

The Wreck Removal Convention

The Nairobi Convention on the Removal of Wrecks (the Convention) entered into force on 14 April 2015.

The Convention has created the first set of uniform international rules for the prompt and effective removal of wrecks located within a State Party's Exclusive Economic Zone (EEZ) in order to deal with the growing problems faced by coastal States and the shipping industry in general.

Shipowners will be held financially liable for the removal of wrecks that may adversely affect the safety of lives, goods and property at sea and the marine and the coastal environment. As a requirement of the the Convention, shipowners must have insurance or other form of financial security in place.

The Scope of the Convention

The Convention has defined wrecks quite broadly as:

- (a) a sunken or stranded ship; or
- (b) any part of that ship; and
- (c) any objects lost at sea from that ship (including containers)

Wrecks located within a State Party's EEZ fall within the scope of the Convention. The EEZ is the area outside the 12 nautical mile zone and extending to an area not more than 200 nautical miles from the State's coast (depending on each State Party's declaration of the limit of its own EEZ).

Under the Convention States can also opt-in to apply the Convention to wrecks located within their territorial waters. States choosing not to opt-in will continue to enforce their domestic legislation to wrecks within their territorial waters.

The Convention Requirements

Ship's of 300 GT or more that are flagged in a State Party or call at ports or offshore facilities in a State Party are required to have insurance or other form of security in place up to the limits of the 1996 Protocol to the London Convention. Shipowners must obtain a certificate to evidence that insurance or other financial security is in place in accordance with the Convention.

Shipowners are required to obtain the certificate from a State Party. For ship's that are registered in a State Party, the certificate will be issued or certified by the appropriate authority of the State of the ship's registry. Ship's flagged in countries that are not parties to the Convention can obtain a certificate from one of the State Parties listed at the end of this article that that have to date confirmed their ability to issue certificates to non-State Party flagged ships. The certificate must be carried on board the ship and a copy should be deposited with the authorising State Party.

The IG Club's have confirmed they will be issuing their Members with Blue Cards complying with the Convention which will enable Members to obtain a certificate from the relevant State Party.

Reporting Wrecks

If a ship falling within the above description has been involved in a maritime casualty resulting in a wreck, the Master or the operator of the ship must without delay notify the State Party of the incident and provide a report of the following:

- (i) the name and principal place of business of the registered owner;
- (ii) the precise location of the wreck;
- (iii) the type, size and construction of the wreck;
- (iv) the nature of the damage to, and the condition of, the wreck;
- (v) the nature and quantity of the cargo, in particular any hazardous and noxious substances; and
- (vi) the amount of any oil on board, including bunker oil and lubricating oil.

Removal of the Wreck

If the wreck is determined by the State Party to be a hazard the State Party can take action against the ship owner.

When determining whether a wreck is a hazard, the State Party should consider a number of criteria's listed within the Convention such as the type, size and construction of the wreck, the depth of the water and the tidal range and currents in the area.

If the wreck is found to be a hazard, the State Party can ask the registered ship owner to remove the wreck. The ship owner will be under strict liability for the costs of locating, marking and removal of the wreck.

There are few exceptions to this strict liability rule under the Convention, however, these have been very narrowly defined as wrecks as a result of acts of war, a third party's act or omission with intent to cause damage or caused as a result of the negligence of any Government or authority responsible for maintenance of lights or navigational aids.

The State can bring a claim for costs arising under the Convention against the insurer or person providing financial security for the registered owner's liability.

Under the Convention the measures taken by the State Party should not go beyond what is reasonably necessary for the removal of a wreck which poses a hazard.

The Limit of Liability of Owners

The Convention allows shipowners to limit their liability in accordance with the national laws or international regimes in place such as the Convention on Limitation of Liability for Maritime Claims 1976 (as amended by the 1996 Protocol).

Shipowners should, however, be aware that they may be subject to a higher limit within the jurisdiction where the wreck is located or the national laws may exclude wreck removal limits, which will mean shipowners will be unable to limit their liability.

The Time Bar of Claims

Two time bars apply under the Convention. Claims for the recovery of costs under the Convention are time-barred if they are not made within three years of the date the wreck is determined to be a hazard in accordance with the Convention and secondly, all claims will be time barred if not made within six years from the date of the maritime casualty that resulted in the wreck.

Our observations

Although only 16 states have so far ratified the convention, the fact that there is now uniform international rules in place should be welcomed by states and the shipping community. The

strict liability on shipowners for locating, marking and removing the wreck as well as providing the State Party a right of direct action against the insurers, should encourage states to be more receptive to requests for ports of refuge at the time of distress.

It is expected that more states will gradually join the convention. However, it is likely that most states adopt the convention's rules only in respect of the EEZ, so to keep the territorial waters subject to their own national regulations.

The current contracting states to the Convention on the date of publishing this article are:

Country/Territory	Deposit Date	Date of Entry into Force	Opt in for territorial sea
Antigua & Barbuda	9 January 2015	14 April 2015	Yes
Bulgaria	8 February 2012	14 April 2015	Yes
Congo	19 May 2014	14 April 2015	
Cook Islands	22 December 2014	14 April 2015	
Denmark	14 April 2014	14 April 2015	Yes
Germany	20 June 2013	14 April 2015	
India	23 March 2011	14 April 2015	
Iran	19 April 2011	14 April 2015	
Liberia	8 January 2015	14 April 2015	Yes
Malaysia	28 November 2013	14 April 2015	
Malta	18 January 2015	18 April 2015	Yes
Marshall Islands	27 October 2014	14 April 2015	Yes
Morocco	13 June 2013	14 April 2015	
Nigeria	23 July 2009	14 April 2015	
Palau	29 September 2011	14 April 2015	
Tonga	20 March 2015	20 June 2015	
Tuvalu	17 February 2015	17 May 2015	
United Kingdom	30 November 2012	14 April 2015	

The following states have to date confirmed that they will be issuing certificates to ships flagged in countries that are not party to the Convention, subject to any conditions the relevant authority may apply:

Cook Islands, Denmark, Germany, Liberia, Malta, Marshall Islands, Palau and United Kingdom.