must produce certificate of competence
- liability insurance
- proof ownership
- documentation (certificate of registry etc)

Operators are also restricted from soliciting business in The Bahamas. All soliciting must be conducted outside The Bahamas. All application must be approved by the New Providence Port Authority- please view section on legal parameters of the New Providence Port Authority.

Once a vessel is issued with a Foreign Charter Certificate, and the master has a local licence issued by the New Providence Port Authority, the vessel is registered legally under the laws of The Bahamas relating to foreign charter vessels. Persons operating charter services are not required to have work permits. Operators must be reminded however, that absolutely no soliciting of clientele is permitted in The Bahamas.

Operators should be aware that all information furnished to the authorities in order for the permitted to be granted must be correct. Operators faced strict penalties if the information, which is produced, is found to be false.

For further information concerning foreign yacht charters please view the foreign yacht section of Department's web page or called the Port Department (Mr. Cyril Roker or Mrs. Carmen Kellman) at (242)322-8832.

## **Legal Requirements for Registration of Pleasure Crafts/ Vessels**

There is a legal requirement to register pleasure crafts operated within the territorial waters of The Bahamas.

The Water Skiing and Motor Boat Control Act mandates that these vessels must be registered. Section 10 (1) of the above act states:

*No boat to which this section applies shall be used within the territorial waters of The Bahamas to which this section extends unless and until it is registered under this Act:*

*Provided that any motor boat which is for the time being registered under the provisions of the Boat Registration Act shall, for so long as it remains so registered, be exempt from registration under this Act.*

The Water Skiing and Motor Boat Control Act specifies the procedures for registration. Section 11 reads as follows:

- (1) Every person desirous of using a motor boat to which section 10 applies shall make application for registration of the boat to the Port Controller in New Providence or to the Commissioner in an Out Island District and shall furnish the Port Controller or the Commissioner, as the case may be, with such information concerning the boat as may be described.*
- (2) Upon application being duly made under the provisions of the section and upon payment of the appropriate fee, the Port Controller or Commissioner shall enter the prescribed particulars of the boat (which particulars shall include particulars of the ownership of the boat) in a register to be maintained by him for that purpose and shall allocate a registration number to the boat.*

All applications must be made to the Port Controller in New Providence and the Out Island Commissioner (Administrator) in the Family Island. Persons must produce a valid bill of sale and proof of customs declaration if the vessel was purchased overseas. Persons should also bring along proof of identification i.e. passport.

The registration of pleasure vessels is valid until 31 March in the year following registration. All registration must be renewed on an annual basis [see Section 11(3) of the Water Skiing and Motor Boat Control Act].

### **Registration numbers**

There is also a legal responsibility placed on the owner of a vessel registered under the Water Skiing and Motor Boat Control Act to ensure that the registration number for the vessel is painted clearly on both sides of the bow [see section 11(4)].

### **Operational Safety**

Persons operating motor boats also must pay particular attention to safety provisions within the Water Skiing and Motor Boat Control Act. Section 5 of the Act stipulates:

- (1) No person shall drive a motor boat or manipulate any water ski within the territorial waters of The Bahamas*

- (a) in willful or reckless disregard for the safety of any other person or property;*
- (b) without due caution and circumspection; or*
- (c) at a speed or in a manner likely to endanger life or limb or to damage the property of or injure any person.*

Section 6(1) further provides:

*No person shall drive a motor boat within the territorial waters of The Bahamas while he is under the influence of drink or drug to such an extent as to be incapable of having proper control of the motor boat.*

Sections 5 and 6 places a responsibility on operators to exercise due diligence whilst operating vessels. Operators must exhibit a duty of care whilst operating. Any actions, which may potentially endanger others, must be avoided. Operators should- at all times- refrain from consuming alcohol beverages whilst operating crafts. Alcohol impairs one's ability to respond to emergencies and normal operational requirements, even very small amounts of alcohol.

### **Legal Age**

All owners and operators must also pay particular attention to the legal age of persons permitted to operate motor boats. Section 8 (1) states:

*Subject to the provisions of subsection (3) of this section it shall not lawful for any person under the age of sixteen years to drive any motor boat powered with an engine rated at more than ten horse power in any area to which, for the time being, this section applies.*

The law provides that persons must be sixteen years old or over to operate motor boats within the territorial waters of The Bahamas (subject to the provisions within the Act).

### **Wrecks, Salvage and Scuttling of Ships**

All wrecks, inclusive of abandoned vessels are subject to provisions of the Merchant Shipping Act concerned with wrecks found in The Bahamas. The definition of 'wreck' is extremely important to note. Section 2 of the Merchant Shipping Act defines 'wrecks' as:

*“wreck” includes flotsam, jetsam, lagan and derelict found in, or on the shores of, the sea or of any tidal water; the whole or any portion of the ship lost, abandoned, stranded or in distress; any portion of cargo, stores or equipment of such a ship; any portion of the personal property on board such a ship when it was lost, stranded, abandoned or in distress; but does not include wreck to which the Abandoned Wreck Act applies.*

It is quite evident that the definition of wreck is broad, and persons should note the definition.

The Merchant Shipping Act specifies procedures which must be followed when persons take possession of wrecks as defined by the Merchant Shipping Act.

Section 223 (1) of the Merchant Shipping Act states:

*Whenever any person takes possession of any wreck in The Bahamas, he shall as soon as possible deliver the wreck to the receiver; but the Minister may dispense with any such delivery in the case of any wreck upon such conditions as he thinks fit.*

Provisions within the law mandate that all wrecks must be delivered to the Receiver of Wreck. Persons are entitled to claim wrecks, inclusive of abandoned vessels. The Receiver of Wreck is then responsible for trying to locate the owner, and dispose of the wreck if necessary. Persons who salvage wrecks are entitled to claim a salvage reward. The Receiver of Wreck is Captain Anthony Allens- the Port Controller of the Port Department.

As the Crown is the owner of the seabed, all persons wishing to scuttle vessels should seek approval from the authorities. Provisions within law stipulate that authorities are empowered to order that scuttled vessels, which pose a risk to navigation etc, are removed at the owner's expense. Section 13 of the Port Authorities Act is also very important. One of the powers and duties bestowed upon a port authority is the duty/power to appoint places where all wrecks are to be laid on shore or sunk in the ocean.

Section 230 of the Merchant Shipping Act provides provisions where stranded or abandoned vessels in port areas – if deemed necessary- may be removed at the owners' expense. The Minister (responsible for maritime affairs) is empowered to order the removal of stranded or abandoned vessels- at the owners' expense- in waters of The Bahamas.

### **Abandoned Wreck**

International law via the United Nations Convention on Law of the Sea 1982 places a duty upon States to protect objects of an archaeological and historical nature. The Abandoned Wreck Act governs the removal and salvage of archaeological and historical objects.

Section 2 of the Abandoned Wreck Act defined 'abandoned wreck' as:

*“abandoned wreck” means any wreck which has remained continuously upon the sea-bed within the limits of The Bahamas for a period of fifty years or upwards before being brought to shore.*



The claims of all persons to abandoned wreck are barred and the property of the wreck is vested in The Crown. No person is permitted to salvage and bring to shore abandoned wreck without the proper licence/agreement issued by the Minister responsible for Maritime Affairs- see Sections 3 and 4.

Persons who fail to adhere to the provisions of this act may be liable to criminal prosecution.

### **Compulsory Pilotage**

Pilotage is compulsory in every port area to which pilots are appointed, except for the provisions sets out in the Fourth Schedule of the Port Authorities Act.

Harbour pilots possess specialised knowledge of the harbour area and its approaches, and thus they direct ships in and out of Nassau Harbour.

Section 56 of the Port Authorities Act states:

*Pilotage shall be compulsory in every port area in which pilots are appointed except in cases set out in the Fourth Schedule; and in cases where pilotage is not compulsory the fees chargeable under this Act shall be payable where the master of a ship voluntarily accepts the services of a pilot.*

### **Fishing Regulations**

It is important to note the fishing regulations of The Bahamas. Foreign vessels are not authorised by law to fish within the exclusive fishing zone of The Bahamas unless the proper permit is obtained from the Fisheries Department- See Section 7 of the Fisheries Resources (Jurisdiction and Conservation) Act.

Additionally, all Bahamian fishing vessels, engaged in commercial fishing activities, must obtain a valid permit from the Fisheries Department- See Section 11 of the Fisheries Resources (Jurisdiction and Conservation) Act.

### **Customs Regulations**

All vessels arriving from foreign destinations must clear customs before landing. Vessels travelling to foreign destinations from within The Bahamas must also clear customs before departing- see Sections 10 and 56 of the Custom Management Act. Vessels must clear at first call of port. Clearance must be obtained prior to landing the vessel in The Bahamas. Operators should also pay close attention to import and export requirements for goods.

## **Immigration Regulations**

All ships arriving in The Bahamas are bonded via the duty placed upon its local representative to give adequate and timely notification of the arrival of the ship- see Section 32 of the Immigration Act.

Particular attention should also be paid to immigration procedures regarding employment of non-nationals. Persons are not permitted to engage in employment without a valid work permit issued by the Immigration Department- see Sections 19 and 28 of the Immigration Act.

## **Health Regulations**

All ships on arrival at any port of The Bahamas from ports outside The Bahamas must produce a bill of health- see Quarantine Act, Section 12.

## **International Maritime Organization- Conventions to which Bahamas is party**

- Convention on the International Maritime Organization, 1948 as amended
- Convention on Facilitation of International Maritime Traffic, 1965, as amended, (FAL Convention)
- International Convention on Load Lines, 1966, as amended (Load Line Convention)
- International Convention on Tonnage Measurements of Ships, 1969 (Tonnage Convention)
- International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties
- Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS)
- International Convention for Safe Containers, 1972
- International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS) Protocol 1978, Protocol 1988
- Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, Protocol 1976
- Convention on Limitation of Liability for Maritime Claims, 1976
- Convention on the International Mobile Satellite Organisation (Inmarsat), 1976, as amended
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW)
- International Convention on Civil Liability for Oil Pollution, 1992 (CLC)
- International Convention on the Establishment of an International Compensation Fund for Oil Pollution Damage, 1992 (FUND Convention)

These provisions of international law is incorporated into national law via the Merchant Shipping Act, the Merchant Shipping (Oil Pollution) Act and Merchant Shipping (Limitation of Liability) Act. These acts are closely related to English law..... Merchant Shipping Act of Great Britain.

### **Port State Control**

The legal concept of port State control has a legal basis in international law. The United Nations Convention on Law of the Sea 1982 provides a legal basis for port State inspections. Other conventions which provide legal basis for port State inspections are SOLAS, MARPOL, and STCW.

Port State Control involves the coastal State's right to inspect foreign vessels that call at ports in the State's territory. As The Bahamas is party to the Caribbean Memorandum on Port State Control, foreign vessels are subject to port state inspections when calling at ports in The Bahamas. Special care is taken to ensure that vessels are not unduly delayed whilst paying particular care to the safety of life and property.

The Bahamas Maritime Authority is the regulating authority responsible for port State inspections within The Bahamas.

### **Inter- Insular Trade**

All shippers should be aware of The Inter- Insular Shipping (Rates for the Carriage of Freight)(Amendment) Rules 1996.

Within these Rules, freight is pre-determined for goods transported to and from Nassau from Family Island destinations. Copies of the Rules can be collected at the Ministry of Transport.

### **The Establishment of Docks, Repairs of Docks etc.**

All persons wishing to construct docks, repair, replace or maintain dock facilities within the territorial waters of The Bahamas must obtain the proper authorisation to do so- see Sections 7 and 8 of the Port Authorities Act. All applications should be made to the Ministry of Transport or the Port Department.

For further information regarding docks licensing please contact Mr. W. Jones at the Port Department, tel: (242)322-8832.