

US COFRs Piracy and K&R Nairobi Wreck Removal Convention

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Setting the standard
for service and security

The Standard



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We set out in this bulletin an update on the club's position on US COFRs; a recommendation concerning ships trading to high-risk piracy areas and K&R cover; and the latest news on adoption of the Nairobi Wreck Removal Convention, including notice of a rule change.

US COFRs

We are committed to finding ways to provide cost-effective insurance for members and to cut out any costs that can be saved. In recent club publications, we have reported that the club is keen to find a better solution for members to avoid them having to incur the current costs associated with the issue of COFRs to comply with US OPA 90 and CERCLA requirements. The Standard Club board's preferred position is that the club should itself issue US COFRs.

The sole purpose of this initiative is to reduce frictional cost and administration for shipowners. We believe that the current system has caused shipowners to pay close to \$1bn over the past 19 years to third-party certificate providers, while the actual cover is effectively being provided by the clubs.

We also believe that the greatest advantage would be achieved if all IG clubs were to follow the same approach, but we recognise that not all clubs currently share our view. We are endeavouring to balance our desire to achieve cost savings for shipowners against a desire to maintain agreement within the IG, where we also value the importance of our relationships. Accordingly, we are currently co-operating with

the other clubs to revisit the policy issues involved to see if consensus can be achieved. This requires all club boards to review the matter.

When this process is completed, we will review the options available to ensure that the club's members are provided with the most cost-effective means possible for the issuance of US COFRs. In the meantime, we believe that this focus on the topic will in any event prove to be beneficial to shipowners.

A list of FAQs setting out the club's position on this topic is available **on our website**.

High-risk piracy areas and Kidnap and Ransom (K&R) cover

The Standard Club board at its last meeting reviewed the risk of P&I claims arising from piracy. Occasionally, there are claims arising from kidnap and ransom which may be considered by the club board on a discretionary basis.

The board wishes members to note that the club strongly recommends members to take out K&R cover if their ships are trading to areas with a high risk of piracy. The club is able to provide K&R cover on competitive terms, although members are of course free to buy such cover from other insurers.

The Nairobi International Convention on the Removal of Wrecks 2007

The Nairobi International Convention on the Removal of Wrecks 2007 is due to come into force 12 months following the date on which 10 states have ratified it. To date, eight states have ratified the Convention, but more may do so soon. It is therefore expected that it will be in force in the near future.

Application of the Convention

The Convention gives state parties the power to take measures to remove wrecks located within their Exclusive Economic Zones (12 – 200 nm from the coastal baseline) that pose a hazard to navigation or that may reasonably be expected to result in harmful consequences to the marine environment or damage to the coastline or other coastal interests (e.g. fisheries, tourism and offshore infrastructure). State parties can opt to apply the Convention to wrecks located within their territorial waters (0 – 12 nm from the coastal baseline) in addition to their EEZ if they wish.

In determining whether a wreck poses such a hazard under the Convention, a state party can take into account various criteria such as the tidal range, currents and submarine topography in the area, the nature of the cargo on board, and the acoustic and magnetic profiles of the wreck.

If a state party determines that a wreck located within its EEZ does constitute a hazard pursuant to the Convention, then the registered owner of the ship is required to remove it. Strict liability attaches to the registered owner for the costs of locating, marking and removing the wreck, subject to certain narrow exceptions such as where the wreck results from an act of war or where the wreck is wholly caused by an act or omission by a third party with intent to cause damage.

Compulsory insurance

The registered owner of a ship with a gross tonnage in excess of 300 gt is required to maintain insurance or other financial security in a maximum amount equal to the limits prescribed by the Convention on Limitation of Liability for Maritime Claims 1976 as amended. Ships are to be issued with a certificate by the ship's flag state confirming that such insurance or other financial security is in place. Once the Convention is in force, the club will be in a position to issue certificates evidencing that sufficient insurance is in place in compliance with the Convention. The club's rules will be amended to reflect this and, in this regard, members' attention is drawn to the notice of an amendment to the club's rules below.

Implications

As it applies to wrecks located in a state party's EEZ, and given the wide-ranging criteria that states can rely upon in deciding to have a wreck removed, the Convention may provide contracting states with a legal basis to order removal of wrecks located in very deep water. The wide-ranging criteria that states can rely upon to order a wreck removal and the enhanced technical challenges involved in removing wrecks in deep water may result in an increase in the number and value of wreck removal claims.

Members should consult with their usual club contact if they have any queries. The club will continue to follow developments as the Convention's entry into force draws nearer.

Notice of a proposed amendment to the club's rules (additional to those set out in appendices B and C to the club circular dated 13/11/13)

P&I Class Rules and London Class Rules – Rule 4.5. Renumber paragraph (6) as (7) and insert new paragraph (6) as set out below.
Standard Offshore Rules – Rule 4.4. Renumber paragraph (3) as (4) and insert new paragraph (3) as set out below.

"([6]/[3]) a certificate in compliance with Article 12 of the Nairobi International Convention on the Removal of Wrecks 2007; or"

Web alerts

The Standard Club issues a variety of publications and web alerts on topical issues and club updates. Keep up to date by visiting the News section on our website www.standard-club.com



Standard Bulletin September 2013

In this edition we present articles on a variety of current issues and announce the results of our member survey.

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