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*Proposed Canadian Legislative Regime*

*For the Remediation of Hazards Related to Shipwrecks*

**Discussion Paper**

**International Marine Policy**  
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\*This Convention was adopted under the auspices of the International Maritime Organization at a conference convened in 2007 in Nairobi, Kenya

## **Purpose**

- 1 The purpose of this Discussion Paper is to seek stakeholder views on the possible development of a regime, including legislation based on the *International Convention on the Removal of Wrecks, 2007 (IWR Convention)*, that would comprehensively address the hazards associated with shipwrecks. The text of the Convention is attached in the Annex to this paper.
- 2 The legislative objective of the proposed regime would be to ensure that commercial vessels and pleasure craft whether or not they are registered, listed, or licensed under the *Canada Shipping Act, 2001*<sup>1</sup>, that become a hazardous wreck in the future, will be removed or remediated by their owners at the owners' expense, and that owners have the financial resources to meet that obligation. The regime would also allow Canadian authorities to remove or remediate a hazardous wreck – broadly defined – subject to Canadian jurisdiction and where the situation requires immediate action, or where the owner fails to meet their responsibilities, at the owner's expense. The proposed regime would not apply to wrecks in existence prior to its coming into force.

## **Introduction**

- 3 Marine casualties often result in a number of potential or actual shipwrecks in Canada's internal waters and territorial sea each year. While many potential shipwrecks are successfully salvaged and put back into service, the removal or remediation of those that are not successfully salvaged can be costly. Even though shipowners are fully liable for these costs when navigation is obstructed or there is an immediate threat to the marine environment, all too often Canadian taxpayers bear the costs. Shipowners can become insolvent following an incident particularly if the wrecked vessel has no salvage value and are therefore unable to pay for removal of the wreck. Furthermore, the existing legislation does not expressly hold shipowners liable for remediation of hazards related to shipwrecks other than obstructions to navigation or immediate threats to the marine environment caused by oil pollution. For example, the provincial government of Nova Scotia paid over \$12 million to dismantle and remove the foreign-owned MV Miner which ran aground in a provincially protected wilderness area after breaking free of its tow in September 2011. There was nothing in existing federal legislation that would hold the owners of the MV Miner to account for the removal of the wreck.

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<sup>1</sup> The proposed legislation would also include a mechanism to exempt certain classes of small vessels, for example human-powered craft (canoes, kayaks, rowboats etc), that are unlikely to pose a significant shipwreck hazard.

- 4 Most Canadians would agree that Canada needs to protect its shorelines, rivers, lakes and marine aquatic environments from hazards related to shipwrecks and that taxpayers should not be required to pay for the remediation of those hazards. However, Canada's current legislative regime on shipwrecks is limited in that shipowners are primarily required to remove shipwrecks that are, or potentially are an obstruction to navigation or remediate potential or immediate threats to the marine environment. In the case of the MV Miner, the vessel no longer posed a hazard to navigation when it became stranded and fixed to the Nova Scotia shore and the Canadian Coast Guard advised that all reasonable threats of pollution from the vessel had been removed.
- 5 Legislation based on the *IWR Convention* could address several of the limitations inherent in Canada's current legislative framework by establishing a regime of strict liability and compulsory insurance on shipowners for the remediation of a much broader range of hazards related to shipwrecks. The Convention defines "hazard" as any condition or threat that poses a danger or impediment to navigation; or may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States. Those "related interests" are defined as the interests of a coastal State directly affected or threatened by a wreck, such as:
  - (i) maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;
  - (ii) tourist attractions and other economic interests of the area concerned;
  - (iii) the health of the coastal population and the wellbeing of the area concerned, including conservation of marine living resources and of wildlife; and
  - (iv) offshore and underwater infrastructure.
- 6 The *IWR Convention* was adopted by the International Maritime Organization (IMO) in May 2007 and came into force for State Parties on April 14, 2015. Canada is not Party to the Convention. While the *IWR Convention* covers many circumstances where a large vessel becomes a shipwreck, legislation implementing the Convention alone would not protect taxpayers against all shipwrecks. Legislation that would comprehensively address the hazards associated with shipwrecks would need to extend the Convention's application to vessels that are not covered by the Convention (e.g., non-seagoing vessels such as the Great Lakes fleet); extend some provisions (e.g., compulsory insurance) beyond what exists in the Convention; and consider unique provisions for other circumstances that are not covered by the Convention (e.g., liability for removal of towed objects).
- 7 In a discussion paper released in April 2010, Transport Canada (TC) requested stakeholders consider whether Canada should ratify the *IWR Convention* and apply its provisions to our internal waters and territorial sea. The paper was circulated to associations and individuals representing Canadian shipowners, maritime lawyers and marine underwriters; it was also

presented at the 2010 spring and fall national meetings of the Canadian Maritime Advisory Council and was posted on the Department's website<sup>2</sup> for anyone to comment. Eight responses were received to that discussion paper, all of which recommended that Canada accede to the *IWR Convention*, with the majority agreeing that it be extended to Canada's internal waters and territorial sea (two respondents did not comment on extending the Convention). Given this response, it is assumed that the provisions of the Convention are generally acceptable to shipowners and their insurers who should have little problem in complying with the obligations set out in the Convention. Insurance against liability for shipwrecks is an integral part of all marine liability insurance policies and prudent shipowners should already carry that insurance to protect their potential exposure to shipwreck costs.

- 8 This current discussion paper assumes that the *IWR Convention* would be the centrepiece for a new legislative regime that comprehensively addresses the hazards associated with shipwrecks. This paper builds on the 2010 discussion paper by taking a broader perspective in light of growing concerns about shipwrecks in wide-ranging circumstances. Stakeholders are invited to comment on proposals to implement the Convention and the various additional provisions set out below that are needed to ensure that the regime is comprehensive. The discussion paper starts with a brief description of Canada's existing legislative regime that deals with shipwrecks to a limited extent and then considers each of the key elements of the new legislative regime.

### **Canada's Current Legislation and Shipwrecks**

- 9 There are at least eight federal laws<sup>3</sup> that touch on "hazards" that can arise from a shipwreck, however, not one piece of legislation deals completely with all the facets of hazard removal, and in all geographical locations, as established in the *IWR Convention*. The two key pieces of legislation with provisions that deal with some aspects related, but not limited to shipwrecks are:

- (i) The *Navigation Protection Act* (NPA): Section 15 creates an obligation for the owner of an obstruction, including a wreck, to advise the Minister of Transport of the existence of the obstruction, mark and then immediately remove the obstruction unless the Minister orders otherwise. The Minister of Transport may also mark and remove the obstruction if the owner fails to do so. Under section 16 of the NPA, the Minister of Transport may order the person in charge of an obstruction or potential obstruction to secure, remove or destroy it. It is important to note, that sections 15 and 16 of the NPA only apply in waters listed in the Schedule to the Act. The list of Scheduled Waters includes the busiest

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<sup>2</sup><https://www.tc.gc.ca/eng/policy/acf-acfi-nairobi-menu-2210.htm>

<sup>3</sup> *Navigation Protection Act; Canada Shipping Act, 2001; Arctic Waters Pollution Prevention Act; Canada Marine Act; Fisheries Act; Fishing and Recreational Harbours Act; Department of Transport Act; Canada National Parks Act.*

waterways in Canada. These are navigable waters that support busy commercial or recreation-related navigation.

(ii) The *Canada Shipping Act, 2001* (CSA, 2001): Under section 180, if the Minister of Fisheries and Oceans believes on reasonable grounds that a vessel, including a wreck, has discharged, is discharging or is likely to discharge a pollutant, he or she may take mitigation measures that he or she considers necessary to repair, remedy, minimize or prevent pollution damage from the vessel, including, the removal or destruction of the vessel and its contents, and may sell or otherwise dispose of the vessel and its contents. The Minister of Fisheries and Oceans may, as well, direct any person or vessel to take pollution mitigation measures or to refrain from doing so.

Although the NPA and the CSA, 2001 do not include a civil liability regime, they both have provisions for offenses and punishment that could result in fines and other penalties upon summary conviction.

10 In addition to these laws, the *Marine Liability Act* (MLA) provides strict liability and compensation regimes for all pollution damages from any oil spill incidences and for costs and expenses incurred by the Minister of Fisheries and Oceans, pursuant to section 180 of the CSA, 2001, as well as costs and expenditures of any other person in Canada<sup>4</sup>. In the future, the MLA would also provide for compensation for hazardous and noxious substances carried as cargo<sup>5</sup>. However, the MLA does not include any statutory liability regime respecting shipwrecks specifically, nor is there any requirement for shipowners to maintain insurance related to shipwrecks. It should be noted, however, that Part 3 of the MLA on the Limitation of Liability for Maritime Claims contains a provision which stipulates that claims related to shipwreck removal and remediation are not subject to any limitation (see Schedule 1, Part 3 of the MLA). Thus, the recovery action of costs incurred by a public authority will not be inhibited by this statutory provision that grants the shipowners the right to limit their liability.

11 It must be remembered, however, that the limitation of liability under Part 3 of the MLA is not a liability regime. Whether a claim is subject to limitation or not does not determine if the shipowner is liable for damages. In the absence of a statutory liability regime, that determination will require either an admission of liability or legal proceedings to establish who is liable. The proposed regime will remedy this situation by establishing a statutory regime of liability with clear rules to determine the shipowner's liability. Again, once that liability is established under the new regime, claims for wreck removal will continue to be exempted from any limitation under Part 3 of the MLA.

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<sup>4</sup> As per sections 51, 71 and 77 of the MLA

<sup>5</sup> This regime is already implemented in the MLA and will come into force in Canada when Canada ratifies the *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010* and it comes into force internationally.

## Proposed Regime

### a) Scope of Application

- 12 It is proposed that legislation implementing the *IWR Convention* regime should be extended to Canada's internal waters and territorial sea in addition to the Exclusive Economic Zone (EEZ). This scope of application, supported by stakeholders indicated during the 2010 consultations, will ensure that the Convention applies to all seagoing vessels<sup>6</sup> that call at Canadian ports on the Great Lakes or St. Lawrence Seaway or on any other internal waterway. There are a significant number of vessels that never venture out into the open seas, including some large vessels that operate exclusively on the Great Lakes. These vessels should also be included in the proposed scope of application and, therefore, subject to the proposed regime.
- 13 Moreover, it is proposed that the legislation use a modified version of the definition of "ship" in Article 1 paragraph 2 of the *IWR Convention* which would include all vessels, whether seagoing or not. There is some precedent for this approach. When Canada implemented the *Convention on Limitation of Liability for Maritime Claims* (LLMC), its application was extended to owners of non-seagoing ships (paragraph 25(1)(b) of the MLA). Similarly when Canada implemented the *Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974* as amended by the Protocol of 1996, its application was extended to ships "whether seagoing or not" (paragraph 36(1)(a) of the MLA). The approach is also consistent with existing domestic legislation dealing with shipwrecks that obstruct or may obstruct navigation such as the NPA which defines a vessel in terms of "whether it is used as a sea-going vessel or on inland waters only" (Section 2 of the NPA).
- 14 The *IWR Convention's* provisions also apply to both the "registered owner" of a ship or, in the case of an unregistered ship, to the person(s) owning the ship at the time of the maritime casualty. At any point in time, there seems to be a significant number of vessels in Canadian waters that are either not registered or licensed or for which the registration or license has been cancelled or suspended, although often the vessel continues to float at anchor or tied to a dock. These vessels are perhaps even more at risk of becoming a shipwreck than the registered or licensed active fleet.
- 15 Thus, consistent with the *IWR Convention*, the proposed regime would apply to commercial vessels and pleasure craft whether or not they are registered, listed or licensed under the CSA, 2001. The proposed regime would also include a mechanism to exempt certain classes of small vessels, for example human-powered craft (canoes, kayaks, rowboats etc), that are unlikely to pose a significant shipwreck hazard. A decision to de-register or decommission a ship or an omission that leads to the cancellation of registration would not allow the

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<sup>6</sup> Excluding warships and other vessels owned or operated by a State for Government non-commercial purposes.



shipowner to void his obligations under the Convention or the proposed regime in the event of a shipwreck.

- 16 The proposed regime would also apply the definition of “wreck” as defined in Article 1 (4) of the *IWR Convention*, “following upon a maritime casualty, means: (a) a sunken or stranded ship; or (b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or (c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or (d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.”

**b) Reporting a Wreck and Warning Mariners (applies to all wrecks)**

- 17 The *IWR Convention* has provisions that require the reporting and warning of the location of wrecks. These requirements are consistent with existing international and Canadian regulations and so would not introduce any additional administrative burden or financial cost on either shipowners or Canadian taxpayers.

- 18 Under the *IWR Convention*, a State Party must require the master or the operator of a vessel flying its flag to report to the Affected State<sup>7</sup> when the vessel is involved in a maritime casualty resulting in a wreck (Article 5). Reporting of a maritime casualty is already required under the *Shipping Casualties Reporting Regulations* (SCRR), for Canadian ships in any waters in Canada or anywhere in the world and for foreign ships in the internal waters and territorial sea of Canada. The report must include the location of the casualty (Section 4(4)(d) of the SCRR). The person in charge of an obstruction in waters listed in the Schedule to the NPA is also required to immediately notify the Minister of Transport and provide the information requested by the Minister, which includes the location of the obstruction. The proposed legislation may consider amendments to the SCRR and NPA and any other relevant legislation<sup>8</sup> that would bring these rules into line with the Convention’s reporting requirements, in particular by requiring that wrecks be reported to other Affected States.

- 19 The *IWR Convention* would require Canada to warn mariners and other States concerned (if applicable) of the nature and location of a wreck upon becoming aware of a wreck (Article 7(1)). This is consistent with the requirement to issue navigational warnings under the *Safety of Life at Sea Convention* (SOLAS – Chapter V, Regulation 4) and would be accomplished through existing processes, such as the issuance of a Notice to Mariners.

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<sup>7</sup> “Affected State” is defined in the *IWR Convention* as meaning “the State in whose Convention area the wreck is located”. The Convention Area would include Canada’s EEZ, territorial sea and internal waters.

<sup>8</sup> e.g. *Arctic Waters Pollution Prevention Act; Vessel Pollution and Dangerous Chemicals*.

**c) Hazard Assessments**

- 20 The proposed regime would, in accordance with the *IWR Convention*, permit Canadian authorities to take necessary and appropriate actions to facilitate the removal or remediation of a shipwreck in Canada's EEZ, territorial sea or internal waters only if it is determined that the wreck poses a hazard and the owner fails to take the appropriate action<sup>9</sup>. The Convention provides a very broad definition of hazard that includes related interests of a Coastal State that are well beyond the immediate threat to navigation or the marine environment.
- 21 It is worth repeating that those "related interests" are defined as the interests of a coastal State directly affected or threatened by a wreck, such as:
- (i) maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;
  - (ii) tourist attractions and other economic interests of the area concerned;
  - (iii) the health of the coastal population and the wellbeing of the area concerned, including conservation of marine living resources and of wildlife; and
  - (iv) offshore and underwater infrastructure.
- 22 Article 6 of the Convention provides a list of criteria that should be taken into account when considering if a wreck poses a hazard. This list is not exhaustive but illustrative. It includes the type, size, construction of the wreck and the nature of the cargo it carries as well as factors related to its location (water depths, tides, traffic density, proximity to structures, etc.). Among other things, it recognizes the need to protect particularly sensitive sea areas and potentially vulnerable port facilities.
- 23 The hazard assessment will determine the measures that authorities may require of a shipowner for the remediation of the hazard. It will be important that the hazard assessment fully consider all aspects of the shipwreck in relation to the various interests that may be impaired. This will require a much broader range of expertise and local knowledge than is necessary under current Canadian law which addresses only navigation hazards or immediate threats to the marine environment. Canadian authorities will need to engage that expertise as necessary.
- 24 It is also likely that the assessment will evolve as the nature of the ship, cargo, sea area and interests affected becomes better known. In the immediate aftermath of an incident, it may be possible to prevent, mitigate or eliminate hazards that would eventually be posed by a shipwreck. Shipowners should take such actions as soon as possible to minimize their

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<sup>9</sup> The legislation would require the removal of wrecks of foreign ships in the EEZ only in circumstances permitted by international law.

liability. It will be important for authorities to determine the urgency for remediation or removal of a wreck in order to provide timely directions to the shipowner on the measures to be taken to remediate the hazards, but the shipowner should not feel constrained from acting to remove the wreck if the authorities have yet to complete their hazard assessment. The *IWR Convention* also allows for the Affected State to take immediate action to remove or remediate the wreck, consistent with considerations towards safety or protection of the marine environment. In these circumstances, the shipowner is still liable for costs incurred by the State<sup>10</sup>.

#### **d) Locating, Marking and Removal of Wreck**

- 25 Where there is a reason to believe that a wreck is a hazard, the *IWR Convention* requires the Affected State to ensure all practicable steps are taken to establish the precise location of the wreck (Article 7(2)). In most cases, the location of the wreck will already be established through the required reporting mechanisms, which include the requirement to provide the location of the shipwreck. In the case of drifting ships, there may be a need for further action to monitor the changing location of the wreck.
- 26 Once a wreck has been deemed a hazard, the *IWR Convention* requires the Affected State to ensure that it is marked. Marking the wreck serves as a warning to other vessels of the wreck's presence, and facilitates the locating of the wreck for remediation purposes. Currently, wrecks that pose an obstruction to navigation in waters listed in the Schedule to the NPA (Section 15) must be marked, and the onus is on the person in charge of the obstruction to carry out the marking. Legislation implementing the *IWR Convention* would expand the requirement for a wreck to be marked to include wrecks that pose other types of hazards, and to include hazardous wrecks located in Canadian waters not listed in the Schedule to the NPA and ships subject to Canadian jurisdiction in the EEZ. Canadian authorities would have the authority to mark the wreck should the owner of the wreck fail to do so or when a wreck has been found but the owner cannot be located.
- 27 Currently, the owner of a wreck is only responsible for removal of the wreck if it is an obstruction to navigation in Canadian waters listed in the Schedule to the NPA. The owner is also responsible for any pollution response measures. If the owner fails to do so, the Canadian Coast Guard takes the necessary actions and then seeks to recover the costs from the owner or, in the event of oil pollution, including preventive measures, from the Ship-Source Oil Pollution Fund (SOPF) if the environmental threat is caused by oil carried on the ship. Any hazardous wrecks outside these specific situations are currently not covered by Canadian legislation.

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<sup>10</sup> Nothing in this paragraph is intended to infringe upon the rights and obligations of salvors or shipowners under the *International Convention on Salvage*.

- 28 Under the proposed regime, Canadian authorities would be empowered to issue a “wreck removal notice” requiring the shipowner to remove a wreck that is in Canadian waters or Canada’s EEZ and that has been determined to be a hazard. For wrecks of foreign ships in the EEZ, the Minister could only issue such notices where Canada has jurisdiction at international law to require removal of the wreck.
- 29 “Removal” is defined under the *IWR Convention* as meaning “any form of prevention, mitigation or elimination of the hazard created by a wreck”. Depending on the situation and the hazard posed by the wreck, and in keeping with the concept of proportionate response embodied in Article 2 of the Convention, the owner may be required to fully remove the wreck, or some lesser action to address the specific hazard(s) determined by the hazard assessment (for example, removal of hazardous cargo may be sufficient).
- 30 The Affected State is required to communicate immediately with the shipowner and the State of the ship’s registry once the hazard assessment has been completed and the wreck has been deemed a hazard. This communication includes consultation on measures to be taken in relation to the wreck (Article 9(1)(b)) and the conditions the Affected State wishes to impose. The deadline and conditions are to be communicated in writing.
- 31 Should the shipowner not remove the wreck by the deadline, or should circumstances require that immediate action be taken, the Affected State may remove the wreck at the owner’s expense.

**e) Shipowner Liability**

- 32 In accordance with Article 10 of the *IWR Convention*, the proposed regime would establish strict liability for the shipowner that would cover the costs of locating, marking and removing a wreck subject to Canada’s jurisdiction, including all related costs to government such as the assessment of hazards and monitoring of the effectiveness of remediation. It should also provide the same defenses as set out in Article 10 (e.g., war or hostilities, acts or omissions of third parties done with intent to cause damage or negligence of any government responsible for the maintenance of navigational aids). Under strict liability, a claimant would not need to prove that a shipowner is at fault. The fact that a wreck has been determined to pose a hazard would be sufficient to establish the shipowner’s liability.
- 33 While the *IWR Convention* provides that the shipowner may limit liability in accordance with any applicable national or international regime, the proposed legislation would not alter the current provision in Part 3 of the *Marine Liability Act*, discussed above, that excludes claims for measures to remove or remediate shipwrecks from the shipowner’s right to limit liability under that Part. However, in accordance with Article 2 of the *IWR Convention*, the shipowner would be liable only for measures that are proportionate to the hazard(s) determined by the hazard assessment explained above.

- 34 A unique situation exists with regard to vessels that are used to tow other vessels or floating objects<sup>11</sup>. Often the towed vessel or other object is much larger than the towing vessel and more likely to become a wreck, particularly if it has no motive power of its own. There may be circumstances where the towing vessel must, to preserve its own safety, release the towed vessel or object. While the *IWR Convention* would hold the owner of a towing vessel liable for the costs of locating, marking and removing the wreck of the towing vessel itself, it would not hold the owner of the towing vessel liable for the wreck of the towed vessel or object.
- 35 If the towed vessel is a “ship” as defined in the Convention, then its owner would be strictly liable if, as a result of a marine casualty during the towing operation, the towed vessel becomes a wreck and is determined to pose a hazard. Where the towed vessel is registered and compliant with the all provisions of the Convention, the recovery of costs related to the removal or remediation of hazards related to the wreck should be straightforward under the new regime. However, if the towed vessel or object is not a registered ship, there could be difficulty in holding its owner liable or in even determining the owner’s identity. One approach to this would be to establish strict liability for the owner of the towing vessel for hazards arising from the wreck of the towed vessel or object and require that owner to maintain insurance for its removal or remediation. This approach was taken by Denmark when that state implemented the *IWR Convention*.
- 36 Most towing activity in Canada is subject to standard contracts such as the Eastern Canada Tug Owner’s Associations standard terms or BIMCO’s Towcon (specific task for lump sum payment) or Towhire (hired at a daily rate). These contracts make the owner of the towed vessel or object liable if that vessel or object is lost and becomes a wreck even when the operator of the towing vessel has been negligent. While these contracts are often seen as unbalanced in that they strongly favour the owner of the towing vessel, they have been upheld by courts provided the contracts are clear and unambiguous and express that the owner of the towed vessel or object is liable and responsible to insure it.
- 37 Rather than follow the Danish model and impose liability and compulsory insurance on the owner of the towing vessel, it is proposed that the Canadian regime follows current industry practice and establish strict liability for the owner of the towed vessel or object for its removal or remediation if it becomes a wreck. This would be consistent with the *IWR Convention*. However, the proposed regime would also include a requirement for the owner of the towing vessel to ensure, prior to engaging in the tow operation, that the owner of the towed vessel or object maintains adequate insurance for wreck removal or remediation. Failure by the owner of the towing vessel to ensure the towed vessel or object has complied with that obligation could result in the owner of the towing vessel committing an offense subject to a monetary penalty, and possibly even being held liable for damages caused by the

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<sup>11</sup> For example floating homes or platforms.

wreck of the towed vessel and costs to remove or remediate it. An exception from this monetary penalty would be allowed for situations involving a vessel in distress where a tow is required to avoid a marine casualty and is therefore impractical to ensure that the vessel to be towed is insured prior to undertaking the tow operation.

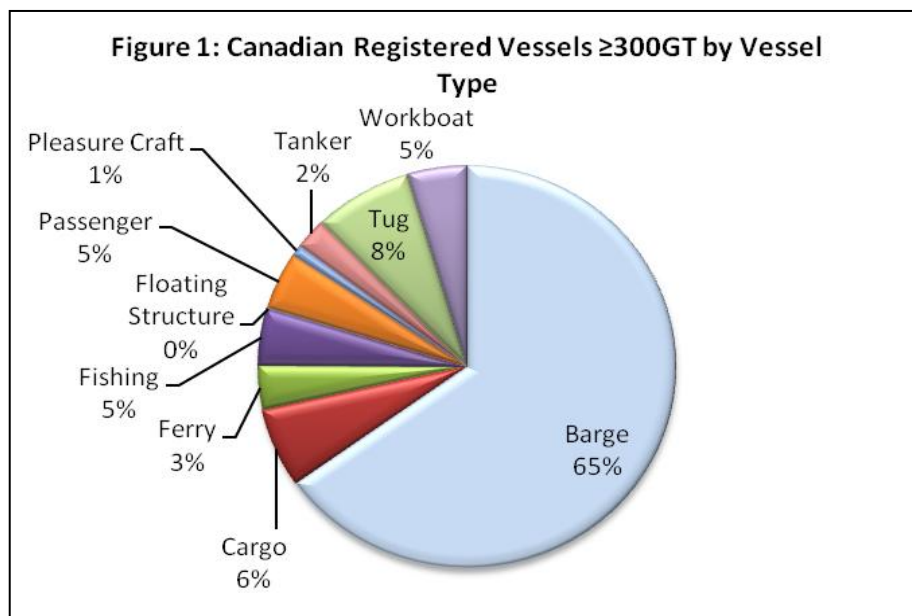
**f) Compulsory Insurance**

- 38 It is crucial to ensure that shipowners have the financial resources necessary to meet their obligations for wreck removal or remediation, even when the owner becomes insolvent. The proposed regime would therefore require all Canadian ships that are 300 Gross Tons (GT) and above to maintain insurance or financial security for wreck removal or remediation in accordance with the Article 12 of the *IWR Convention*.
- 39 Similarly, all foreign ships that are 300 GT and above that call at Canadian ports would also be required to maintain insurance or financial security for wreck removal or remediation in accordance with the *IWR Convention*. This is consistent with the approach taken when Canada implemented the *International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention)*.
- 40 The amount of insurance required would be equal to the limits of liability calculated in accordance with Article 6(1)(b) of the LLMC as set out in Part 3 of the MLA. These limits are expressed in terms of Special Drawing Rights (SDRs)<sup>12</sup> of the International Monetary Fund. The insurance policy would need to provide for a right of direct action against the insurer for claims related to wreck removal and remediation, i.e., the policy could not include a standard “pay to be paid” clause that normally would require the shipowner to pay any claim before being indemnified by the insurer. Unlike the shipowner, who would not have the right to limit its liability under the LLMC for wreck claims, as explained above, the insurer’s exposure would be limited to the amount of liability calculated in accordance with the LLMC and the insurance policy would need to make it clear that the amount is fully reserved for wreck claims. Thus, shipowners would be well advised to consult with their insurers on the overall amount of liability insurance they would need to protect their exposure to other potential liability, apart from their liability for wreck removal.
- 41 The insurance would also need to include provisions to be available for payment of wreck removal claims for quite some time after the marine casualty even if the policy would normally have expired during that period (within three years from the date when the hazard has been determined, or no more than six years from the date of the maritime causality that resulted in the wreck). This will be a particularly important factor to be considered if wreck removal insurance is part of a Hull and Machinery (H&M) policy rather than a Protection and Indemnity (P&I) policy.

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<sup>12</sup> SDR is a Special Drawing Right of the International Monetary Fund which provides quotations of this unit of account in the national currencies of all participating countries, including Canada.

- 42 Ships required to maintain insurance or financial security will be required to carry onboard a certificate issued by a contracting party to the *IWR Convention* attesting that insurance for wreck removal is in force in accordance with the provisions of the Convention. For Canadian registered ships and foreign ships registered in states that are not contracting parties to the Convention, TC will issue certificates in the same manner that it does currently under the *International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC)* and the *Bunkers Convention*. The master or operator of a ship of 300 GT and above must ensure that a valid certificate issued by a contracting state exists and produce it when requested by an enforcement officer.
- 43 To acquire a certificate, the shipowner would need to apply to TC and provide evidence from his or her insurer that there is a valid policy of insurance that meets the provisions of the *IWR Convention* and any other such information required to complete the certificate in accordance with Article 12 of the Convention. Typically, this is in the form of a “Blue Card” from a P&I Club<sup>13</sup>. TC will reserve the right to refuse to issue or to cancel certificates it has issued if it is felt that the insurer is unable to meet the obligations or meet the provisions related to insurance under the *IWR Convention*.
- 44 Just three percent of Canada’s registered fleet, approximately 1,500 vessels, are 300 GT and above and would therefore be subject to the compulsory insurance requirement. As Figure 1 shows, the affected vessels cover almost all vessel types, including cargo vessels, fishing vessels, workboats, pleasure craft, and ferries. These are owned by approximately 500 companies or individuals, indicating that there should be a number of owners seeking insurance policies that cover fleets of two or more vessels. Barges and tugs account for 65 percent and 8 percent, respectively, of the fleet of ships that are 300 GT and above.



<sup>13</sup> Shipowners have agreed to give each other mutual protection within the framework of mutual Protection and Indemnity Associations generally referred to as “P&I Clubs”.

- 45 Canada has a large fleet of vessels under 300 GT (almost 50,000 vessels) that spend most of their time within Canada's internal waters and territorial sea and are likely to account for more shipwrecks than the larger vessels. Some of these vessels are so small that there is little likelihood that they would be determined to pose a hazard if they became a wreck and the cost to remediate them if they were a hazard would likely be minimal. However, the costs to remediate hazards that could be caused by some of the larger vessels under 300 GT should they become a wreck could be significant.
- 46 As mentioned earlier, the vast majority of vessel owners in Canada are prudent operators who maintain insurance against potential liability that can arise from the operation of their vessels. However, if future experience with the *IWR Convention* were to indicate that there is a major problem with vessels under 300 GT and they do not have the financial resources necessary to meet their obligations for wreck removal or remediation, the proposed legislation would provide the authority for regulations to be developed that could implement an insurance requirement for vessels under 300 GT that fly the Canadian flag or call at Canadian ports. The amount of compulsory insurance for vessels under 300 GT would be determined in accordance with the liability limit as set out in the LLMC in Part 3, Section 29 of the MLA, which would be \$500,000. To avoid any undue administrative burden, the owners of these vessels would not be required to apply to TC for the certificates of insurance as would be required of ships 300 GT and above. Instead, they would be expected to comply with the insurance requirement and provide proof of that insurance on demand when requested by an enforcement officer (i.e., an honour system).
- 47 It should be noted that the minimum tonnage threshold that would trigger this insurance requirement for vessels under 300 GT has yet to be determined. Denmark has implemented this requirement for all Danish ships of 20 GT and above and has also done so on the basis of an honour system. Consultations with stakeholders within the context of the proposed regime will seek to determine an optimal threshold for Canadian ships. If that threshold were to be 20 GT, a further 10,000 vessels would be required to maintain wreck removal insurance under the proposed legislation.
- 48 These consultations will also provide an opportunity to consider whether and to what extent it would be possible to adopt measures similar to the proposed regime that would deal with wrecks of vessels that have long ceased maritime operations and have been re-purposed for other uses such as floating hotels, restaurants and the like, and often are permanently moored. Such a re-purposed vessel may no longer be considered as a "vessel" under the CSA, 2001 and thus would not be captured by the proposed regime if it becomes a "wreck", for example, as a result of a collision caused by another vessel.



**g) Enforcement, Violations, Offenses and Penalties**

- 49 It is proposed that the legislation be enforced in keeping with current practices for the enforcement of ship safety and liability provisions under the CSA, 2001 and the MLA, respectively. The legislation would grant Canadian authorities the power to designate enforcement officers and the powers of those officers will be stated.
- 50 A number of relevant violations and offenses will be created and subject to either administrative monetary penalties or fines upon summary conviction depending on their severity. The vessel, its owner, operator and/or master will be charged with the offence and liable for the penalty as appropriate. Where appropriate, ships could be detained at a Canadian port or subjected to other restrictions.
- 51 It is proposed that violations and offenses would include, but not necessarily be limited to:
- If neither the master nor the operator of a Canadian vessel reports a marine casualty to the authorities of an Affected State, then each of them or the vessel may be prosecuted. If either the master or the operator of the vessel reports the marine casualty then the other will be excused.
  - If neither the master nor the operator of a foreign vessel reports a marine casualty in Canada's EEZ, territorial sea or internal waters or the report is incomplete to Canadian authorities, then each of them or the vessel may be prosecuted. If either the master or the operator of the vessel reports the marine casualty then the other will be excused.
  - If the shipowner fails to comply with a Wreck Removal notice to remove or remediate hazards related to a shipwreck, then the shipowner or the vessel may be prosecuted.
  - If the master or operator of a ship required to carry a valid certificate of insurance fails to ensure that such a certificate is carried onboard the ship or fails to produce it when requested by an enforcement officer, then the vessel, its owner, operator or master may be prosecuted.
  - If, following the approval of regulation, the owner of a ship under 300 GT fails to insure a ship that is required by that regulation to maintain insurance and provide proof of such insurance when requested by an enforcement officer, then the vessel, its owner or operator may be prosecuted.
  - If the master or operator of a towing vessel fails to ensure that the vessel or object towed is insured for wreck removal, then the vessel, its owner, master or operator may be prosecuted.

## **h) Relationship with Other Liability Regimes**

- 52 It has been already mentioned above that Article 10 of the *IWR Convention* makes it clear that the shipowner would be strictly liable for the costs of locating, marking and removing a wreck unless that liability would be in conflict with other liability regimes as set out in Article 11. This provision may be particularly relevant to the shipowner's liability for oil pollution damage, including preventive measures, pursuant to the CLC and *Bunkers Conventions*, both of which have been ratified by Canada and adopted in the MLA. In the future this will also include the Hazardous and Noxious Substances Convention (*HNS Convention*) when Canada becomes a party to it.
- 53 This means that in the event of a claim that would fall under the *Bunkers Convention*, the maximum liability of the shipowner for bunker-related claims would be established under the LLMC in Part 3 of the MLA. Thus, in the event of loss or damage caused by the release of the bunker oil from the wreck, or preventive measures to minimize further damage including the removal of the bunker oil from the wreck, the associated cost, if incurred by a public authority on behalf of the shipowner, would be recoverable up to the LLMC limits and would also be backed by compulsory insurance of the shipowner as established under the *Bunkers Convention*. In the event the costs exceed the LLMC limits, the public authority would then be able to turn to the domestic SOPF to seek recovery of the balance of their claims exceeding the shipowner's liability, up to the SOPF's own limit of liability under the MLA.
- 54 However, in some cases it might be necessary to remove the bunker oil from the wreck for purposes that would not fall under the *Bunkers Convention*. For example, it might be determined that the bunker oil is not "expected to result in major harmful consequences, etc" (*IWR Convention* Article 1(5)(b)) but that the wreck, nonetheless, poses a major navigational hazard (*IWR Convention* Article 1(5)(a)) and must be removed starting with the removal of the bunker oil to refloat the wreck. Again, if the shipowner fails to take that action, the cost incurred by a public authority in removing the oil from the wreck would be a claim under the *IWR Convention* and would be recoverable up to the amount of the compulsory insurance as established under that Convention. If that amount were to be insufficient to settle the claim of the public authority, the latter would be able to take action against the assets of the shipowner for the balance of its claim since wreck claims are not subject to the limitation of liability under the LLMC in Part 3 of the MLA, as was already mentioned above. However, if that recovery action proved to be futile on account of the shipowner not having any assets, the public authority would not be able in this case to turn to the SOPF to seek recovery of any unpaid balance of its costs of removing the oil from the wreck

## **i) Enactment of Proposed Regime**

55 As indicated above, the *IWR Convention* came into force on April 14, 2015 for State Parties that already ratified or acceded to it by that date. Canada is not a party to the Convention at the present time. If and when the proposed regime is adopted by Parliament and the provisions of the *IWR Convention* are implemented in Canadian law, it would then be possible for Canada to accede to the Convention. The Convention would come into force for Canada in 90 days following the date on which Canada deposits its instrument of accession with the International Maritime Organization (IMO).

### **Summary**

56 Stakeholders are invited to express their views on the proposed regime based on the *IWR Convention* that would comprehensively address the hazards associated with shipwrecks. The legislation would ensure that commercial vessels and pleasure craft, whether or not they are registered, listed or licensed under the CSA, 2001 that become a wreck in the future can be removed or remediated by their owners or by Canadian authorities at the owners' expense and that owners have the financial resources to meet that obligation. This regime would not apply to wrecks in existence prior to its coming into force.

57 In summary, the proposed regime would achieve this objective by acceding to the *IWR Convention* and extending its application to Canada's internal waters and territorial sea and to non-seagoing ships.

58 Shipowners would be held strictly liable for the removal or remediation of hazardous wrecks subject to Canadian jurisdiction and would not be able to limit that liability. As is the case today, the master or operator of the ship would be required to report a marine casualty that may lead to a shipwreck to the public authorities. Public authorities would assess the hazard posed by an actual or potential shipwreck, and determine the measures that the shipowner is required to undertake to remedy those hazards and the deadline for completing those measures. If the shipowner fails to undertake the measures within the time allowed, the public authorities would have the authority to undertake them at the expense of the shipowner. Measures required or undertaken by public authorities would be proportionate to the hazard(s) that they have determined.

59 Vessels of 300 GT and above that fly the Canadian flag or call at Canadian ports would be required to maintain wreck removal insurance in accordance with the *IWR Convention* and carry onboard a certificate provided by a State that is party to the Convention attesting that such a policy of insurance is in place. The proposed legislation would include a provision that vessels towing other vessels or objects ensure that wreck removal insurance for the towed vessel or object is in place before the towing operation commences.

- 60 The proposed regime would also provide for regulations that would make it possible in the future to extend the insurance requirement to vessels under 300 GT that would be enforced based on an honour system.
- 61 The amount of insurance required would be calculated based on the LLMC for vessels of 300 GT and above, and as determined by Section 29 of the MLA for vessels under 300 GT. This amount of insurance would be dedicated to wreck removal claims from public authorities only and would not be available for other claims that are subject to the LLMC. The insurance would provide public authorities with a right of direct action against the insurer and would survive the insolvency of the insured.
- 62 The proposed regime would also include provisions for violations and offences and fines that are consistent with current marine legislation.
- 63 The proposed regime is not expected to result in significant new costs for the vast majority of shipowners who have access to many markets and appropriate insurance products at competitive rates and who, as prudent shipowners, already maintain adequate insurance for liability arising from their operations.
- 64 For shipowners who maintain very minimal insurance or operate without any insurance, they will need to determine any financial impact of the proposed regime in consultation with insurance experts. Transport Canada would be interested in hearing of any operational or competitive concerns for these shipowners or their insurers, particularly in the pleasure vessel sector, that may be associated with the proposed regime.
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**INTERNATIONAL CONVENTION ON  
THE REMOVAL OF WRECKS  
(2007)**

# **NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS, 2007**

THE STATES PARTIES TO THE PRESENT CONVENTION,

CONSCIOUS of the fact that wrecks, if not removed, may pose a hazard to navigation or the marine environment,

CONVINCED of the need to adopt uniform international rules and procedures to ensure the prompt and effective removal of wrecks and payment of compensation for the costs therein involved,

NOTING that many wrecks may be located in States' territory, including the territorial sea,

RECOGNIZING the benefits to be gained through uniformity in legal regimes governing responsibility and liability for removal of hazardous wrecks,

BEARING IN MIND the importance of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, and of the customary international law of the sea, and the consequent need to implement the present Convention in accordance with such provisions,

HAVE AGREED as follows:

## **Article 1**

### **Definitions**

For the purposes of this Convention:

1 "Convention area" means the exclusive economic zone of a State Party, established in accordance with international law or, if a State Party has not established such a zone, an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

2 "Ship" means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.

3 "Maritime casualty" means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it, resulting in material damage or imminent threat of material damage to a ship or its cargo.

4 "Wreck", following upon a maritime casualty, means:

(a) a sunken or stranded ship; or

(b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or

- (c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or
  - (d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.
- 5 “Hazard” means any condition or threat that:
- (a) poses a danger or impediment to navigation; or
  - (b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States.
- 6 “Related interests” means the interests of a coastal State directly affected or threatened by a wreck, such as:
- (a) maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;
  - (b) tourist attractions and other economic interests of the area concerned;
  - (c) the health of the coastal population and the wellbeing of the area concerned, including conservation of marine living resources and of wildlife; and
  - (d) offshore and underwater infrastructure.
- 7 “Removal” means any form of prevention, mitigation or elimination of the hazard created by a wreck. “Remove”, “removed” and “removing” shall be construed accordingly.
- 8 “Registered owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship at the time of the maritime casualty. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the operator of the ship, “registered owner” shall mean such company.
- 9 “Operator of the ship” means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended.
- 10 “Affected State” means the State in whose Convention area the wreck is located.
- 11 “State of the ship’s registry” means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State whose flag the ship is entitled to fly.
- 12 “Organization” means the International Maritime Organization.
- 13 “Secretary-General” means the Secretary-General of the Organization.

## **Article 2**

### **Objectives and general principles**

- 1 A State Party may take measures in accordance with this Convention in relation to the removal of a wreck which poses a hazard in the Convention area.
- 2 Measures taken by the Affected State in accordance with paragraph 1 shall be proportionate to the hazard.
- 3 Such measures shall not go beyond what is reasonably necessary to remove a wreck which poses a hazard and shall cease as soon as the wreck has been removed; they shall not unnecessarily interfere with the rights and interests of other States including the State of the ship's registry, and of any person, physical or corporate, concerned.
- 4 The application of this Convention within the Convention area shall not entitle a State Party to claim or exercise sovereignty or sovereign rights over any part of the high seas.
- 5 States Parties shall endeavour to co-operate when the effects of a maritime casualty resulting in a wreck involve a State other than the Affected State.

## **Article 3**

### **Scope of application**

- 1 Except as otherwise provided in this Convention, this Convention shall apply to wrecks in the Convention area.
- 2 A State Party may extend the application of this Convention to wrecks located within its territory, including the territorial sea, subject to article 4, paragraph 4. In that case, it shall notify the Secretary-General accordingly, at the time of expressing its consent to be bound by this Convention or at any time thereafter. When a State Party has made a notification to apply this Convention to wrecks located within its territory, including the territorial sea, this is without prejudice to the rights and obligations of that State to take measures in relation to wrecks located in its territory, including the territorial sea, other than locating, marking and removing them in accordance with this Convention. The provisions of articles 10, 11 and 12 of this Convention shall not apply to any measures so taken other than those referred to in articles 7, 8 and 9 of this Convention.
- 3 When a State Party has made a notification under paragraph 2, the "Convention area" of the Affected State shall include the territory, including the territorial sea, of that State Party.
- 4 A notification made under paragraph 2 above shall take effect for that State Party, if made before entry into force of this Convention for that State Party, upon entry into force. If notification is made after entry into force of this Convention for that State Party, it shall take effect six months after its receipt by the Secretary-General.
- 5 A State Party that has made a notification under paragraph 2 may withdraw it at any time by means of a notification of withdrawal to the Secretary-General. Such notification of withdrawal shall take effect six months after its receipt by the Secretary-General, unless the notification specifies a later date.



## **Article 4**

### **Exclusions**

1 This Convention shall not apply to measures taken under the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, as amended, or the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973, as amended.

2 This Convention shall not apply to any warship or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service, unless that State decides otherwise.

3 Where a State Party decides to apply this Convention to its warships or other ships as described in paragraph 2, it shall notify the Secretary-General, thereof, specifying the terms and conditions of such application.

4 (a) When a State Party has made a notification under article 3, paragraph 2, the following provisions of this Convention shall not apply in its territory, including the territorial sea:

(i) Article 2, paragraph 4;

(ii) Article 9, paragraphs 1, 5, 7, 8, 9 and 10; and

(iii) Article 15.

(b) Article 9, paragraph 4, insofar as it applies to the territory, including the territorial sea of a State Party, shall read:

Subject to the national law of the Affected State, the registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before such removal commences, the Affected State may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

## **Article 5**

### **Reporting wrecks**

1 A State Party shall require the master and the operator of a ship flying its flag to report to the Affected State without delay when that ship has been involved in a maritime casualty resulting in a wreck. To the extent that the reporting obligation under this article has been fulfilled either by the master or the operator of the ship, the other shall not be obliged to report.

2 Such reports shall provide the name and the principal place of business of the registered owner and all the relevant information necessary for the Affected State to determine whether the wreck poses a hazard in accordance with article 6, including:

(a) the precise location of the wreck;

- (b) the type, size and construction of the wreck;
- (c) the nature of the damage to, and the condition of, the wreck;
- (d) the nature and quantity of the cargo, in particular any hazardous and noxious substances; and
- (e) the amount and types of oil, including bunker oil and lubricating oil, on board.

## **Article 6**

### **Determination of hazard**

When determining whether a wreck poses a hazard, the following criteria should be taken into account by the Affected State:

- (a) the type, size and construction of the wreck;
- (b) depth of the water in the area;
- (c) tidal range and currents in the area;
- (d) particularly sensitive sea areas identified and, as appropriate, designated in accordance with guidelines adopted by the Organization, or a clearly defined area of the exclusive economic zone where special mandatory measures have been adopted pursuant to article 211, paragraph 6, of the United Nations Convention on the Law of the Sea, 1982;
- (e) proximity of shipping routes or established traffic lanes;
- (f) traffic density and frequency;
- (g) type of traffic;
- (h) nature and quantity of the wreck's cargo, the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck and, in particular, the damage likely to result should the cargo or oil be released into the marine environment;
- (i) vulnerability of port facilities;
- (j) prevailing meteorological and hydrographical conditions;
- (k) submarine topography of the area;
- (l) height of the wreck above or below the surface of the water at lowest astronomical tide;
- (m) acoustic and magnetic profiles of the wreck;
- (n) proximity of offshore installations, pipelines, telecommunications cables and similar structures; and
- (o) any other circumstances that might necessitate the removal of the wreck.

## **Article 7**

### **Locating wrecks**

1 Upon becoming aware of a wreck, the Affected State shall use all practicable means, including the good offices of States and organizations, to warn mariners and the States concerned of the nature and location of the wreck as a matter of urgency.

2 If the Affected State has reason to believe that a wreck poses a hazard, it shall ensure that all practicable steps are taken to establish the precise location of the wreck.

## **Article 8**

### **Marking of wrecks**

1 If the Affected State determines that a wreck constitutes a hazard, that State shall ensure that all reasonable steps are taken to mark the wreck.

2 In marking the wreck, all practicable steps shall be taken to ensure that the markings conform to the internationally accepted system of buoyage in use in the area where the wreck is located.

3 The Affected State shall promulgate the particulars of the marking of the wreck by use of all appropriate means, including the appropriate nautical publications.

## **Article 9**

### **Measures to facilitate the removal of wrecks**

1 If the Affected State determines that a wreck constitutes a hazard, that State shall immediately:

- (a) inform the State of the ship's registry and the registered owner; and
- (b) proceed to consult the State of the ship's registry and other States affected by the wreck regarding measures to be taken in relation to the wreck.

2 The registered owner shall remove a wreck determined to constitute a hazard.

3 When a wreck has been determined to constitute a hazard, the registered owner, or other interested party, shall provide the competent authority of the Affected State with evidence of insurance or other financial security as required by article 12.

4 The registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before such removal commences, the Affected State may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

5 When the removal referred to in paragraphs 2 and 4 has commenced, the Affected State may intervene in the removal only to the extent necessary to ensure that the removal proceeds effectively in a manner that is consistent with considerations of safety and protection of the marine environment.

6 The Affected State shall:

- (a) set a reasonable deadline within which the registered owner must remove the wreck, taking into account the nature of the hazard determined in accordance with article 6;
- (b) inform the registered owner in writing of the deadline it has set and specify that, if the registered owner does not remove the wreck within that deadline, it may remove the wreck at the registered owner's expense; and
- (c) inform the registered owner in writing that it intends to intervene immediately in circumstances where the hazard becomes particularly severe.

7 If the registered owner does not remove the wreck within the deadline set in accordance with paragraph 6(a), or the registered owner cannot be contacted, the Affected State may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

8 In circumstances where immediate action is required and the Affected State has informed the State of the ship's registry and the registered owner accordingly, it may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

9 States Parties shall take appropriate measures under their national law to ensure that their registered owners comply with paragraphs 2 and 3.

10 States Parties give their consent to the Affected State to act under paragraphs 4 to 8, where required.

11 The information referred to in this article shall be provided by the Affected State to the registered owner identified in the reports referred to in article 5, paragraph 2.

## **Article 10**

### **Liability of the owner**

1 Subject to article 11, the registered owner shall be liable for the costs of locating, marking and removing the wreck under articles 7, 8 and 9, respectively, unless the registered owner proves that the maritime casualty that caused the wreck:

- (a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character;
- (b) was wholly caused by an act or omission done with intent to cause damage by a third party; or
- (c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

2 Nothing in this Convention shall affect the right of the registered owner to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

3 No claim for the costs referred to in paragraph 1 may be made against the registered owner otherwise than in accordance with the provisions of this Convention. This is without prejudice to the rights and obligations of a State Party that has made a notification under article 3, paragraph 2, in relation to wrecks located in its territory, including the territorial sea, other than locating, marking and removing in accordance with this Convention.

4 Nothing in this article shall prejudice any right of recourse against third parties.

## **Article 11**

### **Exceptions to liability**

1 The registered owner shall not be liable under this Convention for the costs mentioned in article 10, paragraph 1 if, and to the extent that, liability for such costs would be in conflict with:

- (a) the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended;
- (b) the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended;
- (c) the Convention on Third Party Liability in the Field of Nuclear Energy, 1960, as amended, or the Vienna Convention on Civil Liability for Nuclear Damage, 1963, as amended; or national law governing or prohibiting limitation of liability for nuclear damage; or
- (d) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended;

provided that the relevant convention is applicable and in force.

2 To the extent that measures under this Convention are considered to be salvage under applicable national law or an international convention, such law or convention shall apply to questions of the remuneration or compensation payable to salvors to the exclusion of the rules of this Convention.

## **Article 12**

### **Compulsory insurance or other financial security**

1 The registered owner of a ship of 300 gross tonnage and above and flying the flag of a State Party shall be required to maintain insurance or other financial security, such as a guarantee of a bank or similar institution, to cover liability under this Convention in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases not exceeding an amount calculated in accordance with article 6(1)(b) of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

2 A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship of 300 gross tonnage and above by the appropriate authority of the State of the ship's registry after determining that the

requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party, such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This compulsory insurance certificate shall be in the form of the model set out in the annex to this Convention, and shall contain the following particulars:

- (a) name of the ship, distinctive number or letters and port of registry;
  - (b) gross tonnage of the ship;
  - (c) name and principal place of business of the registered owner;
  - (d) IMO ship identification number;
  - (e) type and duration of security;
  - (f) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
  - (g) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other security.
- 3 (a) A State Party may authorize either an institution or an organization recognized by it to issue the certificate referred to in paragraph 2. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.
- (b) A State Party shall notify the Secretary-General of:
- (i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognized by it;
  - (ii) the withdrawal of such authority; and
  - (iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to three months from the date on which notification to that effect was given to the Secretary-General.

- (c) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not maintained. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

4 The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages and, where the State so decides, the official language(s) of the State may be omitted.

5 The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authorities issuing or certifying the certificate.

6 An insurance or other financial security shall not satisfy the requirements of this article if it can cease for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5 unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification, which results in the insurance or security no longer satisfying the requirements of this article.

7 The State of the ship's registry shall, subject to the provisions of this article and having regard to any guidelines adopted by the Organization on the financial responsibility of the registered owners, determine the conditions of issue and validity of the certificate.

8 Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organizations relating to the financial standing of providers of insurance or financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate required by paragraph 2.

9 Certificates issued and certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates issued or certified by them, even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by this Convention.

10 Any claim for costs arising under this Convention may be brought directly against the insurer or other person providing financial security for the registered owner's liability. In such a case the defendant may invoke the defences (other than the bankruptcy or winding up of the registered owner) that the registered owner would have been entitled to invoke, including limitation of liability under any applicable national or international regime. Furthermore, even if the registered owner is not entitled to limit liability, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defence that the maritime casualty was caused by the wilful misconduct of the registered owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the registered owner against the defendant. The defendant shall in any event have the right to require the registered owner to be joined in the proceedings.

11 A State Party shall not permit any ship entitled to fly its flag to which this article applies to operate at any time unless a certificate has been issued under paragraphs 2 or 14.

12 Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security to the extent required by paragraph 1 is in force in respect of any ship of 300 gross tonnage and above, wherever registered, entering or leaving a port in its territory, or arriving at or leaving from an offshore facility in its territorial sea.

13 Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 12, ships are not required to carry on board or to produce the certificate required by paragraph 2, when entering or leaving a port in its territory, or arriving at or leaving from an offshore facility in its territorial sea, provided that the State Party which issues the certificate required by paragraph 2 has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 12.

14 If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authority of the State of registry, stating that it is owned by that State and that the ship's liability is covered within the limits prescribed in paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.

### **Article 13**

#### **Time limits**

Rights to recover costs under this Convention shall be extinguished unless an action is brought hereunder within three years from the date when the hazard has been determined in accordance with this Convention. However, in no case shall an action be brought after six years from the date of the maritime casualty that resulted in the wreck. Where the maritime casualty consists of a series of occurrences, the six-year period shall run from the date of the first occurrence.

### **Article 14**

#### **Amendment provisions**

1 At the request of not less than one-third of States Parties, a conference shall be convened by the Organization for the purpose of revising or amending this Convention.

2 Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to this Convention, as amended.

### **Article 15**

#### **Settlement of disputes**

1 Where a dispute arises between two or more States Parties regarding the interpretation or application of this Convention, they shall seek to resolve their dispute, in the first instance, through negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice.



2 If no settlement is possible within a reasonable period of time not exceeding twelve months after one State Party has notified another that a dispute exists between them, the provisions relating to the settlement of disputes set out in Part XV of the United Nations Convention on the Law of the Sea, 1982, shall apply *mutatis mutandis*, whether or not the States party to the dispute are also States Parties to the United Nations Convention on the Law of the Sea, 1982.

3 Any procedure chosen by a State Party to this Convention and to the United Nations Convention on the Law of the Sea, 1982, pursuant to Article 287 of the latter, shall apply to the settlement of disputes under this article, unless that State Party, when ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, chooses another procedure pursuant to Article 287 for the purpose of the settlement of disputes arising out of this Convention.

4 A State Party to this Convention which is not a Party to the United Nations Convention on the Law of the Sea, 1982, when ratifying, accepting, approving or acceding to this Convention or at any time thereafter shall be free to choose, by means of a written declaration, one or more of the means set out in Article 287, paragraph 1, of the United Nations Convention on the Law of the Sea, 1982, for the purpose of settlement of disputes under this Article. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is party, which is not covered by a declaration in force. For the purpose of conciliation and arbitration, in accordance with Annexes V and VII of the United Nations Convention on the Law of the Sea, 1982, such State shall be entitled to nominate conciliators and arbitrators to be included in the lists referred to in Annex V, Article 2, and Annex VII, Article 2, for the settlement of disputes arising out of this Convention.

5 A declaration made under paragraphs 3 and 4 shall be deposited with the Secretary-General, who shall transmit copies thereof to the States Parties.

## **Article 16**

### **Relationship to other conventions and international agreements**

Nothing in this Convention shall prejudice the rights and obligations of any State under the United Nations Convention on the Law of the Sea, 1982, and under the customary international law of the sea.

## **Article 17**

### **Signature, ratification, acceptance, approval and accession**

1 This Convention shall be open for signature at the Headquarters of the Organization from 19 November 2007 until 18 November 2008 and shall thereafter remain open for accession.

- (a) States may express their consent to be bound by this Convention by:
  - (i) signature without reservation as to ratification, acceptance or approval; or
  - (ii) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
  - (iii) accession.

- (b) Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

## **Article 18**

### **Entry into force**

1 This Convention shall enter into force twelve months following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.

2 For any State which ratifies, accepts, approves or accedes to this Convention after the conditions in paragraph 1 for entry into force have been met, this Convention shall enter into force three months following the date of deposit by such State of the appropriate instrument, but not before this Convention has entered into force in accordance with paragraph 1.

## **Article 19**

### **Denunciation**

1 This Convention may be denounced by a State Party at any time after the expiry of one year following the date on which this Convention comes into force for that State.

2 Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.

3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, following its receipt by the Secretary-General.

## **Article 20**

### **Depositary**

1 This Convention shall be deposited with the Secretary General.

2 The Secretary-General shall:

- (a) inform all States which have signed or acceded to this Convention of:
- (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
  - (ii) the date of entry into force of this Convention;
  - (iii) the deposit of any instrument of denunciation of this Convention, together with the date of the deposit and the date on which the denunciation takes effect; and
  - (iv) other declarations and notifications received pursuant to this Convention;

- (b) transmit certified true copies of this Convention to all States that have signed or acceded to this Convention.

3 As soon as this Convention enters into force, a certified true copy of the text shall be transmitted by the Secretary-General to the Secretary-General of the United Nations, for registration and publication in accordance with Article 102 of the Charter of the United Nations.

## **Article 21**

### **Languages**

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE IN NAIROBI this eighteenth day of May two thousand and seven.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Convention.

**ANNEX**

**CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY  
IN RESPECT OF LIABILITY FOR THE REMOVAL OF WRECKS**

Issued in accordance with the provisions of article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007

Name of Ship	Gross tonnage	Distinctive number or letters	IMO Ship Identification Number	Port of Registry	Name and full address of the principal place of business of the registered owner

This is to certify that there is in force, in respect of the above-named ship, a policy of insurance or other financial security satisfying the requirements of article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007.

Type of Security .....

Duration of Security .....

Name and address of the insurer(s) and/or guarantor(s)

Name .....

Address .....

.....

This certificate is valid until .....

Issued or certified by the Government of .....

.....

(Full designation of the State)

OR

The following text should be used when a State Party avails itself of article 12, paragraph 3:

The present certificate is issued under the authority of the Government of .....

(full designation of the State) by ..... (name of institution or organization)

At .....  
(Place)

On .....  
(Date)

.....  
(Signature and Title of issuing or certifying official)

**Explanatory Notes:**

- 1 If desired, the designation of the State may include a reference to the competent public authority of the country where the Certificate is issued.
- 2 If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
- 3 If security is furnished in several forms, these should be enumerated.
- 4 The entry "Duration of Security" must stipulate the date on which such security takes effect.
- 5 The entry "Address" of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.