

# Synopsis of the new Wreck Removal Convention



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The Nairobi International Convention on the Removal of Wrecks will come into force on 14 April 2015.

## Overview

The Nairobi International Convention on the Removal of Wrecks (the Convention) provides a set of standard international rules with the aim of ensuring the prompt and effective removal of a wreck located outside the territorial waters of a state party. It is the first international convention to attempt to lay down a framework for wreck removal liabilities.

The Convention has a number of important implications for shipowners, including compulsory insurance requirements. Under the Convention, state parties are able to:

- require the registered owner of a ship to report a wreck without delay;
- make the owner responsible for locating and marking the wreck, as well as its removal;
- require an owner to have in place compulsory insurance (or other financial security) to cover liabilities arising from a wreck; and
- take direct action against insurers.

## Scope of application

The Convention gives state parties the power to take measures to remove any wrecks located within their Exclusive Economic Zone (EEZ) – an area 12–200 nm from the coastal baseline.

Under the Convention, a 'wreck' is defined broadly and includes a sunken or stranded ship (or any part of it) or

any object lost at sea from that ship, which could include a container.

A state party may remove a wreck in the following circumstances:

- if it poses a hazard to navigation;
- if the wreck may result in harmful consequences to the marine environment;
- if the wreck may damage the coastline or other coastal interests (such as fisheries, tourism or offshore infrastructure).

The action a state party may take to remove a hazardous wreck is limited to that which is 'reasonably necessary'.

## Extended geographical application

States can opt to also apply the Convention to wrecks located within their territorial waters (0–12 nm from the coastal baseline). At the time of writing, 10 of the 17 states that have ratified the Convention have applied to extend it to their coastal waters: Antigua & Barbuda, Bulgaria, Congo, Cook Islands, Denmark, Liberia, Malta, Marshall Islands, Palau and the United Kingdom. For the remaining states, domestic legislation will continue to apply to wrecks in territorial waters.

## How is a wreck determined to be a hazard?

In determining whether a wreck poses a hazard under the Convention, a state party can take into account a wide

Importantly, compulsory insurance or other financial security is required for ships above 300gt that call into a country that is a party to the Convention, even if the ship is not flagged in a Convention state. The requirement applies to calls at ports in a Convention state as well as to calls at offshore facilities in the state's territorial waters.

range of criteria, including tidal range, currents, submarine topography, the proximity of shipping routes, the nature of the cargo on board, and the acoustic and magnetic profiles of the wreck.

#### **What action can a state take in respect of a wreck in its jurisdiction?**

##### **Removal**

A state party can require the registered owner of the ship to remove the wreck if it is determined that a wreck located within its EEZ is a hazard under the Convention.

##### **Strict liability for locating, marking and removal**

Strict liability is imposed on the registered owner for the costs of locating and marking the wreck, as well as for its removal.

While there are some exceptions to strict liability, they are narrowly defined under the Convention, such as where the wreck results from an act of war or where it is wholly caused by an act or omission of a third-party with intent to cause damage.

##### **Reporting the wreck**

Under the Convention, a shipowner is required to report the wreck without delay. The report must include the name and principal place of business of the registered owner, as well as:

- the precise location of the wreck;
- the type, size and construction of the wreck;
- the nature of damage to the ship and its cargo (especially hazardous cargo); and
- the amount of oil on board, including fuel and lube oil.

##### **Compulsory insurance**

The registered owner of a ship above 300gt and flying the flag of a state party is required to maintain insurance or other financial security (such as a bank guarantee) to cover liabilities under the Convention. The maximum amount of security should be equal to the limits prescribed

by the Convention on Limitation of Liability for Maritime Claims 1976 (as amended) (the LLMC 1976).

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. For ships flagged in countries that are not parties to the Convention, it will be necessary for them to obtain certificates from the relevant authority in a state party.

As with other members of the International Group of P&I clubs, The Standard Club will issue members with 'Blue Cards' that comply with the requirements of the Convention and enable members to obtain the relevant Convention Certificate.

##### **Limitation of liability**

Under the Convention, provision is made for owners to limit liability in accordance with national laws or international regimes, such as the LLMC 1976.

It should be noted, however, that a number of states opted to exclude wreck removal claims from the LLMC 1976 when the LLMC 1976 was incorporated into their national law. There is therefore the possibility that owners may be unable to limit liability or that a higher limit applies in some jurisdictions.

##### **Time limits**

There are two time limits under the Convention, as follows:

1. Claims are time-barred if they are not made within **three years** of the date that the wreck is determined to be a hazard under the Convention;
2. All claims are barred if they are not brought within **six years** of the date of the marine casualty that caused the wreck.

The Convention has been adopted by the following 17 countries:

- Antigua & Barbuda<sup>+</sup>
- Bulgaria<sup>+</sup>
- Congo<sup>+</sup>
- Cook Islands<sup>+</sup>
- Denmark<sup>+</sup>
- Germany
- India
- Iran (Islamic Republic of)
- Liberia<sup>+</sup>
- Malaysia
- Malta<sup>++</sup>
- Marshall Islands<sup>+</sup>
- Morocco
- Nigeria
- Palau<sup>+</sup>
- Tuvalu<sup>\*\*</sup>
- United Kingdom<sup>+</sup>

<sup>+</sup> These states have opted to apply the Convention to their territorial waters

<sup>\*</sup> The Convention will come into force on 18 April 2015 due to the country's late ratification.

<sup>\*\*</sup> The Convention will come into force on 17 May 2015 due to the country's late ratification.

### Summary

The Convention comes into force on 14 April 2015 in the 17 countries listed below, with the exception of Malta where the Convention will come into force on 18 April 2015 and Tuvalu on 17 May 2015. Ten states have extended the scope of the Convention so that it applies to their territorial waters: Antigua & Barbuda, Bulgaria, Congo, Cook Islands, Denmark, Liberia, Malta, Marshall Islands, Palau and the United Kingdom.

Members should be aware that once the Convention is in force, evidence of insurance (or other financial security) will be required for all ships of 300gt or more flagged in a state party. Evidence of insurance or security is also required for ships calling at a state that has ratified the Convention, even if the ship is not flagged in a state party.

A number of the Convention states have indicated that they are happy to issue certificates to ships flagged by non-Convention countries.

These states include Cook Islands, Denmark, Germany, Liberia, Malta, Marshall Islands, Palau, and the United Kingdom. However, it should be noted that most of these states likely operate a priority system meaning that ships not flagged at these specific countries may encounter delays with obtaining the certificate.

The Standard Club will issue 'Blue Cards' to enable members to obtain the relevant certificate under the Convention.

Due to the geographically broad scope of the Convention and the wide definitions it incorporates, the Convention may provide states with a legal basis for ordering the removal of a wreck located in very deep water. The increased technical challenge of having a deep-water wreck removed may result in an increase in the number and value of wreck removal claims.

All information in this article is correct at time of writing.

