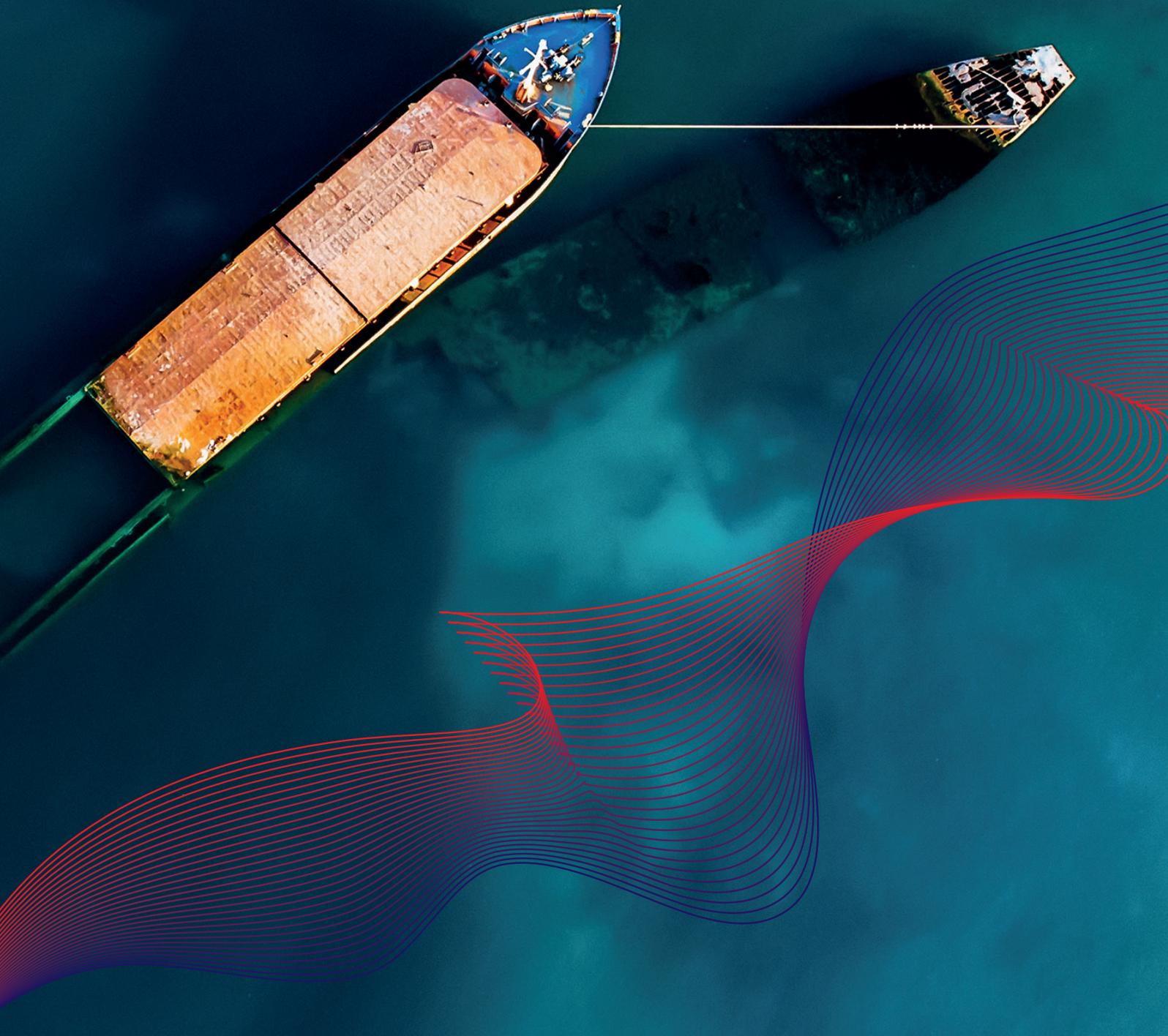


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MS  *Amlin*

Wreck removal in a nutshell: the Nairobi Convention



The Nairobi Wreck Removal Convention 2007 (NWRC) is an international convention that provides the basis for states to remove shipwrecks that may have the potential to adversely affect the safety of lives, goods and property at sea, as well as the marine environment. The NWRC was adopted in 2007 at an international conference in Kenya and came into force in 2015. Presently, there are 53 State Parties to the NWRC, covering roughly 76% of the world's tonnage.

The NWRC has a wide range of mechanisms aimed at the removal of wrecks that may pose a hazard to navigation or the marine environment and its articles cover the following:

- reporting, locating and marking wrecks (Articles 5, 7, and 8);
- criteria for determining whether a wreck poses a hazard (Article 6);
- measures to facilitate the removal of wrecks as well as the rights and obligations in this respect (Article 9);
- liability of the registered owner for the costs involved in locating, marking and removing wrecks (Articles 10 and 11);
- requirements for compulsory insurance or other financial security (Article 12); and
- settlement of disputes between states (Article 15).

With this circular, MS Amlin would like to answer some FAQ about the NWRC.

Q1: To what does the NWRC apply and who is responsible?

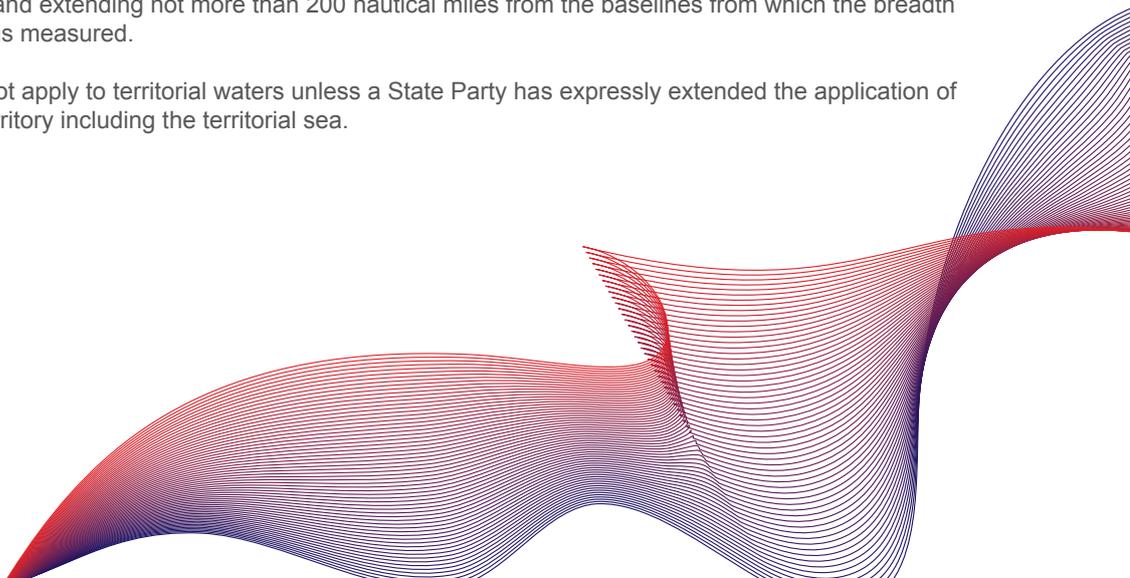
It applies to wrecks located in the Convention area (see Q2 below). In this regard the NWRC permits a State Party to take measures to facilitate the removal of wrecks that pose a hazard to navigation or the marine environment. It is the registered owner of the ship involved in a maritime casualty and resulting in a wreck, who is responsible to remove such wreck.

- “Ship” means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft, floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.
- “Wreck” means a sunken or stranded ship or any part of it including any object that is or has been on board such ship; any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or 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.
- “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.

Q2: Where does the NWRC apply?

It applies in the exclusive economic zone (EEZ) of a State Party established in accordance with international law. If an EEZ is not established, then the NWRC applies in an area beyond and adjacent to the territorial sea of that State Party and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

The NWRC does not apply to territorial waters unless a State Party has expressly extended the application of the NWRC to its territory including the territorial sea.



Presently, the State Parties to the NWRC are:

Albania ¹	Comoros ¹	Iran	Nauru	Saint Vincent and the Grenadines ¹
Antigua & Barbuda ¹	Croatia ¹	Japan ¹	Netherlands ^{1,4}	
Bahamas ¹	Cyprus ¹	Jordan	Nigeria	Saudi Arabia
Belarus	Denmark ^{1,3}	Kenya ¹	Niue ¹	Sierra Leone
Belgium	Estonia ¹	Korea (DPRK)	Oman ¹	Singapore
Belize ¹	Finland ¹	Liberia ¹	Palau	South Africa
Bulgaria ¹	France ¹	Madagascar	Panama ¹	Sweden ¹
Canada ¹	Gabon	Malaysia	Portugal	Switzerland
China ²	Germany	Malta ¹	Romania	Tonga
Congo	Guyana	Marshall Islands ¹	Saint Kitts and Nevis	Tuvalu
Cook Islands	India	Morocco		United Kingdom ^{1,5}

¹ Extension to territory and territorial sea

² Excluding Hong Kong Special Administrative Region and the Macao Special Administrative Region of the People's Republic of China

³ Excluding the Faroes and Greenland

⁴ Including the European part of the Netherlands and the Caribbean part of the Netherlands (Bonaire, Sint Eustatius and Saba)

⁵ Including the Isle of Man (excluding territorial waters) as well as Gibraltar and the Cayman Islands (including territorial waters)

Source: [IMO](#)

Q3: What is the liability under the NWRC?

The registered owner shall be liable for the costs of locating, marking and removing a wreck. Liability is strict, which means that a claimant does not need to show fault of the registered owner.

The registered owner is only able to escape liability under the NWRC if he can prove that the maritime casualty that caused the wreck:

- resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character;
- was wholly caused by an act or omission done by a third party with intent to cause damage; or
- 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.

Q4: Can liability under the NWRC be limited?

The registered owner can limit liability in accordance with the Convention on Limitation of Liability for Maritime Claims 1976 (LLMC), as amended.

However, states ratifying the LLMC can make a reservation against LLMC applying to wreck removal. Some State Parties have indeed notified the International Maritime Organisation (IMO) of a reservation of their right to legislate for unlimited liability in respect of wreck removal. In those jurisdictions, registered owner cannot limit their liabilities arising under the NWRC.

In the event of doubt whether clients may be involved in a maritime casualty taking place in any such jurisdiction, please contact MS Amlin for assistance.

Q5: Should a Blue Card be issued under the NWRC?

Yes, for ships of 300 gross tonnage and above that are flying the flag of a State Party or entering or leaving a port in its territory, it is compulsory to maintain insurance or other financial security to cover their liability under the NWRC. Such compulsory insurance or financial security is attested by a Certificate issued by the flag state to the ship (Certificate of Insurance or Other Financial Security in Respect of Liability for the Removal of Wrecks). The Certificate shall be carried on board the ship, and it is issued on the basis of a Blue Card, which a registered owner can obtain from their P&I insurer or financial guarantor as a confirmation that the required insurance or financial security is in place.

Such a compulsory insurance regime can be found also in other IMO liability conventions, such as the Civil Liability Convention (CLC), the Bunker Convention, and the Athens Convention for the carriage of passengers.

Q6: Are P&I insurers liable to claimants other than the registered owner?

Yes, any claim under the NWRC can be brought directly against the insurer or financial guarantor providing security for the registered owner's liability under the Blue Card. Thus, the insurer is responsible for the registered owner's NWRC liabilities and can be subject to direct action by third-party claimants.

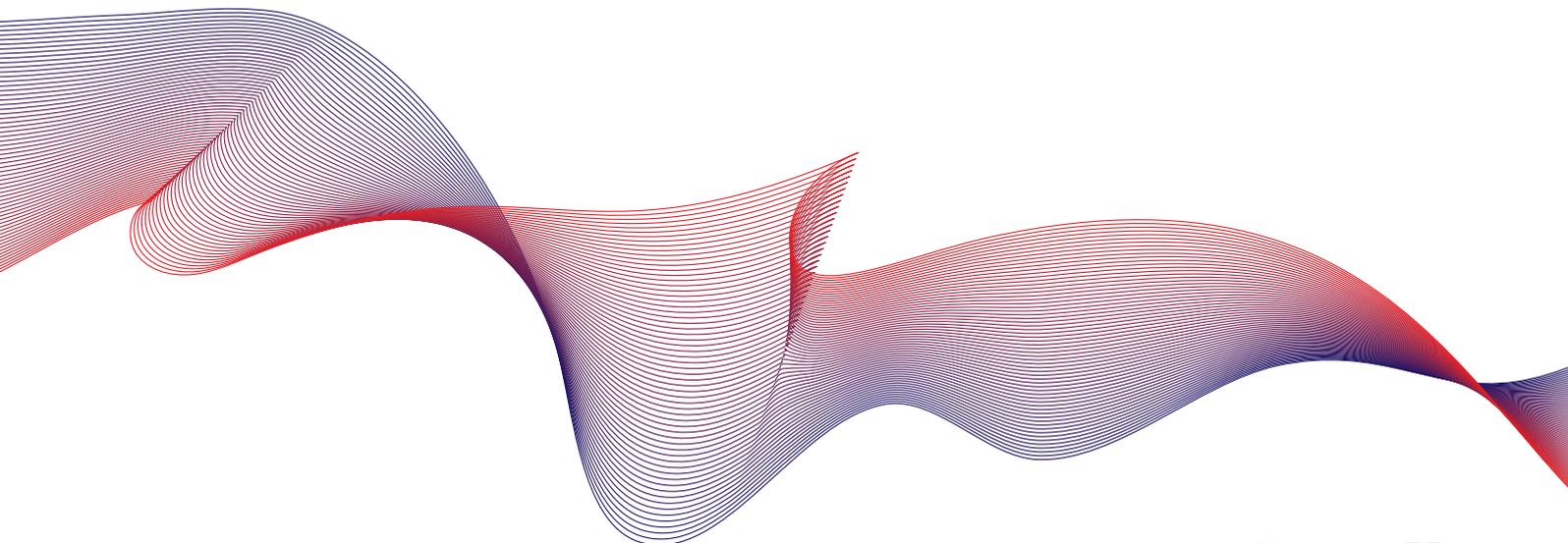
In such an event, the insurer can rely on the defences available to the registered owner including the right to limit liability (see Q3 and Q4 above), and even if the registered owner is not entitled to limit their liability, the insurer may still limit liability to the amount of the insurance. However, the insurer cannot rely on any defences or exclusions set in the insurance policy with the exception of wilful misconduct of the registered owner.

Conclusion

The NWRC as summarised above, provides a set of uniform international rules governing responsibility and liability for removal of hazardous wrecks. As such, not only does it facilitate the prompt and effective removal of wrecks, but it also creates predictability and certainty for the maritime sector in the unfortunate event of a maritime casualty.

For more information on the NWRC, please visit the IMO dedicated page:

www.imo.org/en/About/Conventions/ListOfConventions/Pages/Nairobi-International-Convention-on-the-Removal-of-Wrecks.aspx



This information is meant for guidance only. Should you require more information or assistance, please feel free to contact our Client Services Desk:
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