

Shipwrecks and the Nairobi Convention

What you need to know

- If a ship is flagged in a state that has ratified the Convention (a **State Party**) it must carry an insurance certificate showing insurance coverage for wreck removal; the owner or any demise charterer must also report any wrecks that occur to the ship.
- If you are a shipowner (including bank owned SPV shipowners) you face strict liability for the costs of wreck removal within the 200 mile exclusive economic zone (**EEZ**) of a State Party (which will include the 12 mile territorial waters of the State Party if it has opted-in to the relevant part of the Convention).
- Insurance will be available from P&I clubs.
- Financiers of ships will want to check that their loan documents require the shipowner to have that insurance in place and, if flagged to a State Party, provide a copy of the relevant insurance certificate.
- Ratifying states currently include the Marshall Islands, Liberia and the United Kingdom.



The Convention applies to wrecks (the definition includes parts of ships, cargo and a ship that is likely to sink or strand) occurring in the EEZ of a State Party (up to 200 nautical miles from the coast, but not within its territorial waters (from the coastline to a maximum of 12 nautical miles) unless the State Party has opted in to its territorial waters also being covered).

Shipowners' responsibilities

The owner and any manager or demise charterer which operates a ship flagged in a State Party have an obligation to report any wreck without delay to the State Party (in whose waters the incident has occurred). Although only 15 states have ratified to date, the Marshall Islands, Liberia and the UK have all ratified, meaning that about one third of the world's ships will be covered by the compulsory insurance and reporting obligations from the start.

If the State Party determines that a wreck is a hazard to navigation or the environment, that State Party should ensure it is marked. It can also require the registered owner to mitigate the hazard by removing the wreck. If the registered owner does not remove it, the State Party can. The registered owner is responsible for the costs of locating, marking and removing the wreck except under very limited circumstances.

What is the Convention all about?

The Nairobi International Convention on the Removal of Wrecks 2007 comes into force on 14 April 2015. When the Convention applies, it will impose strict liability and insurance obligations on the registered owners of all ships that become or cause wrecks. The Convention applies to all ships and platforms (floating ships and production drilling units are only excluded while on location and engaged in work), but the compulsory insurance and reporting obligations will only apply to ships flagged in a State Party.

The registered owner which operates a ship of 300 gross tonnage or more and flagged in a State Party must ensure that the ship carries insurance (with a certificate on board) to cover the cost of removal up to any limit imposed by the applicable national or international limitation regime or no greater than any limit imposed by the Convention on the Limitation of Liability for Maritime Claims 1976 as amended). The State Party can bring a claim directly against the insurer for the costs of removal. Ships flagged in a state that is not a State Party can and should also obtain insurance certificates demonstrating they have coverage for wreck removal. The International Group of P&I clubs have confirmed they will assist the State Parties in issuing certificates of coverage.

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Conclusion

There are limited carve outs for liability; these relate to war, third party acts and government negligence. In many ways the Convention only standardises existing practice, but the ability of states to take action directly against insurers is likely to result in a more uniform and systematic protection of the world's seas and might encourage more jurisdictions to offer refuge to stricken ships so preventing impending disasters.

Shipowners should be ensuring they have appropriate insurance in place and financiers should check whether their owners have the correct cover. A finance document should require the Owner or operator of a ship to insure against all the risks that a prudent first class operator would insure against including wreck related costs outlined in this article.

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